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

Date of Decision : 27.08.2020

+ **W.P.(C) 5710/2020 & CM APPL. 20646/2020**
SATVAT INFOSOL PRIVATE LIMITED & ANR.

..... Petitioner

Through: Mr.Jayant Mehta, Mr.Aditya
Chatterjee, Ms.Bhargavi
Kannan & Mr.Shrishail
Navalgund, Advs.

versus

NATIONAL TESTING AGENCY

..... Respondent

Through: Mr.Amit Bansal, Senior
Standing Counsel with
Ms.Seema Dolo, Adv.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

1. This petition has been filed challenging the order dated 09.06.2020 passed by the respondent, forfeiting the earnest money deposit submitted by the petitioner towards Tender for Selection of Service Provider for Mock Tests at National Testing Centres/Test Practice Centres, as also blacklisting and banning the petitioner from future NTA tenders for a period of three years.

2. The order has been challenged by the petitioner on the ground of violation of Principles of Natural justice as also on the ground of proportionality.

3. As far as the ground of violation of Principles of Natural Justice is concerned, the learned counsel for the petitioner submits that earlier by a communication dated 24.10.2019, similar order of forfeiture of EMD and blacklisting was passed by the respondent against the petitioner. This was challenged by the petitioner before this Court on the ground of violation of Principles of Natural Justice and this Court by its order dated 14.01.2020 passed in WP (C) No.180/2020, was pleased to set aside the communication dated 24.10.2019, directing as under:

"5. In the overall facts and circumstances, keeping in mind that the NTA is reconsidering the matter, which is clear from letter dated 2nd January, 2020, the impugned order is set aside only on the ground that the Petitioner was not heard. The NTA is free to pass appropriate orders on merits after considering the representation the Petitioner dated 15th November, 2019, response to the letter dated 2nd January, 2020 and after affording a hearing to the Petitioner. This Court has not rendered any opinion on the merits of the issue."

4. The petitioner asserts that thereafter, the respondent issued a communication dated 20.01.2020 calling upon the petitioner to attend a personal hearing, however, no proper Show Cause Notice was issued to the petitioner. In spite of the same, the petitioner filed a detailed representation/reply dated 29.01.2020 with the respondent. The petitioner asserts that in absence of a proper Show Cause Notice, the

impugned order is liable to be set aside for violation of Principles of Natural Justice.

5. I do not find any merit in the submission made by the learned counsel for the petitioner. The letter dated 24.10.2019 had clearly set out the allegations against the petitioner on which the proposed action of banning the petitioner was taken. The petitioner also understood the allegations against it and the action of banning proposed against it, including the period thereof. The petitioner, in fact, filed a detailed reply thereto by its letter dated 29.01.2020. It is too late now for the petitioner to claim that it was not aware of the allegations against it or has in any manner been prejudiced by a lack of proper Show Cause Notice.

6. As held by the Supreme Court in *The Chairman, Board of Mining Examination and Chief Inspector of Mines & Anr. vs. Ramjee*, (1977) 2 SCC 256, the Principles of Natural Justice cannot be put in a straight jacket formula and each violation thereof cannot in any manner lead to the voidance of the order; prejudice caused needs to be shown for such an order to be invalidated. Reference may also be had to *State Bank of Patiala & Ors. vs. S.K. Sharma*, (1996) 3 SCC 364.

7. In *Gorkha Security Services vs. Government (NCT of Delhi) & Ors.*, (2014) 9 SCC 105, the Supreme Court, while emphasizing the need of issuance of a Show Cause Notice and the contents thereof, further observed that even if the material/grounds which necessitate the department to take action and particular penalty/action which is

proposed to be taken are not specifically mentioned in the show-cause notice but can clearly and safely be discerned from the reading thereof, that would be sufficient to meet the requirement of principles of natural justice so far as the issuance of show-cause notice is concerned.

8. In the present case, the submission of the petitioner is liable to be rejected also because the High Court in its order dated 14.01.2020 passed in WP (C) No.180/2020, quoted hereinabove, had directed the respondent to consider the representation of the petitioner after affording an opportunity of hearing to it. There was no direction to issue a fresh show-cause notice.

9. As far as the challenge on the ground of proportionality is concerned, the learned counsel for the petitioner has taken me through the detailed reply filed by the petitioner by its letter dated 29.01.2020, to submit that the declaration in question had been submitted by the petitioner due to a *bona fide* administrative reason. He submits that on the date of preparation of the bid for submission, the concerned officer was not aware of the blacklisting order by the ONGC and therefore, the bid was submitted due to inadvertence with the concerned declaration. He further submits that on gaining knowledge of the inadvertence, the petitioner immediately, on its own, wrote not only to the respondent herein but also to other Authorities to whom bids had been submitted, withdrawing such bids and bringing to their notice the blacklisting order passed by the ONGC. He submits that for such

inadvertent mistake, the petitioner could not have been banned for 3 years as has been done in the Impugned Order.

10. I again do not find any merit in the submission made by the counsel for the petitioner. In ***Patel Engineering Ltd. vs. Union of India & Anr., (2012) 11 SCC 257***, the Supreme Court held that for testing the argument based on the doctrine of proportionality, the court is required to examine: (1) the purpose sought to be achieved by the impugned decision to blacklist the contractor; and (2) the adverse effects, the impugned action may have on the rights of the contractor.

11. As reflected in the Impugned Order and not disputed by the petitioner, the bid was submitted by the petitioner with the respondent on 09.10.2019. Even as per the case of the petitioner, the blacklisting order had been received by the petitioner at its Registered Office towards the end of September, 2019 (the actual date of receipt has not been disclosed till date). The petitioner itself asserts that the said order reached its Corporate Office on 30.09.2019. As noted hereinabove, the bid was submitted by the petitioner on 09.10.2019. For a corporate entity like the petitioner, it is inconceivable that such an important communication and order would not be brought to the notice of the relevant officers who are submitting bids/tenders to other entities. It is common knowledge that in almost all tender floated by the Government/PSU/Statutory Bodies, a declaration is now sought as to whether the firm has been blacklisted by any other PSU/Central Government agency. Even assuming the case of the petitioner that there were administrative lacunas in its system, such administrative

lacunas cannot inure the benefit to the petitioner to avoid the consequences thereof at the hands of the respondent and other parties.

12. In terms of the tender document, on a false declaration being found, the respondent could have blacklisted the petitioner for a period of three years, as has been done by the impugned order. Clause 6.5 (5) of the Bid Document Part II (Special Conditions of Contract) is quoted hereinunder in this regard:-

"Bid Document Part II (Special Conditions of Contract)

6.5 Qualification Criteria Parameters:

Note: In case a false declaration is submitted by the bidder and discovered before tender finalization, bid will be summarily rejected and EMD forfeited. If this aspect is discovered after award of tender, then the contract will be cancelled and Performance security bank guarantee will be forfeited. In either case, the bidder may be blacklisted and prohibited to participate in NTA tenders for 3 years.

*(Only the emphasis by
underlying is of this Court)*

13. The petitioner was therefore well aware of the consequence of submitting a false declaration. The respondent in its impugned order dated 09.06.2020, has given detailed reasons for rejecting the submissions of the petitioner and thereafter blacklisting it for a period

of 3 years. This court in exercise of its powers of judicial review, cannot sit in appeal over such decision.

14. The learned counsel for the respondent has also vehemently submitted that even in the present petition, though the petitioner has referred to the proceedings before the Uttarakhand High Court in challenge to the blacklisting order passed by the ONGC, it has intentionally concealed from this Court that by an order dated 27.11.2019, the Uttarakhand High Court in the writ petition filed by the petitioner, had observed that the petitioner had no *prima facie* case against the said order. He submits that though this order is within the knowledge of the petitioner, the petitioner concealed the same not only in its representation/reply dated 29.01.2020 filed with the respondent but also from this Court in the present petition. He has submitted that therefore, the petitioner deserves no sympathy from this Court.

15. As observed hereinabove, for invoking the doctrine of proportionality, the order has to be found to be unreasonable, arbitrary or so disproportionate so as to shock the conscience of this Court. In the present case, as the NIT had warned the tenderers that they can be blacklisted for a period of 3 years if their declaration is found to be false; there being no doubt that the declaration submitted by the petitioner was false; the explanation given by the petitioner thereafter not having found favour with the respondent, the order passed by the respondent cannot be termed as unreasonable or arbitrary. The period of blacklisting also does not shock the conscience of this Court.

16. I, therefore, find no merit in the present petition, the same is dismissed. There shall be no order as to costs.

NAVIN CHAWLA, J

AUGUST 27, 2020/rv

