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

+ **W.P.(C) 2817/2019**

VERTEL INFOTEL PRIVATE LIMITED & ORS Petitioners

Through: Mr Ramji Srinivasan, Sr. Advocate with Mr Ritin Rai, Mr Vaibhav Mahajan, Ms Syloma Mohapatra, Mr Nikhil Ramdev, Mr Sidhant Gupta, Mr Ravneet Singh and Mr Aabhas Kshetarpal, Advocates.

versus

UNION OF INDIA & ORS Respondents

Through: Ms Maninder Acharya, ASG with Mr Gaurang Kanth, CGSC, Ms Biji Rajesh, Ms Eshma Baruah, Mr Sahil Sood, Mr Harshul Choudhary and Mr Viplav Acharya, Advocates for UOI with Mr Harendra Singh, Sub Inspector, SSB, Mr M. Subramaniam, Dy. Sec. MHA and Mr S. K. Sain, GeM.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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20.03.2019

CM No.13103/2019

1. Allowed, subject to all just exceptions.

W.P.(C) 2817/2019 & CM No. 13102/2019

2. Issue notice. Learned counsel appearing for the respondents

accepts notice.

3. The petitioner has filed the present petition, *inter alia*, praying as under:-

- a) Issue a writ of Certiorari or any other appropriate Writ/Order(s)/Direction(s) to call for all the relevant records relating to; and to quash and set aside the order as communicated under its office memorandum dated 29.12.2017 vide MHAO.M. No. II/20034/120/2017- CIS-I (Annexure P/1, Pg. No. 127 to 129) and the order as purportedly communicated under the MHA letter no. II/20034/120/2017-IS-II dated 11.01.2019 as passed by the Respondent No. 1 (MHA) denying security clearance by holding the same to be arbitrary, unreasonable and illegal; and
- b) Issue a writ of Certiorari or any other appropriate Writ/Order(s)/Direction(s) to call for all the relevant records relating to; and to quash and set aside the stigmatic letter dated 22.02.2018 vide No.l9/Proc/SSB/ATI/5W VHF Radio/2016(4)/499-504 (Annexure P/2, Pg. No. 130 to 132) addressed by Respondent No. 2A (DIG, Provisioning, SSB) to all the IG (Provisioning) of CRPF/BSF/ITBP/CISF/NDRF and NSG; and
- c) Issue a writ of Certiorari or any other appropriate Writ/Order(s)/Direction(s) to call for all the relevant records relating to; and to quash and set aside the letter dated 28.01.2019 (Ref No.9/W SSB/2017(17)/402-410) (Annexure P/3, Pg. No. 133 to 138) addressed by Respondent No. 2A (DIG, Provisioning, SSB) to Respondent No. 3 (GeM) and letter dated 29.01.2019 (Ref No. 9/W-SSB/2017(17)/444-45) (Annexure P/4, Pg. No. 139) addressed by Respondent No. 2A (DIG, Provisioning, SSB) to Respondent No. 1 (MHA) seeking permanent debarment of the Petitioner Company No. 1 from

GeM by holding the same to be arbitrary, stigmatic and biased; and

- d) Issue a writ of Certiorari or any other appropriate Writ/Order(s)/Direction(s) to call for all the relevant records relating to; and to quash and set aside the letter/order dated 22.02.2019 (Annexure P/5, Pg. No. 140) issued by MHA to GeM and the GeM's communication dated 01.3.2019 (Annexure P/6, Pg. No. 141 to 149) to the Petitioner No. 1, whereby, all the products of the Petitioner Company No. 1 have been unpublished/ debarred and blacklisted from the GeM portal by holding the same to be in complete violation of GFR 2017, principles of natural justice and bad in law.”

4. The petitioner is, essentially, aggrieved by the action of respondent no. 3 (Government E-Market Place) in removing all the products of the petitioner from its common platform. The said action has been taken pursuant to communications issued by the Ministry of Home Affairs (MHA) indicating that the petitioner did not have security clearance for two of its products and yet the petitioner was participating in various bids through the Government E-Market Place (GeM). Admittedly, neither a show cause notice was issued to the petitioner, nor was the petitioner afforded a hearing before such action was taken.

5. In addition to the above, the petitioner is also aggrieved by denial of security clearance in respect of two of its products. The petitioner states that it had provided all information with regard to the said products as required by the Sashatra Seema Bal (SSB) (Respondent no. 2) and a heightened security clearance has been denied to it, without affording the petitioner an opportunity to be heard and without providing any reason.

6. This petition raises several issues. First, whether the action of the SSB and the MHA in denying security clearance is warranted/sustainable. Second, whether any punitive action could be taken against the petitioner simply for participating in various bids as is indicated in the letter dated 22.02.2013. Third, whether the petitioner could be removed from the GeM simply on the basis of a letter written by the SSB. The petitioner has also alleged *mala fides* on the part of the SSB in not procuring any equipment from the petitioner. It is pointed out that the petitioner was L-1 of three tenders in the past three years and all of them were scrapped.

7. Ms Acharya, learned counsel appearing for the respondents states that insofar as punitive action by GeM is concerned, the petitioner would be afforded a hearing and a reasoned order would be passed. It is also pointed out that the petitioner has been called for a hearing, which is now scheduled on 26.03.2019.

8. In this view, the impugned order removing the petitioner from the GeM is set aside and the petitioner would be afforded full opportunity to be heard. It is clarified that if the petitioner is aggrieved by the same, it has liberty to avail of remedies available to it, in accordance with law.

9. Insofar as denial of security clearance and other allegations regarding the petitioner are concerned, the petitioner submits that it has already made a representation to the MHA. The petitioner is also at liberty to supplement the same by filing a further representation. If such representation is made within a period of one week from today, the concerned authority of the MHA shall consider the same and pass a reasoned order within a period of three weeks, thereafter. The same shall

be done, after affording the petitioner an opportunity an opportunity to be heard. Needless to state that if the petitioner is aggrieved, the petitioner would be at liberty to avail all remedies as available in accordance with law.

10. It is clarified that this Court has not expressed any opinion on the merits of the allegations made by the petitioner and all contentions of the parties are reserved.

11. The petition is disposed of in the aforesaid terms. The pending application also stands disposed of.

12. Order *dasti* under signatures of the Court Master.

VIBHU BAKHRU, J

MARCH 20, 2019
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