



* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 26th July, 2023

Pronounced on: 11th August, 2023

+ LPA 568/2023 & CM APPLs. 37686-37687/2023

BASANT GOEL

..... Appellant

Through: Mr. Vivek Sood, Senior Advocate
with Mr. Rupesh Tyagi, Advocate.

versus

UNION OF INDIA AND ORS

..... Respondents

Through: Ms. Arunima Dwivedi, CGSC with
Ms. Pinky Panwar and Mr. Aakash
Pathak, Advocates for R-1.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SANJEEV NARULA

J U D G M E N T

SANJEEV NARULA, J.

1. The Appellant is the proprietor of one M/s Goel Medicos, who entered into a contract with Respondent No. 3 for supply of medicines to the Sonipat Wellness Centre of Central Government Health Scheme [“CGHS”]. However, the contract was later terminated and the performance security was forfeited on the ground of corrupt and fraudulent practices. In addition, M/s Goel Medicos was declared ineligible for a period of two years from participating in any tender or contract awarded by the CGHS, across India. Dissatisfied with this decision, the Appellant filed a writ petition challenging the termination as well as debarment. While the Appellant has achieved



partial success as the Learned Single Judge, by way of judgement dated 11th July, 2023 [*hereinafter*, “*impugned judgement*”], has set aside the debarment order, he remains aggrieved with rejection of his prayer against forfeiture of Performance Bank Security [*hereinafter*, “*PBS*”]. In that light, Appellant has preferred the present appeal against the impugned judgment, assailing the PBS forfeiture.

The facts presented by the Appellant

2. M/s Goel Medicos is a well-established and renowned entity in the business of retail pharmacy, pharmacy distribution, and institutional supply of medical/ pharmaceutical products. They are also empanelled with CGHS as an authorized local chemist and are responsible for supplying allopathic medicines to certain wellness centres situated in the Delhi-NCR region.

3. Respondents issued a tender on 08th April, 2020 for the appointment of an Authorized Local Chemist for eight wellness centres of CGHS. M/s Goel Medicos, owned and controlled by the Appellant, emerged as the successful bidder for the wellness centre at Sonipat. Amidst the tender process, Ms. Usha Goel, who was the previous proprietor of M/s Goel Medicos, executed a Gift Deed on 31st July, 2020, thereby transferring the ownership, assets, and all interests and liabilities of the establishment to the Appellant [Mr. Basant Goel]. Immediately thereafter, on 04th August, 2020, the Respondents communicated their acceptance of M/s Goel Medicos’ offer, which was responded to by the Appellant on the same day. Consequent thereto, M/s Goel Medicos proceeded to complete the formalities under the tender, which included execution of an Agreement with Respondent No. 3. During this process, an old employee, Mr. Akash



Jain, unintentionally and mistakenly obtained a Power of Attorney [“PoA”] dated 18th August, 2020 from the previous proprietor – Ms. Usha Goel, instead of the Appellant, which authorized him to handle the tender formalities on behalf of M/s Goel Medicos.

4. In pursuance of the aforesaid PoA, Mr. Akash Jain signed an Agreement with Respondent No. 3 on 19th August, 2020 for supply of medicines under the tender, for a period of three years [*hereinafter, “the Agreement”*]. A formal empanelment order was issued by Respondent No. 3 on 26th August, 2020, which concluded the tender process. M/s Goel Medicos then commenced supplying medicines to the Sonipat centre *w.e.f.* 01st September, 2020. The business transactions between the parties progressed smoothly and as per Respondents’ standards.

5. Later, M/s Goel Medicos submitted their bids for the tenders floated by Respondent No. 3 for wellness centres in the South, North, and East Zones of Delhi-NCR on 04th January, 2023, and emerged as the successful bidder for 38 such centres. During the scrutiny of the bid documents submitted in furtherance of the aforesaid tenders, Respondent No. 3 issued two show-cause notices to M/s Goel Medicos in respect of Dilshad Garden, Ghaziabad and Sonipat wellness centres, where M/s Goel Medicos had already been appointed as an Authorized Local Chemist under previous tenders. As per these notices, M/s Goel Medicos failed to bring the Gift Deed dated 31st July, 2020 to the Respondents’ notice, which amounted to misrepresentation of facts and indulgence in corrupt or fraudulent practice under the tender.

6. The Appellant responded to the aforesaid show-cause notices, explaining how the error crept in unknowingly and due to inadvertent



mistake of his employee (Mr. Akash Jain). However, this reply was not found satisfactory by the Respondents and on 31st May, 2023, the contract for supply of medicines to Sonipat wellness centre was terminated, forfeiting the PBS of Rs. 12,10,000/- submitted by M/s Goel Medicos [*hereinafter, "Termination Letter"*]. Additionally, M/s Goel Medicos was declared ineligible, thus, precluding their participation in any tender or award of a contract by the CGHS in the country for a period of two years.

7. Aggrieved with the Termination Letter, the Appellant filed W.P.(C) No. 8491/2023 before this Court, which was disposed of through the impugned judgment, wherein the Learned Single Judge partly allowed the writ petition by setting aside the debarment order, but refrained from interfering with the Respondents' decision insofar as it pertained to termination of contract and forfeiture of PBS. The relevant portion of the order rejecting the above-mentioned relief reads as follows:

"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.”

8. Hence, the present appeal.

Appellant's contentions

9. Mr. Vivek Sood, Senior Counsel for the Appellant, put forth the following contentions:

9.1. The execution of PoA on 18th August, 2020 by Ms. Usha Goel (erstwhile proprietor) and the Agreement dated 19th August, 2020 by Mr. Akash Jain (the authorized signatory) on the strength of the PoA, was an inadvertent oversight and there was no element of malice or *malafide* involved in these actions. The proximity between the date of change in proprietorship (31st July, 2020) and the execution of the documents (18th and 19th August, 2020) lends credibility to the claim that these were genuine and unintentional errors.

9.2. The learned Single Judge overlooked the fact that officials of the Respondents were aware of the change in ownership of M/s Goel Medicos. Right from the beginning *i.e.*, 16th September 2020, all the invoices raised by M/s Goel Medicos bore the amended Goods and Services Tax [“GST”]



number and Drug License details of M/s Goel Medicos. That apart, Respondent No. 3 consistently deducted and deposited 02% GST Tax Deducted at Source on payments made to M/s Goel Medicos, as per the amended GST and Drug License numbers. This indicates Respondents' acknowledgment of the change in proprietorship of M/s Goel Medicos and their satisfaction with services rendered by them.

9.3. Respondents' interpretation of the Agreement dated 19th August, 2020 as a "sham" due to *bonafide* mistake in the PoA, is flawed and misconceived. Prior to the execution of the Agreement, Appellant himself signed the letter dated 04th August, 2020, accepting the terms of the tender. Nonetheless, the Agreement was executed by an authorized signatory on behalf of M/s Goel Medicos, without mentioning the name of the proprietor. Thus, any perceived irregularity in authority to sign the Agreement was remedied as Appellant impliedly consented to/ ratified Mr. Akash Jain's authority, in accordance with Sections 186 and 197 of the Indian Contract Act, 1872.

9.4. Definition of a fraudulent practice contained in Section I Clause 15(ii)(b) of the Tender Document, which has been relied on by Respondent No. 3 to terminate the Agreement, is inapplicable to the present case. Neither the show-cause notice, nor the Termination Letter discloses how Appellant's inadvertent mistake influenced the tender process or the execution of the contract was to the detriment of CGHS.

9.5. The decision to terminate the Agreement and forfeit PBS is unduly harsh and has far-reaching consequences for the Appellant as, on the basis of the impugned termination, M/s Goel Medicos is being disqualified from subsequent tenders. The penalty faced by Appellant is disproportionate to



the nature of mistake committed and thus, Respondent No. 3 has violated the well-recognised doctrine of proportionality.

9.6. There is no record of any complaint against M/s Goel Medicos regarding their performance or quality of medicines supplied to the wellness centres. There is thus, no justification to resort to such severe actions against Appellant. The Termination Letter reflects Respondent No. 3's pre-determined and mechanical approach, wherein it failed to appreciate the explanations furnished by the Appellant. This displays a lack of proper consideration and a pre-conceived decision on the part of Respondent No. 3.

9.7. Learned Single Judge's observation suggesting that the Senior Counsel for the Appellant had only assailed the debarment portion of the Termination Letter, is erroneous and not supported by the record. It is crucial to note that the petition was filed during the summer vacations but was effectively taken up for hearing on 03rd July, 2023. Initially, arguments on behalf of the Appellant were primarily focused on seeking interim relief; however, as the case progressed, both parties presented arguments on all pertinent points. This was because the Learned Single Judge indicated an inclination to dispose of the writ petition without calling for formal replies or counter-affidavits from the Respondents.

Analysis

10. Upon careful analysis of the contentions raised by the Appellant, this Court finds no merit in the same. The key issue in this case revolves around the termination of the Agreement dated 19th August, 2020 and forfeiture of the PBS by Respondent No. 3 due to the alleged misrepresentation of facts by Appellant/ M/s Goel Medicos in the tender process.



11. Mr. Sood strongly asserted that Appellant never intended to commit any fraud or misrepresent his authority to the Respondents. The PoA and the Agreement were inadvertently obtained by Mr. Akash Jain, Appellant's employee, under an honest belief of authority. The Court however remains unconvinced that the Termination Letter is arbitrary or unreasonable. With the execution of Gift Deed dated 31st July, 2020, the proprietorship of M/s Goel Medicos was effectively transferred from Ms. Usha Goel to Mr. Basant Goel. Hence, any action undertaken by Ms. Usha Goel after this date, such as issuing the PoA on 18th August, 2020, had no legal validity as she was no longer the owner of the pharmacy. Consequently, Mr. Akash Jain, acting as the alleged attorney, lacked the authority to sign the Agreement on behalf of M/s Goel Medicos, binding them to the terms and conditions of the contract/tender. It is well-established in contract law that parties are bound by a duty of honest performance. This duty requires parties to act in good faith and not mislead or deceive the other party. In the present case, M/s Goel Medicos, as a bidder in the tender process, had a duty to provide accurate and truthful information, including the details of the current proprietorship, which it failed to do.

12. In light of the above, we agree with Learned Single Judge's finding that the Appellant had misrepresented the facts to the Respondents. This misrepresentation falsely implied a continuing association of M/s Goel Medicos with Ms. Usha Goel, who no longer remained the proprietor. By creating such an impression, the Appellant not only impacted the tender process, but also raised questions about the reliability and credibility of M/s Goel Medicos as a potential contractor. We must also note that the inadvertent and *bonafide* mistake in the PoA may not have been intended to



deceive or influence the tender process, but it still constitutes a misrepresentation of facts that could have had a detrimental impact on CGHS' interests. Appellant's misrepresentation serves as a fundamental flaw in the formation of the Agreement, making the entire transaction voidable at the instance of the Respondents. Therefore, Respondent No. 3's decision to terminate the contract and forfeit the PBS cannot be deemed unlawful.

13. Mr. Sood also contended that the execution of the Agreement dated 19th August, 2020 was not affected by the issuance of PoA as the Respondents continued to deal with M/s Goel Medicos, without raising any objections. This, however, is also not a ground sufficient to set aside the Termination Letter. In light of the suppression of such crucial facts, Respondent No. 3 was entitled to invoke Section I clause 16 and Section II clause 10 of the Tender Document and terminate the Agreement and forfeit the performance security. PBS is provided as security to ensure the satisfactory performance of the contract and to protect the interests of the Respondents. The stipulation of forfeiture of PBS acts as a safeguard against non-compliance with the contractual obligations. Respondents were justified in forfeiting the PBS due to the misrepresentation of facts, as it indicated a breach of trust and could have led to potential financial losses for the Respondents.

14. Regarding the principle of 'doctrine of proportionality', the Court is of the opinion that penalty of termination and forfeiture imposed on the Appellant may appear harsh, but is proportionate to the seriousness of the misrepresentation committed. The contractual obligations are to be adhered strictly, and violations, even if inadvertent, are to be addressed appropriately



to maintain the integrity of the tendering process. The Tender Document envisages the consequences of engaging in a fraudulent practice, which includes misrepresentation of facts, and the Court does not find any ground to intervene on this count. Decisions concerning government contracts and public procurement involve significant public interest considerations, which are crucial and the Court cannot sit in appeal over the same.

15. In conclusion, the Court finds no infirmity in the view taken by the Learned Single Judge, who correctly held that the termination of the contract and forfeiture of PBS were warranted due to the misrepresentation of facts. The Appellant's argument that the misrepresentation was a *bona fide* mistake does not absolve them of the consequences of violating the tender terms and conditions. Therefore, the present appeal is dismissed along with other pending applications.

SANJEEV NARULA, J

SATISH CHANDRA SHARMA, CJ

AUGUST 11, 2023/d.negi