

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-9415-2021

Date of Decision:-12.05.2021

Sportina Exim Pvt. Ltd.

... Petitioner

Versus

WAPCOS Ltd. and Others

... Respondents

**CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA
HON'BLE MR. JUSTICE KARAMJIT SINGH**

Present:- Mr. Kanwal Goyal, Advocate
for the petitioner.

KARAMJIT SINGH, J.

Case has been heard through video conferencing on account of
COVID-19 Pandemic.

The petitioner has filed this writ petition under Article 226/227
of the Constitution of India challenging the action of respondents in
rejecting its technical bid vide E-mail dated 27.4.2021 (Annexure P-8) in
respect of project for laying of synthetic hockey turf and allied works at SAI,
STC, Hazaribagh (Jharkhand). Prayer has also been made for quashing of
letter dated 28.4.2021 (Annexure P-12) and for issuance of writ of Certiorari
for quashing of the offending clause 3(j) of Section-II read with Form-C

(Annexure P-1) appended with e-tender document. The petitioner also made prayer that necessary direction be given to the respondents to consider his price bid.

A few facts relevant for the decision of this case as narrated in the petition may be noticed. The petitioner is a private limited company having its registered office in Mumbai. The respondent No.1-WAPCOS Limited is a Public Sector Undertaking under Ministry of Jal Shakti having its registered office in Gurugram (Haryana). On 15.3.2021, respondents invited tenders from experienced contractors/bidders having prescribed technical and financial credentials for laying of synthetic hockey turf and allied works at SAI, STC, Hazaribagh (Jharkhand). In response to same, the petitioner submitted its bid, online. Thereafter respondents sought clarification from the petitioner vide E-mail dated 12.4.2021 (Annexure P-6) regarding declaration given by it in Form-C with regard to no previous history of blacklisting. The petitioner gave reply dated 14.4.2021 (Annexure P-7), whereby it clarified its position regarding the same. On 27.4.2021 vide (Annexure P-8), the petitioner was informed that its tender has been rejected during technical evaluation by the Committee for the reason “technically not qualified”. However, no specific reason was given by the respondents for the same. The respondents opened the financial bid on 28.4.2021 and on the same day they sent letter (Annexure P-12) to the petitioner regarding the exact reason for rejection of his bid. The petitioner has assailed the aforesaid actions of the respondents being illegal and contrary to the principles of natural justice.

We have heard the counsel for the petitioner.

The counsel for the petitioner submitted that bid of the petitioner was wrongly rejected by the respondents on the ground that the declaration made by it in Form-C of tender documents was false. The learned counsel further contended that as per respondents, the petitioner was earlier blacklisted by Delhi Development Authority (in short 'DDA') from 6.2.2012 to 6.2.2019. The learned counsel further submitted that the aforesaid action of DDA to blacklist the petitioner being illegal, was challenged and was finally set aside by the Delhi High Court. The clarification in this regard was given by the petitioner vide E-mail dated 14.4.2021 (Annexure P-7). However the respondents passed impugned order dated 27.4.2021 (Annexure P-8) without considering the aforesaid clarification given by the petitioner. The learned counsel further contended that order (Annexure P-8) was passed by the authorities in a mechanical manner without assigning any reason for rejection of technical bid of the petitioner. The respondents also did not give any opportunity of hearing to the petitioner before passing the said order. The same was passed in violation of the settled principles of law.

The counsel for the petitioner next argued that the alleged blacklisting of the petitioner by DDA was not relating to laying of synthetic hockey turf. While challenging the validity of Form-C i.e. No Conviction Certificate, the counsel for the petitioner submitted that the said declaration was to be furnished by the bidder only with regard to blacklisting for any such activities. As per the counsel for the petitioner, it means that the said declaration in the shape of Form-C was applicable in case the petitioner was blacklisted on account of its default with regard to project/work of laying of

synthetic hockey turf and allied works only. The counsel for the petitioner while referring to Annexure P-7 submitted that the alleged blacklisting of petitioner by DDA, which was later on set aside, was not related to laying of synthetic hockey turf. The counsel for the petitioner further contended that Form-C is ambiguous and thus is liable to be quashed.

The counsel for the petitioner further argued that the alleged blacklisting of the petitioner by DDA was already set aside by Delhi High Court before the floating of tenders in question by the respondents. So the alleged blacklisting which was not related to laying of synthetic hockey turf and allied works and was already set aside by the Delhi High Court, was wrongly taken into consideration by the respondents while passing impugned orders Annexures P-8 and P-12.

The counsel for the petitioner next argued that the price quoted by the petitioner is much lower than the price quoted for execution of the work by L-1 bidder and as such the price bid of the petitioner should be considered by the respondents.

In support of his contentions, counsel for the petitioner, referred to **Kulja Industries Limited vs. Chief General Manager W.T. Proj, BSNL and Others, CA-8944-2013, decided on 4.10.2013**, wherein the Hon'ble Supreme Court upheld the order of blacklisting of the company with direction that the period for which such order remains operative shall be determined afresh by the competent authority on the basis of guidelines which the corporation may formulate for that purpose.

The petitioner has also relied upon **W.P.(C)10854-2017 titled as Atlanta Limited vs. Union of India and Another, decided on 9.4.2018,** wherein Delhi High Court declared that “*Clause 2.1.19 to the extent it states that a contractor or its associate "has been expelled or terminated by Ministry of Road Transport & Highways or it implementing agencies for breach by such Bidder including individual or any of its Joint Venture Member", does not apply to automatic and unilateral contractual termination of agreements; it can apply only and only in cases, where for good and justified reasons, NHAI terminates a contract, and proposes to apply the said condition (Clause 2.1.19) after granting hearing and opportunity to the concerned party. In the present case, the said condition cannot apply to the petitioner. Its bids in future should, therefore, be necessarily considered on their merits and not rejected at the threshold.*”

Reliance was also placed on **CWP Nos.21863 and 21864 of 2016 titled as M/s R.S. Labour and Transport Contractor vs. Food Corporation of India and Others, decided on 6.3.2017,** wherein a Co-ordinate Bench of this Court quashed the impugned decision to blacklist the petitioners with liberty to respondents to initiate appropriate proceedings for blacklisting if they so desire, in accordance with law.

In the end the counsel for the petitioner made prayer that respondents be directed to consider its financial bid.

We have considered the submissions made by counsel for the petitioner.

Form-C

Place: _____ *Name and seal of Bidder:* _____

From the perusal of Annexure P-4, it is clear that while submitting Form-C, the petitioner gave declaration that it has never been blacklisted or restricted to apply for any such activities by any concerned authorities of Central/State Government. The respondents vide Annexure-P6 sought clarification regarding said declaration from the petitioner. The petitioner gave its reply (Annexure P-7) wherein it admitted that previously it was illegally debarred/blacklisted by DDA for indefinite period, in 2012. The said order was challenged and Delhi High Court gave directions to withdraw the said order and limited it for the period of 7 years from 2012 to 2019, which has already expired and the matter is still pending before Delhi High Court. On the basis of aforesaid clarification, respondents passed impugned order dated 27.4.2021 (Annexure P-8) whereby technical bid of the petitioner was rejected. Thereafter, the petitioner gave representation (Annexure P-10), on the same very date, clarifying its position. The same was rejected by the respondents vide impugned order dated 28.4.2021 (Annexure P-12) in the following terms:-

“However, at the time of submission of bid, your firm declared i.e. M/s Sportina Exim Pvt. Ltd. has never been blacklisted. After query raised by WAPCOS, your firm confirmed that M/s Sportina Exim Pvt. Ltd. was blacklisted from 6.2.2012 to 6.2.2019 by DDA. In view of above, your firm was disqualified technically for subjected work.”

From the above, it stands proved that the petitioner while submitting tender documents, concealed the fact regarding its blacklisting for the period from 2012 to 2019 by DDA (a State Government Department),

while making declaration in Form-C. So, it is clear that the petitioner concealed fact regarding its blacklisting by DDA for the period of 7 years, while submitting tender documents.

The counsel for the petitioner has also sought quashing of Form-C. Admittedly, the petitioner participated in the tender process, but he remained unsuccessful. We are of the view that it would not be open to the petitioner at this stage to question the legality of Form-C after having participated in the tender process and remaining unsuccessful bidder. At present the petitioner is estopped from challenging the validity of Form-C, after applying in response to notice inviting tender. The counsel for petitioner has also failed to demonstrate in what manner Form-C was arbitrary, irrational or unreasonable. Under Form-C the bidder was required to certify about his previous history of blacklisting by any Government agency. We do not find any wrong in it, the reasons being the cost of work of laying synthetic hockey turf and allied works at SAI, STC, Hazaribagh (Jharkhand) was ₹7.19 crores. So, it involves huge public money and the same cannot be wasted by offering contract to the company having a chequered past.

In the present case the technical bid of the petitioner was rejected by the duly constituted committee on the ground that the petitioner concealed fact regarding its previous blacklisting, while submitting the tender documents. So there is no illegality in the impugned actions of the respondents.

Furthermore it is settled law that the scope of judicial review in such like matters is very limited. In Tata Cellular vs. Union of India, (1994) 6 SCC 651, the Hon'ble Supreme Court held that the modern trend points to judicial restraint in administrative action and the Court does not sit as a Court of appeal but merely reviews the manner in which the decision was made.

We have gone through the judicial pronouncements cited by the counsel for the petitioner. However, we find that they are not of any assistance to the petitioner, as none of the cited cases were relating to concealment of facts regarding previous history of blacklisting of the bidder.

In wake of the above, we do not find any merit in this writ petition and the same is dismissed.

(RAJAN GUPTA)
JUDGE

(KARAMJIT SINGH)
JUDGE

12.05.2021
Gaurav Sorot

Whether reasoned / speaking?

Yes / No

Whether reportable?

Yes / No