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

Date of Decision: 7th February, 2023

+ **W.P.(C) 834/2020 and CM APPL. 2596/2020**

ROYAL ELECTRICAL COMPANY Petitioner

Through: Ms. Geeta Mehrotra, Advocate.

versus

GOVT. OF N.C.T. OF DELHI

..... Respondent

Through: Ms Kanika Agnihotri and Mr Rohan Anand, Advocates for DJB (M-9968791199)

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The Petitioner - Royal Electrical Company, A-771, Shastri Nagar, Delhi-110052, stated to be a registered government contractor, challenges the impugned circular dated 25th November, 2019 whereby the Petitioner has been debarred for a period of 5 years by the Delhi Jal Board ('DJB').
3. The work order dated 4th January, 2018 was awarded to the Petitioner for the purpose of renovation of the electrical system of the Sewage Pumping Station (SPS) at sector 17 Rohini. The total value of the work order was Rs.2,48,127/- (*Rupees Two Lakh forty eight thousand one hundred and twenty seven*). The DJB issued show cause notice on 2nd April, 2019 seeking reasons as to why the Petitioner ought not to be blacklisted/removed/temporarily suspended from the list of approved contractors on the ground that some of the work, which was allegedly claimed to have been carried out by the Petitioner, had turned out to be

bogus/fictitious. A reply was given by the Petitioner to the said show cause notice, on 16th April, 2019 explaining that the work order was actually executed to the satisfaction of the officials of the DJB. A hearing was given by the Executive Engineer, (SDW) IX, DJB. However, thereafter, no debarment order was communicated except the impugned circular dated 25th November, 2019.

4. The submission of Ms. Mehrotra, Id. Counsel for the Petitioner is five fold -

- i. That the impugned circular relies upon a debarment order dated 15th November, 2019, which had not been communicated to the Petitioner.
- ii. The Debarment Committee did not give a hearing to the Petitioner. A hearing was only given by the Engineer concerned.
- iii. In a connected matter, where a similarly placed party was debarred, the file noting was relied upon by the DJB, which cannot constitute an order.
- iv. The work was executed to the satisfaction of the concerned engineer.
- v. The allegation of bogus/fictitious work is not maintainable, inasmuch as the 12 exhaust fans, which were to be supplied, were in fact, supplied by the Petitioner.

5. She submits that under similar circumstances, Id. Single Judges of this Court have set aside the debarment order in

- *'Kamlesh Engineering Works v. Delhi Jal Board, Govt. Of N.C.T. of Delhi'* [W.P.(C) 10052/2021 vide Order dated 16th August 2022]

- *'M/s. Vardhaman Trading Company v. Delhi Jal Board, Govt. Of N.C.T. of Delhi'* [W.P.(C) 4570/2021 decided on 28th September 2022] and
- *'M/s Paras Sales v. Delhi Jal Board, Govt. of N.C.T. of Delhi'* [W.P.(C) 4455/2021 decided on 28th September 2022]

6. Ms. Kanika Agnihotri, Id. Counsel appearing on behalf of the DJB submits that the show cause notice clearly specifies the grounds on which the debarment was contemplated. The reply was also considered and the matter was taken up by the Debarment Committee on the recommendation of the Managing Director (MD)/CEO.

7. It is further submitted by Ms. Agnihotri, that the DJB had found that several of its own employees may have been in collusion with some contractors and when this was unearthed by the DJB, the action of debarment was undertaken by the Respondent in consultation with the vigilance department. Id. Counsel for the Respondent submits that the circular itself would have to be treated as a debarment order, inasmuch as the Petitioner is well aware of the reasons for which the debarment has been undertaken. She further submits that the principles of natural justice have been duly complied with.

8. A perusal of this record shows that the circular dated 25th November, 2019 reads as under:

“The Competent Authority vide orders dated 15-11-2019 has approved to Debar following firms including their Proprietor/Partner(s)/Director(s) from participation in any of the tenders to be issued by the Divisions/Office(s) of Delhi Jal Board and to have any business dealing with DJB by any means for the period mentioned against each firm from the date of issued of

this circular.

<i>S. No.</i>	<i>Name of Firms</i>	<i>Period of Debarment</i>
1.	<i>M/s Royal Electrical Co.</i>	<i>5 Years</i>
2.	<i>M/s Durga Engineering Works</i>	<i>5 Years</i>
3.	<i>M/s Elite Electrical & Hardware Traders</i>	<i>5 Years</i>
4.	<i>M/s Paras Sales</i>	<i>5 Years</i>

”

9. A perusal of the said circular would reveal that it was issued on the basis of an order dated 15th November, 2019 passed by the competent authority, which has approved the debarment. However, no such order dated 15th November, 2019 has been placed on record by the DJB. Insofar as the non-grant of hearing is concerned, the judgments of the coordinate Benches of this Court in the 3 cases cited by the Petitioner, fully deal with the same issues. Even in those cases, the Debarment Committee had not granted a hearing and the Court had clearly held that the file notings would not constitute an order.

10. The observations of the Id. Single Judge in ***Kamlesh Engineering Works (supra)*** read as under:

“8. As would be manifest from the recordal of the facts as set out hereinabove, the petitioner apart from having been placed initially on notice to show cause was neither provided an opportunity of hearing by the Debarment Committee nor do the minutes of that Committee evidence any consideration of the reply that had been submitted.

9. While the respondents have alluded to notices dated

2 April and 18 April 2019 issued by the Executive Engineer as well as of 23 May 2019 by the Superintendent Engineer and an opportunity of personal hearing having been provided by the latter to the petitioner, those cannot sustain the impugned action since the decision to debar was taken by the Debarment Committee and not by the authorities mentioned hereinabove. The note sheet would further indicate that the recommendations of the Debarment Committee were thereafter approved by the Managing Director and CEO of the Board. Even that authority had neither heard the petitioner nor provided it an opportunity to represent against the recommendations of the Executive Engineer, the Superintendent Engineer or the Debarment Committee. The manner in which proceedings were drawn by the respondents would thus clearly appear to fall foul of the well settled principle that "he who hears must decide".

10. The Court further notes that apart from the office noting and minutes which have been placed on the record by the respondent, no formal order of blacklisting has been placed on the record. It is well settled that file notings neither constitute an order nor a decision which can be countenanced in law. Accordingly, and for all the aforesaid reasons, this Court finds itself unable to sustain the decision taken by the respondent.

11. The writ petition is accordingly allowed. The decision of 04 October 2019 as well as the circular of 14 October 2019 insofar as it relates to the petitioner are hereby quashed and set aside. This order, however, shall not preclude the respondent from drawing proceedings afresh and in accordance with law.

12. The Court while parting deems it appropriate to observe that it has interfered with the impugned order of blacklisting only on account of the evident infraction of the principles of natural justice. The present order is thus not liable to be construed as being an

adjudication on the merits of the allegations that were levelled against the petitioner. All contentions of respective parties in that respect are kept open.”

11. This order has also been followed by another coordinate Bench of this Court in *Vardhman Trading Company(supra)* and *Paras Sales (supra)*.

12. The reasoning in all these three orders shows that the debarment order having not been communicated and the Debarment Committee having not afforded a hearing, the act of debarment would not sustain. Following the reasons given in the said judgments, it is held that even in the present case, except the circular dated 25th November, 2019, the debarment order having not been communicated to the Petitioner, the debarment order in this case would also not sustain. The writ petition is, accordingly, allowed.

13. The debarment order dated 15th November, 2019 and the circular dated 25th November, 2019 pursuant thereto are, accordingly, set aside qua the Petitioner. This would, however, not bar the DJB from taking action in accordance with the law, after complying with the principles of the natural justice.

14. All pending applications are also disposed of.

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**PRATHIBA M. SINGH
JUDGE**

FEBRUARY 7, 2023/dk/rp