

\$~19

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision: 7th February, 2023
+ **W.P.(C) 4170/2020 and CM APPL. 15012/2020**
M/S R & R ENTERPRISES Petitioner
Through: Ms. Ruchika Sharma & Ms. Seema
Singh, Advocates. (M: 9811663159)
versus
UNION OF INDIA & ORS. Respondents
Through: Mr. Anil Soni (CGSC) with Mr.
Devvrat Yadav, Advocate for UOI.
(M: 8285815626)

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 - M/S R & R Enterprises seeking quashing of the adverse remark “no slow progress” in the impugned WLR dated 20th June, 2018, and the subsequent impugned WLR dated 16th March, 2020 passed by Respondent No.2 – HQ Chief Engineer, Western Command, Chandimandir, and any subsequent order thereof as a consequence of which the Petitioner firm is banned from participating in tender process of the Respondents.
3. The Petitioner is a contractor who was enlisted with the Military Engineering Services (MES). It had been awarded various contracts from time to time by the MES. The contracts which are subject matter of this case are as under:

- (i) GE/WS/D-04/16-17
- (ii) GE/WS/D-05/16-17
- (iii) GE/WS/D-28/16-17

(iv) GE/WS/D- 30/16-17

(v) GE/WS/D-36/ 16-17.

4. During the subsistence of the said contracts, there were disputes between the parties due to the alleged delays in the execution of the contracts. It is the case of the Respondents that the Petitioner did not perform the allotted work within the time period prescribed in the work orders.

5. On the other hand, it is the Petitioner's case that there were delays by the Respondents in handing over the sites and other such disputes. It is further submitted by the Petitioner that it tried to resolve the issues on several occasions, however, it was unsuccessful in doing so. Finally, vide two circulars dated 20th June, 2018 and 24th April, 2020, the Petitioner was de-enlisted by the MES. The impugned WLR dated 20th June, 2018 further shows the adverse remark "no slow progress" against the Petitioner.

6. Ld. Counsel for the Petitioner submits that for the last several years, the Petitioner has continued to be de-enlisted and is thus unable to bid for tenders with the MES. Ld. Counsel has no objection if the de-enlistment is restricted to the period already served.

7. Mr. Soni, Ld. Counsel for the Respondents submits that a detailed counter has been filed by the MES and that the Petitioner was de-enlisted/debarred due to slow progress.

8. A perusal of the de-enlistment communications shows that there was no period specified for the de-enlistment/ debarment of the Petitioner. There is no clarity as to till when the Petitioner would continue to be de-enlisted. Indefinite debarment is clearly prohibited under the law as held by the Hon'ble Supreme Court in *M/s Kulja Industries Limited v. Chief Gen.*

Manager W.T. Proj. BSNL & Ors., CA. No. 8944/2013. The relevant extract of the judgement reads:

25. Suffice it to say that “debarment” is recognised and often used as an effective method for disciplining deviant suppliers/contractors who may have committed acts of omission and commission or frauds including misrepresentations, falsification of records and other breaches of the regulations under which such contracts were allotted. What is notable is that the “debarment” is never permanent, and the period of debarment would invariably depend upon the nature of the offence committed by the erring contractor.

26. In the case at hand according to the respondent BSNL, the appellant had fraudulently withdrawn a huge amount of money which was not due to it in collusion and conspiracy with the officials of the respondent Corporation. Even so permanent debarment from future contracts for all times to come may sound too harsh and heavy a punishment to be considered reasonable especially when (a) the appellant is supplying bulk of its manufactured products to the respondent BSNL, and (b) the excess amount received by it has already been paid back.

27. The next question then is whether this Court ought to itself determine the time period for which the appellant should be blacklisted or remit the matter back to the authority to do so having regard to the attendant facts and circumstances.

28. A remand back to the competent authority has appealed to us to be a more appropriate option than an order by which we may ourselves determine the period for which the appellant would remain blacklisted. We say so for two precise reasons:

28.1 Firstly, because blacklisting is in the nature of penalty the quantum whereof is a matter that rests primarily with the authority competent to impose the same. In the realm of service jurisprudence this Court has no doubt cut short the agony of a delinquent employee in exceptional circumstances to prevent delay and further litigation by modifying the quantum of punishment but such considerations do not apply to a company engaged in a lucrative business like supply of optical fibre/HDPE pipes to BSNL.

28.2 Secondly, because while determining the period for which the blacklisting should be effective the respondent Corporation may for the sake of objectivity

and transparency formulate broad guidelines to be followed in such cases. Different periods of debarment depending upon the gravity of the offences, violations and breaches may be prescribed by such guidelines. While it may not be possible to exhaustively enumerate all types of offences and acts of misdemeanour, or violations of contractual obligations by a contractor, the respondent Corporation may do so as far as possible to reduce if not totally eliminate arbitrariness in the exercise of the power vested in it and inspire confidence in the fairness of the order which the competent authority may pass against a defaulting contractor.”

9. The aforementioned judgement has also been relied on by this Court in **W.P.(C)3606/2021** titled **Rhonpal Biotech Pvt. Ltd. v. New Delhi Municipal Council & Anr.** Thus, in the opinion of the Court, permanent de-enlisted/ debarment cannot be resorted to for the slow progress of the work as the same would be disproportionate.

10. Without going into the merits as to whether there was slow progress or delay by the Petitioner, considering the fact that substantial time has lapsed since the de-enlistment on 20th June, 2018 it is directed that the debarment/de-enlistment of the Petitioner shall be restricted to the period already undergone i.e. till 6th February, 2023. Going forward the Petitioner would not be treated as a de-enlisted firm and it is free to bid for the tenders of the MES in its own name.

11. It is clarified that the Court has not gone into the merits of the de-enlistment in view of the above directions

12. With these observations, the petition, along with all pending applications, is disposed of.

PRATHIBA M. SINGH
JUDGE

FEBRUARY 7, 2023

dj/kt