

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No. 3211 of 2021**

Mata Di Electricals through its Partner Devendra Jain S/o Shri Ugam Raj Jain, aged about 35 years, R/o Near Tehsil Office Rajim, District Gariyaband, Chhattisgarh.

---- **Petitioner**

Versus

1. Chhattisgarh State Ware Housing Corporation, through Managing Director, Sector-24, Near Jhanjh Lake, Atal Nagar, Raipur, District Raipur, Chhattisgarh.
2. Manager, Technical, Chhattisgarh State Ware Housing Corporation, Sector 24, Near Jhanjh Lake, Atal Nagar, Raipur, District Raipur, Chhattisgarh.

---- **Respondents**

(Cause Title taken from Case Information System)

For Petitioner : Mr. Anup Majumdar, Advocate.

For Respondents : Mr. Animesh Tiwari, Advocate.

Hon'ble Mr. Arup Kumar Goswami, Chief Justice

Hon'ble Mr. N.K.Chandravanshi, Judge

Order on Board

Per Arup Kumar Goswami, Chief Justice

16/12/2021

Heard Mr. Anup Majumdar, learned counsel for the petitioner as well as Mr. Animesh Tiwari, learned counsel for the respondents.

2. A notice inviting tender (NIT) dated 02.05.2020 was issued by the respondents for supplying Power Sprayer (Petrol) in terms of the specifications provided in the NIT. On evaluation of the tenders, the bid

of the petitioner was accepted. On 26.06.2020, the petitioner was informed that before execution of the pre-integrity contract and agreement, the officers of the Corporation will inspect the stores and the Power Sprayer (Petrol) which were to be supplied. A date for inspection within seven days of the receipt of the letter was requested. Subsequently, in supersession of the letter dated 26.06.2020, a work order dated 10.07.2020 came to be issued instructing the petitioner to supply 35 numbers of Power Sprayer (Petrol) as per the NIT conditions. Subsequent thereto, on 13.07.2020, a pre-contract integrity pact and an agreement were executed in between the petitioner and the respondent No. 2.

3. By a letter dated 08.10.2020, the petitioner was informed that on an inspection being carried out on 28.08.2020, it was found that the Power Sprayer (Petrol) available with the petitioner was not in accord with the specifications mentioned in the work order and the NIT, and accordingly, the petitioner was directed to rectify the Power Sprayer (Petrol) in accordance with the specifications within seven days. It was also indicated in the said letter that on failure to take appropriate action within the time limit specified, appropriate action would be taken as per clause 12(iv)(g) of the NIT.

4. It is stated by the petitioner that though a letter dated 15.10.2020 was issued by the petitioner requesting inspection of the Power Sprayer (Petrol) procured by the petitioner, none came for inspection of the same and thereafter, surprisingly, by an order dated 21.10.2020, the respondents cancelled the contract of the petitioner,

forfeited the earnest money deposit and disqualified the petitioner from participating in any tender under the respondents in future.

5. The relevant portion of translated version of the order dated 21.10.2020 (translated by the petitioner) reads as follows:

“Chhattisgarh State Warehousing Corporation

Head Office village Jhanjh, Sector 24, Atal Nagar, Nawa
Raipur (CG)

Date- 21.10.2020

To,

M/s. Mata Di Electricals
Near Tahsil Office,
Fingeshwar Road, Rajim,
District Gariyaband (CG)

Subject: Regarding purchase of 35 Nos. Power Sprayer
(petrol)

Reference: (1) Supply Order No. 0-7068 of this office
dated 10.07.2020

(2) letter No. 9332 of this office dated
08.10.2020.

You were given order to supply 35 Nos. of Power
Sprayer (Petrol) under the referred supply order under the
subject. As per your letter No. MDE 351 dated
25.08.2020, request was made to the Corporation for
inspection. Consequent to the said letter, as per the letter
No. 8051 dated 26.08.2020 of the Headquarters,

inspection was done by the officers of the Headquarters by visiting the specified place. In the inspection, the officers found that the Power Sprayer (Petrol) prepared was not as per the terms and specifications of the agreement executed.

With reference to aforesaid, vide letter No. 2 referred above, you were instructed to prepare the material according to the supply order and after keeping it ready for pre-supply inspection, you were to inform this office within 7 days. But till date, no correspondence has been made from your side.

Therefore, as per clause No. 12 (iv)(g) at page No. 21 of the tender sheet, and clause No. 17(iii) at page No. 25, the contract is being cancelled and to compensate the loss incurred by the Corporation, your earnest money is being forfeited and in future, you will be ineligible to participate in any tender of the Corporation.

Sd/-
Managing Director
21.10.2020"

6. Mr. Majumdar submits that though prayer is made for setting aside of the order dated 21.10.2020 in the writ petition, the petitioner is not pressing for setting aside the order of cancellation of the contract. The petitioner is aggrieved by forfeiture of the earnest money as well as disqualifying the petitioner from participating in future tender. It is submitted that in the NIT as well as in the agreement, there is no

provision for blacklisting under any eventuality and therefore, debarring the petitioner from participating in future contract of the respondents is, *per se*, illegal and arbitrary and the same cannot be countenanced in law. It is also submitted that no notice was given to the petitioner requiring him to show cause as to why the petitioner shall not be disqualified from participating in the tender of the Corporation, that too, permanently which is, in essence, blacklisting of the petitioner from participating in future contracts.

7. Mr. Animesh Tiwari, learned counsel for the respondents submits that it is not correct to say that no notice was issued as contended by the petitioner. He submits that a notice was issued on 08.10.2020. Placing reliance on a judgment of the Hon'ble Supreme Court in *Kulja Industries Limited v. Chief General Manager, Western Telecom Project Bharat Sanchar Nigam Limited & Others*, reported in *(2014) 14 SCC 731*, it is submitted by him that the power to blacklist a contractor is inherent with a party allotting the contract and therefore, merely because there was no provision of blacklisting in the NIT or the agreement, the same will not preclude the Corporation from blacklisting a contractor if the need arises in the interest of the Corporation. So far as return of earnest money is concerned, it is submitted that when the contract has been cancelled and the petitioner is not assailing the said cancellation, no question arises for refund of the earnest money.

8. We have considered the submissions of the learned counsel for the parties and have perused the materials on record.

9. In *Kulja Industries Limited* (supra), the Hon'ble Supreme Court

has observed that power to blacklist a contractor is inherent in the party allotting the contract as 'blacklisting' signifies a business decision by which the party affected by the breach decides not to enter into any contractual relationship with the party committing the breach. While between two private parties the right to take any such decision is absolute and untrammelled by any constraints whatsoever, and the freedom to contract or not to contract is unqualified, any such decision is subject to judicial review when the same is taken by the State or any of its instrumentalities. In other words, any such decision will be open to scrutiny not only on the touchstone of the principles of natural justice but also on the doctrine of proportionality. A fair hearing to the party being blacklisted thus becomes an essential pre-condition for a proper exercise of the power and a valid order of blacklisting made pursuant thereto.

10. Therefore, the argument of Mr. Majumdar that the petitioner could not have been debarred from participating in future contracts with the respondents in absence of any provision enabling blacklisting, is without any merit.

11. However, a perusal of the letter dated 08.10.2020, on which reliance is placed by Mr. Tiwari to contend that notice was given to the petitioner with regard to proposed blacklisting, goes to show that the said notice did not indicate that the petitioner is asked to show cause as to why he shall not be ineligible to participate in any tender of the respondents. The notice refers to clause 12(iv)(g) dealing with 'failures and termination', which have no clause for disqualification in future.

12. As no order of blacklisting can be validly passed without

affording adequate opportunity of hearing, debarring the petitioner, that too, for all times to come, from participating in contracts under the respondent, is wholly arbitrary and illegal and therefore, such stipulation in the order dated 21.10.2020 is set aside. The respondents are, however, at liberty to proceed in accordance with law, if so advised.

11. So far as the prayer for return of earnest money deposit is concerned, since the work order has been cancelled and the same is not being questioned, issuing a direction for return of earnest money deposit does not arise.

12. The writ petition stands disposed of in the above terms. No cost.

Sd/-
(Arup Kumar Goswami)
CHIEF JUSTICE

Sd/-
(N.K.Chandravanshi)
JUDGE