

\$~2

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Date of Judgment: 09.07.2019

+

W.P.(C) 6757/2019, C.M. Appl. No. 28350/2019 (Stay)

SPACE 4 BUSINESS PVT LTD

..... Petitioner

Through: Mr. Shyam Khetarpal, Advocate

versus

NEW DELHI MUNICIPAL COUNCIL THROUGH ITS
SECRETARY

..... Respondent

Through: Mr. Anil Grover, Standing Counsel
with Ms. Noopur Singhal and
Mr. Mishal Vij, advocate for NDMC.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE JYOTI SINGH

G.S. SISTANI, J. (ORAL)

1. The respondent had invited an E-Tender on 29.05.2019 for bids from Contractors for executing the work of celebration of 5th International Day of Yoga of 2019 by providing a Video Wall System.
2. As per one of the conditions of the Tender, the petitioner was to deposit Earnest Money Deposit (EMD) in the form of a Fixed Deposit Receipt/Demand Draft in the prescribed format at the Office of the Executive Engineer, NDMC, and post the deposit of the amount, the same was to be acknowledged by the Officer of the respondent and a scanned copy of the acknowledgement and the EMD was required to be uploaded on the web portal of the respondent. The last date for depositing the EMD was prescribed as 06.06.2019.

3. It is the grievance of the petitioner that on 06.06.2019, the representative of the petitioner went to the Office of the respondent to physically submit the EMD, however, the concerned person refused to accept and acknowledge the receipt of EMD citing specific orders from Senior Officers not to accept the EMD, because the petitioner had been debarred by the respondent. A letter was addressed by the petitioner to the respondent calling upon the respondent to accept the EMD. However, the EMD was not accepted. It is the grievance of the petitioner that the action of the respondent is arbitrary, unreasonable and a prayer has been made to quash the entire tender process arising out of Tender dated 29.05.2019.

4. A short affidavit has been filed by the respondent giving reasons for not accepting the EMD of the petitioner. It is submitted by Mr. Grover, learned Standing Counsel that the EMD of the petitioner was not accepted as the petitioner stands debarred for three events based on a communication dated 01.06.2018, which was within the knowledge of the petitioner. He submits that this was the third event and thus, his EMD was returned. Paragraph 4(a), (b) of the short affidavit have been relied upon and are reproduced as follows:

“4. Xxx xxx xx

(a) *Because of deficiencies and non-performance on the part of petitioner Firm observed during the "Third International Yoga Day Celebrations 2017", the petitioner firm was debarred from New participation in Tender/NIQ-QCM floated by the department for three events under approval of competent*

authority i.e. Chief Engineer (Electrical), NDMC. The decision was conveyed to the petitioner firm by the then Executive Engineer (BM-I) Electrical vide letter No. D/763/EE(E)BM-I dated 01.06.2018. Copy of letter No. D/763/EE(E)BM-I dated 01.06.2018 issued by the then Executive Engineer (BM-I) Electrical, NDMC is annexed herewith as Annexure-A/1. The petitioner has not filed the copy of said letter deliberately.

- (a) *Accordingly, the Petitioner Firm was not permitted to participate in the tender dated 08.06.2018 floated for Celebration of 4th International Yoga Day, 2018 and EMD in the form of FDR was not accepted from petitioner firm as done in present case also.”*

5. In response to the submissions made by Mr. Grover, learned counsel for the petitioner submits that in fact, the period of his debarment has come to an end as the petitioner did not participate in the Yoga Day 2018, Function of Palika Parking and Ekta Divas of 2018, and thus the embargo of 3 events would stand satisfied. Mr. Grover points out that the Yoga Day 2018 and Ekta Divas are events organised by the Electrical Division of the respondent while the third event pertains to another Division and thus, the order of debarment would remain in force. This submission is not disputed by the counsel for the petitioner.

6. We have heard learned counsel for the parties. The order passed against the petitioner debarring him for three events reads as under:-

“As you aware that Department has already conveyed about your aforesaid work performance that the quality of work and service was not satisfactory and your representative was not support and pick up the phone as well as walky-talky and also leave the site/function without any information during execution of work of VVIP Event held on the occasions of celebration of 4th International Day of Yoga 2018. During event the all system got collapse in Connaught Place, except main Venue.

Therefore under the approval of competent authority, your firm is being debar from the participation in Tender/NIQ/QCM floated by department for three events.”

7. We may note that this order was a subject matter of the writ petition being W.P.(C) No. 6632/2018, wherein notice has been issued but no interim protection was granted.

8. The above order extracted by us shows that the petitioner was debarred from participating in the tenders floated by the Electric Division for three events. Admittedly, the event organized at Palika Parking does not pertain to the Electric Division, i.e., the Department in question, which has debarred the petitioner and therefore, it cannot be said that the petitioner's period of debarment has come to an end. We, thus, cannot agree with the contention of the learned counsel for the petitioner.

9. The scope of interference in tender matters under Article 226 of the Constitution of India is restricted to the decision making process

not the decision. [See *Tata Cellular v. Union of India*, 1994 (6) SCC 651].

10. In the facts and circumstances of the present case, we find no illegality or arbitrariness in the stand taken by the respondent.

11. We find no merit in the present writ petition, which is accordingly dismissed. All pending applications, including C.M. Appl. No. 28350/2019 stand disposed of.

G.S.SISTANI, J

JYOTI SINGH, J

JULY 09, 2019

pkb



न्यायमेव जयते