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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 08th February, 2022

+ W.P.(C) 2035/2021 & CM APPL. 5969/2021 & CM APPL.
9718/2021

TECHNO POWER ENTERPRISES PVT LTD..... Petitioner

versus

UNION OF INDIA THROUGH PRINCIPAL
SECRETARY AND CHAIRMAN & ORS. Respondents

AND

+ W.P.(C) 3666/2021 & CM APPL. 11114/2021
M/S. SHYAM TAKNIKI UDYOG Petitioner

versus

UNION OF INDIA & ORS. Respondents

Advocates who appeared in this case:

For the Petitioners: Mr. Anshuman Sharma and Mr. Asif Ali Zaidi, Advocates
in W.P. (C) 2035/2021

Mr. Jagjit Singh Chhabra and Mr. Saksham Maheshwari,
Advocates in W.P. (C) 3666/2021

For the Respondents: Mr. Ashok Singh, Advocate

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

W.P.(C) 2035/2021 & W.P.(C) 3666/2021

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JUDGMENT

SANJEEV SACHDEVA, J

1. The hearing was conducted through video conferencing.
2. Petitioners impugn order dated 09.02.2021 whereby respondent has passed an order banner business dealings with the petitioners.
3. On 10.12.2021, e-tenders were invited for design, supply, erection, testing and commissioning of 25 KV, 50 Hz, Single Phase, AC Electrification including OHE & TSS as Composite Electrical Work.
4. Petitioners formed a joint venture and submitted their tender on 03.01.2020.
5. A certificate of executed and ongoing work allegedly certified by a Chartered Accountant was submitted along with the bid document to show eligibility for the tender.
6. On 31.01.2020, the joint venture withdrew the bid before the technical evaluation process was concluded.
7. As per the respondents, the certificate of the Chartered Accountant submitted alongwith the bid was forged and fabricated and the Chartered Accountant had confirmed that he had not issued



the certificate.

8. A notice in terms of Para 13(vi) of the subject tender was issued on 29.06.2020, requiring the petitioners to show cause as to why action of banning for five years be not taken against them. Said show cause notice was duly replied by the petitioners.

9. Subsequently, by letter dated 23.10.2020 a memorandum and statement of imputation were issued to the petitioners for the proposed banning action. Along with the letter dated 23.10.2020, a memorandum of charge, statement of charge/misconduct against the joint venture and relied upon documents were enclosed.

10. Petitioner M/s Techno Power Enterprises Pvt. Ltd. gave a detailed response to the Memorandum of Charge on 17.11.2020 and the Petitioner Shyam Takniki Udyog gave a detailed reply on 14.12.2020.

11. Thereafter the impugned order dated 09.02.2021 has been passed.

12. Learned counsels for the Petitioners submit that the order does not consider their response and no opportunity of hearing was given to the Petitioners before passing the banning order.

13. Learned counsel for the petitioners also contended that the



punishment i.e. banning for the maximum period of five years is completely disproportionate to the alleged misconduct.

14. Learned counsels contended that no prejudice was caused to the respondents because the bid was withdrawn even prior to the completion of evaluation or award of contract.

15. Learned counsel of the respondent submits that an opportunity of hearing was granted to the petitioners and they were directed to appear on any working day within 15 days.

16. Though the learned counsels for the parties have made extensive submissions on the merits of the order, however, it is noticed that the impugned order, besides, briefly noticing the facts as mentioned in the statement of charge does not even refer to the replies filed by either of the petitioners to the memorandum of charge.

17. Impugned order also does not, in any manner deal with the response given by either of the petitioners to the memorandum of charge as well as the statement of misconduct.

18. The submissions of learned counsel of the respondent that an opportunity of hearing was granted to the petitioners to appear on any working day within 15 days is of no consequence for the reason that said opportunity was granted prior to issuance of memorandum and



statement of charge and not thereafter.

19. It may be noticed show cause notice was issued to the Petitioners on 29.06.2020, which was duly replied by the Petitioners and they requested for an opportunity for a personal hearing. In response the Respondents had stated that they could appear on any working day within 15 days.

20. The impugned order was not passed pursuant to the show cause notice. After the replies were filed by the Petitioners to the show cause notice dated 29.06.2020, respondents, on 23.10.2020, proceeded to issue a memorandum of charge, statement of charge/misconduct against the joint venture and relied upon documents requiring the petitioners to show cause against the proposed action.

21. Said show cause notice dated 23.10.2020 was duly replied to by Petitioner M/s Techno Power Enterprises Pvt. Ltd. on 17.11.2020 and the Petitioner Shyam Takniki Udyog on 14.12.2020. However, pursuant to the said show cause notice, admittedly, no opportunity of personal hearing has been granted and as noticed hereinabove, said responses have not even been considered in the impugned order dated 09.02.2021.

22. In view of the above, without commenting on the merits of the case of either party, since respondents have neither granted an



opportunity of hearing nor considered the response given by either of the petitioners to the memorandum and statement of charge, the impugned order dated 09.02.2021 cannot be sustained.

23. Consequently, the impugned order dated 09.02.2021 is set aside. The matter remitted to the competent authority to pass a fresh speaking order, on the Memorandum of Charge dated 23.10.2020, after affording an opportunity of personal hearing to the petitioners and taking into account their responses. If petitioners wish to file any further documents or submissions, the same be forwarded to the competent authority within two weeks from today.

24. Respondents shall expeditiously conclude the proceedings by passing a speaking order. It would be open to the competent authority to also consider the issue of quantum of punishment.

25. In case the competent authority passes an order to ban either of the petitioners or both of them, then the period between 09.02.2021 till today shall be taken into account and credit for the same shall be granted to the petitioners or the petitioner as the case may be.

26. It is clarified that this Court has neither considered nor commented upon the merits of the contentions of either of the parties. All rights and contentions of the parties are reserved.



27. Petitions are disposed of in the above terms.

28. Copy of the order be uploaded on the High Court website and be also forwarded to learned counsels through email by the Court Master.

SANJEEV SACHDEVA, J

FEBRUARY 08, 2022
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