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

Date of decision: 16th AUGUST, 2023

IN THE MATTER OF:

\+ **W.P.(C) 9206/2023 & CM APPL. 35006/2023**

LAVA INTERNATIONAL LIMITED ..... Petitioner

Through: Mr. Rajiv Nayyar, Sr. Advocate with Mr. Harsh Kaushik, Mr. Mohit Paul, Mr. Arpit Srivastava, Mr. Kush Srivastava and Mr. Nishant Nandan, Advocates.

versus

UNION OF INDIA & ANR. ..... Respondents

Through: Mr. Anil Soni, CGSC with Mr. Prateek Rana, Advocate for UoI.
Dr. Sarbjit Sharma, Dr. Sumit Sharma, Mr. Vaneet Raizada and Ms. Rudrakshi Gautam, Advocates for R-2.

\+ **W.P.(C) 9207/2023 & CM APPL. 35008/2023**

LAVA INTERNATIONAL LIMITED ..... Petitioner

Through: Mr. Rajiv Nayyar, Sr. Advocate with Mr. Harsh Kaushik, Mr. Mohit Paul, Mr. Arpit Srivastava, Mr. Kush Srivastava and Mr. Nishant Nandan, Advocates.

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UNION OF INDIA & ANR. ..... Respondents

Through: Mr. Anil Soni, CGSC with Mr. Prateek Rana, Advocate for UoI.

Dr. Sarbjit Sharma, Dr. Sumit Sharma, Mr. Vineet Raizada and Ms. Rudrakshi Gautam, Advocates for R-2.

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The present Writ Petitions have been filed under Article 226 seeking the issue of an appropriate writ for quashing and setting aside the order dated 08.06.2023 issued by the GeM Admin, Government E-Marketplace, Sansad Marg, New Delhi – 110001, suspending the GeM Account of the petitioner for a period of 60 days from 08.06.2023 to 07.08.2023, in terms of Incident Report Numbers 1617676 & 1617676, which were issued by the GeM Admin to the Petitioner herein for submission of fake documents or false statements.

2. The facts leading up to the passage of the impugned order and the petitioner's objection to it thereof are as follows:

   a. The petitioner, Lava International Limited with registered office at B-14, House-2, Basement, Shivlok Commercial Complex, Delhi 110015, limited is a private limited company engaged in the business of manufacturing Mobile Handsets in India.

   b. The respondent No. 1, Government E-market place (GeM), under Ministry of Commerce and Industry, 2nd Floor, Jeevan Tara Building, Sansad Marg, New Delhi 110001was established via official gazette notification dated 08.12.2017 with the aim of facilitating online procurement of Goods and Services required by various Government Departments, Organisations and PSUs using tools such as e-bidding, reverse e-auction and demand aggregation. The Respondent No. 1 platform operates via initial registration and creation of self-filled Product Catalogues by manufacturers and retailers of various goods and services as 'sellers' on the GeM portal, thereby allowing them to display their products on the portal, based on which the government entities float procurement tenders for their desired goods and services, inviting bids from the registered GeM sellers, followed by subsequent scrutiny and documentation before actual purchase. The Respondent No. 2, GeM Admin, is the concerned in-charge of Respondent No. 1.

c. It is stated that the petitioner on 13.03.2023 & on 19.04.2023 created product catalogues for Mobile Headsets, namely, Yuva 2 Pro and Lava Blaze Pro respectively, on the GeM Portal. The petitioner correctly filled up the 'product description' column of the catalogues with 'Android 12 OS' as the products Operating Software, however, due to inadvertent typographical human error, the petitioner at the drop-down menu of the 'operating system' column of the catalogues form clicked the option 'iOS 10 or higher'.

d. Respondent No. 1 as on 29.05.2023 received a complaint from a seller on the GeM Platform informing that the product catalogue of one of the petitioner pertaining to Lava Blaze Pro (LZX404) as presented by two resellers of the product, Estore Enterprises and Metex Engineers, bore the same abovementioned erroneous technical specifications, that is, the catalogue has operating software as iOS despite selling phones based on Android Operating Systems and that the resellers had gone ahead to participate in a bid on the portal bearing number GEM/2023/B/3212631 dated 09.03.2023 with the abovementioned error in the product catalogues. It had also been brough to the respondents attention that in view of the said bid award, a letter had already been issued to the buyer organization dated 02.05.2023, by the resellersEstore Enterprises and Metex Engineers, admitting to the deviation and clarifying it as a typographical error.

e. The product Admin of Respondent No. 1 thereby, on 01.06.2023, marked a deviation on the petitioner's products and an automatic message was uploaded on the 'incident' section of the Dashboard of the petitioner's GeM account, affording 48 hours to upload relevant documents and state the facts to defend the deviation highlighted. Subsequently, on 05.06.2023 and 06.06.2023, two incident messages were again uploaded on the 'incident' section of the petitioner's GeM account directing the petitioners to upload relevant documents and / or state relevant facts defending the deviation within a time period of 24 hours.

f. It is stated that due to no response from the petitioner, the above incident was escalated to the GeM Admin as on 07.06.2023 classifying the severity of the offence to 'Grave', subsequent to which, an automated Show Cause notice dated 07.06.2023 was issued to the petitioner, alleging the submission of 'fake documents or false statements' and directing the petitioner to provide a reply within 5 days of issuance. It is stated that on the same day dated 07.06.2023, the petitioner responded to the notice, specifying the selection of 'iOS 10' in the Operating Service column instead of 'Andrioid 12 OS' was purely on account of human error and expressed their willingness to take corrective action by uploading the corrected version of the product.

g. That on 08.06.2023, an order was passed by the Respondent No. 2, being the impugned order, stating that in accordance with the GeM incident Management Policy and as decided by competent authorities, the transactions from the GeM account of the petitioner has been suspended for a period of 60 days from 08.06.2023 to 07.08.2023, thereby making the petitioner ineligible from entering into fresh transactions, uploading products and participating in bids during that duration.

h. It is stated that on 12.06.2023, the petitioner appealed by way of a letter dated 12.06.2023 requesting the closure of the incident and revocation of the impugned order passed by Respondent No. 2. The letter of appeal was followed by emails dated 13.06.2023, 19.06.2023, 21.06.2023, 22.06.2023 and 26.06.2023 and a communication regarding rejection of the appeal raised by the petitioner was received via email dated 26.06.2023 from the GeM Helpdesk.

i. The present writ petition is filed by the petitioner in view of the abovementioned facts thereof, praying that an appropriate writ in the nature of Certiorari and / or Mandamus or any other order may be passed quashing or setting aside the impugned order issued by Respondent Number 2 via email dated 08.06.2023 and to direct the respondents to restore the GeM Account of the petitioner with immediate effect.

3. It is stated by the petitioner that the mistaken selection of the Operating System is purely on account of human error and that under the Incidental Management Policy of the Government E-Marketplace, such an error ought to be classified as a 'mild deviation' as per Para 3.1, applicable for deviations involving 'listing the products/services not in relevant categories and/ or listing the same with vague/ conflicting product specifications/ details and irrelevant photographs etc. by Original Equipment Manufacturers', penalty for which involves taking corrective action by seller/service provider/buyer. It is further stated that the IRN: 1617677 pertaining to Yuva 2 Pro and IRN: 1617676 pertaining to Lava Blaze Pro, both dated 07.06.2023, categorized the severity of the offense as 'grave' meaning those deviations adversely impacting the reputation and credibility of the GeM Platform, which keeping in mind the present facts of the case is a wrong categorization, in violation of the Incidental Management Policy Guidelines. It is further stated that the deviation in the product catalogue could not have caused any loss to the government entity, as the deviation took place at the pre-contract stage before the commencement of any tender/bid process issued. It is also contended that penalties involving suspension of the seller's account for a period of 60 days as done in the present case, as per Para 3.2 to 3.4 of the Guidelines under the Incidental Management Policy, isfor 'grave offences', which should not be applicable here.

4. The learned counsel appearing for the petitioner apart from reiterating the averments stated in the petition also submitted that, since no loss is caused to any party prior to the removal of the product catalogue by the respondents on 08.06.23, the penalty of a 60-day suspension is disproportional and excessive. It is also contended that grave pre contract incident of 'fake documents or false statements' given under item 3 of the Incident Management Policy of GeM has to be read in context of and taking its color from the other similarly placed incidences such as mis-direction of MRP, Impersonation of Brand name/category, offering services with false authorization and registration with fake credentials. It is therefore contended here that the 'submission of fake documents and false statement' should not be read as including the incident at hand since there was no intention to take any undue advantage via false submissions since the error here was of a Bonafide human typographical nature. Moreover, such incidents of pre-contract 'conflicting/vague product specifications' are specifically carved out under Item 52 of the Policy and classified as 'mild'. It is thereby contended that their inclusion as a 'grave offence' would render this categorization as arbitrary and the specifications given under Item 52 as redundant.

5. It is further contended that the Show Cause Notice dated 07.06.2023 issued by the GeM Admin to the petitioner neither provided any reason as to why the said incident was categorized as 'grave' deviation, nor did it stipulate that an action of suspension is proposed to be taken by the respondent. It is also contended than the Impugned Order dated 08.06.2023 and the subsequent appeal order dated 26.06.2023 is also unreasoned in nature as to the petitioner's suspension for 60 days from the GeM Portal.

6. This Court on 13.07.2023 directed the Respondents to file their counter affidavit. Counter affidavit has been filed by the respondent.

7. The Respondents in their counter dated 17.07.2023 stated that Incidental Management policy of the Government E-Market Place was brought about to maintain the trust and integrity of the portal. It is stated that as per the Incidental Management Policy Clause 3.4, 'false statements' are treated as 'grave offences' as done in the present case because the wrong operating software selection made by the Petitioner in the drop down menu regarding product specifications has severe implications which may result in incorrect search results in the available product catalogues on the GeM portal. It also causes incorrect selection which would amount to misleading buyers and raising questions over the credibility of the platform. It was also contended that this would amount to GeM allowing sellers with incorrect product specifications to participate in bids floated by buyer organizations and when subsequently notified may cause wastage of procurement time and resources for the buyer. It was further contended that the said 'false statements' were made by the petitioner on two different occasions for two different products namely Peititoner's phone model 'Yuva' and 'Blaze', one on 13.03.2021 and another one on 19.04.2023 and that it could not be construed as a human error because the same could not be repeated at two instances.

8. The learned counsel appearing for the respondents apart from reiterating the averments stated in the counter also submitted that the petitioners failed to rectify the error in product specification despite multiple communications seeking the same dated 01.06.2023, 05.06.2023 and 06.06.2023. Due to contention on the possible corrective action which could

have been taken by the petitioner on receipt of the said communications and subsequently a show cause notice to that effect, this court in its order dated 19.07.2023 sought the filing of an affidavit by the Respondent as to whether the petitioner could have, on their own, removed the product catalogue from the GeM portal on the date 07.06.2023 along with its reply to the Show Cause notice issued or prior to that. The affidavit to the effect was filed dated 20.07.2023 and it is stated that despite the 'discontinue feature' which allowed sellers on the GeM portal to remove their catalogue being done away with as a policy decision from 10.05.2023, the sellers still always had an option to make the stock value of their products zero which would have effectively removed the catalogue from the GeM portals visibility thereby avoiding misleading buyers and other stakeholders. It is therefore contended that the petitioner in failing to do so, cannot claim the benefit of lack of ability to rectify their said mistaken upon receiving notice of the same.

9. Heard the counsels and perused the material on record.

10. The Government e Marketplace (GeM) was created in the view of setting up a dedicated e market for different goods and services procured by Government Organizations, departments and Public Sector Undertakings and provides tools of electronic bidding, reverse e-auction and demand aggregation to facilitate government users. It has been authorized and mandated under Rule No. 149 of the General Financial Rules, 2017 that purchases of Government users happen via the GeM by the Ministry of Finance. Therefore, the GeM portal acts as a one-time stop for all government procurement, promoting an inclusive, transparent, and unified procurement marketplace.

11. The said portal operates via initial registration and self-filled product catalogues by various sellers and manufacturer. Therefore, to deal with any deviations on the GeM Portal, the Incident Management Policy was initiated to facilitate an online mechanism of reporting and initiating actions on deviations on the GeM Portal. The GeM Admin is the deciding authority on the type and consequence of each deviation which may act on complaints received by the sellers/buyers/other stakeholders or may suo-moto take requisite action on the same. As per para 2.1 of the Policy, based on severity, deviations are classified into four categories namely, mild, serious, severe and grave. Mild variations as per Para. 3.1 of the said policy are those involving 'listing the products/services not in relevant categories and /or listing the same with vague / conflicting product specifications/details and irrelevant photographs etc, by the Original Equipment Manufacturers. As per Para 2.3 (i) read with Annexure 2 of the policy, such mild variations require the seller/service provider to take corrective actions against the deviation. On the other hand, 'Grave Deviations' as per Para. 3.4 of the policy are those adversely impacting the reputation and credibility of the GeM Platform and include 'submission of false documents or false statement' as given under Serial No. 3 of Annexure 1 of the Policy. The penalty for such grave deviations as per the policy include suspension of the account of the seller/SP by the GeM Admin for a period of up to 60 days for the first and second deviation.

> *"2.1 Based on severity of incident, the deviations on GeM are categorized into four levels, namely: (i) mild, (ii) serious, (iii) severe, and (iv) Grave. The table at Annexure 1 depicts deviations and their categorization.*

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2.3 Based on the manner of rising incidents, incidents are divided in two categories:
(i) Platform driven: Action of the Seller/Service Provider/Buyer on GeM portal that is not in line with the terms and conditions on GeM including those identified through analytics will attract platform driven action by GeM. Some of key identified deviations along with action to be taken is placed as Annexure 2.

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3.1 Mild Deviation: Mild deviations are those which are related to incomplete or unintentional erroneous submissions of information. Seller/ Service Provider/ Buyer is alerted for corrective action.

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3.4 Grave:
3.4.1 The Grave incidents are those which adversely impact the reputation/ credibility of the GeM platform. The process flow for handling Grave incidents shall also be same as mentioned for serious incidents.
3.4.2 Based on the outcome of findings of the show-cause notice:
A. If no deviation at user end– Incident will be closed
B. In case, there is an unsatisfactory explanation by the Buyer/ Seller/ SP the
following steps shall be taken: -
a) Buyer – Primary user and competent authority to be notified for necessary
action.
b) Seller / SP suspended by the GeM admin for a period of
• upto 60 days- for first & second deviation within a period of 180 calendar days
• upto 90 days- for third and subsequent deviations within a period of
180 calendar days (and up to 2 Years with approval from CVO-GEM).

C. Deviation reflects in the overall Seller/Buyer rating"

12. The short question which therefore arises for consideration is as to whether this court should exercise its discretion under Article 226 of the Constitution of India in setting aside the decision taken by the GeM Admin to categories the incident of wrong specification of the Operating Software in the petitioner's product as 'grave' in nature thereby suspending the petitioner's account for a period of 60 days.

13. The deviation incident of the petitioner in wrongly uploading its Operating Software as iOS instead of 'Android' will have implications. The incorrect catalogues are stated to have the effect of incorrect search results in populating the available product catalogues which can mislead buyers who rely on the catalogue for estimation of procurement cost of a product with given specifications and may allow the sellers to participate in bids based on incorrect selections thereby causing wastage of time and resources of the buyer organisation in evaluating the wrong bid.

14. The possibility of such events are evident from the clarification placed on record as provided by the resellers of the petitioner's products Estore Enterprises and Metex Engineers, to the potential buyer organisation subsequent to their participation in the tendering process relating to bid no. GEM/2023/B/3212631dated 02.05.2023 stating the deviation was a result of a 'typographical error'. A complaint in this regard was also received by the respondents dated 29.05.23, and subsequently it is placed on record that the buyer organisation in the abovementioned tender of Bid No. GEM/2023/B/3212631 cancelled the said bid on 19.07.2023 to prevent conclusion of the contract on the basis of the wrong catalogue.

15. This Court is inclined to accept the stand of the Respondent that in their view the present deviation cannot be treated as a minor error since it can have a serious impact during the procurement process. The operating system of the mobile phones forms a characteristic and fundament part of the mobile phone and any discrepancy in the same will affect the description of the product itself.

16. Furthermore, the contentions of the petitioner on the nature of Show Cause notice dated 07.06.2023 not specifying the reason for categorising the deviation incident as 'submission of fake or false statements' cannot be accepted by this court. The system sent show cause notice dated 07.06.2023 has to be seen in continuation of the three automated messages marked to the Petitioner by the Respondent Portal dated 01.06.2023, 05.06.2023 and 06.06.2023. The Petitioner had already been intimated about the relevant deviation in the information about the Operating System and seeking a reply in the form of necessary documentation for the same. The show cause notice as a result in continuity to the non-responsiveness of the petition to the abovementioned prior communications is valid in being reasoned.

17. On a pointed question being asked as to whether the Petitioner could take remedial steps pursuant to the notice dated 05.06.2023 & 06.06.2023 and bring down their catalogue or not. An affidavit has been filed by the Respondents stating that after change of policy on 10.05.2023, the Petitioners could not bring down the catalogue. However, it is stated that it was always open for the Petitioner to withdraw the number of sets available and thereby making the total available stock to them to be zero which would have effectively had the effect of bringing down the catalogue. In spite of this the Petitioners have replied in their Show Cause Notice that the

Petitioners would correct the version of the product once the incident is removed. It is not as if the Petitioners were not aware of the error. The Petitioners were intimated about the error on 1st January and 5th June and the Petitioners did not take any corrective action which they could have and in fact even after the Show Cause Notice they did not make the stock available to them to zero which would have had the effect of removing the product from the GeM portal. Therefore, the stand of the Petitioner that it was a bona fide mistake cannot be accepted, looking at the conduct of the Petitioners.

18. GeM is a portal where products are available for sale for the Government entities. Government entities place their orders and manufacturers and service providers offer their products and services for use/consumption of government departments. The success of the portal depends of the large number of persons who are prepared to offer their goods/services. The Respondent has taken this decision and has imposed the penalty of suspension of the Petitioner's account from the GeM portal for a period of 60 days and it is well settled that Courts cannot adjudicate on the quantum of penalty imposed unless the penalty is disproportionate to the mis-conduct of the party so as to invoke the principles of doctrine of dis-proportionality.

19. It is also well settled principle that courts under their writ jurisdiction shall not substitute their opinions to those arrived by the deciding authorities, unless there is satisfaction that such decisions are marred by perversity or illegality. The Courts functions are restricted in deciding whether the decision of the authorities is devoid of *mala fide* and have been arrived at in good faith with the exercise of reasonability.

20. The Apex Court in Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corpn. Ltd., **(2016) 16 SCC 81**, has observed as under:

> *"12. In DwarkadasMarfatia and Sons v. Port of Bombay [DwarkadasMarfatia and Sons v. Port of Bombay, (1989) 3 SCC 293] it was held that the constitutional courts are concerned with the decision-making process. Tata Cellular v. Union of India [Tata Cellular v. Union of India, (1994) 6 SCC 651] went a step further and held that a decision if challenged (the decision having been arrived at through a valid process), the constitutional courts can interfere if the decision is perverse. However, the constitutional courts are expected to exercise restraint in interfering with the administrative decision and ought not to substitute its view for that of the administrative authority. This was confirmed in Jagdish Mandal v. State of Orissa [Jagdish Mandal v. State of Orissa, (2007) 14 SCC 517] as mentioned in Central Coalfields [Central Coalfields Ltd. v. SLL-SML (Joint Venture Consortium), (2016) 8 SCC 622 : (2016) 4 SCC (Civ) 106 : (2016) 8 Scale 99] .*
>
> *13. In other words, a mere disagreement with the decision-making process or the decision of the administrative authority is no reason for a constitutional court to interfere. The threshold of mala fides, intention to favour someone or arbitrariness, irrationality or perversity must be met before the constitutional court interferes with the decision-making process or the decision."*

21. In Air India Ltd. vs. Cochin International Airport Ltd, **2000 (2) SCC 617**, the Apex Court summarized the scope of interference as enunciated in several earlier decisions and held as under:

> *"7. The award of a contract, whether it is by a private party or by a public body or the State, is essentially a commercial transaction. In arriving at a commercial decision consideration which are paramount are*

commercial considerations. The State can choose its own method to arrive at a decision. It can fix its own terms of invitation to tender and that is not open to judicial scrutiny. It can enter into negotiations before finally deciding to accept one of the offers made to it. Price need not always be the sole criterion for awarding a contract. It is free to grant any relaxation, for bona fide reasons, if the tender conditions permit such a relaxation, for bona fide reasons, if the tender conditions permit such a relaxation. It may not accept the offer even though it happens to be the highest or the lowest. But the State, its corporations, instrumentalities and agencies are bound to adhere to the norms, standards and procedures laid down by them and cannot depart from them arbitrarily. Though that decision is not amenable to judicial review, the court can examine the decision-making process and interfereif it is found vitiated by mala fides, unreasonableness and arbitrariness. The State, its corporations, instrumentalities and agencies have the public duty to be fair to all concerned. Even when some defect is found in the decision-making process the court must exercise its discretionary power under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the court should intervene."

22. In Bank Of India And Anr v. Degala Suryanarayana, **(1999) 5 SCC 762**, the Apex Court has held that the Court exercising the jurisdiction of judicial review would not interfere with the findings of fact arrived at except in a case of mala fides or perversity i.e., where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at that finding. The Court cannot

embark upon reappreciating the evidence or weighing the same like an appellate authority. So long as there is some material to support the conclusion arrived at by the authority, in the equity the same has to be sustained provided it does not shock the conscience of the Court.

23. In State of Haryana v. Rattan Singh, **(1977) 2 SCC 491**, the Apex Court has observed as under:

> *"4. ....The 'residuum' rule to which counsel for the respondent referred, based upon certain passages from American Jurisprudence does not go to that extent nor does the passage from Halsbury insist on such rigid requirement. The simple point is, was there some evidence or was there no evidence — not in the sense of the technical rules governing regular court proceedings but in a fair commonsense way as men of understanding and worldly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. Absence of any evidence in support of a finding is certainly available for the court to look into because it amounts to an error of law apparent on the record......."*

24. In Ranjit Thakur v. Union of India, **(1987) 4 SCC 611**, the Apex Court has held as under:

> *"25. Judicial review generally speaking, is not directed against a decision, but is directed against the "decision-making process". The question of the choice and quantum of punishment is within the jurisdiction and discretion of the court-martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias."*

25. In Hombe Gowda Educational Trust and Another v. State of Karnataka and Others, **(2006) 1 SCC 430**, the Apex Court has held as under:

> *"**17**. The Tribunal's jurisdiction is akin to one under Section 11A of the Industrial Disputes Act. While exercising such discretionary jurisdiction, no doubt it is open to the Tribunal to substitute one punishment by another; but it is also trite that the Tribunal exercises a limited jurisdiction in this behalf. The jurisdiction to interfere with the quantum of punishment could be exercised only when, inter alia, it is found to be grossly disproportionate.*

26. In Deputy Commissioner, Kendriya Vidyalaya Sangthan & Ors. v. J. Hussain, **(2013) 10 SCC 106**, the Apex Court has held as under:

> *"**8**........In exercise of power of judicial review, however, the court can interfere with the punishment imposed when it is found to be totally irrational or is outrageous in defiance of logic. This limited scope of judicial review is permissible and interference is available only when the punishment is shockingly disproportionate, suggesting lack of good faith. Otherwise, merely because in the opinion of the court lesser punishment would have been more appropriate, cannot be a ground to interfere with the discretion of the departmental authorities."*

27. It is therefore a settled proposition that a mere contention in categorisation as applicable in the present case is not sufficient for this Court to exercise powers under Article 226. The issuance of a writ can only be followed, and the interference of this court can only be sought if the

deciding authority's decision shocks the conscience of the court, is malafide, or suffers from procedural impropriety.

28. The contention of the learned Counsel for the Petitioner that the Show Cause Notice did not contemplate blacklisting of the Petitioner also cannot be accepted. The Show Cause Notice reads as under:

> *"SYSTEM sent show cause 07/06/2023*
> *It has been reported to GeM (Incident Number V20134310) that you have submitted fake documents or false statement on GeM. This kind of infringement on your part is affecting service standards, which you have agreed while registering in the portal. This infringement is a grave deviation as per Incident Management Policy of GeM. You are required to provide your reply/comments within the initial 5 (five) calendar days of issue of this notice, in case no response is received. then you will be provided a final 5 (five) calendar days to provide your reply/comments, failing which auto action willl be taken by the system against your account in accordance with the IM policy. Kindly Note that upon receipt of this Notice you are required to acknowledge the same, failing which you will not be allowed to do any other activity on GeM.lt is to notify you that as per GeM GTC and GeM Incident Management Policy, all of your Seller entities using same PAN would be equally impacted by the action taken against you for your default I deviation under this incident. All your related entities under same PAN are therefore put under notice with this Show Cause Notice."*

29. A perusal of the Show Cause Notice shows that it states that action against the Petitioners would be in accordance to the incident policy of the GeM. Clause 3.4 of the Policy stipulates the possibility of suspension of account from the GeM portal for a period of 60 days.

30. A perusal of the statements and submissions of the parties makes it clear that the GeM Admin in accordance with the Incidence Management Policy is entrusted with all the powers and duties to categorize incident deviations on the GeM platform and issuing corrective actions and penalties for the same. Submissions have also been made and documents have been placed on record expanding upon the rationale for reaching this decision and categorising the deviation of the petitioner as 'grave' as mentioned above. Moreover, the impugned order dated 08.06.2023 suspending the petitioners account from the GeM Platform for a period of 60 days was duly proceeded by multiple communications indicating the error with opportunity for correction dated 01.06.23, 05.06.23 and 06.06.23 respectively followed by an auto-generated Show Cause Notice issued dated 07.06.23.

31. Following a perusal of the submissions and statements of the parties, this court is of the opinion that there has neither been a grave procedural impropriety nor any illogical conclusion in the absence of appreciation of evidence by the deciding authority being the GeM Admin. It may be reiterated that this court will not indulge in determining the adequacy of the evidence used by the Authority to reach its decision.

32. It is to also be noted that attaining efficiency and inclusivity are objectives of a platform in the nature of GeM and are directly proportional to an increase in the pool of verified sellers hosted by it. GeM would have no extraneous motivation to debar sellers and reduce the number of product catalogues available on their platform, in fact, such actions are clearly not in the interest of the nature of services provided by GeM. Therefore such suspension of sellers accounts as done in the case of the petitioner by the Respondents is purely to ensure market discipline, uphold the credibility of

the platform as a service provider and prevent tender processed from being initiated via the GeM platform with incorrect specifications.

33. In the view of the above, this court is not inclined to entertain the present writ petitions. The petitions are dismissed along with the pending application(s), if any.

SUBRAMONIUM PRASAD, J

AUGUST 16, 2023
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