**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,**
**NAGPUR BENCH : NAGPUR.**

**WRIT PETITION NO. 4177 of 2020**

Ms/. ICONET Services through its
Proprietor Captain Anil Kumar Midha,
102, Spur Tank Road Chetpet,
Chennai-600 031.
email: padma@iconectwireless.com .. **PETITIONER**

**VERSUS**

Western Coalfield Limited
A subsidiary of Coal India Limited,
Government of India undertaking
through its Chief General Manager,
Western Coalfield Headquarters
Nagpur. .. **RESPONDENT**

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Shri Apurv De, Advocate for petitioner.
Shri C.S.Samudra, Advocate for respondent.

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**CORAM :- A.S.CHANDURKAR AND URMILA S. JOSHI-PHALKE, JJ.**
**ARGUMENTS WERE HEARD ON 10.06.2022**
**ORDER IS PRONOUNCED ON 24.06.2022**

**ORDER**

In view of notice for final disposal issued in the writ petition the learned counsel for the parties have been heard at length.

2. The challenge raised in this writ petition is to the order dated 28.11.2020 issued by the respondent thereby banning the petitioner from doing business with the respondent for a period of two years under Clause 6.13.2(v) of the Coal India Limited Purchase Manual, 2020 (for short, the Purchase Manual, 2020).

3. The facts in brief are that in response to the tender notice issued by the respondent for supply, installation and commissioning of digital VHF handheld transreceiver sets and repeaters the petitioner submitted its bid on 12.10.2019. While processing the bid documents the respondent sought price justification on the tendered items from the petitioner. The petitioner submitted its price justification on 04.02.2020. In that price justification, supply order dated 09.09.2019 received by the petitioner from M/s. ACC Limited was relied. The respondent verified the authenticity of that document and found that the details supplied by the petitioner were different from the information supplied by M/s. ACC Limited. The petitioner was therefore issued a show cause notice on 14.08.2020 in which it was asked to explain as to why it should not be banned from having business dealings with the respondent in view of Clause 6.13.2(v) of the Purchase Manual, 2020. The petitioner submitted its explanation to the show cause notice on 07.09.2020. The respondent did not find the explanation as furnished to be acceptable and hence by the impugned order dated 28.11.2020 the respondent banned the petitioner from having any business dealings with it for a period of two years. This order is the subject matter of challenge in the writ petition.

4. Shri Apurv De, learned counsel for the petitioner submitted that the respondent erred in relying upon Clause 6.13.2(v) of the Purchase Manual, 2020 since the petitioner was only a bidder to whom no work order

was issued as its bid was not accepted. The said Clause in the Purchase Manual was applicable only to a supplier to whom a work order is issued. Since the bid submitted by the petitioner was not accepted, it could not be considered to be a supplier for applying the said Clause and banning the petitioner from doing business. The learned counsel invited attention to Clause 23.5 of the Tender Notice in that regard. He further submitted that as per Clause 6 of the Commercial Terms and Conditions of the Notice inviting tender, an offer made was valid only for a period of 180 days from the date of opening of the tender. The bid submitted by the petitioner was opened on 21.10.2019 and the period of 180 days came to an end on 19.04.2020. A show cause notice was issued on 14.08.2020 which was beyond the period of validity of the petitioner's offer. It was therefore not permissible for the respondent to consider the offer as subsisting after expiry of the period of 180 days. On this count also it was submitted that the respondent was not justified in passing the impugned order. The learned counsel also referred to Clause 13.15.6.1 of the Purchase Manual, 2020 which prescribed comparison of prices in the bid. Referring to the communication dated 28.01.2020 issued by the respondent and the petitioner's reply dated 04.02.2020, it was submitted that the petitioner had offered a discount of 16% on the basic yearly charges and ignoring this aspect the impugned order came to be passed. In view of Clause 21.8 of the Tender Notice the respondent could seek price justification only if the lowest price received was unreasonable or unacceptable. There was no reason in this background to seek the price justification and thereafter pass the banning order. It was thus submitted that the impugned order was liable to be set aside and the petitioner ought to be permitted to undertake business with the respondent.

5. Shri C. S. Samudra, learned counsel for the respondent supported the impugned order. According to him, the petitioner's bid was opened on 21.10.2019 and the price justification was sought in terms of the Tender Notice as well as the Purchase Manual. After making an enquiry with M/s. ACC Limited it was noticed that the information furnished by the petitioner in that context was based on fake/tampered documents and hence action was taken in terms of Clause 6.13.2(v) of the Purchase Manual, 2020. It was submitted that the Purchase Manual, 2020 was adopted from 25.01.2020 and as per Clause 30 thereof amendments made to the Purchase Manual were applicable. Referring to Chapter 6 of the Purchase Manual, 2020 it was pointed out that the said Chapter was in relation to "Registration of Suppliers, Vendor Rating and Penal Action against Suppliers/Bidders". This indicated that Clause 6.13.2(v) of the Purchase Manual, 2020 was attracted while taking penal action against a supplier or a bidder. It was not correct to contend that such action could be taken only against a supplier and not against a bidder. It was then submitted that by following the prescribed procedure and after granting full opportunity to the petitioner, the impugned order had been passed. Show cause notice dated 14.08.2020 was issued and after considering the reply dated 07.09.2020 submitted by the

petitioner, the impugned action was in accordance with the Purchase Manual, 2020 as well as the Tender Notice. The petitioner too did not make any grievance that he had not been granted proper opportunity by the respondent. Moreover, the earnest money deposit had not been forfeited. The learned counsel invited attention to the declaration certificate dated 10.10.2019 submitted by the petitioner in which the proprietor of the firm had stated that if any information or document submitted by the petitioner was found to be false or incorrect, action was liable to be taken including forfeiture of earnest money deposit and blacklisting. Before taking the impugned action, the documents supplied by M/s. ACC Limited were called for and the petitioner was made aware of the charge made against it. Placing reliance on the decisions in *Patel Engineering Limited vs. Union of India and another* ***(2012) 11 SCC 257****, Grosons Pharmaceuticals (P) Ltd. vs. State of U.P. and others* ***(2001) 8 SCC 604*** *and Gorkha Security Services vs. Government (NCT of Delhi) and others* ***(2014) 9 SCC 105*** and in Writ Petition No.6400 of 2014 (*Ms/Punya Coal Roadlines and ors. vs. M/s. Western Coalfields Limited and anr*) decided on 22.01.2015 and in Writ Petition No. 4855 of 2021 (*Ms/ Hindustan Trade Overseas Pvt.Ltd. vs. General Manager (CMC) Western Coalfield Limited and anr.*) decided on 28.04.2022, it was submitted that since the impugned action was taken after grant of fair opportunity to the petitioner, there was no reason to interfere in writ jurisdiction. It was thus submitted that the writ petition was liable to be dismissed.

6. We have heard the learned counsel for the parties and we have perused the Purchase Manual of the respondent for the year 2020. At the outset, it would be necessary to refer to certain relevant Clauses in the Tender Notice as well as the Purchase Manual. As per Clause 23.5 of the Tender Notice penalty for defaulting bidders insofar as the non-critical tenders are concerned has been prescribed. In that Clause, it has been stated that submission of forged documents by a bidder would be dealt with as per the existing guidelines of the Purchase Manual that was made available on the website of the respondent. As per Clause 30 of the Tender Notice, the provisions of Coal India Purchase Manual, 2004 alongwith subsequent amendments and e-procurement guidelines were made applicable to the tender and it was stated that the Purchase Manual alongwith amendment was available on the website of the respondent. As per Clause 4.7.7(iv) of the Purchase Manual, 2004 on wilful suppression of facts or furnishing of wrong information or forged documents, the respondent could consider banning of business with such firm. This Clause is similarly worded to Clause 6.13.2(v) of the Purchase Manual, 2020. The Purchase Manual, 2020 came into effect from 25.01.2020 and Chapter 6 thereof deals with Registration of Suppliers, Vendor Rating and Penal Action against suppliers/bidders. Thus under Chapter 6 of the said Purchase Manual, the respondent could take penal action against suppliers/bidders on the occurrence of contingencies mentioned therein.

7. In the present case, show cause notice was issued by the respondent to the petitioner on 14.08.2020. In the said show cause notice, it was stated by the respondent that while processing its tender price justification was sought from the petitioner for the tendered items. The petitioner had submitted a copy of the supply order dated 09.09.2019 that was received from M/s. ACC Limited. The respondent sought to verify the authenticity of that order and entered into communication with M/s. ACC Limited. From the reply sent by M/s. ACC Limited, it was found that the supply order submitted by the petitioner attributed to M/s. ACC Limited was not tallying with the actual supply order submitted to M/s. ACC Limited. Hence the petitioner was called upon to show cause as to why penal action should not be taken as per Clause 6.13.2(v) of the Purchase Manual, 2020.

One of the contentions raised by the petitioner is that since the validity period of the bid submitted was only for 180 days from its opening, it was not permissible for the respondent to issue show cause notice thereafter. The petitioner's bid was opened on 21.10.2019 and the period of 180 days came to an end on 19.04.2020. We however find that neither does the tender document nor the Purchase Manual of the year 2020 or of the year 2004 preclude the respondent from taking any action for furnishing of wrong or false information by the bidder. The question is not about the validity of the offer and duration of 180 days but the issue on which the petitioner was asked to give its explanation was furnishing of wrong information or manipulated or forged documents. We therefore do not find any justification in the contention of the petitioner that as the show cause notice had been issued after a period of 180 days from the opening of its bid or beyond the validity period of the offer it was illegal. The show cause notice therefore cannot be set aside on that count.

8. Perusal of the impugned order dated 28.11.2020 indicates that initially the petitioner was issued a show cause notice on 14.08.2020. The reply of the petitioner dated 07.09.2020 has been taken into consideration and on finding that the said reply was not satisfactory, the action of banning of business has been taken in view of the Tender Notice and the provisions of Clause 6.13.2(v) of the Purchase Manual, 2020. It is not the case of the petitioner that such action of banning of business has been taken without any notice to it or that such action has been taken on non-existent grounds. The petitioner has not denied the furnishing of the alleged purchase offer dated 09.09.2019 which it claimed that it had been received from M/s. ACC Limited. Once this aspect is not disputed then it would have to be held that the respondent by proceeding to take action under Clause 6.13.2(v) of the Purchase Manual, 2020 was justified in doing so. The bidders were put on notice by the Notice inviting tender as well as the Purchase Manual as regards submission of furnishing wrong or false information.

9. In view of aforesaid and by considering the law laid down in the decisions relied upon by the learned counsel for the respondent, we find that there is no case made out to interfere with the impugned order passed

by the respondent thereby banning the petitioner from engaging in any business with the respondent for a period of two years. Though the learned counsel for the petitioner sought to urge that it was not necessary to seek price justification with regard to the bid submitted by the petitioner, we find that the respondent has acted in accordance with the Tender Notice and the Purchase Manual, 2020. The reason for banning business with the petitioner is preceded by a show cause notice and thereafter consideration of the reply of the petitioner.

We do not find any merit in the challenge raised by the petitioner to the impugned order. The writ petition is thus dismissed with no order as to costs.

**( URMILA S. JOSHI-PHALKE, J.)** **(A.S.CHANDURKAR, J.)**

*Andurkar.*