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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 1954/2019 & CM Nos. 9143-9145/2019**

ACE INTEGRATED SOLUTIONS LIMITED..... Petitioner

Through: Mr Akhand Pratap Singh, Mr
Bahul Kalra, Ms Aditi Mittal,
Advocates.

versus

FOOD CORPORATION OF INDIA & ANR..... Respondents

Through: Mr Manoj, Standing Counsel
for FCI with Ms Aparna Sinha,
Advocate for R1.
Mr Amit Kumar, Advocate for
R-2/UOI.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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25.02.2019

VIBHU BAKHRU, J

1. The petitioner has filed the present petition, *inter alia*, impugning an order dated 29.01.2019 passed by respondent no.1 (the Food Corporation of India – FCI), whereby the FCI has decided to terminate the contract entered into with the petitioner and seek refund of the amount of ₹14,03,389/- paid by it to the petitioner. In addition, the FCI has also debarred the petitioner from participating in any future tenders of FCI for a period of five years.

2. Insofar as the decision of FCI to terminate the contract and recover the amount already paid to the petitioner is concerned, the same is a contractual dispute between the said parties and this Court

does not consider it apposite to entertain this controversy in this petition. It would, of course, be open for the petitioner to institute an appropriate action in this regard, if so advised. In view of the above, the scope of the present petition is limited to examining the decision of FCI to debar the petitioner from participating in future tenders for a period of five years.

3. The action against the petitioner has been taken on account of the alleged failure on the part of the petitioner to perform the contract relating to recruitment of Watch and Wards staff of FCI. The said work was entrusted to the petitioner on 10.04.2017. Thereafter, an advertisement was issued in Employment News for holding a written examination to be held on 18.02.2018 for recruiting Watch and Wards staff on 53 posts. It is stated that on 18.02.2019, approximately one lakh candidates appeared for the written examination, which was conducted in one hundred and seventy examination centres across Delhi and NCR. The petitioner claims that approximately four thousand five hundred school invigilators and support school staff were employed in the said exercise. This stage having been completed, the petitioner submitted its bill for services rendered for an amount of ₹29,13,744.50/-.

4. Thereafter, on 27.03.2018, the petitioner commenced the second stage of the process entailing scrutiny of documents and verification of the shortlisted candidates. It is stated that in all one hundred and seventy-one candidates – which was about more than three times the number of vacancies – were shortlisted for undertaking of physical

endurance test (PET). Admittedly, the PET was conducted on 28.03.2018.

5. Thereafter, the petitioner prepared dossiers of ninety-six candidates. Out of the said ninety-six candidates who had cleared the PET (physical endurance test), fifty-three candidates were to be empanelled and remaining forty-three were required to be placed on a waiting list.

6. It is stated that there was an incident in regard to the examination held in the West Zone (Madhya Pradesh Region) of Food Corporation of India and, on 09.05.2018, a General Advisory was issued by FCI Headquarters to exercise of due diligence before issuance of appointment letters.

7. Subsequently, it was found that there was a mismatch of photographs and signatures of fourteen candidates in the dossiers submitted by the petitioner. Thereafter, a Committee comprising of three Assistant General Managers of FCI was constituted to verify the documents and the identity of the candidates. The said Committee called seventeen candidates, which included fourteen candidates in respect of whom there was suspected mismatch of signatures/thumb impressions. The said Committee interacted with the said candidates and found that someone else had impersonated them in the written test conducted by the petitioner. It is stated that four of the candidates admitted to such misconduct. It is stated that FCI had sent the documents to FSL for matching signatures/thumb impressions and the

report received indicated that the signatures/thumb impressions of ten candidates did not match with the signatures/thumb impressions taken at the time of the written examination.

8. On 03.07.2018, a Show Cause notice was issued to the petitioner calling upon the petitioner to show cause as to why an action should not be taken against the petitioner for the unfair practices observed in the recruitment process. The petitioner responded to the said show cause notice of on 10.07.2018.

9. On 08.08.2018, FCI also filed a criminal complaint with regard to the said impersonation. Subsequently, a preliminary inquiry was conducted on 21.09.2019 and an FIR was finally registered on 22.01.2019.

10. The petitioner has also filed a complaint, *inter alia*, against one of the officers of FCI on 21.01.2019

11. It is apparent from the above that the petitioner has been given the full opportunity to meet the allegations made against it. The fact, that several of the candidates selected with the assistance of the petitioner were found to be cases of impersonation, is not disputed by the petitioner. In the aforesaid circumstances, the entire selection process was required to be scrapped. The FCI's contention that it has also suffered on account of the same is also not disputed.

12. It is also clear that the petitioner cannot be absolved of its responsibility for ensuring the integrity of the selection process.

13. The contention of the petitioner, that the entire process was also to be supervised by the FCI and the petitioner was only to assist the officers of the FCI and therefore the action against the petitioner is unwarranted, cannot be accepted. Notwithstanding, the role of FCI in the selection process, the fact that the petitioner was required to ensure the integrity of the recruitment process and conduct the selection with due diligence, cannot be denied. Given the fact that a significant number of selected candidates did not appear in written test and the same was taken by other persons impersonating them, there can be no doubt that the petitioner did fail in performance of its obligations. In these circumstances, the decision of the FCI to take a punitive measure on the said act cannot be interfered with.

14. There is an inherent right in the Executive to refrain from dealing with a particular person; the only restriction being that such right cannot be exercised arbitrarily. In ***Patel Engineering Limited v. Union of India & Another: (2012) 11 SCC 257***, the Supreme Court had observed as under:-

“The State can decline to enter into a contractual relationship with a person or class of persons for legitimate purpose. The authority of the State to blacklist a person is necessary concomitant to the executive power of the State to carry on the trade or the business and making of contracts for any purpose etc. There need not be any statutory grant of such power. The only legal limitation upon the exercise of such an authority is that the State is to act fairly and rationally without in any

way being arbitrary - thereby such a decision can be taken for some legitimate purpose”.

15. It is seen that the said decision has been taken after the petitioner was given due opportunity of being heard. This Court is also unable to accept that the punishment imposed is harsh or onerous and disproportionate to the allegation.

16. The contention that a criminal case is pending and therefore FCI was required to watch the outcome of the same, is also unmerited. The two proceedings, blacklisting the petitioner and the criminal case, are separate proceedings. Even if it is accepted that the petitioner was not complicit with the candidates in question, it can hardly be disputed that it had failed to maintain the necessary integrity of the selection process. Thus, irrespective of whether the petitioner (or its officials) are found to be criminally liable, the action resting on its failure to duly discharge its function can be initiated.

17. In view of the above, the present petition is dismissed. All pending applications are disposed of.

18. Order *dasti*.

VIBHU BAKHRU, J

FEBRUARY 25, 2019

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