

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No. 718 of 2023 (O&M)

Date of Decision: 18.01.2023

Tractebel Engineering Pvt. Ltd.

.....Petitioner

versus

National Hydroelectric Power Corporation Ltd.

.....Respondent

CORAM: HON'BLE MR.JUSTICE RAVI SHANKER JHA, CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI, JUDGE

Present : Mr. Akshay Bhan, Senior Advocate with
Mr. A.S.Talwar, Advocate,
Mr. Abhijeet Singh Rawaley, Advocate and
Mr. Anuj Berry, Advocate, for the petitioner.

Mr. S.P.Jain, Addl. Solicitor General of India with
Mr. Suvir Kumar, Advocate, for the respondent.

RAVI SHANKER JHA, CHIEF JUSTICE (oral)

CM No. 943 of 2023

Reply filed on behalf of the respondent is taken on record.

Application stands disposed of.

Main Petition

This petition has been filed by the petitioner being aggrieved by the order dated 02.12.2022 (Annexure P-1) by which the petitioner company has been suspended from doing business dealings with the respondent under Clause 3.2 of the qualification criteria contained in the bidding document. The present petitioner had entered into a joint venture with the petitioner in another Civil Writ Petition No. 29376 of 2022. It is stated that by an order dated 02.12.2022, both the petitioner companies were suspended allegedly on the ground that the petitioners have failed to disclose the fact that they had been black-listed by M/s REC by its order dated 07.07.2022. It is

informed that the order of suspension dated 02.12.2022 was stayed by this Court vide order dated 20.12.2022 passed in Civil Writ Petition No. 29376 of 2022 on account of the fact that the aforesaid order had been passed without issuing any show cause notice to the petitioner companies. It is submitted that the present petition is identical to Civil Writ Petition No. 29376 of 2022.

Though the petition has been vehemently opposed by the learned Additional Solicitor General of India appearing on behalf of the respondents, however, he fairly concedes that there is a clause 1.2 of the Guidelines on Banning Business Dealings appended with the Pre-Contract Integrity Pact, which clearly provides for issuance of a show cause notice and hearing prior to passing of an order of suspension. He, however, states and points out that there is a Clause 5.4 as well in the same document which prescribes that there is no requirement of issuance of any show cause notice or personal hearing before issuing an order of suspension.

We have heard learned senior counsel for both the parties at length.

The fact that there are two clauses in the same document, which are diametrically opposed to each other, is not in dispute. Clause 1.2 of the Guidelines on Banning Business Dealings clearly states that since banning/suspension of business dealings involves civil consequences for an agency concerned, it is incumbent that adequate opportunity of hearing is provided and the explanation, if tendered, by the agency is considered before passing any order keeping all the facts and circumstances into consideration. Clause 1.2 is in tune with the law laid down by this Court as well as by the Supreme Court in several matters. In the circumstances, as it is an admitted and undisputed fact in the instant case that no show-cause notice prior to suspension of business dealings was issued to the petitioner and, therefore, we are of the considered opinion that the impugned order be treated as *nonest*.

It is informed and stated by learned senior counsel appearing for the respondents that subsequently the respondent-authorities have issued a show cause notice to both the petitioner companies on 16.01.2023 giving 15 days time to file a reply as to why action for banning them may not be taken. The said show cause notice has also been assailed by the petitioners in another Civil Writ Petition No. 1038 of 2023.

Learned Senior Counsel appearing for the respondent further submits that the respondent-authorities would take into consideration the reply that is to be filed by the petitioners to the said show cause notice and after affording an opportunity of hearing shall take a decision by passing a reasoned order in accordance with law. It is clarified that the respondent is a central agency and has no bias or *mala-fide* against the petitioner or any other company and the authorities will take a decision taking all the facts and facets into consideration free from any kind of prejudice.

Learned senior counsel appearing for the petitioner submits that the petitioner would file a detailed reply to the said show cause notice dated 16.01.2023 issued by the respondent-authorities and would also avail opportunity of personal hearing granted to it.

Having heard learned senior counsel for the parties at length and in view of the aforesaid facts and circumstances, the present petition is disposed of by observing that the impugned order dated 02.12.2022 suspending the business dealings having been issued without any show cause notice to the petitioner be treated as *nonest* and as submitted by the learned senior counsel for the respondent, the petitioner shall be granted an opportunity to submit reply to the said show cause notice dated 16.01.2023, and upon affording an opportunity of personal hearing to the petitioner, a reasoned/speaking order shall be passed and communicated to the petitioner.

Learned senior counsel for the parties are ad-idem that in case any adverse order is passed by the authorities against the petitioner, it shall be at liberty to avail the remedy of appeal or other remedies admissible in law.

In view of the aforesaid observations and directions made by this Court, the present petition stands disposed of.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

18.01.2023
ravinder

Whether speaking reasoned	√Yes/No
Whether reportable	Yes/No√