

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.3264 of 2015 (O&M)

Date of Decision: 30.01.2019

Parveen Kumar @ Praveen Kumar Kataria

... Petitioner

Versus

Union of India and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Vikas Bishnoi, Advocate and
Mr. Tarun Seth, Advocate
for the petitioner.

Mr. O.P. Dabla, Advocate
for the respondent/Union of India.

ARUN MONGA, J. (ORAL)

The present writ petition has been filed, inter alia, for issuance of a writ in the nature of certiorari to quash impugned order dated 29.09.2014 (Annexure P-10) and order dated 29.10.2014 (Annexure P-11), pursuant where to petitioner has been delisted from approved list of contractors in perpetuity.

2. Learned counsel for the petitioner contends that even if the grounds of the impugned orders are held against the petitioner, at the most a contractor can be unlisted for a period of one year at single instance. He relies on a judgment rendered by the Hon'ble Supreme Court of India in case titled as ***Gorkha Security Services Vs. Government of NCT of Delhi and others 2014 (9) SCC 105*** as also another judgment rendered by this Court in ***CWP No.15067 of 2015 titled as Gurdeep Singh Vs. State of Punjab and others.***

3. Vide letter dated 28.12.2013 Annexure P-9 of the Chief Engineer, South Western Command, it was held that the petitioner was a proprietor of M/s R.K. Kataria and Sons and also a partner of M/s PEPSU Builders and Engineers that both these

related firms were submitting double tenders in their respective names. It was further held that the same person i.e. Parveen Kumar @ Praveen Kumar (Kataria) was de facto managing both these firms, had submitted tenders which were lowest and he was taking advantage thereof.

4. Through the said letter dated 28.12.2013 (Annexure P-9) sanction was sought by the Chief Engineer, South Western Command (being the registering authority) from Engineer-in-Chief for suspending the petitioner from the approved list of contractors for three months owing to the suspected mal-practices. The said sanction was sought in terms of para 1.16 (b) (iii) of Manual of Contract, 2007. However, petitioner's name was removed instead of suspension from the approved list of contractors vide impugned order dated 29.10.2014 (Annexure P-11). In the reply filed to the writ petition, the stand of the respondents is same as recorded in the impugned orders viz the petitioner firm was indulging in malpractices of submitting double tenders. It was asserted that the petitioner was held guilty of concealment and misrepresentation of facts, owing to which the impugned orders were fully justified and the petitioner's firm cannot be re-listed on the approved list of Government contractors.

5. Having gone through the pleadings of the parties as also after hearing the rival contentions of the learned counsel for the parties, I am of the opinion that the impugned orders cannot be kept alive in perpetuity. In this context, the judgments as relied upon by the learned counsel for the petitioner are also applicable to the present case. For ready reference, the relevant para of the judgment rendered by the Hon'ble Supreme Court of India in ***M/s Kulja Industries Limited V. Chief Gen, Manager W. T. Proj. BSNL & others, AIR 2014 (SC) 9***, is extracted hereinbelow:-

“22. As regards the period for which the order of debarment will remain effective, the guidelines state that the same would depend upon the seriousness of the case leading to such debarment.

23. Similarly in England, Wales and Northern Ireland, there are statutory provisions that make operators ineligible on several grounds including fraud, fraudulent trading or conspiracy to defraud,

bribery etc.

24. Suffice it to say that 'debarment' is recognised and often used as an effective method for disciplining deviant suppliers/contractors who may have committed acts of omission and commission or frauds including misrepresentation, falsification of records and other breaches of the regulations under which such contracts were allotted. What is notable is that the '**debarment' is never permanent** and the period of debarment would invariably depend upon the nature of the offence committed by the erring contractor.

25. In the case at hand according to the respondent-BSNL, the appellant had fraudulently withdrawn a huge amount of money which was not due to it in collusion and conspiracy with the officials of the respondent-corporation. Even so permanent debarment from future contracts for all times to come may sound too harsh and heavy a punishment to be considered reasonable especially when (a) the appellant is supplying bulk of its manufactured products to the respondent-BSNL and (b) The excess amount received by it has already been paid back.”

6. The said judgment in turn was also relied by the Division Bench of this Court in Gurdip Singh's case, *idid*, the relevant whereof is extracted hereinbelow:-

“6. Even otherwise, the impugned order is one of permanent blacklisting. An action of blacklisting for all times to come cannot be sustained in view of the judgment of the Apex Court in **M/s Kulja Industries Limited V. Chief Gen,Manager W.T.Proj.BSNL & others, AIR 2014 (SC) 9.**”

7. In another judgment rendered by Hon'ble Supreme Court of India in case titled as Gorkha Security Services Vs. Government of NCT of Delhi and other 2014 (9) SCC 105, it has been held that there cannot be a permanent blacklisting merely because the power has been vested with the respondent to blacklist a contractor. The relevant whereof is reproduced hereinbelow:-

“25. It is thus apparent that this sub-clause provides for various actions which can be taken and penalties which can be imposed by the Department. In such a situation which action the Department proposes to take, need to be specifically stated in the show cause notice. It becomes all the more important when the action of black listing and/or forfeiture

of earnest money/security deposit is to be taken, as the clause stipulates that such an action can be taken, if so warranted. The words 'if so warranted', thus, assume great significance. It would show that it is not necessary for the Department to resort to penalty of black listing or forfeiture of earnest money/ security deposit in all cases, even if there is such a power. It is left to the Department to inflict any such penalty or not depending upon as to whether circumstances in a particular case warrant such a penalty. There has to be due application of mind by the authority competent to impose the penalty, on these aspects. Therefore, merely because of the reason that clause 27 empowers the Department to impose such a penalty, would not mean that this specific penalty can be imposed, without putting the defaulting contractor to notice to this effect.”

8. These judgments authoritatively lay down that 'debarment' or 'blacklisting' for all times to come is not permissible.

9. In view of the settled law as laid down in the aforesaid judgments rendered by Hon'ble supreme Court of India and Division Bench of this Court, the impugned orders dated 29.09.2014 and 29.10.2014 permanetnly removing the petitioner's name from the approved list of contractors are held bad in law. The same are quashed with no order as to costs.

10. Petition is allowed in the aforesaid terms.

30.01.2019

rekha sharma

**(ARUN MONGA)
JUDGE**

Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*