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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.12.2019

Coram:

THE HONOURABLE DR. JUSTICE C.V.KARTHIKEYAN

Writ Petition 33022 of 2019
and
W.M.P.Nos.33451 and 33452 of 2019

Mrs.Meera Sivasankaran	.. Petitioner
/versus/	
Sr.Dy.Gen.Manager(HR & ADMN.) M/s Bharat Electronics Limited, Nandambakkam, Chennai 600 089.	.. Respondent

Prayer:-

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records relating to the show cause notice dated 16.11.2019 issued by the respondent, to quash the same as being illegal, unjust and arbitrary and direct the respondent to permit the petitioner to continue with the existing contract as per the agreement dated 4th July 2019.

For Petitioner :Mr.AR.L.Sundaresan,
Senior Counsel for Mr.N.Senthilkumar

For Respondent :Mr.T.Madhusudhan Reddy

O R D E R

The petitioner is aggrieved by the show cause notice which was issued on 16.11.2019 by the respondent and therefore, she has filed the present writ petition in the nature of Certiorarified Mandamus to call for the records relating to the show cause notice dated 16.11.2019 issued by the respondent, to quash the same as being illegal, unjust and arbitrary and to direct the respondent to permit the petitioner to continue with the existing contract as per the agreement dated 4th July 2019.

2. The Court is aware that very rarely there can be interference and order passed on the basis of the show cause notice. The show cause notice is only a notice calling upon the



addressee to reply as to why action should not be taken against the said addressee. In this case, however, the show cause notice, which had been issued to the petitioner, appears to have words which have predetermined the decision to be taken.

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3. The brief facts of the case is that the petitioner had originally started Agency by name "Lakshmi Travels" and thereafter, she had been providing service to several Public Works Undertakings. It is stated that an agreement was entered on 04.07.2019 with the respondent company. The respondent was not satisfied with the functioning of the petitioner, more particularly, it is stated that a solvency certificate was issued, which was later found to be not a genuine certificate. The respondent had a right to terminate the agreement. Prior to such determination, naturally they will have to issue a show cause notice. They issued a show cause notice, which is impugned before this Court. That was dated 16.11.2019. They could have very well stated the reasons as to why they have issued the show cause notice and called upon the petitioner to give her explanation to them. But very unfortunately, in the show cause notice, they have also stated as follows:

"6.0 Consequent to the illegal and fraudulent act committed by you, the contract is null and void ab initio irrespective of the date of knowledge of the fraud committed by you. Any termination of the Contract in writing is only an empty formality to enable initiating a fresh Tender, in which you are however disqualified to participate.

7.0 In addition to the termination, the other penal consequences, but not limited to, are black listing you from the Vendor list of BEL, Chennai, banning you from participating in the future tenders of BEL, Chennai for such period of time as determined by BEL, forfeiture of your security deposit for depleting and wasting the resources, both time and costs, of BEL-Chennai, informing the Ministry of Tourism, Govt. of India, the other PSU's, wherein you are registered as a Vendor, Central Vigilance Commission etc."

4. A bare reading of the said extract of the show cause notice shows that the respondent has already decided to disqualify the petitioner from participating in any fresh tender. They have practically decided to blacklist the



petitioner from the vendor list of BEL, Chennai and ban her from participating in future tenders of BEL, Chennai. These words should not have been incorporated in the show cause notice. After giving an opportunity to the petitioner to answer the averments in the show cause notice, the respondent is always at liberty to pass any order as against the petitioner herein, but it is highly unjustified that they should take such a decision even while issuing the show cause notice. For that one reason, I hold the show cause notice has to be set aside. That cannot be the end of the case, since an opportunity must necessarily be given to the respondent to issue a fresh show cause notice.

5. The learned counsel appearing for the petitioner has placed reliance in *Siemens Limited vs. State of Maharashtra and others* reported in [(2006) 12 SCC 33] wherein the Hon'ble Supreme Court has stated as follows:

"10. A bare perusal of the order impugned before the High Court as also the statements made before us in the counter affidavit filed by the respondents, we are satisfied that the statutory authority has already applied its mind and has formed an opinion as regard the liability or otherwise of the appellant. If in passing the order the respondent has already determined the liability of the appellant and the only question which remains for its consideration is quantification thereof, the same does not remain in the realm of a show cause notice. The writ petition, in our opinion, was maintainable."

6. The reasoning of the Hon'ble Supreme Court is directly applicable to the facts of the present case. Consequently, the show cause notice dated 16.11.2019 is quashed. But the respondent is granted permission to issue a fresh show cause notice on or before 10.01.2020 for which the petitioner should issue a reply on or before 20.01.2020. The respondent may conduct an enquiry adopting the principles of natural justice, namely, by giving an opportunity of personal hearing, if sought for, granting opportunity to give written representation and any document by the petitioner herein and thereafter, an order is to be passed, based on the enquiry conducted with reasons on or before 15.02.2020.



7. With the above observations, this writ petition is disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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+1cc to M/s.N.Senthil Kumar, Advocate sr.106534
+1cc to Mr.T.Madhusudhan Reddy, Advocate sr.106398

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rp(co)
nr 20/01/2020