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W.P.(MD)NO.8910 OF 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.07.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.8910 of 2021 and
W.M.P.(MD)Nos.6703 & 6705 of 2021

M/s. GA Digital Web Word Pvt. Ltd.
Rep through its Manager/Authorized Person,
K. Saravanan,
Having Registered Office at Plot No.1
Hargobind Enclave,
Vikas Marg Extension,
Delhi-110 092. ... Petitioner

Vs.

Bharat Heavy Electricals Ltd.,
Through its General Manager/MM&WCM
Having its Office at 4th Floor, 24 No.Bldg.,
HPBP BHEL, TRICHY-620 014. ... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the proceedings of the impugned banning Order in Ref: BHEL/MM/ULC/GADIGITAL/BAN dated 06.01.2020 on the file of the respondent and the consequent impugned banning order in Ref: BHEL/MM/ULC/GADIGITAL/BAN dated 30.01.2020 on the file of the respondent and the consequent impugned communication in Ref: MM/SDC/BHEL/001 dated 24.02.2021 on file of the respondent and quash the same.



For Petitioner : Mr.K. Govindarajan,
for Mr.K.Jeyamohan.

For Respondent : Mr. Raguvaran Gopalan

* * *

ORDER

Heard the learned counsel on either side.

2. The petitioner challenges the order dated 06.01.2020 passed by the respondent whereby the petitioner was blacklisted for three years and also the order dated 24.02.2021 whereby the respondent declined to revisit the issue.

3. The petitioner is a registered company. The respondent floated a tender process for awarding manpower contract for various areas of Logistics Department, at BHEL, Trichy on 18.02.2019. The petitioner participated in the same. The petitioner projected themselves as an MSME registered vendor. During the technical valuation by the respondent, the



petitioner was asked to submit CA certificate as a supporting document of MSME certificate. The petitioner produced the document said to have been issued by M/s.Shiv and Associates, Chartered Accountants. The respondent cross checked the authenticity of the said certificate with M/s.Shiv and Associates, Chartered Accountancy firm. The Chartered Accountancy firm informed the BHEL that they had not issued the said certificate. Thereupon show cause notice dated 16.08.2019 was issued. The petitioner gave their reply dated 31.08.2019. After considering the same, ban order was passed on 06.01.2020 blacklisting the petitioner for three years and the same was amended on 30.01.2020. The petitioner thereupon submitted a representation seeking reconsideration. The petitioner's request was negatived vide communication dated 24.02.2021. Thus the order blacklisting the petitioner that stood confirmed. Hence, this writ petition came to be filed.

4. The learned counsel appearing for the petitioner took me through the averments set out in the affidavit filed in support of the writ petition and called for quashing the impugned communication.



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5. Per contra, the learned counsel appearing for the respondents submitted that no case for interference has been made out. He pointed out that the technical ground urged by the petitioner that the impugned orders are bad because the opportunity of personal hearing was not given is not sustainable. He relied on the decision reported in **(2014) 9 SCC 105 (Gorkha Security Services V. Government (NCT of Delhi))**. In the aforesaid decision it has been held that when the contractor did not specifically ask for an opportunity of personal hearing and the show cause notice contained all the relevant facts, the question of affording personal opportunity does not arise at all. He would also state that if the petitioner submitted a fake document to the respondent, as per the relevant guidelines the respondent was obliged to take the impugned action. He also submitted that the impugned communications were not passed in a hurry. The show cause notice was issued and the reply was received. There was deliberation from the Union Level Committee. This was again vetted by the corporate operation management and only after getting concurrence note of the Senior Manager /



Finance of BHEL, New Delhi, the order blacklisting the petitioner was passed. He stated that there was a careful scrutiny of the case put forth by the petitioner. He would also state that this Court while exercising under Article 226 of the Constitution of India, cannot exercise appellate jurisdiction. He called for dismissal of the writ petition.

6. I carefully considered the rival contentions and went through the materials on record.

7. The petitioner was a participant in the tender process floated by BHEL, Trichy. Since the petitioner sought preference as MSME vendor, the petitioner was called upon to produce the CA certificate. Thereupon the petitioner produced certificate dated 08.03.2019 ostensibly issued by one M/s.Shiv and Associates, Chartered Accountants. Since it did not contain the Unique Document Identification number, the petitioner was asked to produce appropriate certificate again. The petitioner submitted the certificate dated 18.03.2019 ostensibly issued by the very same firm. When the BHEL verified with the said firm, the respondent received e-mail to



the effect that the two documents were not issued by the company and hence they cannot confirm the authenticity of the documents / certificates sent by the BHEL. Pursuant thereto, the impugned show cause notice dated 16.08.2019 was issued following the order of blacklisting.

8. I cannot fault the respondents for having passed the order dated 06.01.2020 because of the stand explicitly taken by M/s.Shiv and Associates, Chartered Accountancy firm.

9. Thereafter the petitioner once again moved the respondent. On this occasion, the petitioner submitted an affidavit issued by one of the senior partners of the said firm. The said affidavit reads as under:-

“ That on 13.03.2019, we had received a request from the Company to urgently issue a certificate in favour of BHEL on the basis of their registration under Micro, Small and Medium Enterprise Development Act, 2006. Accordingly, Mr.Kamal Kumar, Partner at Shiv and Associates, had



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prepared and provided a draft certificate the Company on 15.03.2019 for their verification and perusal. The draft of such certificate was in the format provided by BHEL in their Tender Document. Since, it was a draft certificate for approval of the Company, we did not generate the Unique Document Identification Number (" UDIN ") as required by ICAI Guidelines which had recently come into effect from February 2019. The UDIN is required on the final certificate issued by a Chartered Accountant which can be generated within a period of 15 days from the date of issuance of final certificate.

4. That it has come to my knowledge that due to some misunderstanding the aforesaid draft certificate was submitted by the Company to BHEL, without verifying the amount of investment as stated in the Udyog Aadhar Memorandum of the Company under the MSMED Act. Due to clerical error, instead of stating the investment amount as per Udyog Aadhar Memorandum, the draft certificate stated the amount of monetary limit of the Company as per their



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Government Purchase Enlistment Certificate. Such clerical error has crept-in due to inadvertence. The purpose of the draft certificate was to screen out such inadvertent mistakes.

5. The aforesaid draft certificate was prepared, signed and stamped by our office and the same has not been forged by the Company. Due to absence of UDIN on this draft certificates, a partner of our firm, Shiv and Associates, denied the issuance of such document as the same does not have a UDIN.”

10. A look at the show cause notice dated 16.08.2019 would show that the petitioner was blamed for having produced the fake certificate because M/s.Shiv and Associates took the stand that they did not issue the said certificate. Since M/s.Shiv and Associates had subsequently clarified in unambiguous terms that they had very much issued the said certificate and that it was not forged, the very basis on which the impugned action was taken goes. While I could understand why the original order was passed, I would not appreciate the



respondent for having passed the order dated 24.02.2021 The respondent ought to have re-visited the issue in the light of the affidavit submitted by none other than M/s.Shiv and Associates.

11. Ban order was passed as early as on 06.01.2020. We are now in July 2022. The respondent contemplated banning the petitioner for a period of three years. A full 2½ years have elapsed. The petitioner has suffered enough. Since I have come to the conclusion that the offending document was a genuine document and not a fake document, the impugned communication is quashed. This writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

07.07.2022

Index : Yes / No
Internet : Yes/ No

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To:
Bharat Heavy Electricals Ltd.,
Through its General Manager/MM&WCM
Having its Office at 4th Floor, 24 No.Bldg.,
HPBP BHEL, TRICHY-620 014.



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G.R.SWAMINATHAN,J.

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