



* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(C) 4455/2021, CM APPL. 13568/2021

Date of Decision: 28.09.2022

IN THE MATTER OF:

M/S PARAS SALES Petitioner
Through: Ms. Geeta Mehrotra, Advocate.

versus

DELHI JAL BOARD, GOVT. OF N.C.T. OF DELHI..... Respondent
Through: Ms. Sangeeta Bharti, Standing
Counsel, DJB with Ms. Malvi Balyan,
Advocate.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J. (ORAL)

1. The petitioner, which claims to be a contractor carrying out business activities with the respondent as well as other Government Departments, has filed the present writ petition under Articles 226 and 227 of the Constitution of India seeking setting aside of the alleged order dated 15.11.2019 and circular dated 25.11.2019 passed by the respondent. The petitioner has further prayed for directions to the respondent to be allowed to participate in tenders to be issued by it and to have business dealings with it.
2. It has been averred that the petitioner was awarded Work Order No. 127 dated 29.03.2018 for 'improvement of damaged stairs & platform for the operation of sluice valves & others allied works at Shalimar Bagh, SPS' and Work Order No. 45 dated 01.05.2018 for 'providing/fixing of MS Chequered



Sheets at Shalimar Bagh, SPS'. The work under the respective Work Orders was to be completed within 30 days. The petitioner completed the work enunciated in the Orders to the satisfaction of the respondent and submitted its bill(s) alongwith all material procurement vouchers to the Executive Engineer-in-Charge on 28.04.2018 and 31.05.2018. The bill(s) was approved for payment, however, instead of processing the payment, two Show Cause Notice(s) both dated 02.04.2019 were issued after more than a year with respect to the Work Orders, directing the petitioner to explain as to why it be not blacklisted/removed/temporary suspended from the list of approved/registered contractors, on the ground that the Vigilance Department of DJB, after inspecting/checking the work under the Orders, had found that no such work was carried out. The petitioner, vide its letter(s) dated 10.04.2019, sought extension of time to file its reply and eventually filed the same on 27.04.2019.

3. Vide reply(s) dated 27.04.2019, the petitioner stated that its final bill with details of measurement were processed by JE/AE and passed by EE (SDW) IX, after physically verifying the work, being Engineering-in-Charge. It was further asserted that neither during the time when the work under the Orders were carried out nor during the guarantee period which continued for a period of six months, any notice/letter was served on the petitioner.

In pursuance of an E-mail dated 27.08.2019, *Mr. Atul Jain* (proprietor of the petitioner) appeared before the Chief Engineer (SDW) NW at *Keshopur* on 28.08.2019 when it was informed to him that the competent authority had confirmed through letter dated 10.06.2019 the factum of purchase of material by the petitioner from *M/s Shri Aadinath Steels*. Subsequent thereto, a Circular dated 25.11.2019 was received by the petitioner whereby it was



communicated for the first time that the competent authority had approved the petitioner's debarment for a period of five years.

4. It has been contended that although the Circular dated 25.11.2019 refers to an order dated 15.11.2019 passed by the Competent Authority, no such order was ever communicated to the petitioner. Lastly, it has been contended that no personal hearing was provided to the petitioner by the Competent Authority/Department Committee.

5. Ms. Sangeeta Bharti, learned Standing Counsel for the respondent/DJB, while supporting the impugned Order/Circular has contended that the action against the petitioner has been taken in pursuance of communication(s) received from the Vigilance Department of the answering respondent, which has observed that no work was carried out in pursuance of the Work Orders and the collusion of DJB Officers' with the petitioner is established. It is further submitted that the matter was placed before the CEO of the answering respondent, who ordered to take action for blacklisting/removal/temporary suspension of the petitioner's firm. Learned Standing Counsel averred that in these circumstances, Show Cause Notice(s) dated 02.04.2019 was issued to the petitioner. In support of her case, she also referred to the Note-File and termed it as a debarment order.

6. I have heard learned counsels for the parties and have also gone through the entire case record.

7. The petitioner has made a specific averment that it had not received any debarment order dated 15.11.2019 and had rather received the Circular dated 25.11.2019 wherein only a mention of the debarment order was made.

8. A perusal of the record would reveal that although learned Standing Counsel for the respondent has termed the Note-File as a debarment order, the



same are Note-Sheets recommending debarment which were only subsequently approved by the Managing Director/CEO of the Board. Evidently, the Debarment Committee has not granted any opportunity of personal hearing to the petitioner and no opportunity was granted to the petitioner to challenge the recommendations of the Executive Engineer/Superintendent Engineer/Debarment Committee either.

9. In UMC Technologies Private Limited v. Food Corporation of India & Another reported as (2021) 2 SCC 551, the Supreme Court while reiterating settled principles has highlighted the severe consequences of blacklisting orders and the stigmatization that accrues to the person/entity being blacklisted. Relevant excerpt from the said decision reads as follows:

“14. Specifically, in the context of blacklisting of a person or an entity by the State or a State Corporation, the requirement of a valid, particularised and unambiguous show-cause notice is particularly crucial due to the severe consequences of blacklisting and the stigmatisation that accrues to the person/entity being blacklisted. Here, it may be gainful to describe the concept of blacklisting and the graveness of the consequences occasioned by it. Blacklisting has the effect of denying a person or an entity the privileged opportunity of entering into government contracts. This privilege arises because it is the State who is the counterparty in government contracts and as such, every eligible person is to be afforded an equal opportunity to participate in such contracts, without arbitrariness and discrimination. Not only does blacklisting take away this privilege, it also tarnishes the blacklisted person's reputation and brings the person's character into question. Blacklisting also has long-lasting civil consequences for the future business prospects of the blacklisted person.

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16. The severity of the effects of blacklisting and the resultant need for strict observance of the principles of natural justice



before passing an order of blacklisting were highlighted by this Court in Erusian Equipment & Chemicals Ltd. v. State of W.B. [Erusian Equipment & Chemicals Ltd. v. State of W.B., (1975) 1 SCC 70] in the following terms: (SCC pp. 74-75, paras 12, 15 & 20)

“12. ... The order of blacklisting has the effect of depriving a person of equality of opportunity in the matter of public contract. A person who is on the approved list is unable to enter into advantageous relations with the Government because of the order of blacklisting. A person who has been dealing with the Government in the matter of sale and purchase of materials has a legitimate interest or expectation. When the State acts to the prejudice of a person it has to be supported by legality.

15. ... The blacklisting order involves civil consequences. It casts a slur. It creates a barrier between the persons blacklisted and the Government in the matter of transactions. The blacklists are “instruments of coercion”.

20. Blacklisting has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for purposes of gains. The fact that a disability is created by the order of blacklisting indicates that the relevant authority is to have an objective satisfaction. Fundamentals of fair play require that the person concerned should be given an opportunity to represent his case before he is put on the blacklist.”

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25. The mere existence of a clause in the bid document, which mentions blacklisting as a bar against eligibility, cannot satisfy the mandatory requirement of a clear mention of the proposed action in the show-cause notice. The Corporation's notice is completely silent about blacklisting and as such, it could not have led the appellant to infer that such an action could be taken by the Corporation in pursuance of this notice. Had the Corporation expressed its mind in the show-cause notice to blacklist, the



appellant could have filed a suitable reply for the same. Therefore, we are of the opinion that the show-cause notice dated 10-4-2018 does not fulfil the requirements of a valid show-cause notice for blacklisting. In our view, the order of blacklisting the appellant clearly traversed beyond the bounds of the show-cause notice which is impermissible in law. As a result, the consequent blacklisting order dated 9-1-2019 cannot be sustained.”

10. In facts and circumstances similar to those involved in the present case, a Co-ordinate Bench of this Court in Kamlesh Engineering Works v. Delhi Jal Board, Govt. of N.C.T. of Delhi, W.P.(C) 10052/2021, while observing that “*he who hears must decide*”, had found fault with the blacklisting as in the said case also the respondent had not granted any opportunity of either personal hearing by the Managing Director or CEO of the Board, or opportunity to challenge the recommendations of the Executive Engineer, the Superintendent Engineer or the Debarment Committee.

11. In view of the foregoing discussion and agreeing with the reasoning and decision of the Co-ordinate Bench of this Court in Kamlesh Engineering Works (Supra), I am of the opinion that file notings and minutes are not a substitute to an order or a decision, and find merit in the contention of the petitioner that no formal order of blacklisting was passed by the respondent and communicated to the petitioner.

12. Accordingly, the writ petition is allowed. The alleged order dated 15.11.2019 and circular dated 25.11.2019 issued by the respondent qua the present petitioner are quashed and set aside. Pending application is disposed of as infructuous.

13. Needless to state, the present order having been passed only on the touchstone of the principles of natural justice does not bar the respondent to



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initiate fresh proceedings against the petitioner in accordance with law. It is clarified that this Court has not gone into merits of the contentions raised on behalf of either of the parties and the same are left open.

MANOJ KUMAR OHRI, J

SEPTEMBER 28, 2022/v

