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

% *Date of Judgment: 28th May, 2019*

+ **W.P.(C) 6143/2019**

ALL SERVICES GLOBAL PRIVATE LIMITED Petitioner

Through **Ms. Meenakshi Arora, Sr. Advocate
with Mr. Ritesh Khatri, Ms. Chitra,
Ms. Jyoti & Ms. Geetam Jangra,
Advocates**

versus

UNION OF INDIA Respondent

Through **Mr. Jagjit Singh & Mr. Preet Singh,
Advocates**

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE JYOTI SINGH

G.S. SISTANI, J. (ORAL)

CM Appl. 26434/2019 (Exemption)

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

W.P.(C) 6143/2019

3. This is a petition under Article 226 of the Constitution of India filed by the petitioner seeking following reliefs :

“(A) grant a writ of certiorarified mandamus, and/or any such other appropriate writ, order or direction thereby calling for the entire record relating to the e-tender notification issued by the respondent in tender number M442-3-Mcc-A-Cat-Stn-Prt [Annexure p-2] published for and opened on 04.09.2018, and particularly quash the

tender clauses [clause 1.2.1. (page 8 of 226 offender)] and clause 7 of appendix 5c (page 86 of 226 of tender), as unconstitutional, unreasonable, arbitrary, ab-initio void, in so far as petitioner is concerned; and

(B) grant a writ of certiorari, and / or any such other appropriate writ order or direction thereby setting aside the impugned letter dated 26.04.2019 (Annexure P-13], actually issued and sent by Respondent on 03.05.2019 but knowingly antedating it; as is an arbitrary, capricious, perverse and unreasonable; against the law thus not tenable in the eyes of law as non-est and void ab-initio; and also setting aside all other consequential letters/ orders issued in furtherance/ pursuant to the said letter; and also seeking writ of mandamus or such other appropriate writ order or direction thereby restoration / recall of the letters/ orders/directions etc if any issued by the respondent pursuant to the process of banning of business of petitioner wheresoever; and

(C) grant ad-hoc, exparte, ad interim directions of the nature of restraining, against the Respondent from implementing the impugned letter dated 26.04.2019 [Annexure P-13] till disposal of the present writ petition, or further orders of this Hon'ble Court; and / or

(D) in alternate direct the Respondent to keep the amount of Rs.19,51,930/- be kept in the form of Fixed Deposit Receipt [FDR]/Term Deposit Receipt [TDR] carrying appropriate percentage of the interest so that the same be handed over to the Petitioner on subsequent outcome of result of Petition in their favour; and/or

4. Ms. Meenakshi Arora, learned senior counsel for the petitioner submits that pursuant to the respondent's inviting e-tenders, the petitioner participated in the tender proceedings. However, the petitioner was disqualified in the technical bid. The petitioner also demanded refund of

the Earnest Money Deposit (EMD), which has been declined for frivolous reasons.

5. It is also submitted without prejudice to the rights and contentions of the parties that there is no violation of breach of undertaking on behalf of the petitioner. Ms. Arora submits that in the absence of any specific clause, the order of forfeiture is bad in law. Counsel further submits that the respondent has threatened to blacklist the petitioner. She submits that a person cannot be blacklisted without issuing a notice calling upon the person as to why he should not be blacklisted and only after an opportunity of hearing, for a good and strong reason, he can be blacklisted.
6. Ms. Arora has highlighted the fact that one of the conditions of the undertaking, more particularly condition no.7, which we reproduce below, is unclear and vague:

“7. I/We hereby give undertaking that our firm or any of constituents has not been levied with a penalty for violation of labour laws for three times in the last two years (from the date of opening of tender) by the appropriate enforcing agency like the Labour Commissioner etc.”

7. Learned senior counsel for the petitioner submits that the said clauses of the tender are too vague and illegal as they include petty cases which are deliberately generated by the agencies in which there is no scope of litigation and nor anybody will spend time and money in pursuing them and, therefore, mostly these are concluded by compounding or by plea bargaining and depositing fine of paltry amounts, below or equal to Rs.2,000/-. She, therefore, submits that the clause does not differentiate between the penalty and fine imposed by an authority and that by the

Court. She submits that the petitioner was under a bonafide belief that the disclosure with regard to penalty had to be made only if it was levied for violation of labour laws three times in the last two years by the authority like the Labour Commissioner, etc. Since there was no penalty imposed by the enforcing agency like the Labour Commissioner but was only a fine of a paltry amount, there was no breach by the petitioner of either Condition 7 of Appendix 5C or Condition 8 of Appendix 5B. The other submission of the learned senior counsel is that even an opportunity of hearing was not granted to the petitioner to explain his case regarding the alleged non-disclosure of the fines.

8. The next submission of the learned senior counsel is that even assuming that the allegations against the petitioner, of giving false undertaking levied by the respondent, in the impugned letter was correct, for the sake of arguments, the conditions of the tender documents did not envisage forfeiture of the EMD.
9. Mr. Jagjit Singh has strongly opposed this petition. He submits that the petitioner has concealed vital information and has filed a false declaration in the form of an undertaking and thus, no relief can be granted to the petitioner. Counsel further clarifies that the petitioner is yet to be blacklisted as is evident from two letters dated 26.04.2019 and 15.05.2019 wherein the petitioner has been informed that the respondent is in the process of blacklisting the petitioner.
10. After some hearing in the matter, Ms. Arora submits that the petitioner would be satisfied in case a composite notice for blacklisting and forfeiture is given to the petitioner; opportunity of submitting reply with all supporting documents is allowed and a hearing is granted. If a

decision is thereafter taken against the petitioner, a reasoned and speaking order be passed.

11. Mr. Jagjit Singh submits that the communication of 15.05.2019 is in fact a detailed order. However, we find that the impugned order is not a reasoned order and even does not reflect the provision under which the amount has been forfeited. Accordingly, we dispose of the writ petition with the following directions:-

- (i) Respondent will issue a show-cause notice to the petitioner within four weeks from the date of the receipt of copy of this order. Reply thereto, if any, be filed within four weeks thereafter.
- (ii) An opportunity of hearing will be granted to the petitioner and thereafter, a reasoned and speaking order will be passed, which would be duly communicated to the petitioner.

12. Needless to say that in case, the reasoned and speaking order so passed is against the petitioner and he is aggrieved by it, he may take recourse to such remedy as may be available to him in accordance with law.

13. In terms of the above directions, the petition stands disposed of.

CM Appl. 26435/2019 (stay)

14. In view of the order passed in the writ petition, the application stands disposed of.

G.S.SISTANI, J

JYOTI SINGH, J

MAY 28, 2019/ck/AK/s