5 14.07.2022

PA(SS/SG)

MAT 604 of 2022
IA NO: CAN/1/2022
United Rail Road Consultants Private Limited
Vs.
NTPC Limited

Mr. Aniruddha Bhattacharya, Advocate
... for the appellant

Mr. Soumya Majumdar,
Mr. Uttam Kumar Mandal,
Ms. Sanjukta Dutta,
Ms. Maitree Roy, Advocates
... for the NTPC Limited

By this appeal writ petitioner has challenged the order of the learned Single Judge dated 22nd of March, 2022 dismissing W.P.A. No. 2788 of 2022.

The writ petition was filed by the petitioner challenging the order of blacklisting dated 22nd of January, 2022 with the plea that the appellant had submitted the bid in pursuance to the NIT dated 26th of March, 2020 for the work of annual rate contract for Merry Go Round (MGR) tract maintenance and colony maintenance of MGR Substation at the Farakka. The bid of the appellant was found to be lowest and the purchase order dated 18th of June, 2020 was issued with the direction to the appellant to commence the work from 24th of June, 2020. The plea of the petitioner is that on account of outbreak of COVID-19, the work could not be commenced and request for extension of time was accepted. The appellant was issued final notice for extension of time till 1st of January, 2021 to commence the work within 7 days from February 9, 2021 failing which the contract was to be terminated. According to the appellant they could not mobilize the resources. The respondent had issued the termination letter dated 24th of February, 2021 terminating the contract on the ground of delay in commencing of the work and sub-contracting of the work. This termination letter is the subject matter of challenge at the instance of the appellant in separate writ petition being W.P.A. No. 8017 of 2021. The appellant was given show cause notice dated 19th of July, 2021 to explain why it should not be debarred from doing business under the banning policy. This show cause notice was replied on 26th of July, 2021 and thereafter the appellant was given personal hearing on 22nd of September, 2021 and the impugned order dated 22nd of January, 2022 was passed to ban all the business dealings with the appellant for a period of 3 years w.e.f. 22nd of January, 2022 from all projects/stations of NTPC ER I. This order was subject matter of challenge in the writ petition.

Learned Single Judge while dismissing the writ petition has reached to the conclusion that there is no violation of principles of natural justice and that the sufficiency of reasons given in the order cannot be gone into by a writ Court and that appellant has effective contractual remedy against the impugned order in the nature of conciliation as well as arbitration.

Learned Counsel for the appellant submits that the blacklisting order is a non-speaking order and it contains no reason and that the grounds raised in the reply have not been fully considered and in support of his submission he has placed reliance upon the judgment in the matter of **Union of India vs. Mohan Lal Capoor and Others** reported in (**1973) 2 SCC 836, Vasant D. Bhavsar vs. Bar Council of India and Others** reported in **(1999) 1 SCC 45**, **Kranti Associates Private Limited and Another vs. Masood Ahmed Khan and Others** reported in **(2010) 9 SCC 496**, **National Highways Authority of India and Others vs. Madhukar Kumar and Others** reported in **2021 SCC OnLine SC 791**. He has further submits that reason should be supported by the material and in support of his submission he has placed reliance upon the judgment of Gujarat High Court in the matter of **Ghanshyan Indravadan Pandya vs. University Engineer** reported in **AIR 2018 Guj 176**.

Opposing the prayer, learned Counsel for the respondent has submitted that there is no error in the decision making process and in exercise of the writ jurisdiction disputed question of fact, if the default committed by the appellant was willful or not, cannot be decided. He has further submitted that several extensions were given to the appellant to commence the work but the same was not done, therefore, the contract has been terminated and appellant has been blacklisted by following due process and even otherwise appeal lies against the order of the blacklisting.

We have heard the learned Counsel for the parties and perused the record.

So far as the issue of termination of contract is concerned, it is subject matter of challenge in another writ petition. The facts mentioned in the writ petition in the present case itself indicate that the extension was given to the appellant from time to time to start the work and even thereafter the work could not be started.

So far as the challenge to the order dated 22.01.2022 is concerned, we find that a proper show cause notice was given to the appellant. The show cause notice dated 19.07.2021 was issued stating that the appellant had failed to perform contractual obligations and requiring the appellant to show cause as to why he should not be debarred from doing business with NTPC under business policy. The appellant had submitted the reply to the show cause notice. It is undisputed that the personal hearing was also given to the appellant. Thus, the learned Single Judge has not committed any error in reaching to the conclusion that the impugned order of blacklisting has been passed after due compliance of the principle of natural justice.

So far as the ground raised by the appellant that the order of the blacklisting dated 22.01.2022 is a non-speaking order which contains no reason, we have minutely perused the blacklisting order dated 22.01.2022 and we find that the said order contains reasons for the decision to ban business dealing with the appellant for a period of 3 years. The order reflects that the grounds taken in the reply to the show cause notice were not found tenable by the authority. The order also states that the work awarded to the appellant was critical in nature and could not be stopped as it had serious impact on the generation activities and it was also stated that it was brought to the appellant's notice many a times that several agencies from across the country were executing the jobs at NTPC Farakka under the same COVID condition by adopting proper safety measures. It was also stated therein that the nature of job under the contract was a regular one which could not be discontinued under any circumstances for safe running of coal rakes and any disruption in movement of rakes attributable to lack of maintenance could put generation of the station at stake. The order also takes note of the requirement of NTPC policy and procedure for banning of business dealing and states that the act of non-performing was viewed very seriously by NTPC and that it had lost trust and confidence in the appellant for doing any business dealings. Hence, we are unable to accept the plea of the appellant that the impugned order is a non-speaking order or order contains no reasons. Hence, we are unable to extend the benefits of the judgments in the matter of **Mohanlal Cooper and Others (supra)**, **Vasant D. Bhavsar (supra)**, **Kranti Associates Private Limited and Another (supra)** and **National Highways Authority of India and Others (supra)**, relied upon by the Counsel for the appellant.

It is also worth noting that against the impugned order appellant has remedy of appeal under clause 5.11 of the NTPC policy and procedure for banning of business dealings which reads as under:

> **"5.11 Appeal against the Decision of the Competent Authority.**
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> The Agency may file an appeal against the order of the Competent Authority banning of business dealing before Appellate Authority. Such an appeal shall be preferred within one month from the date of receipt of the order of banning of business dealing. Appellate Authority would consider the appeal and pass appropriate order which shall be communicated to the Agency as well as the Competent Authority."

Hence, the appellant has the opportunity to challenge the order of banning on merit before the appellate authority, therefore, the other issues raised by the appellant on merit need not be gone into.

Hence, we find no reason to interfere in the order of the learned Single Judge. The appeal is accordingly disposed of with liberty to the appellant to avail the remedy as prescribed in clause 5.11. We make it clear that observations made in this order will not come in the way of appellate authority in deciding the appeal on merit.

(Prakash Shrivastava, C.J.)

(Rajarshi Bharadwaj, J.)