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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 339/2019**

KANWAR SINGH YADAV

..... Petitioner

Through: Mr Kirti Uppal, Senior
Advocate with Mr M.M. Singh,
Mr S.K. Pal, Mr Jitendra
Kumar, Mr Aditya Awasthi,
Advocates.

versus

ALL INDIA INSTITUTE OF MEDICAL SCIENCE
(AIIMS) AND ANR.

..... Respondent

Through: Mr S.R. Krishna, Mr Shashank
Kumar, Advocates for AIIMS.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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15.01.2019

VIBHU BAKHRU, J

CM No. 1594/2019

1. Exemption is allowed, subject to all just exceptions.
2. The application stands disposed of.

W.P.(C) 339/2019 and CM No. 1593/2019

3. The petitioner has filed the present petition impugning a letter dated 05.01.2019 (hereafter 'the impugned order') passed by the Competent Authority of respondent no.1 (AIIMS). By the impugned order, the petitioner has been debarred from participating in any

contracts with AIIMS and the security furnished by the petitioner in the sum of ₹1,08,000/- has been forfeited. In addition, directions have also been issued to recover the amounts overcharged by the petitioner.

4. The petitioner claims that the impugned order is beyond the scope of the contract and has been passed only with the view to exclude the petitioner from participating in the tender floated by AIIMS for operating cafeterias, which has been challenged by the petitioner by way of the separate proceedings filed in this Court.

5. In the year 2013-2014, AIIMS had issued a notice inviting tenders for running the staff cafeteria at Jai Prakash Narayan Apex Trauma Centre (JPNATC). The petitioner had participated for the aforesaid tender, which was accepted by AIIMS on 25.06.2014. Thereafter, on 09.07.2014, license deed was executed in favour of the petitioner for running a cafeteria.

6. It is relevant to note that the tender was submitted for approved rates for various items and the petitioner could not charge prices in excess of the rates as approved.

7. Since, there were certain complaints against the petitioner, a show cause notice dated 23.12.2014 was issued to him wherein it was, *inter alia*, alleged that (i) the food items were kept in an unhygienic manner in the cafeteria; (ii) that none of the persons handling food were found to be wearing gloves; (iii) the mineral water was not being served in the faculty and resident lounge not been followed and instead the mineral water bottled were re-filled by water from the RO filter from the cafeteria; (iv) the rate of food items was not displayed;

(v) items in the cafeteria were sold at a rate higher than that approved to some of the employees; (vi) the general waste disposable was pathetic; and (vii) the manager of the cafeteria has been changed without bringing it to the notice of the Faculty-In-Charge of JPNATC.

8. On 03.08.2018, another show cause notice was issued alleging that some foreign objects had been found in the food served in the cafeteria. Thereafter, another show cause notice dated 18.08.2018 and a revised show cause notice dated 27.08.2018 was issued wherein it was alleged that the complaints had been received that the petitioner had been overcharging to the extent of 60%.

9. The petitioner responded to the said allegation by letters dated 21.08.2018 and 04.09.2018 wherein he stated that the rates for the food items was increased with the prior consent and advice of the committee members (Mr T.R. Mahajan, Mr Shashi Chandran Nair and Dr Sumit Sinha).

10. He also submitted that higher rates were being charged from attendant of patients as was the practice by the cafeteria contractor who was appointed prior to the contract with the petitioner. The petitioner was afforded an opportunity of an oral hearing on 11.10.2018. The petitioner relied upon the contract with M/s Eswara's Kamdhenu Restaurant (which was the contract for running the cafeteria for the period prior to commencement of the contract with the petitioner). The said contract expressly provided that the rate for patients / patient's attendant would be 60% extra. The petitioner also pleaded that he had sent a letter on 22.06.2015 requesting that the rates

for items be increased by 30%. The petitioner had produced a copy of the said letter which indicates that the petitioner had sought confirmation for increasing rates by 30% and in the alternative also suggested that the respondents make their own arrangement for running the cafeteria.

11. In order to ascertain the veracity of the petitioner's claim that the committee members had approved the increased in the rates, Mr Shashi Chandran Nair – who was one of the committee members at the material time – was called at the meeting as the other two committee members were no longer with AIIMS. Mr Nair categorically denied granting any approval of the petitioner for increase in the rates.

12. In view of the finding, it was concluded that the petitioner could not produce any evidence to establish that he had raised the rates after due approval. Accordingly, it was recommended that the petitioner's services for running a cafeteria at JPNATC may be terminated and penalty be imposed in terms tender conditions. The decision whether to debar the petitioner was left with the competent authority.

13. In view of the observations made by the committee, the Competent Authority of AIIMS decided to pass an order dated 30.10.2018 debarring the petitioner from participating in any contract for a period of two years and further, directed that overcharged amount be recovered from the petitioner. In addition, the Competent Authority also directed that the main cafeteria of JPNATC may be taken over from the petitioner with on 01.11.2018.

14. The petitioner challenged the said order dated 30.10.2018 by way of a writ petition (W.P.(C) 11856/2018) which was allowed by an order dated 31.10.2018. The impugned order dated 30.10.2018 was set aside. However, this Court had also observed that the concerned authority would be at liberty to take a fresh decision after affording the petitioner a reasonable opportunity of being heard.

15. Thereafter, the petitioner was afforded another opportunity of hearing on 03.11.2018 and the petitioner was once again asked to provide documentary evidence regarding approval of the increased rates from the patients / attendants.

16. However, the petitioner had failed to provide any evidence in support of its claim that he was permitted to charge at a 60% higher rates from patients and/or their attendants.

17. It is also relevant to state that by a letter dated 18.10.2018, the petitioner had volunteered to hand over the cafeteria premises within a period of 30 days. The petitioner was bound down to the said statement by an order dated 31.10.2018 passed by this Court in W.P.(C) 11856/2018.

18. Insofar as the decision of the Competent Authority to recover excess charges is concerned, this Court is not inclined to examine whether the same is permissible and it would be open for the petitioner to resist any action that may be instituted in this regard. The limited controversy to be addressed by this Court is whether the order debarring the petitioner from participating in any contract with AIIMS, is flawed.

19. Mr Uppal, learned Senior Counsel appearing for the petitioner had assailed this impugned order on two fronts. First, he submitted that the same was beyond the terms of the contract and second, he submitted that the same was *malafide* and was passed with the view to exclude the petitioner from the current tendering process.

20. This Court finds no merit in the contention that the impugned order is flawed as it is not supported by any provision in the contract. It is well settled that all parties have an inherent right not to enter into a contractual relationship with any party, which is found to be errant or undesirable.

21. In ***Kulja Industries Ltd. v. Chief General Manager, BSNL: AIR 2014 SC 9***, the Supreme Court had observed that “*the power to blacklist a contractor whether the contract be for supply of material or equipment or for the execution of any work whatsoever is in our opinion inherent in the party allotting the contract. There is no need for such power being specifically conferred by statute or reserved by the contractor.*”

22. It is, thus, not necessary that the contract between the parties contain a provision for blacklisting the petitioner.

23. Insofar as the question of petitioner’s allegation that the petitioner has been blacklisted only with the view to exclude him from participating in the tender is concerned; the same is also unpersuasive. It is not disputed by the petitioner that he had charged higher rates from patients and/or their attendants and he has failed to produce any evidence indicating that the same were approved.

24. It is relevant to note that the petitioner had referred to a letter dated 22.06.2015, wherein the petitioner had sought permission to increase the rates by 30%. Admittedly, there is no evidence that such an approval was granted. However, it is important to note that whereas the petitioner had sought permission to increase the rates by 30%, in fact, he had charged 60% more than the approved rates from patients and/or their attendants. The petitioner had sought to justify this by referring to the contract between AIIMS and the contractor engaged earlier. Plainly, the terms of the said contract were not applicable. Admittedly, there was no specific provision in the contract with the petitioner entitling him to charge higher rates from patients and their attendants. Thus, there is sufficient reason for the Competent Authority to take the decision to debar the petitioner from further contracts.

25. In view of the above, no interference with the impugned order is warranted.

26. The petition is, accordingly, dismissed. The pending application also stands disposed of.

27. Order *dasti* under the signature of Court Master.

VIBHU BAKHRU, J

JANUARY 15, 2019
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