IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No. 23167 of 2017(O&M)
Date of Decision: 2nd April, 2019

M/s Selvel Media Services Pvt. Ltd. …..Petitioner

versus

Municipal Corporation, Union Territory, Chandigarh and others

…..Respondents

CORAM: HON'BLE MR.JUSTICE KRISHNA MURARI, CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI, JUDGE

Present : Mr. Chetan Mittal, Senior Advocate with
Mr. M.S.Nain, Advocate, for the petitioner.

Mr. Pankaj Jain, Senior Standing Counsel,
U.T. Admn. Chd. with Ms. Deepali Puri, Advocate
for the respondent-Municipal Corporation, Chandigarh.

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KRISHNA MURARI, CHIEF JUSTICE

By means of this petition, the petitioner has invoked the extra ordinary writ jurisdiction of this Court conferred by Article 226 of the Constitution of India seeking the following main relief:-

i) to issue a writ in the nature of certiorari quashing the impugned order dated 29.09.2017 (Annexure P-12) passed by respondent No.2 thereby debarring the petitioner for a period of two years with immediate effect from participating in future tenders/works in the Municipal Corporation, Chandigarh, on the ground for which neither any show cause notice was issued nor any opportunity of hearing was granted and the ground of continuous possession after the expiry of contract was under the orders of the Court in the previous litigation and thus not only illegal, arbitrary, discriminatory and result of total non

> application of judicious mind and on such minor issues warranting such extreme penalty of debarring is against the well settled principles of law and rather the same has been passed hurriedly with a pre-determined mind."

2. We have heard Shri Chetan Mittal, learned Senior counsel assisted by Shri Mohinder Singh Nain, Advocate for the petitioner company and Shri Pankaj Jain, learned Senior Standing Counsel for Union Territory, Chandigarh alongwith Ms.Deepali Puri, Advocate, for the respondents.

3. Facts relevant for the purpose of effective adjudication of the controversy at hand in nut-shell can be summarized as under:-

The petitioner is a company registered under the Companies Act, 1956 and engaged in the business of advertising and other media related services. The petitioner company on being successful in two different tenders for operation, running and maintenance of public toilets within the internal markets of Chandigarh entered into two agreements bearing Nos. 71 and 72 with the respondent-Municipal Corporation. The petitioner company was also successful in obtaining the third contract which relates to two toilets situated in Sectors 23 and 35, Chandigarh. The time period for all the three contracts was five years.

4. During the continuation of the contract period, vide order dated 21.07.2015 the petitioner company was debarred/black listed for a period of two years which was put to challenge before this Court by filing Civil Writ Petition No. 19017 of 2015 mainly on the allegation that it was in violation of the principles of natural justice as neither any show cause notice was issued nor any opportunity of hearing was afforded.

5. Learned counsel appearing for the respondents in the said writ petition conceded the factual position that the order was passed without any notice or opportunity of hearing and on a request made by, the respondents were permitted to withdraw the notice dated 21.08.2015 with liberty to issue fresh notice and to take action in accordance with law after affording an opportunity of hearing.

6. Subsequently, the respondents issued a fresh show cause notice dated 08.10.2015 proposing black-listing/debarring the petitioner company for a period of two years on the ground that having failed to handover the vacant possession of the buildings with fittings/fixtures etc. in running condition to the Municipal Corporation as handed over at the commencement of the contract, it has violated clause 15 of the two agreement Nos. 71 and 72. In respect of agreement No.21, the charge against the petitioner company was that it has failed to deposit the licence fee in advance and thus was liable to pay a sum of Rs. 12,89,367/- and despite the demand notice the petitioner company has failed to deposit the same.

7. The petitioner company submitted a detailed reply to the aforesaid show cause notice. Thereafter a hearing meeting was held under the Chairmanship of the Commissioner, Municipal Corporation, Chandigarh on 23.12.2015 and after detailed discussion it was resolved as under:-

> 1. Company representative on behalf of M/s Selvel Media Services Pvt. Ltd. agreed to pay the upto date amount of license fee after reconciliation for the work under Agreement No.21 of year 2010-11.
>
> 2. Company was advised to clear the other liabilities such as Service Tax on license fees for the work under Agreement No.21 of year 2010-11.
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> 3. Company was advised to submit the NDC to the office of the Executive Engineer, MC PH Divn. No. 4, Chandigarh, in respect of :

i) Electricity & water bills for the period of execution of contract,

ii) The applicable statutory for display of advertisements.

4. Company also agreed to update the condition of Public Toilet Blocks as per inventory for the toilets (2 No. of Sector 22 and Sector 35) covered under Agreement No.21 of year 2010-11.

5. Regarding inventory of public Toilet Blocks i.e. 46 no. and 40 no. (Covered under 2 no. agreements of year 2007-08), the works to update the condition of toilets by replacement of fixtures and repair of Civil Works etc. have already been allotted to M/s Esquire Construction Co. Sector 56, Chandigarh with the charges to be recoverable from the dues of M/s Selvel Media Services Pvt. Ltd. In this regard, the company representative has agreed for the same but requested that the quantities of the various items should be as per the inventory for the toilets signed after the joint survey which was carried out during May, 2014."

8. The aforesaid resolution arrived at in the hearing meeting dated 23.12.2015 was communicated to the petitioner company vide letter dated 04.07.2016. The petitioner company further alleges that in compliance of the aforesaid resolution arrived at between the parties in the hearing meeting dated 23.12.2015, the petitioner company deposited a sum of Rs. 12,89,367/- with the respondents. However, since in respect of Agreement Nos. 71 and 72, the detail of the amount to be paid was not communicated, therefore, the same could not be deposited, though various communications took place between the parties in this regard.

9. Another order dated 18.11.2016 was passed by the respondents again debarring/black-listing the petitioner company from participating in the future tenders for a period of two years. The order was again challenged before this Court by filing Civil Writ Petition No. 24197 of 2016. Again

during the pendency of the aforesaid writ petition, the order of black listing/debarring the petitioner company was withdrawn by the respondents and accordingly the petition was disposed of as having rendered infructuous vide order dated 15.03.2017.

10. The petitioner company again filed a detailed reply to the allegations made against it. The respondents passed an order dated 29.09.2017 again black-listing/debarring the petitioner company for a period of two years from participating in future tenders which is impugned in this petition.

11. Learned senior counsel for the petitioner company vehemently contended that the main ground on which now the petitioner company has been debarred in respect of keeping the government property under unauthorized possession even after the date on which the contract came to an end i.e. 31.03.2014, was not even a part of the show cause notice and yet has been made the basis of passing the order of black listing/debarring which is totally illegal. It is further submitted that the aforesaid charge cannot be made out against the petitioner inasmuch as the continuation in respect of agreement Nos. 71 and 72 even after the expiry of the period of contract was by virtue of the orders passed by this Court in Civil Writ Petition Nos. 2950 of 2014 and 7718 of 2014. It is pointed out that after the expiry of the period of contract, the petitioner company was declared successful in the fresh tender process but the formal allotment of new contract was not finalized which was challenged by filing the aforesaid two writ petitions. Civil Writ Petition No. 2950 of 2014 was disposed of by this Court by making various directions one of which is as under:-

> "In case of any adverse decision, especially as the *adhoc* arrangement has continued till now, the same

be not implemented for a period of seven days from the date of communication of the decision to the petitioner."

12. The respondents issued two notices dated 01.04.2014 and 11.04.2014 requiring the petitioner company to remove the advertisement from the toilets and handover the vacant possession which was in violation of the order dated 18.02.2014 and was put to challenge by filing another Civil Writ Petition No. 7718 of 2014 which was disposed of by making the following observations:-

> "The only concern of the learned Senior counsel for the petitioner in this behalf is that in terms of interim directions passed by this Court, the petitioner continued to maintain the toilets beyond 1.4.2014. We may notice that as per an interim arrangement, the petitioner was continuing to do so but in the midst of the decision making process over the tender, the petitioner was sought to be deprived of the right to maintain the toilets. It is in these circumstances that the interim orders were passed.
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> Learned Senior Standing Counsel for the respondents fairly states that the petitioner will be paid for the period beyond 1.4.2014 also, on the same terms as were being paid immediately prior to that, when the tender process was under examination. The possession of the toilets will be handed over on or before 12.5.2014."

13. It is an admitted case of the respondents that the possession of the toilets has been handed over in the 2nd week of May, 2014 within the time allowed by this Court.

14. When learned counsel for the respondents was confronted with the observation that in view of the orders passed by this Court firstly the petitioner company cannot be made liable for the charge for not handing over the vacant possession and secondly the debarment/black-listing on this ground being directly in the teeth of the order dated 06.05.2014 passed in Civil Writ Petition No. 7718 of 2014 is contemptuous, learned counsel for the respondents on the basis of the instructions made a statement before us that this charge cannot sustain and conceded that it may be deemed to have

been withdrawn. The main charge having been conceded to be withdrawn, the other charge on which the petitioner company has been black-listed and debarred, namely, the possession of the toilets when handed over was not in good condition and despite deficiencies being noted in the joint inspection, the same have not been rectified and non deposit of licence fee, learned counsel for the petitioner company contends that these aforesaid two charges against the petitioner company already stood resolved in the hearing meeting dated 23.12.2015 and in response thereto a sum of Rs. 12,89,367/- towards licence fee have already been deposited.

15. Learned counsel for the petitioner company further submits that since in respect of the shortcomings/deficiencies in respect of agreement Nos. 71 and 72 no specific amount was conveyed and therefore, the same could not be deposited and the petitioner company cannot be held liable for the same as well.

16. There is no denial of the fact that the issue was resolved in the hearing meeting dated 23.12.2015 and in pursuance thereto outstanding sum of Rs.12,89,367/- towards licence fee has been deposited. Learned counsel for the respondents has failed to point out any material to demonstrate that any specified amount in compliance of the resolution arrived at between the parties was ever demanded from the petitioner company and it failed to deposit the same.

17. In the light of the above facts and in the absence of any material having been brought on record by the respondents to counter the aforesaid facts, prima-facie the respondents cannot be said to be justified in black-listing/debarring the petitioner company on the twin charges, once the third charge which was predominant has been withdrawn.

18. Apart from the above, the three charges on which the impugned order is based are so inter-linked and the facts constituting the charges are so intermingled and interrelated to each other that once one of them has been withdrawn, the issue in respect of other two charges need a fresh consideration especially in the light of the resolution arrived at between the parties in the hearing meeting dated 23.12.2015 and the un-rebutted allegations of the petitioner having deposited the licence fee.

19. In view of the facts and circumstances discussed hereinabove, the impugned order in respect of the remaining two charges, since require a fresh consideration, the same cannot sustain and is hereby set aside. The matter stands remitted back to the respondents' authorities to pass a fresh order in respect of two charges in respect of agreement Nos. 71 and 72 in accordance with law keeping in view the conciliation arrived at between the parties in the hearing meeting dated 23.12.2015 and also the deposit of licence fee as alleged by the petitioner. Needless to observe that the decision shall be taken by the authorities after issuing a fresh show cause notice and affording opportunity of hearing to the petitioner company by a reasoned order in accordance with law expeditiously preferably within a period of three weeks from today.

With these observations and directions, the petition stands disposed of finally.

(KRISHNA MURARI)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

02.04.2019
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Whether speaking/reasoned	√Yes/No
Whether reportable	√Yes/No