



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

Date of decision: 11th JULY, 2023

IN THE MATTER OF:

+ **W.P.(C) 8491/2023, CM APPLs. 32351-52/2023 & 32608/2023**

BASANT GOEL

..... Petitioner

Through: Mr. Vivek Sood, Sr. Advocate with
Mr. Rupesh Tyagi, Mr. Saurabh
Aggarwal, Advocates

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Chetan Sharma, ASG with Ms.
Arunima Dwivedi, Mr. Amit Gupta,
Mr. Saurabh Tripathi, Mr. Vikram
Aditya Singh, Ms. Pinky Pawar, Mr.
Aakash Pathak, Advocates for UoI
Mr. H. S. Phoolka, Sr. Advocate with
Mr. Vinay Kumar Dubey, Mr. Prateek
Tiwari, Ms. Priya Dubey, Ms.
Surpreet Kaur, Mr. Mandeep Singh,
Advocates for Intervenors – M/s
Kaushik Medical Store & M/s Gandhi
Medicos
Mr. Abhinav Agnihotri, Mr. Divesh
Sawhney, Advocates for Intervenor –
Prakash Medicos.
Ms. Ritu Bhalla, Mr. Siddharth Das,
Mr. Jasvinder Sharma, Advocates for
Applicant.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

SUBRAMONIUM PRASAD, J

1. The present Writ Petition challenges the Order dated 31.05.2023, passed by the Respondent No.3 herein, terminating the Contract Agreement



dated 19.08.2020, entered into between the Additional Director, CGHS (HQ) and M/s Goel Medicos against Tender ID No. 2020_DGHS_555011_1 for supply of indented medicines to the CGHS Wellness Centres at Sonipat, and the forfeiture of the Performance Bank Security of Rs.12,10,000/- and also debarring M/s Goel Medicos from participating in any tender or award of contract in any tender published by the CGHS pan India or continuation of any contract with CGHS for a period of two years.

2. Shorn of unnecessary details, the facts, leading to the present Writ Petition are as under:

- a. The Petitioner herein is the Proprietor of a Proprietorship concern, namely, M/s Goel Medicos, which carries on business of retail pharmacy, pharmacy distributor and institutional supplier of medical/pharmaceutical products in Delhi-NCR Region. It is stated that M/s Goel Medicos is empanelled with CGHS as Authorized Local Chemist for supplying of Allopathic medicines to three CGHS Wellness Centers, namely, Dilshad Garden, Ghaziabad and Sonipat.
- b. It is stated that on 08.04.2020 Respondents issued a notice inviting tender *vide* open tender notice No. F. No. 55-01/2016-17/CGHS/MSD/ALC for empanelment of authorized local chemists for CGHS Delhi/NCR for the Financial Year 2020 to 2023. It is stated that the said tender was advertised on the Public Procurement Portal *vide* tender ID No. 2020_DGHS_555011_1.
- c. It is stated that the Petitioner herein participated in the said tender and was declared as a successful bidder for several



CGHS Wellness Centres including the Sonipat CGHS Wellness Centre.

- d. It is stated that Mrs. Usha Goel, i.e. the mother of the Petitioner herein, was the sole proprietor of M/s Goel Medicos. It is stated that by way of a Gift Deed dated 31.07.2020, Mrs. Usha Goel transferred the proprietorship of M/s Goel Medicos to the Petitioner herein.
- e. It is stated that on 18.08.2020, i.e. after executing the Gift Deed dated 31.07.2020 in favour of his son, Mrs. Usha Goel executed a Power of Attorney in favour of one Mr. Akash Jain, who was an employee of M/s Goel Medicos, authorizing him to sign the tender documents on her behalf in her absence.
- f. It is stated that on the basis of the PoA, the tender documents were signed by Mr. Akash Jain on behalf of Mrs. Usha Goel, who had ceased to be the owner of M/s Goel Medicos pursuant to execution of Gift Deed dated 31.07.2020 in favour of her son, i.e. the Petitioner herein.
- g. It is stated that a Contract Agreement dated 19.08.2020 was entered into between the Additional Director, CGHS (HQ) and M/s Goel Medicos. A Performance Security dated 17.08.2020 for a sum of Rs.12,10,000/- was submitted on behalf of M/s Goel Medicos *vide* BG No. 0255NDLG00004621 by Akash Jain.
- h. It is stated that show cause notice dated 06.04.2023 with respect to CGHS Wellness Centre at Sonipat was issued by the Respondents against M/s Goel Medicos on the ground that the



intimation of change of the proprietorship of M/s Goel Medicos was not given to the Respondent No.3 and the bid documents were signed by Mr. Akash Jain on the basis of the PoA executed by Mrs. Usha Goel who ceased to be the proprietor of M/s Goel Medicos subsequent to her signing the Gift Deed dated 31.07.2020 in favour of her son and the same amounts to fraudulent act/misrepresentation of facts on the part of M/s Goel Medicos as a false Power of Attorney, which is a notarized legal document, has been submitted to the CGHS based on which the Contract Agreement was executed between Goel Medicos through authorized signatory Akash Jain and Additional Director, CGHS (HQ) and, therefore, the Agreement does not have any legal sanctity. Relevant portion of the said Show Cause Notice reads as under:

“The Tender Inviting Authority CGHS Delhi, for tender ID 2020_DGHS_555011_1, i.e., Additional Director CGHS (HQ), CGHS Bhawan, Sector-13, R.K.Puram, New Delhi-66 prima facie, is of the opinion that Section I, Clause 15 (i) of the tender has been contravened and Sh, Basant Goel, proprietor of M/s Goel Medicos has committed a fraudulent act, by misrepresenting facts and submitting a false Power of Attorney.

Therefore, CGHS intends to forfeit your Performance Bank Security for Sonipat Wellness Centre and terminate your contract (under Section I, Clause 15 (v), Section I, Clause 16B and Section II, Clause 10 for the said fraudulent act of misrepresenting facts and submitting false Power of Attorney.



*In view of above, you are hereby asked to show cause within 48 hours of receipt of the show cause notice through email, as to why action should not be taken against you for **violation of provisions of tender ID 2020_DGHS_555011_1, Section 1, clause 15 (i) and (ii) b.***

In case no clarification is submitted, it will be presumed that you have nothing to say in this matter; and necessary action shall be initiated against you without further notice.”

- i. Reply to the show cause notice was given by the Petitioner. The explanation given by the Petitioner was rejected by the Respondents *Vide* order dated 31.05.2023 and the Contract Agreement dated 19.08.2020 was terminated and the Performance Security of Rs.12,10,000/- was forfeited. M/s Goel Medicos was debarred from participating in CGHS tenders/contracts published by the CGHS pan India or continuation of contract with CGHS for a period of two years.
 - j. It is this Order which is under challenge in the present Writ Petition.
3. Mr. Vivek Sood, learned Senior Counsel appearing for the Petitioner, has focused his argument only on that portion of the impugned order by which the Petitioner herein has been debarred from participating in the tenders/contracts floated by the CGHS pan India for a period of two years from the date of the impugned Order or for continuation of any contract entered by M/s Goel Medicos with CGHS for the same period. He has drawn the attention of this Court towards the show cause notices and has submitted that in the show cause notices, the Petitioner has only been asked



to show cause as to why the contract agreement dated 19.08.2020 should not be terminated and the Performance Security of Rs.12,10,000/- should not be forfeited. He submits that the Order by which the Proprietorship concern of the Petitioner herein has been debarred from participating in the tenders floated by the CGHS pan India for a period of two years is unsustainable in the absence of any mention about the same in the show cause notice.

4. Mr. Sood draws the attention of this Court towards the judgment of the Apex Court in UMC Technologies (P) Ltd. v. Food Corpn. of India, (2021) 2 SCC 551, to contend that the basic principle of natural justice is that before any adjudication starts, the authority concerned should give the affected party a notice of the case against him so that he can defend himself and such notice should be adequate and the grounds necessitating action and penalty/action proposed should be mentioned specifically and unambiguously. He states that the Apex Court in the said judgment has held that an order travelling beyond the bounds of notice is impermissible and without jurisdiction.

5. *Per contra*, Mr. Chetan Sharma, learned ASG, has drawn the attention of this Court to Clause 15 of the tender document which relates to Corrupt or Fraudulent Practices and to Clause 16 which deals with forfeiture of EMD/Performance Security. He submits that Clause 16(b) of the tender document states that if it is found during the bidding process or thereafter that factual information is being or has been suppressed, then the bidder will be debarred from further participation and the EMD will be forfeited. Learned ASG has also drawn the attention of this Court to the Show Cause Notice dated 06.04.2023 pertaining to Wellness Centres at Dilshad Garden and Ghaziabad and submits that apart from the present infraction several



other infractions have been committed by the Petitioner. He, therefore, contends that the Order debarring the Proprietorship concern of the Petitioner herein does not require any interference.

6. Mr. H. S. Phoolka, learned Senior Counsel appearing for M/s Kaushik Medical Store and M/s Gandhi Medicos, contends that the Petitioner does not require any leniency from this Court. He contends that the Petitioner is also guilty of other malpractices and any interference by this Court with the Order of debarment will have deleterious effect on the tender process.

7. Heard the Counsel for the parties and perused the material on record.

8. The undisputed facts of the case are that the Petitioner is the Sole Proprietor of the Proprietorship concern, namely, M/s Goel Medicos, which was gifted to him by his mother – Mrs. Usha Goel, by way of a Gift Deed dated 31.07.2020. In the Gift Deed dated 31.07.2020 it is specifically mentioned that Mrs. Usha Goel has not been able to run the business due to lack of time and in consideration of her natural love and affection for her son, i.e. the Petitioner herein. It is stated that she gifted her proprietorship business, i.e. M/s Goel Medicos, to the Petitioner herein along with all its assets, liabilities, statutory registrations, goodwill, agencies and all other movable assets including transfer of all the personnel as a going concern. The Gift Deed also mentions that the business will be operated in the same manner and with the same name except that from the date of the gift deed, the Proprietorship concern will become the Proprietorship concern of the Petitioner herein. After execution of the gift deed, Mrs. Usha Goel ceased to be the sole Proprietor of M/s Goel Medicos. Despite executing a Gift Deed in favour of her son on 31.07.2020, Mrs. Usha Goel executed a Power of Attorney dated 18.08.2020 in favour of Mr. Akash Jain authorizing him to



sign documents in relation to different tenders as an authorized signatory in the absence of Mrs. Usha Goel, who has been shown as the Sole Proprietor of M/s Goel Medicos. On the basis of the said Power of Attorney, Mr. Akash Jain signed and submitted the tender documents with the Respondents. At the relevant point of time Mrs. Usha Goel was not the Sole Proprietor of M/s Goel Medicos and, therefore, she could not have authorized Mr. Akash Jain to sign the tender documents on behalf of M/s Goel Medicos. Therefore, the tender documents, which have been signed by a person who was authorised to sign them by a person who ceased to be the Sole Proprietor of M/s Goel Medicos, should not have been considered by the CGHS for the tender process.

9. Viewed in this light, this Court does not find any reason to interfere with the portion of the Order dated 31.05.2023, passed by the Respondent No.3 herein, terminating the Contract Agreement dated 19.08.2020 entered into between the Additional Director, CGHS (HQ) and M/s Goel Medicos against Tender ID No. 2020_DGHS_555011_1 for supply of indented medicines to the CGHS Wellness Centres at Sonipat, and forfeiting the Performance Bank Security of Rs.12,10,000/- which was submitted by M/s Goel Medicos at the time of entering into the contract. However, this Court finds merit in the submission of Mr. Vivek Sood, learned Senior Counsel appearing for the Petitioner, that the Petitioner could not have been debarred from participating in any tender or award of contract in any tender published by the CGHS pan India or continuation of contract with CGHS for a period of two years from the date of the Order of termination of contract.

10. In the Show Cause Notice, Respondent No.3 has only asked the Petitioner to show cause as to why the contract of the Petitioner should not



be terminated and its Performance Bank Security of Rs.12,10,000/- not be forfeited in terms of Section I, Clause 15 (v), Section I, Clause 16B and Section II, Clause 10 of the tender document for its fraudulent act of misrepresenting facts and for submitting a false Power of Attorney. The Show Cause Notice in any way does not indicate that the consequence of termination of the contract will result in debarment of the Proprietorship concern of the Petitioner from participating in any tender or award of contract in any tender published by the CGHS pan India or continuation of contract with CGHS for a period of two years from the date of the Order of termination of the contract.

11. Clause 15 & 16 of the tender document which lays down the criteria regarding corrupt or fraudulent practices by the bidders and the forfeiture of EMD/Performance Security by the CGHS and/or forfeiture of EMD/Performance Security in case of any such discrepancy, reads as under:

“15. CORRUPT OR FRAUDULENT PRACTICES

(i) CGHS requires that the Bidders observe the highest standards of ethics and conduct during the tender process and afterwards during the execution of such contract.

(ii) In pursuance of this policy, the terms and conditions are set forth as follows:

a) "corrupt practice" means the offering, giving, receiving or soliciting of anything of value to influence the action of the public official in the tender process or in the process of execution of contract; and



b) "Fraudulent practice" means misrepresentation of facts in order to influence the tender process or execution of a contract to the detriment of CGHS,

c) "collusive practice/cartelization" means a scheme or arrangement among Bidder (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive CGHS of the benefits of free and fair competition;

d) "coercive practice" means harming or threatening to harm, directly or indirectly, person or their property to influence their participation in the procurement process or affect to execution of a contract.

(iii) CGHS will reject a proposal for award of contract, if it determines that the bidder recommended for award has engaged himself in corrupt or fraudulent practices while competing for the contract in question;

(iv) CGHS will declare a bidder ineligible, either indefinitely or for a specified period of time, for award of the contract if at any time it determines that the bidder was engaged in corrupt and fraudulent practices while competing for or in executing the contract.

(v) The bidder shall not transfer, sublet or assign any part or whole of the contract to anyone else during the period of the contract. In the event of the bidder contravening this condition, it will be considered a fraudulent act. CGHS will terminate the contract and the Performance Bank Guarantee will be forfeited in addition to actions taken against the bidder for practicing fraudulent acts.



16. FORFEITURE OF EMD/PERFORMANCE SECURITY

A. EMD shall be forfeited if :

- a) the bidder withdraws his bid during the period of bid validity.*
- b) it is found during the bidding process that factual information is being suppressed, then the bidder will be debarred from further participation and EMD will be forfeited.*
- c) the successful bidder fails to unconditionally accept the contract within one week of receipt of offer letter, and sign the Contract within a maximum of 21 days of unconditional acceptance of the contract.*
- d) the successful bidder fails to deposit the Performance Security as specified in the tender document and within the time frame specified.*

B. Performance Security/Bank Guarantee will be forfeited along with termination of contract, if:

- a) the successful bidder fails to abide by the terms and conditions of the contract.*
- b) it is found any time during the contract period and till 60 days of validity of PBG, that any factual information related to the contract has been suppressed by the contractor.*
- c) the empanelled chemist supplies any sub-standard, spurious drugs or substitutes medicines.*
- d) the empanelled chemist delays supplies.*
- e) the empanelled chemist over charges*



f) the chemist is found engaged in corrupt, collusive, coercive and/or fraudulent practices including subcontracting.

g) the medicines supplied by the Authorized Local Chemist against the indents placed on them in pursuance of this contract are subsequently found as having been stolen from anywhere or are not conforming to quality.

h) the Chemist stops the supplies of the medicines/drugs without giving 90 days prior notice.”

12. The abovementioned clauses do not indicate that the termination of contract will result in debarment of the bidders from participating in any further tenders of the CGHS at pan India level for a period of two years. Clause 16 (b) of the tender document only stipulates that if it is found that factual information has been suppressed, then the bidder will be debarred from further participation and its EMD will be forfeited. It cannot mean that the Petitioner can be debarred from participating in any tender or award of contract in any tender published by the CGHS pan India or continuation of contract with CGHS for a period of two years.

13. In UMC Technologies (supra) the Apex Court has held as under:

“13. At the outset, it must be noted that it is the first principle of civilised jurisprudence that a person against whom any action is sought to be taken or whose right or interests are being affected should be given a reasonable opportunity to defend himself. The basic principle of natural justice is that before adjudication starts, the authority concerned should give to the affected party a notice of the case against



him so that he can defend himself. Such notice should be adequate and the grounds necessitating action and the penalty/action proposed should be mentioned specifically and unambiguously. An order travelling beyond the bounds of notice is impermissible and without jurisdiction to that extent. This Court in Nasir Ahmad v. Custodian General, Evacuee Property [Nasir Ahmad v. Custodian General, Evacuee Property, (1980) 3 SCC 1] has held that it is essential for the notice to specify the particular grounds on the basis of which an action is proposed to be taken so as to enable the noticee to answer the case against him. If these conditions are not satisfied, the person cannot be said to have been granted any reasonable opportunity of being heard.

14. Specifically, in the context of blacklisting of a person or an entity by the State or a State Corporation, the requirement of a valid, particularised and unambiguous show-cause notice is particularly crucial due to the severe consequences of blacklisting and the stigmatisation that accrues to the person/entity being blacklisted. Here, it may be gainful to describe the concept of blacklisting and the graveness of the consequences occasioned by it. Blacklisting has the effect of denying a person or an entity the privileged opportunity of entering into government contracts. This privilege arises because it is the State who is the counterparty in government contracts and as such, every eligible person is to be afforded an equal opportunity to participate in such contracts, without arbitrariness and discrimination. Not only does blacklisting take away this privilege, it also tarnishes the blacklisted person's reputation and brings the person's character into question. Blacklisting also has long-lasting civil consequences for the future business prospects of the blacklisted person.



15. In the present case as well, the appellant has submitted that serious prejudice has been caused to it due to the Corporation's order of blacklisting as several other government corporations have now terminated their contracts with the appellant and/or prevented the appellant from participating in future tenders even though the impugned blacklisting order was, in fact, limited to the Corporation's Madhya Pradesh regional office. This domino effect, which can effectively lead to the civil death of a person, shows that the consequences of blacklisting travel far beyond the dealings of the blacklisted person with one particular government corporation and in view thereof, this Court has consistently prescribed strict adherence to principles of natural justice whenever an entity is sought to be blacklisted.

25. The mere existence of a clause in the bid document, which mentions blacklisting as a bar against eligibility, cannot satisfy the mandatory requirement of a clear mention of the proposed action in the show-cause notice. The Corporation's notice is completely silent about blacklisting and as such, it could not have led the appellant to infer that such an action could be taken by the Corporation in pursuance of this notice. Had the Corporation expressed its mind in the show-cause notice to blacklist, the appellant could have filed a suitable reply for the same. Therefore, we are of the opinion that the show-cause notice dated 10-4-2018 does not fulfil the requirements of a valid show-cause notice for blacklisting. In our view, the order of blacklisting the appellant clearly traversed beyond the bounds of the show-cause notice which is impermissible in law. As a result, the consequent blacklisting order dated 9-1-2019 cannot be sustained."



14. A perusal of the abovementioned judgment would show that it is necessary that the Show Cause Notice must specifically and unambiguously show the penalty that is proposed to be taken upon the adjudication of the show cause notice. The abovementioned judgment states that mere existence of a clause in the bid document, which mentions blacklisting as a bar against eligibility, cannot satisfy the mandatory requirement of a clear mention of the proposed action in the show-cause notice and since the Show Cause Notice dated 06.04.2023 is completely silent about blacklisting/debarment of the Petitioner herein from its participation in any tender or award of contract in any tender published by the CGHS pan India or continuation of contract with CGHS for a period of two years, the same cannot be sustained.

15. In view of the above, the portion of the impugned order debarring the Petitioner herein from participation in any tender or award of contract in any tender published by the CGHS pan India or continuation of contract with CGHS for a period of two years from the date of the said Order is set aside.

16. It is made clear that this Court has not made any observations on the other allegations made by the learned ASG and Mr. Phoolka on the conduct of the Petitioner and it is always open for the Respondents to take action against the Petitioner for any other infraction by issuing a fresh Show Cause Notice.

17. With these observations, the Writ Petition is partly allowed and disposed of. Pending applications, if any, also stands disposed of.

SUBRAMONIUM PRASAD, J

JULY 11, 2023

Rahul