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

% *Date of Decision: 28th March, 2023*

+ **LPA 204/2020**

**UNION OF INDIA AND
ANR.**

..... Appellants

Through: Mr. Mukul Singh, CGSC
with Ms. Ira Singh, Adv.

versus

**M/S. MACHINE TOOLS
INDIA (PVT.) LTD.**

..... Respondent

Through: Mr. Karan Luthra &
Mr. Shravan Niranjana,
Adv.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE AMIT MAHAJAN

VIBHU BAKHRU, J. (Oral)

1. The appellants have filed the present intra-court appeal, impugning an order dated 21.01.2020 (hereafter '**impugned order**'), passed by the learned Single Judge in **W.P.(C) 4847/2019**, captioned **M/s Machine Tools (India) Ltd. v. Union of India & Anr..**

2. The respondent had preferred the said writ petition, being W.P.(C) 4847/2019, to assail a letter dated 19.12.2018, whereby the respondent was black listed from participating in any tenders floated by the appellants for a period of five years.

3. The respondent's principal ground of challenge to the said letter dated 19.12.2018 was that it had already suffered punishment on the basis of the allegations that are the subject matter of the said letter. It is the respondent's contention that the

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respondent could not be vexed twice on the same allegations in
the given set of facts.

The factual context

4. Appellant no. 2 (Diesel Locomotive Works, workshop of Indian Railways located in Varanasi) is an undertaking of the Government of India and functions directly under the Ministry of Railways.

5. Appellant no. 1 had floated a tender for supply of Flux, inviting bids from authorised dealers/ distributors. One of the eligibility conditions required that the tenderer should either be an Original Equipment Manufacturer (OEM) or an authorised dealer/ distributor of OEM or should be specifically authorised by OEM for bidding in the said tender.

6. The respondent participated in the bidding process and in order to substantiate that it satisfied the eligibility criteria, furnished a letter dated 09.04.2015, purportedly issued by Lincoln Electric Company, USA (OEM). This letter was found to be forged in as much as Lincoln Electric Company, USA denied that it had issued any such letter in favour of the respondent.

7. The Vigilance Department of the appellants conducted an investigation and found that the respondent had furnished a false letter to fraudulently claim that it satisfied the eligibility criteria.

8. Thereafter, on 12.11.2015, a Show Cause Notice was issued to the respondent. The said Show Cause Notice specifically called upon the respondent to show cause as to why its business dealings with appellant no. 2 as well as Indian

Railways, should not be banned and its name not be removed from the list of approved suppliers on account of submitting forged documents.

9. The respondent replied to the said Show Cause Notice. It appears that the respondent did not contest that the document submitted by it was forged. It, however, claimed that one of its employees (one Mr. Mohammad Shaheen Khan), had uploaded the certificate on its own and without authorisation. The respondent also stated that it was initiating action against the said delinquent employee.

10. On the receipt of the said Show Cause Notice, the respondent issued an order dated 19.12.2015, de-listing the respondent company from the list of “*MMT Vendor List*”, for a period of two years from the date of order.

11. Subsequently, on 26.04.2016, the appellant issued another Show Cause Notice, proposing to blacklist the respondent for a period of five years on the same allegations – that the respondent had furnished a forged letter to satisfy the eligibility criteria for participating in the bidding process. Thereafter, on 19.12.2018, appellant no. 2 issued a letter blacklisting the respondent in respect of any business with the appellants for a period of five years with effect from 19.12.2018. As noted above, being aggrieved by the aforesaid letter, the respondent preferred a writ petition which was allowed in terms of the impugned order.

Impugned order

12. Learned Single Judge found that the order dated 19.12.2015 issued by appellant no. 2, was not in the nature of a

temporary suspension, pending inquiry but was a final order imposing the punishment of removing the respondent's name from the list of approved vendors for a period of two years. The learned Single Judge also found that the said order clearly stated that on investigation, the respondent had been found to have committed certain irregularities.

13. In addition, the learned Single Judge noted that the respondent had not participated in any tender after receiving the punishment in terms of the order dated 19.12.2015.

14. The learned Single Judge found that, in view of the above, the respondent could not be visited with punishment for the second time for the same reasons. Accordingly, the learned Single Judge quashed the letter dated 19.12.2018 banning any dealings with the appellants for a period of five years with effect from the said date.

Submissions

15. The Learned Counsel for the appellants submitted that the learned Single Judge had erred in proceeding on the basis that the final punishment had been meted out to the respondents in terms of the order dated 19.12.2015. He submitted that in terms of Rule 1110 of the Indian Railways Vigilance Manual, 2006 (Standardised Code for Suppliers by Railways – hereafter '**the Code**'), the dealings with the respondents were merely suspended and the same did not amount to blacklisting.

16. He contended that at the material time, inquiries were pending and the final decision was taken subsequently. This is not a case where the respondent was punished twice for the same

irregularity but a case where dealings with the respondent were temporarily suspended, pending inquiry. The final punishment was imposed by the letter dated 19.12.2018. He also referred to Rule 1106 of the Code which provides for the conditions of removal from the list of approved suppliers.

17. He also referred to Rule 1108(iii) of the Code and submitted that a vendor who is suspended, is not barred from participating in further tenders. However, he is only required to be considered as an unregistered vendor. He submitted that the implication of Rule 1108(iii) of the Code is that the respondent could participate in tenders during the period it was de-listed from the list of vendors and till the blacklisting letter dated 19.12.2018 was issued.

18. Learned Counsel for the respondent countered the aforesaid submissions. He drew the attention of this Court to the order dated 19.12.2015 and further submitted that the language of the order clearly indicates that it was in the nature of a punitive action after investigation was complete. He also submitted that as a consequence of the said order, the petitioner could not participate in any tenders after 19.12.2015.

19. He also referred to an e-mail dated 16.01.2016, sent by appellant no. 2 to the respondent's overseas principal (Adcole), *inter alia*, stating that the respondent had been found guilty of an offence of moral turpitude and, therefore, the business dealings with the respondent were suspended.

Reasons and conclusion

20. We have heard the learned Counsel for the parties.

21. At the outset, it would be relevant to note that the Show Cause Notice dated 12.11.2015 had specifically called upon the respondent to show cause as to why the business dealings should not be banned and the respondent should not be removed from the list of approved suppliers, on account of committing forgery. The relevant extract of the said Show Cause Notice is set out below:

“In view of above, it is revealed that you have not acted as per ethics of business transaction and your such act to make yourself eligible in tender by producing a fake certificate comes under the category of offence involving moral turpitude in relation to business dealing.

Therefore, it is opined that your business dealing from DLW and Indian Railways should be banned and also your name should be removed from the list of approved suppliers for committing the above forgery. If you have any clarification for your defence you may submit the same within 15 days after receipt of this letter otherwise it will be assumed that you are accepting the offence and you have to say nothing for the same.”

22. After considering the response of the petitioner, the appellants passed an order dated 19.12.2015. It is relevant to refer to the said order, which is set out below:

“No. Dy.Plant/Procurement/Policy

Dt. 19.12.2015

Sub: Delisting of M/s MTI, Mumbai/Kolkata for committing irregularities.

An investigation has been carried out against M/s MTI, Mumbai/Kolkata for committing Irregularities in a stores tender. The Irregularities made by the firm found true.

In view of above, the firm is being delisted from M&P vendor list for supply of Lincoln products for two years from the date of this letter.

This has got approval of CME.

Necessary actions may be taken up for the compliance of the above.”

23. A plain reading of the order dated 19.12.2015 indicates that the appellants had completed the investigation against the respondent in regard to the alleged irregularities in furnishing the bid. The said order specifically states that the irregularities were 'found true'. It is material to note that the respondent had not disputed that the letter purportedly issued by Lincoln Electric Company, USA was forged; its defence was that its employee had submitted the same without authorisation. The appellants' decision to delist the respondent from the list of vendors and subsequently black list it, is premised on the aforesaid findings.

24. In view of the above, there is no scope for entertaining the contention that the investigations were underway. The language of the order dated 19.12.2015 also militates against the said contention.

25. Having found the respondent guilty of submitting a fabricated document along with its bid, appellant no. 2 had taken the action of de-listing the respondent from the vendor list for the supply of Lincoln products for a period of two years. Clearly, this action is in the nature of a punitive measure imposed on the respondent and is, undeniably, founded on the result of the investigation conducted by the appellants.

26. It is also not disputed that the appellants had sent e-mails to the principal of the respondent informing them that the business dealings of the appellants with the respondent had been suspended and, further, inviting the respondent's principal to participate in the tenders floated by appellant no. 2 directly or through some other Indian Agent.

27. The e-mail dated 16.01.2016, sent by appellant no. 2 to the respondent's overseas principal is set out below:

"Recipient: info@adcole.com

rom: Diesel Locomotive Works, Indian Railways, Varanasi-221004

Email: dycmm.mnp.dlw@gmail.com

Subject: Indian Agent Machine Tools (India) Pvt. Ltd.

Message Body:

Dear Sir/Madam,

Your agent M/s Machine Tools India Ltd., New Delhi-64 had indulged in fraudulent activity hence found guilty of an offence involving moral turpitude in relation to the business dealings. Consequently the business dealings of M/s Machine Tools (India) Ltd. with Diesel Locomotives Works (DLW) has been suspended. Further Railway Board has been recommended for banning of business with M/s Machine Tools (I) Ltd. You are advised to participate in the tenders for DLW directly or through some other Indian Agent. This is for your information please.

S. K. Sinha

Dy Chief Materials Manager/ M&P

Diesel Locomotive Works,

Varanasi-221004"

28. In view of the above, we find little merit in the appellants' contention that the respondent was not impeded from participating in tenders, notwithstanding its name has been removed from the list of vendors.

29. The learned Single Judge, after considering the controversy, held that the order dated 19.12.2015 could not be considered as a suspension order for the following reasons:

"9. In my opinion the above order cannot be termed as a suspension order pending full enquiry as pleaded by learned counsel for the respondent. The following aspects persuade me to conclude as above:

(i) A perusal of the said first order clearly

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shows that it does not in any manner indicate that the same is in the nature of suspension or a case of temporary ban. If it was a suspension order, it would have said so.

(ii) The said order clearly states that the irregularities have been found true i.e. a final finding of fact is given. Clearly, no further enquiry is proposed as claimed.

(iii) If order dated 19.12.2015 was in the form of a temporary suspension, there would have been no need to even issue a second Show Cause Notice as was done on 26.4.2016 before issuing the blacklisting order dated 19.12.2018. Issue of two show causes followed by two different punishments shows that the pleas of the respondent are without merit.”

30. We concur with the aforesaid view.

31. The learned counsel for the appellants had referred to Rule 1106 and Rule 1110 of the Code in support of his contention that the respondent's name could be suspended pending consideration of the banning order.

32. There is no cavil that suspension is permissible under Rule 1110 of the Code – which was relied upon by the learned counsel for the appellants – pending full enquiry into the allegations. The said Rule is set out below:

“1110. Suspension:

Suspension of business may be ordered where pending full inquiry into the allegations; it is not considered desirable that business with the firm should continue. Such an order may be passed:

- (i) If the firm is suspected to be of doubtful loyalty to India;*
- (ii) If the Central Bureau of Investigation or any other investigation agency recommends such a course in respect of a case under investigation;*
- (iii) If Ministry/Department is prima-facie of the view that the firm is guilty of an offence*

involving moral turpitude in relation to the business dealings which if established, would result in business dealings with it being banned.”

33. However, the said Rule is not applicable in the facts of the present case. This is because appellant no. 2 had after investigation, found that the respondent had committed irregularities. The delisting order dated 19.12.2015 clearly indicates that the investigation in this case was concluded. Thus, this is not a case where the appellants had taken the measure of delisting the respondent on formation of a “*prima facie view that the firm was guilty of an offence*”.

34. Insofar as Rule 1106 of the Code is concerned, the same would have little application in the facts of this case as is apparent from the plain reading of the said Rule. Rule 1105 and Rule 1106 of the Code are set out below:

“1105. Removal:

A firm may be removed by the Competent Authority (Head of the Department or any other authority nominated by him) from the list of approved suppliers if, on account of its performance or other disabilities, it is no longer considered fit to remain on the approved list. Such orders will be endorsed to other Government Departments

1106. Conditions for Removal:

Removal from the list of approved suppliers may, at the discretion of the Competent Authority, be ordered if a firm:

- (a) fails to execute a contract or fails to execute it satisfactorily;*
- (b) no longer has the technical staff or equipment considered necessary;*
- (c) fails to furnish income-tax clearance certificate if required under the rules; or*

(d) *is declared bankrupt or insolvent or its financial position has become unsound and in the case of Limited Company, it is wound up or taken into liquidation.”*

35. It is apparent from the plain reading of Rule 1106 of the Code that it enables the Competent Authority to order removal of the name of any of the vendors if the conditions set out are satisfied. None of the aforesaid conditions are applicable in the facts of this case.

36. It is also relevant to refer to Rule 1108(iii) of the Code. The same is set out below:

“1108. Certain Clarifications:

(iii) Tenders received from a firm, whose name has been removed from the list of approved suppliers, may be given the same consideration as is given to tenders from unregistered parties.”

37. It is apparent from a plain reading of Rule 1108(iii) of the Code that it enables the concerned authorities to treat the tenderers whose name have been removed from the list of the approved suppliers as unregistered vendors. Plainly, this Rule is applicable only in cases where a vendor's name is removed for reasons as set out in Rule 1105 or Rule 1106 of the Code. That is, in cases where the removal is on account of certain disabilities or certain other factors, which are not an impediment in accepting the bids from such tenderers, if such conditions no longer exist or are not relevant for the said transaction. Rule 1108(iii) is not applicable in a case where a particular firm has been found guilty of misconduct which involves moral turpitude. In such cases, the decision to remove a firm from the list of approved vendors is predicated on the basis that there ought to be no dealings with the

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said firm.

38. Before concluding, it would also be relevant to note that the respondent has been unable to participate in the tender since 19.12.2015. Thus, the respondent has already suffered a punishment of being, in effect, debarred from participating in any bidding process for over a period of seven years.

39. The learned counsel for the appellants has also handed over a printout from the Indian Railways E-Procurement System, which indicates that the respondent's name continues to be on the list of firms with whom business dealings have been banned / suspended. Even though – according to the appellants – the final penalty imposed on the respondent was to ban the respondent firm from participating in tender process for a period of five years, the respondent has, in fact, suffered a punishment greater than that.

40. In view of the above, we find no infirmity with the impugned order. The appeal is, accordingly, dismissed.

41. The appellants are directed to forthwith remove the respondent's name from the list of firms with whom business dealings have been banned / suspended.

42. The parties are left to bear their own costs.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

MARCH 28, 2023 / “SS”/gsr

Signature Not Verified

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