IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13184 of 2022

Karnataka State Electronics Development Corporation Ltd., Having its office at 2nd Floor, TTMC A Block, BMTC, Shanthinagar, K.H. Road, Bengaluru, Karnatka- 56027 through Maruthy. M, Assistant Manager (F and A), male, aged 56 years, S/o Late T. Munikrishnappa R/o, No. 30, 1st Main Road, 1st cross Kanaka Nagara, Yalachenahalli congress office, Bengaluru- 78, P.S.- Wilson Gaurden, Post Office- Wilson Gaurden, District- Bangaluru, Karnatka- 560027

... ... Petitioner/s

Versus

1. The State of Bihar, through the Chief Secretary, State of Bihar.
2. The Development Commissioner-cum-Chairman, BSBCL, Bihar, Patna.
3. The Additional Chief Secretary, Prohibition, Excise and Registration Department, Bihar, Patna.
4. The Excise Commissioner, Prohibition, Excise and Registration Department, Bihar Patna.
5. The Managing Director, BSBCL, Bihar, Patna.
6. The Deputy Commissioner-cum-Nodal Officer, Prohibition, Excise and Registration Department, Bihar, Patna.
7. The General Manager, BSBCL, Bihar, Patna.

... ... Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Kumar Amit Mr.Dhananjay Kumar
For the Respondent/s	:	Mr.Vivek Prasad (Gp 7)
For BSBCL	:	Mr. Vikash Kumar, Adv. Mr. Girijesh Kumar, Adv.

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE NAWNEET KUMAR PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 01-12-2022

1. Heard the learned counsel for the parties.

2. The petitioner is a Government of Karnataka

Enterprise having pan India presence, which has been working in the field of software development and I.T. since decades.

3. The grievance of the petitioner is that without considering the reply of the petitioner dated 20.05.2022 pursuant to the show-cause issued to it on 04.05.2022, the respondents have blacklisted the petitioner for a period of one year.

4. The petitioner was selected as an Agency for design, supply, installation, commissioning, operations and maintenance for Integrated Excise Management System (IEMS) for the Department of Prohibition Excise and Registration, Govt. of Bihar after the petitioner was declared successful in the tender.

5. The petitioner had to work as a total solution and service provider to undertake the projects of development and implementation of the solution, its roll-outs and sustained operations.

6. An agreement (Master Service Agreement), (hereinafter referred to as "MSA") was signed between the parties, namely, the petitioner and the Bihar State Beverage Corporation Limited (BSBCL) on 16.01.2017. Under the MSA, Datacon Technologies Pvt. Ltd. was empanelled as agency to undertake the entire implementation of IEMS and call centre projects. It has also been pointed out by the petitioner that under the MSA, there was a detailed provision for dispute resolution which included escalation, mediation, arbitration and conciliation Act, which could have been invoked by the Department in case of any grievance against the petitioner.

7. It is the case of the petitioner that several times, issues with respect to unavailability of infrastructure non- functional internet facilities at check-posts and delayed payment for services rendered, were brought to the notice of the Department but those were never addressed. In fact, the delay in various modules of projects was due to the Department not addressing those grievances of the petitioner or of the Datacon Technologies Pvt. Ltd.

8. The requirements under the agreement were also changed a number of times, which was a definite departure from the MSA or RFP document.

9. So far as the petitioner is concerned, the entire hardware items were moved at Patna way-back in August, 2017 but the work for Data Centre could not begin till 2019 as the exact location could not be finalized. Notwithstanding the aforesaid, most of the modules of IEMS software were completed. In the meantime, the respondent/Department blacklisted the empanelled agency of the petitioner, namely, Datacon Technologies Pvt. Ltd on 04.05.2022 for a period of one month and thereafter such empanelled agency and the petitioner were issued show-cause notices as to why it should not be blacklisted.

10. The reply to the show-cause by the petitioner and the empanelled agency /Datacon

Technologies Pvt. Ltd which in fact was entrusted with the entire task of implementation of IEMS, were not considered and the empannelled agency as well as the petitioner, both, were blacklisted on 03.06.2022

11. Be it noted that the call centre module, which was part of IEMS was being run on an agreement between the petitioner and BELTRON since 2018 but no issue was ever raised by BELTRON either with respect to salary of the employees or the working of the call centers.

12. A perusal of the order of blacklisting suggests that the Department was aggrieved because of the delay in making the projects "go live" which was attributed to non-implementation of various modules of IEMS software and its poor management.

13. In the notice, it was declared by the Department that the vendor / petitioner would be obligated to take up the issue of poor management of IEMS and call centers with the empanelled agency and resolve those to the satisfaction of the Department within 30 days. The vendor / petitioner was given the liberty to consider changing the empanelled agency if it was not able to address the grievance of the Department. The notice also contained a caution sounded by the Department that in case the empanelled agency / Datacon Technologies Pvt. Ltd. was changed or substituted by another, the transition ought to be smooth and it should not disrupt either the IEMS or the call center operations. Along with the afore-noted declaration, the petitioner as well as it empanelled agency, both, were directed to submit a reply as to why the contract be not finally terminated and the petitioner / vendor and the empanelled agency /Datacon Technologies Pvt. Ltd be blacklisted for a period of three years.

14. The learned counsel for the petitioner has raised a grievance that the notice issued to the petitioner or to its empanelled agency was not a notice as is contemplated in the commercial world for a decision of blacklisting or termination of the contract. The tenor of the notice reflected only the grievance of the Department and provided an opportunity to the vendor and the empanelled agency to address those issues, sort it out, and in the event of not doing so, there could be a decision of termination of contract with the vendor and blacklisting of the vendor as well as the empanelled agency. The petitioner was never in contemplation that such office memorandum, which the Department calls a notice for blacklisting, to be a notice as such but it was taken as an intimation to the petitioner in its capacity as a vendor to improve the working of IEMS and call centers. The notice would have complete only if the Department would have held in the notice that because of the delayed implementation of the IEMS or the call centers, the vendor/petitioner and the empanelled agency/ Datacon Technologies Pvt. Ltd. both were liable to be blacklisted and the contract terminated.

15. It has further been submitted that black-listing entails very serious consequences. It takes out a company from the privileges and advantages of entering into any lawful relationship with the Government for the purposes of gains. With an action so stringent, with such cascading evil effects, it has been argued, notice is a must as it is one of the primary requirements of principles of natural justice. Notice must intimate the noticee the contemplation of the Department in view of deficiency in service provided to black-list it. The notice cannot be tentative, vague or providing the various options to the noticee.

16. On a plain reading of the purported notice, the petitioner thought it to be a reminder that the services at IEMS and call centers ought to be improved or upscaled, giving liberty to the vendor/ petitioner to further indicate the impediments faced by the empanelled agency or the vendor, which could, in turn, have been addressed by the Department. This office memorandum, the learned Advocate submits, *prima facie,* appears to be a consultation of one party with the other and not a notice as required for as serious an action as black-listing.

17. The order of black-listing dated 03.06.2022 refers to the same grievance of the Department, viz. poor management of the IEMS and call centres including certain new departures in the implementation and execution of schemes. There is reference of another show-cause notice having been issued by the Department to the main vendor/ petitioner regarding supposed default in deduction and contribution of E.P.F. and E.S.I. amount of employees of the petitioner, who were engaged with IEMS.

18. The sudden and complete shutdown of servers on 31.05.2022, an event which occurred post notice, was also taken into account for black-

listing the petitioner, as such shutdown of servers affected IEMS supply chain module leading to total collapse of the call centres. This was an isolated/ separate event for which the petitioner had no notice that this event shall be read squarely against the petitioner for black-listing it.

19. The petitioner therefore, questions the correctness of this reason as a ground for black-listing the petitioner.

20. True it is, Mr. Vikas Kumar argues, that before black-listing, a notice has to be given but there is no requirement under law to segregate notices with different fall-outs viz. termination of contract, debarment, provisional black-listing and black-listing for a specified term. The petitioner therefore cannot clamour for want of notice. Even if the notice referred to above did not qualify strictly to be called a notice for black-listing, neither the vendor nor the petitioner replied to the same and in a most un-business like approach, the empanelled agency walked out of the agreement by giving only a 24 hours notice specially when the servers were down and the IEMS and call centers were rendered totally dysfunctional.

21. After having heard the learned counsel for the parties, we find that the services provided by the vendor through the agency of the petitioner i.e. Datacon Technologies Pvt. Ltd., as an empanelled agency, was not to the satisfaction of the Department but black-listing the petitioner on grounds with which the petitioner was never confronted, would not be justifiable, regardless of the proposition of law that a party to a contract in such business venture ought to have some freedom in getting the work executed and evaluating the quality of work for it to continue or repeat such arrangement with the agency/ petitioner. It is now well settled that an order of black-listing, even it be for a limited period, creates a disability and for saddling a company with the aforesaid disability, there should be an objective satisfaction of the authority passing such order.

22. In ***Erusian Equipment and Chemicals Ltd. v. State of West Bengal*** **1975 (1) SCC 70,** it was conclusively held that in the event of a decision by the State or its instrumentality not to deal with an entity or enter into any contractual relationship with it entails serious consequences. The authority of the State to black-list a company is a necessary concomitant of the executive power of the State to carry on trade or business and making contracts for any purpose and there is no need of any statutory ground of such power, but there is an inherent limitation, which is of fairness and rationality in the decision.

23. Also refer to [***Patel Engineering Ltd. v. Union of India and Another, (2012) 11 SCC 257; Kulja Industries Ltd. v. Chief Gen. Manager W. T. Proj. Bsnl., (2014) 14 SCC 731; Southern Painters v. Fertilizers and***

Chemicals Travancore Ltd. 1994 Suppl (2) SCC 699 ; BSN Joshi and Sons Ltd. v. Nair Coal Services Ltd And Others, (2006) 11 SCC 548].

24. On a perusal of so-called notice and the final order of termination, we find that the notice was not complete in itself as it did not intimate the noticee about the positive displeasure of the Department regarding the work carried out uptill then and the intention to black-list the petitioner, if the explanations were not found to be plausible or satisfactory. The entire spectrum of notice was towards the displeasure at poor management of IEMS and call centres and an invocation of the vendor and the empanelled agency i.e. the petitioner to improve upon the same. There was no final conclusion of the Department that the services rendered by the vendor with the agency of the petitioner was unsatisfactory; not of the standard and not in tune with the requirements under the MSA. This cannot be held to be a proper notice for the petitioner to respond. The petitioner was never never confronted with the later developments, in that event, those facts could not have weighed with the Department for taking a decision of black-listing the petitioner for three years.

25. The order of black-listing does not appear to be in conformity with the legal requirements of such order being passed after the petitioner was noticed with clarity and had an opportunity to represent his cause.

26. For the afore-noted reason alone, we set aside the order of black-listing for three years against the petitioner, regardless of the fact that the services offered by the petitioner were not at all to the satisfaction of the Department and direct that after giving fresh notice to the petitioner and adverting to the reply, a fresh decision shall be taken by the Department regarding black-listing.

27. The entire exercise be concluded within a period of three months, to be counted from the date of receipt / production of a copy of this order before the concerned Department.

28. With the afore-noted observation, the writ petition stands disposed off.

(Ashutosh Kumar, J)

(Nawneet Kumar Pandey, J)

sunilkumar/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	09.12.2022
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