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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 22nd February, 2023

+ W.P.(C) 3688/2021 and CM APPL. 11173/2021

RAO MOHD. NADEEM

..... Petitioner

Through: Mr Ramesh Kumar, Advocate (M:
9810159436).

versus

WAPCOS LTD.

..... Respondent

Through: Mr. Naresh Kaushik, Mr. Manoj
Joshi, Mr. Anand Singh and Ms.
Shikha John, Advocates (M:
9811031792).**CORAM:****JUSTICE PRATHIBA M. SINGH****Prathiba M. Singh, J. (Oral)**

1. This hearing has been done through hybrid mode.
2. The present petition has been filed by the Petitioner - Rao Mohd. Nadeem seeking quashing of the impugned order dated 24th October, 2018 passed by the Respondent - WAPCOS Ltd. vide which, the Petitioner has been blacklisted from working with any department of the Respondent on any future project.
3. The case of the Petitioner is that he is a Civil Engineer with a Masters degree in Environmental Science and Engineering. The profile of the Petitioner as pleaded in the writ petition is set out below:

“The Petitioner is a graduate in Civil Engineering and masters in Environmental Science and Engineering. He has been Member of G-03, Committee on Reduction of carbon foot print in road construction and Environment and has the privilege of drafting manuals of Indian Road Congress, Ministry of Road Transport and Highways for the last more than fifteen years. He has been International Staff Consultant of Asian

Development Bank In Republic of Kazakhstan and has worked in the past in Republic of Kazakhstan as part of PMC for advising Govt. of Kazakhstan on largest road project connecting Western Europe to Western China on World Bank compliances and standards. He has also worked in World Bank funded Kabul Municipality Development Plan and a team leader for Exim Bank in Republic of Nauru for preparation of Pre- Feasibility Report Line of Credit by Govt. of India like Mumbai-Vadodra Expressway, 4 Lane Banihal to Srinagar, Cochin Port Connectivity, Yamuna Expressway, Diamond Quadrilateral Network of High speed Rail, Corridors, Expansion of Agathi Airport, Budh International Circuit (F-1 Motor track) etc. A copy of educational certificates of the petitioner are annexed herewith as Annexure P2(colly).”

4. The Petitioner was engaged as a top level expert in the Business Development Department of the Respondent. The relevant parts of the engagement letter of the Petitioner dated 7th March, 2018, is as under:

“ OFFICE ORDER NO. 609(EXP)/18

Shri Rao Mohd. Nadeem (11922) is hereby engaged as Expert (TLE) for a period from 15.02.2018 to 30.06.2018 for the work related to Preparation of PR&DPR for road projects (H-3372). He shall be under the administrative control of head (BD).

His engagement shall be governed and regulated by the following terms and conditions.

a) 1) *He will be paid retainership Rs. 75,000/- per month*

2) *Rs. 10,000/- per day on the basis of provision of inputs by him.*

c) *He will work whole time observing normal working, hours and follow the rules regulations, discipline, etc.,*

of the company and ethics of the engineering profession.

j) That in case of unsatisfactory performance/complaint, service will be terminated forthwith without assigning any reason.

The engagement of Shri Rao Mohd Nadeem, Expert (TLE) is purely temporary and this arrangement may cease at any time even prior to the completion period of engagement.”

5. Mr. Ramesh Kumar, Id. Counsel for the Petitioner submits that the Petitioner rendered services till September, 2018. Further, the Respondent, despite being a government undertaking, passed an order of blacklisting without issuing any show cause notice or affording any hearing to the Petitioner. It is argued by Mr. Ramesh Kumar, Id. Counsel that the blacklisting is also indefinite and hence is not sustainable.

6. The case of the Respondent is that on 7th August, 2018 and 5th October, 2018, certain complaints were received from the engineers at two projects where the Petitioner was engaged. The said complaints were to the effect that the performance of the Petitioner was not up to the mark and that there were some *inter se* misunderstandings caused due to the Petitioner's own firm M/s Arhaan & Associates Pvt. Ltd.

7. Mr. Kaushik, Id. Counsel on behalf of the Respondent, submits that the Petitioner while being engaged with the Respondent was promoting the services and business of his own firm. In view of these reasons, as per Id. Counsel, the Respondent had passed the impugned order dated 24th October, 2018.

8. A perusal of the engagement letter of the Petitioner would show that the Petitioner was retained as an expert consultant and was to render quality

services to Respondent. The engagement of the Petitioner was in the form of a consultant expert and not as a regular employee of the Respondent. The Petitioner's engagement was extended on 13th July, 2018 for another six months. He was engaged in a temporary manner on a periodic basis and due to whatever reasons the said relationship came to be terminated on 14th August, 2018. The said termination letter issued by the Respondent is as under:

“Reference office order No. 2254(EXP)/18 dated 13.07.2018

The services of Shri Rao Mohd. Nadeem (11922), Expert (TLE) engaged for the work relating to preparation of PR and DPR for road Project (H-3372) are hereby, terminated with immediate effect.”

9. After having terminating the services, the Respondent issued the impugned order dated 24th October , 2018 which reads as under:

“OFFICE ORDER No. 5110(EXP)/18

*Shri Mohd. Rao Nadeem (11922) is **hereby blacklisted** for working with any department of WAPCOS for any project.”*

10. The said impugned order is completely cryptic and does not give any reason whatsoever for the alleged blacklisting of the Petitioner. Admittedly, no show cause notice has been issued and no hearing has also been afforded to the Petitioner. A perusal of the blacklisting policy which was issued by the Respondent in 2021 itself shows that blacklisting cannot be for not more than three years. As per the said policy, the procedure for blacklisting also contemplates issuance of the notice for setting out the grounds for blacklisting. The relevant clauses of the blacklisting policy which was, thereafter, introduced by the Respondent is set out below:

“2(b) Blacklisting means an administrative action/penalty disqualifying an Agency or Agencies from participating in any public procurement, by the Company for a given period.

.....

5. PERIOD OF BLACKLISTING

Blacklisting period shall be reckoned from the date of blacklisting order and ordinarily the period for which 'Agency or Agencies' is blacklisted should not be less than 6 months and should not exceed 3 years. In certain cases where maximum penalty of blacklisting has been imposed and the default of the Agency or Agencies' was grievous, the 'Competent Authority may at the end of such period, review the prevailing circumstances and conduct of the Agency or Agencies' and further extend the period of blacklisting.

In exceptional cases where the act of 'Agency or Agencies is a threat to the National Security, the banning shall be for indefinite period.

6. PROCEDURE FOR BLACKLISTING

a) If a prima-facie, case is made out that the 'Agency or Agencies' is guilty on the above grounds which can result in blacklisting of business dealings a show-cause notice shall be served by the Competent Authority to the current Agency or Agencies'.

b) The show-cause notice shall indicate the ground on which the 'Agency or Agencies' is proposed to be blacklisted and shall grant the 'Agency or Agencies' a period of ten days to submit its written response to the said blacklisting show-cause notice.

c) The Agency or Agencies' shall be given an opportunity of being personally heard either in physical mode or Virtual Conference (VC") mode by the competent authority or any officer of designated by the competent authority if a written response is tendered within specified time. Minutes of meeting of the personal hearing shall be prepared.

d) In case no written response is tendered the competent authority shall proceed ex-parte.

e) The competent authority shall take a decision after considering the written response and response given in the personal hearing regarding blacklisting of the 'Agency or Agencies'. Such decision shall be final and binding on the said 'Agency or Agencies.'

f) The final blacklisting order shall be uploaded on the official website of the Company with a copy of same be forwarded to CMD, WAPCOS Ltd. Ministry of Jal Shakti & the 'Agency or Agencies'.

g) Once the orders for blacklisting are issued they should not be ordinarily revoked unless:

i. On a review upon application by the 'Agency or Agencies' the competent authority or the authority higher than it, is of the opinion that the punishment already meted out is adequate in the circumstances of the case or the order so passed was not justified or,

ii. In respect of the same facts the accused has been honourably acquitted by a Court of Law.

h) An order for blacklisting passed for a certain specified period shall deemed to have been automatically revoked on the expiry of that specified period and it will not be necessary to issue a specific formal order of revocation.

i) The above process of banning should be completed within 04months from initiation of case by competent authority."

11. Though the said policy is not strictly applicable, even judging by the standards that the Respondent has set for itself, in such actions, the impugned order fails. Moreover, in the present case, the use of the word blacklisting is also a complete misnomer inasmuch as the Petitioner being an expert who was engaged as a temporary consultant, it was up to the Respondent to terminate the relationship with the Petitioner if there was any issue relating to the performance. The same was done vide letter dated 14th

August, 2018. The so-called blacklisting decision is thus lacking any foundation or basis.

12. In the present case, admittedly, no show cause notice has been issued and no hearing was afforded to the Petitioner. Further, the blacklisting is over and above the termination which would remain as a permanent stigma attached with the Petitioner. The same is also indefinite in nature, thus there is complete breach of the principles of natural justice. The impugned blacklisting order dated 24th October, 2018 is accordingly not sustainable in terms of the settled legal position in *Kulja Industries Limited vs. Chief General Manager, Western Telecom Project Bharat Sanchar Nigam Limited and ors*, (2014) 14 SCC 73 and *VetIndia Pharmaceuticals Limited v. State of Uttar Pradesh and Anr.* (Civil Appeal No. 3647 of 2020, arising out of SLP(C) No. 6319 of 2020).

13. Accordingly, the impugned blacklisting order dated 24th October, 2018 is set aside. The Petitioner is allowed in the above terms.

14. This petition along with all pending applications is disposed of.

PRATHIBA M. SINGH, J.

FEBRUARY 22, 2023

mr/kt