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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 19.10.2022

Judgment pronounced on: 23.02.2023

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+ **W.P.(C) 13983/2022**

M/S WELL PROTECT MANPOWER SERVICES PVT. LTD.

..... Petitioner

Through: Ms. Maninder Acharya, Senior Advocate
with Mr. Tarkeshwar Nath, Mr. Viplav
Acharya, Mr. Harshit Singh, Mr. Lalit
Mohan and Mr. Virat Saharan,
Advocates.

Versus

DELHI DEVELOPMENT AUTHORITY & ANR.

..... Respondents

Through: Mr. Sanjay Katyal, Standing Counsel for
DDA with Mr. Nihal Singh and Ms.
Kritika Gupta, Advocates.

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

JUDGMENT

SACHIN DATTA, J.

1. The present petition under Article 226 of the Constitution of India assails the order dated 21.09.2022 issued by the respondent No.1, whereby the petitioner has been debarred from participation in any tender/contract of any type in the “sports wing of Delhi Development Authority” for a period of three years from the date of the said order.

FACTUAL BACKGROUND

2. The factual background in the context of which the impugned debarring order has been passed emerges from a conjoint reading of the petition and the counter affidavit filed on behalf of the petitioner and the respondent no. 1. The

petitioner is stated to be a company engaged in the business of providing security surveillance and other manpower services. Pursuant to an e-tender invited by the respondent no. 1 vide NIT No. 1./SBS/DDA/2015-16 (hereinafter referred to as '**2015 Work Order**'), the petitioner emerged as a successful bidder, and an agreement bearing No. 02/SBS/DDA/2015-2016 was signed between the petitioner and the respondent no.1. The said agreement was with regard to engagement of security guards and security supervisors for prevention of trespassing, watch and ward and security surveillance services at DDA, Squash and Badminton, Siri Fort Road, New Delhi, for a period of twelve months. The contract document was executed on 25.08.2015 pursuant to the acceptance letter No.F.2(13)/SBS(civil)/DDA/15-16/143 dated 17.08.2015.

3. Subsequently, a Work Order dated 03.08.2018 was issued for providing security guards (without arms) for CWG Village Sports Complex, Delhi Development Authority (hereinafter referred to as '**DDA**'), from 01.08.2018 to 31.12.2018. The said Work Order (hereinafter referred to as '**2018 Work Order**') was thereafter extended till 30.06.2019.

4. It is the assertion of the petitioner in the writ petition that the terms and conditions as contained under the 2015 Work Order were adopted in respect of the 2018 Work Order. In this regard, it has been specifically averred in the writ petition as under:-

"4. Finding the services of the Petitioner upto mark and above board, the Respondent No. 1 issued a Work Order 05/CWGVSC/DDA/2018-19 dated 03.08.2018 for providing manpower of 28 security guards at CWG Village Sports Complex, Akshardham from 01.08.2018 to 31.12.2018 on the basis of Contract Agreement No. 02/SBS/DDA/2015-2016 with Squash and Badminton Stadium. In other words, the terms and conditions as enshrined under NIT No. 1./SBS/DDA/2015-16 were adopted for execution of the work order dated 03.08.2018."

5. Even in the counter affidavit filed on behalf of the respondent no.1, it has been averred as under:-

“ii. As per the Work Order (annexed as Annexure P3 of the writ petition), the Petitioner was provided the work to provide 28 Security Guards from 01-08-2018 to 31-12-2018, which was extended upto 30-06-2019 as per the same terms and conditions as per Contract Agreement No. 02/SBS/DDA/2015-16 for Squash and Badminton Stadium.”

6. As such, it is the common case of the parties that the terms and conditions of the 2015 Work Order were also to apply in respect of the 2018 Work Order. The work pursuant to the 2018 Work Order stood completed and closed on 30.06.2019.

7. It is averred in the writ petition that the respondent no.1 issued a Show Cause Notice dated 08.05.2020, wherein it was stated by the said respondent that the petitioner has failed to provide proof regarding training of its security guards as per the norms of the Private Security Agencies (Regulation) Act, 2005 (hereinafter referred to as “**PSARA Act**”) and that the requisite PSARA training certificates were not provided in respect of the guards deployed by the petitioner. An allegation was also made against the petitioner regarding violation of payment of bonus under the Payment of Bonus Act, 1965. A reply to the aforesaid Show Cause Notice dated 08.05.2020 was issued by the petitioner *vide* letter dated 15.05.2020. Thereafter, another reply to the aforesaid Show Cause Notice dated 30.06.2020 is stated to have been sent by the petitioner to the respondent no. 1 seeking release of the withheld security deposit amounting to Rs.6,00,000/-. It is further averred that apprehending debarring/blacklisting action on the part of the respondent no. 1, a communication dated 08.02.2022 was sent by the petitioner requesting the respondent no.1 to refrain from any such action. It is contended that the

impugned debarring order dated 21.09.2022 was issued by the respondent no.1 thereafter.

8. The counter affidavit filed on behalf of the DDA brings out some further relevant facts, which have, unfortunately, not been disclosed in the writ petition. It is revealed therein that since August 2018, the respondent DDA had been writing to the petitioner seeking PSARA training certificates and also seeking clarification as regards to the age of the security guards deployed by the petitioner. It also transpires from the counter affidavit filed on behalf of the respondent DDA that the Show Cause Notices dated 31.03.2019 and 27.05.2019 were issued to the petitioner even prior to the Show Cause Notice dated 08.05.2020 referred to in the writ petition. Further, letters dated 18.08.2018, 11.11.2018, 20.11.2018, 04.12.2018, 05.12.2018, 17.12.2018, 16.02.2020, 03.07.2020, 24.07.2020, 14.08.2020 and 29.06.2021 were sent by the respondent no.1 to the petitioner, repeatedly raising the issue regarding PSARA training certificates, and the age of the guards deployed by the petitioner. Further, it is disclosed in the counter affidavit that the Show Cause Notice dated 15.09.2021 was finally sent to the petitioner on the aspect of failure to file the PSARA training certificates. The Show Cause Notice also highlights the alleged deficiency in the payment by the petitioner to the guards deployed by it. A response dated 25.09.2021, is stated to have been sent by the petitioner in response to the Show Cause Notice dated 15.09.2021. A personal hearing is also stated to have been granted to the petitioner on 21.07.2022 pursuant to which the impugned debarring order dated 21.09.2022 came to be passed. Crucially, the Counter Affidavit also reveals that the impugned debarring order is premised on the Office Memorandum No.F.1/20/2018-PPD dated 02.11.2021, issued by the Department of Expenditure, Ministry of Finance.

CONTENTIONS OF THE PETITIONER

9. The contentions raised by learned senior counsel for the petitioner to assail the impugned order dated 21.09.2022, are broadly as under:-

- (i) It is contended that there is no requirement to provide the training certificates of the guards deployed by the petitioner as there is no such requirement in the 2018 Work Order.
- (ii) While advertng to the chain of correspondence and various Show Cause Notices referred to in the counter affidavit, it is contended that the controversy with regard to alleged deficiency in the payment made by the petitioner to its employees was duly resolved.
- (iii) The impugned debarring order is stated to be belated, inasmuch as it is stated to have been issued much after the completion of the work and without referring to the Show Cause Notice dated 08.05.2020. It is further contended that the letter dated 15.09.2021 cannot be said to be a 'Show Cause Notice'.
- (iv) It is contended that the Office Memorandum dated 02.11.2021, which is stated to be the basis of debarment, is not applicable to the present case. It is stated that the said Office Memorandum was not referred to in any Show Cause Notice sent on behalf of the respondent no.1, and therefore, the petitioner could not respond to the Office Memorandum, and as such, there has been denial of the principles of natural justice.
- (v) Finally, it is urged that the action of the respondent no.1 is actuated by *malafides* and arbitrariness and the said act has been resorted to merely forfeit the security amount of Rs.6,00,000/-, stated to have been

withheld by the respondent no.1. It is also urged that the debarring of three years is grossly disproportionate and excessive.

CONTENTIONS OF THE RESPONDENT

10. *Per contra*, learned standing counsel appearing on behalf of the respondent DDA refutes the contentions raised by learned senior counsel appearing on behalf of the petitioner. He has taken exception to the conduct of the petitioner in concealing the chain of communications exchanged between the parties prior to passing of the impugned order dated 21.09.2022. Further, the correspondence filed along with the counter affidavit has been extensively referred to highlight the continuing lapse on the part of the petitioner in providing requisite PSARA training certificates. It is stated that the said training certificates are mandatory under the prevalent law and is also mandated in terms of the applicable terms and conditions of the 2015 Work Order which were *ipso facto* made applicable to the 2018 Work Order as well. It is contended that despite multiple opportunities, the petitioner has failed to provide the requisite PSARA certificates. It is pointed out that *vide* communications dated 20.11.2018 and 17.12.2018, the petitioner took the stand that the PSARA training certificates are under process but later on the petitioner expressed its inability to furnish the requisite certificates *vide* letter dated 20.07.2021. It is emphasized that the impugned action has been taken after affording repeated opportunities to the petitioner and also providing an opportunity of hearing to the petitioner pursuant to the Show Cause Notice dated 15.09.2021. It is contended that the failure on the part of the petitioner to provide requisite PSARA certificates amounts to a serious violation of statute apart from being in breach of contractual conditions. He further contends that the impugned order is justified and based on the Office Memorandum dated 02.11.2021 issued by the Ministry of Finance.

ANALYSIS AND CONCLUSION

11. I have considered the rival contentions of the respective counsel for the parties.

12. The legal position as regards debarring/blacklisting is settled by a long line of decisions rendered by the Supreme Court starting with *M/s Erusian Equipment & Chemicals Ltd. Vs. State of West Bengal and Another* (1975) 1 SCC 70, where the Supreme Court declared that blacklisting has the effect of preventing a person from entering into lawful relationship with the Government for the purposes of gains and that the authority passing any such order was required to give a fair hearing before passing the order of blacklisting/debarring certain entity. In *M/s Erusian Equipment & Chemicals Ltd. (supra)*, it was held as under:-

“20. Blacklisting has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for purposes of gains. The fact that a disability is created by the order of blacklisting indicates that the relevant authority is to have an objective satisfaction. Fundamentals of fair play require that the person concerned should be given an opportunity to represent his case before he is put on the blacklist.”

13. The above principles have been reiterated time and again in a long line of judgments including in the case of *Joseph Vilangandan v. Executive Engineer (PWD)* [(1978) 3 SCC 36]; *Southern Painters v. Fertilizers & Chemicals Travancore Ltd.* [1994 Supp (2) SCC 699 : AIR 1994 SC 1277]; *B.S.N. Joshi & Sons Ltd. v. Nair Coal Services Ltd.* [(2006) 11 SCC 548]; *Patel Engg. Ltd. v. Union of India* [(2012) 11 SCC 257 : (2013) 1 SCC (Civ) 445].

14. Although the terms and conditions of the work order issued in favour of the petitioner do not contain any provision for debarring/blacklisting the petitioner, it is now well settled that the power to blacklist the contractor is

inherent in the party allotting the contract. In this regard, it has been held in ***Kulja Industries Limited Vs. Chief General Manager, Western Telecom Project Bharat Sanchar Nigam Limited and Ors. (2014) 14 SCC 731***, as under:-

“17. That apart, the power to blacklist a contractor whether the contract be for supply of material or equipment or for the execution of any other work whatsoever is in our opinion inherent in the party allotting the contract. There is no need for any such power being specifically conferred by statute or reserved by contractor. That is because “blacklisting” simply signifies a business decision by which the party affected by the breach decides not to enter into any contractual relationship with the party committing the breach. Between two private parties the right to take any such decision is absolute and untrammelled by any constraints whatsoever. The freedom to contract or not to contract is unqualified in the case of private parties. But any such decision is subject to judicial review when the same is taken by the State or any of its instrumentalities. This implies that any such decision will be open to scrutiny not only on the touchstone of the principles of natural justice but also on the doctrine of proportionality. A fair hearing to the party being blacklisted thus becomes an essential precondition for a proper exercise of the power and a valid order of blacklisting made pursuant thereto. The order itself being reasonable, fair and proportionate to the gravity of the offence is similarly examinable by a writ court.”

15. Also, in ***Patel Engineering Limited Vs. Union of India and Another, (2012) 11 SCC 257***, it has been held by the Supreme Court as under:-

“15. It follows from the above judgment in Erusian Equipment case [(1975) 1 SCC 70] that the decision of the State or its instrumentalities not to deal with certain persons or class of persons on account of the undesirability of entering into the contractual relationship with such persons is called blacklisting. The State can decline to enter into a contractual relationship with a person or a class of persons for a legitimate purpose. The authority of the State to blacklist a person is a necessary concomitant to the executive power of the State to carry on the trade or the business and making of contracts for any purpose, etc. There need not be any statutory grant of such power. The only legal limitation upon the exercise of such an authority is that the State is to act fairly and rationally without in any way being arbitrary—thereby such a decision can be taken for some legitimate purpose. What is the legitimate purpose

that is sought to be achieved by the State in a given case can vary depending upon various factors.

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25. The bid document is not a statutory instrument. Therefore, the rules of interpretation, which are applicable to the interpretation of statutes and statutory instruments, are not applicable to the bid document. Therefore, in our opinion, the failure to mention blacklisting to be one of the probable actions that could be taken against the delinquent bidder does not, by itself, disable the second respondent from blacklisting a delinquent bidder, if it is otherwise justified. Such power is inherent in every person legally capable of entering into contracts.”

16. The law is also well settled that while considering a challenge to a debarring/blacklisting order, this Court will not exercise jurisdiction akin to an appellate Court. However, any such action would be subject to judicial review on the touchstone of the principles of natural justice, to ensure absence of arbitrariness, *malafides* and colorable exercise of power and also on the touchstone of the doctrine of proportionality.

17. A perusal of the correspondence exchanged between the parties clearly reveal that providing of requisite training certificates for the guards deployed by the petitioner was being insisted upon by the respondent no.1 even during the currency of the work being executed by the petitioner under the 2018 Work Order. In this regard, a letter dated 18.08.2018, was addressed by the respondent no.1 to the petitioner wherein the petitioner was specifically requested to provide as under:-

“(a) List of Security Guard deployed at CWGVSC.

(b) Issue of Identity Cards to Security Guards.

(c) PASRA Certificate of Guards.

(d) Consolidated list along with attached form for biometric attendance duly filled and signed, for the contractual employees. Photocopies of Aadhar Card must be attached duly self attested by the individual security guard.

(e) Two Passport size coloured photographs of each employee.

(f) Police verification of each employee.”

18. Again, vide letter dated 11.11.2018, the respondent no.1 addressed a communication to the petitioner specifically stating as under:-

“(b) Certificate of Training as per PSARA Act have not been provided as per Para – 62 of terms & conditions of the Contract Agreement.

(c) Security Guards are required to be deployed at CWGVSC meeting various criteria as per Para – 33 of terms & conditions of the Contract Agreement. A number of Security Guards provided by you are untrained and not meeting the criteria of Age and requirements covered in Para – 33.

19. Pertinently, in response to the aforesaid communication dated 11.11.2018, the petitioner addressed a letter dated 20.11.2018 stating as under:-

*“So far as the Certificates of Training as per **PSARA Act-2005** not provided as per Para 62 of the T&C of the Agreement of Contract are concerned, in this regard, it is to inform you the same are under process and shall be submitted in due course very shortly.”*

20. At that stage, the petitioner did not express any inability/ difficulty to provide the requisite training certificates and instead took the stand that the same are “under process”. The requisite certificates, having not been provided to the respondent no. 1, the respondent no.1 addressed another communication dated 04.12.2018 stating as under:-

“1. Refer to your letter No. F(151)/WPMS/CWGVSC/DDA/Sec./SP/2018/5120 dt. 20 Nov 2018.

2. It is intimated that all the records of Security Guards are available with you and it is your responsibility to verify the criteria of the Security Guards at your end.

3. Security Guards are required to be deployed at CWGVSC meeting various criteria as per Para – 33 of terms & conditions of the Contract Agreement. A number of Security Guards provided by you are untrained, do not have certificate of training as per PSARA norms, and not meeting the criteria of Age and requirements covered in Para – 33.

4. In view of the above, you are once again requested to ensure that Security Gurads meet the criteria as per the Agreement.”

21. The petitioner again responded *vide* letter dated 17.12.2018, stating as under:-

“With reference to your letter No.F-2(235)/CWGVSC/DDA/521, dated 09-12.2018 on the ..ect cited above, it is to inform you that Certificates of Training as per PSARA Act – 2005 in r/o .. deployed in your sports complex is still under process and will be submitted in due course very shortly.”

22. It appears that despite the assurance contained in the aforesaid letter dated 17.12.2018 that the requisite certificates of training would be submitted in due course, the same were not submitted by the petitioner. Consequently, a Show Cause Notice dated 31.03.2019 came to be issued by the respondent no.1 to the petitioner, wherein apart from another incident that took place on the concerned sports complex, it was stated as under:-

“4. A similar violation of duties had happened on 04 Nov 2018, which had been intimated to you, however, you failed to take corrective measures. You have thereby violated clauses 15, 16 and 17 of the Contract Agreement. Many of the guards deployed by you are above 45 years of age and have not been trained as per PSARA norms, thus you have also violated clause 33 of the Agreement.

5. In view of the above, you are asked to give reasons within fifteen days of issue of this letter why action should not be initiated against you/Agency, as per the Contract Agreement. Incase the reasons given are found unsatisfactory or no reply is received within fifteen days of issue of this letter, the Competent Authority shall take action as deemed fit including debarring/blacklisting you/Agency from further tenders in DDA Sports Wing.”

23. Another Show Cause Notice was issued on 27.05.2019 stating as under:-

“4. Further, inspite of our repeated instructions vide our letter Nos. F-2(235)CWGVSC/DDA/412 dt. 22 Oct 2018, F-2(235)CWGVSC/DDA/502 dt. 04 Dec 2018, F-2(235)CWGVSC/DDA/515 dt. 08 Dec 2018, F-2(235)CWGVSC/DDA/521 dt. 09 Dec 2018 and F-2(235)CWGVSC/DDA/788 dt. 25 Apr 2019 your guards are not trained as per PSARA norms and eight guards including Sh. Anil Kumar Tiwari are over 45 years of age, in violation of clause 33 of the Contract Agreement.

5. The above lapses and violation of the Contract Agreement by you/Agency, even after our instructions, are viewed seriously. You are required to intimate within ten days of issue of this letter, why action including debarring/blacklisting from future works in DDA's Sports Wing be not initiated against you for the above lapses."

24. No action appears to have been taken by the respondent no. 1 pursuant to the above mentioned Show Cause Notices. Consequently, another communication dated 16.02.2020 came to be addressed by the respondent no.1 to the petitioner stating as under:-

"2. You have failed to provide this office certificates regarding training of your guards as per PSARA norms, also eight guards deployed by you were above age of 45 years in violation to clause 33 of the Agreement.

3. You are also required to submit the payment details of bonus paid by you to your employees during the period your guards were deployed at CWG Village Sports Complex, as Payment of Bonus Act 1965 is applicable for establishments with more than twenty employees.

4. You are required to submit the details within ten days of issue of this letter. In case the documents are not received from you, action may be taken as per the provision of the Agreement."

25. Again on 03.07.2020, the respondent no. 1 addressed a communication to the petitioner stating as under:-

"4. You are again given an opportunity to provide within fifteen days of issue of this letter, verified copies of PSARA Training Certificates and Police Verification Certificates in respect of the Security Guards deployed by you for the above work, as asked vide our letters referred at para 1."

26. Yet again, on 24.07.2020, the respondent no. 1 wrote to the petitioner stating as under:-

"2. It is once again informed to you have grossly violated LoA, para 2 of terms and condition, in that you have failed to provide copies of PSARA Training Certificate and Police Verification Report despite of letters written to you by Secy CWGVSC as referred at para 1(b), 1(d), 1(e) and 1(f). You had assured vide your letters referred at 1(g) and 1(h) that

PSARA Training Certificates would be submitted shortly however, these have not been provided till date.

3. *You are once again requested to submit verified copies of PSARA Training Certificates and Police Verification Report in respect of the Security Guards deployed by you for the above work, as asked vide our letters referred at para 1.”*

27. Again, vide communication dated 14.08.2020 addressed by the respondent no. 1 to the petitioner, it was stated as under:-

“3. It is once again informed to you that you have grossly violated LoA para2 of terms and conditions, in that you have failed to provide copies of PSARA Training Certificates and Police Verification Report despite of letters written to you by Secy CWGVSC as referred at para 1(b), 1(d), 1(e) and 1(f). You had assured vide your letters referred at 1(g) and 1(h) that PSARA Training Certificates would be submitted shortly however, these have not been provided till date.

4. You are given one more opportunity to submit verified copies of PSARA Training Certificates and Police Verification Report in respect of the Security Guards deployed by you for the above work, as asked vide our letters referred at para 1.”

28. It is evident that despite assuring vide letter dated 17.12.2018, that the requisite training certificates in respect of the security guards deployed “*will be submitted in due course very shortly*”, the petitioner failed to provide the same for almost three years thereafter.

29. Finally, on 20.07.2021, the petitioner addressed a communication stating as under:-

“Further it is also submitted a much more time have passed after completion of the contract Now so it may not be possible to provide training certificate at this belated stage, please.”

30. It is rightly contended by learned standing counsel appearing on behalf of the respondents that the stand taken by the petitioner in the aforesaid letter dated 20.07.2021 was in utter contradiction of the earlier stand of the petitioner. It is

also rightly pointed out by learned standing counsel for the respondents that the terms and conditions of the NIT pursuant to which the 2015 Work Order was placed upon the petitioner, clearly contemplated that the petitioner would comply with the PSARA Act. Further, the NIT and the contract conditions clearly contained the following stipulation:-

“62. The firm/agency on award of the contract would train the existing security guards in the Sports Complexes as required in the PSARA Act under their arrangements.”

31. Apart from the aforesaid Clause 62, Clause 33 of the terms and conditions of the contract provides as under:-

“33. The tenderer shall preferably deploy at least 40% of the staff from the categories of Ex-serviceman Ex-Para military force personnel for the purpose of this contract. Rest of 60% should be capable for performing the duties of security and with good health. Any employee found unfit will be replaced by the agency immediately. The age of guards employed by the agency will be less than 45 years except Ex-Service man /Ex-Paramilitary Force.”

32. As noticed herein above, it is the admitted case of both the petitioner and the respondent no. 1 in their respective pleadings that the terms and conditions applicable to the 2015 Work Order were *ipso facto* made applicable to the 2018 Work Order. The same is also borne out from various communications sent by the respondent no. 1 to the petitioner, for instance, communication dated 11.11.2018, wherein reference was made to the said terms and conditions. In its reply to the aforesaid communications, the petitioner did not refute the applicability of Clause 62 (supra) or any of the other terms and conditions contained in the 2015 Work Order.

33. As such, it was incumbent upon the petitioner to ensure that the security guards deployed were trained as per the PSARA Act. The respondent No.1 was fully justified in seeking the requisite training certificates. Apart from Clause 62

(supra), this requirement also flows from the provisions of the PSARA Act. Section 4 of the PSARA Act provides that holding of a valid license under the said Act is a pre-requisite for any person or private security agency to provide private security. The said Section imposes an embargo and enjoins that no person shall carry on or commence business of a private security agency unless he holds a license issued under the PSARA Act.

34. Section 9(2) of the PSARA Act also provides as under:-

“9(2) Every private security agency shall ensure imparting of such training and skills to its private security guards and supervisors as may be prescribed:
...”

35. Rule 10(1) of the Delhi Private Security Agencies (Regulation) Rules, 2009, prescribes as under:-

“10(1) The licensee shall successfully undergo a training relating to the private security service as prescribed by the Controlling Authority within the time frame fixed by it.”

36. Rule 6 of the Delhi Private Security Agencies (Regulation) Rules, 2009, prescribes the conditions for training of guards as under:-

“(1) For the purposes of training of guards, the Controlling Authority shall frame the syllabus containing the details of the training. The duration of the training shall be for a minimum period of hundred hours of theoretical instruction and sixty hours of practical training, spread over at least, twenty working days. The ex-serviceman and former police personnel shall however be required to attend a condensed course only, of minimum forty hours of classroom instructions and sixteen hours of field training spread over at least seven working days.

(2) The training will include the following subjects, namely:-

- (a) conduct in public and correct wearing of uniform;*
- (b) physical fitness training;*
- (c) physical security, security of the assets, security of the building or apartment, personnel security, household security;*
- (d) fire fighting;*
- (e) crowd control;*

- (f) examining identification papers including identity cards, passports and smart cards,*
- (g) should be able to read and understand English alphabets and Roman numerals as normally encountered in the identification documents, arms license, travel documents and security inspection sheet;*
- (h) identification of improvised explosive devices;*
- (i) first-aid;*
- (j) crisis response and disasters management;*
- (k) defensive driving (compulsory for the driver of Armoured vehicle and optional for others);*
- (l) handling and operation of non-prohibited weapons and firearms (optional);*
- (m) rudimentary knowledge of Indian Penal Code, right to private defense, procedure for lodging first information report in the police station, Arms Act (only operative sections); Explosives Act (operative sections);*
- (n) badges of rank in police and military forces;*
- (o) identification of different types of arms in use in public and Police;*
- (p) use of security equipments and devices (for example; security alarms and screening equipments);*
- (q) leadership and management (for supervisors only); and*
- (r) observations, handling unidentified objects, conducting anti-sabotage checks, handling equipments and special requirement for those who have to do body protection.*

(3) The security guard shall have to successfully undergo the training as prescribed by the Controlling Authority in training institute or organizations recognized by it. On completion of the training, the successful trainee shall be awarded a certificate in Form-IV by the recognized training institute.

(4) For the purposes of imparting training as per the syllabus, the Controlling Authority may frame the guidelines and specifications for recognizing the institute or organization, and may recognize the institutes if it fulfils the required guidelines and specifications.

(5) The officer authorized by the Controlling Authority for the purpose, shall carry out regular inspections of the recognized institute or organization and if it ceases to fulfill the requisite guidelines and specifications, may recommend de-recognition of such institute or organization.

(6) On receiving the recommendation from the authorized officer, the Controlling Authority may after affording a reasonable opportunity to the institute, de-recognize the institute or organization.

(7) A recognized training institute or organization shall submit the following details to the Controlling Authority:-

- (a) name and address of the institute;*
- (b) particulars of the trainee guards;*
- (c) duration of the training;*
- (d) syllabus covered and marks obtained by the trainee;*
- (e) name and designation of the person authorized to issue certificates; and*
- (f) any other information as may be required by the officer authorized by the Controlling Authority.”*

37. A perusal of the above clearly indicates that the requirement of training of the concerned private security guards and supervisors is a pre-requisite for any private security agency to carry out its operations.

38. In the above context, the impugned order rightly find fault in the failure on the part of the petitioner in not submitting PSARA training certificates and police verification documents in respect of the security guards deployed by it.

39. It is also pertinent to note that in the Show Cause Notice sent to the petitioner on 15.09.2021 (as also the previous Show Cause Notices dated 31.03.2019, 27.05.2019 and 08.05.2020), the primary allegation was with regard to the non-furnishing of the requisite training certificates. Paragraph 4 of the said Show Cause Notice dated 03.07.2020 reads as under:-

“4. You are again given an opportunity to provide within fifteen days of issue of this letter, verified copies of PSARA Training Certificates and Police Verification Certificates in respect of the Security Guards deployed by you for the above work, as asked vide our letters referred at para 1.”

Even in the Show Cause Notice dated 15.09.2021, it was stated as under:-

“4. You also failed to submit PSARA training certificate and Police Verification Documents in respect of your employees inspite of our

numerous letters as referred at 1(e) and your assurance vide your letter No. F(151)WPMS/CWGVSC/DDA/SEC/SP/2018/5237 dt. 17.12.2018 and F(151)WPMS/CWGVSC/DDA/SEC/SP/2018/5192 dt. 05.12.2018, thus violating the conditions of the Work Order and clause 62 of the Agreement mentioned at 1(g).”

Learned Standing Counsel for the DDA concedes that although the aforesaid show cause notices refer to some other allegations as well, the proposed debarment of the petitioner was primarily on the ground of non-furnishing of the requisite PSARA training certificates.

40. It is also incorrect for the petitioner to contend that the communication dated 15.09.2021 is not in the nature of a Show Cause Notice. A bare perusal of the said communication indicates that after referring to various factual aspects and the omission on the part of the petitioner in providing the PSARA training certificates and police verification documents, it was stated as under:-

“7. In case your reply is not found satisfactory or you do not submit your reply within fifteen days of issue of this letter, it shall be considered that you have nothing to say in this matter and action for forfeiture of the amount held with DDA and debarment of your Agency from participating in tenders with DDA Sports Wing shall be done.”

41. It is pertinent to note that in response to the Show Cause Notice dated 15.09.2021, it was stated by the petitioner vide reply dated 25.09.2021 as under:-

“We wish to submit that we have already made all payments as due to Sh. Rakesh Ex-Security Guard. In this regard we enclose herewith copy of our letter No. F(27)/WPMS/DDA/PG/2021/3130 dated 20.07.2021 sent to you in which we enclosed all the relevant documents pertaining to payment of Rakesh Ex-Security Guard which are self explanatory.”

42. Therefore, it can be seen that apart from dealing with the issue regarding payment of the requisite amount to Rakesh, one of the security guards deployed by the petitioner, the reply to the said Show Cause Notice did not even deal with

the specific allegations made in paragraph 4 of the Show Cause Notice dated 15.09.2021.

43. In the circumstances, the impugned debarring order dated 21.09.2022 was issued by the respondent no.1 in which it has been stated as under:-

“1. M/s Well Protect Manpower Services Pvt. Ltd. was awarded contract (Work Order) No. 05/CWGVSC/DDA/2018-19 dt. 03 Aug 2018 for providing 28 Nos. Security Guards at CWGVSC on the basis of Contract Agreement No. 02/SBS/DDA/2015-16 with Squash and Badminton Stadium.

*2. The agency failed to make payment to the employees and incorrectly claimed payments vide Bill No. 207 dt. Apr 2019 and Bill No. 270 for Jun 2019. In addition to this, **the Agency failed to submit PSARA training certificates and Police Verification documents in respect of the security guards deployed at CWGVSC, which were mandatory as per Clause 62 of T&C.** Following reminders/letters were sent to the Agency :-*

(a) Letter No. F-2(235)/CWGVSC/DDA/2018/Pt-1 /820 dt. 10 May 2019.

(b) Letter No. F-2(235)/CWGVSC/DDA/1762 dt. 14 Aug 2020.

(c) Letter No. F-2(235)/CWGVSC/DDA/105 dt. 29 Jun 2021.

(d) Letter No. F-2(235)/CWGVSC/DDA/156 dt. 17 Aug 2021

The Agency assured vide letter No. F(151)WPMS/CWGVSC/DDA/SEC/SP/2018/5237 dt. 17.12.2018 that the PSARA training certificates and other documents would be submitted but was not done till the completion of work on 31 Dec 2018 and, thereafter, on EoT upto 30 Jun 2019.

3. The Agency was issued Show Cause Notice vide letter No. Letter No. F-2(235)/CWGVSC/DDA/190 dt. 15 Sep 2021 for non-payment of wages to the employees and non-submission of PSARA training certificates and their response vide letter No. F(27)/WPMS/CWG/2021/3195 dt. 25.09.2021 was found unsatisfactory as the agency insisted that the guards are trained which was not in order according to the Terms & Conditions of the contract Correcting of the mistake by paying the employees at a later stage does not absolve the agency of their wrong doing but establishes the fact of the charges. Hence, Clause 10 would also be effected whereby the Security Deposit will be forfeited.

4. Notwithstanding the above, again an opportunity of personal hearing was given to the agency vide letter No. F-3(249)CWGVSC/DDA/112 dt. 21 July, 2022. During the personal hearing the Agency reiterated their old statements and no additional input was provided to their earlier response.

5. In view of the above. M/s Well Protect Manpower Services Pvt. Ltd., has violated clause 62 of the terms and conditions of the Contract Agreement. After due consideration, M/s Well Protect Manpower Services Pvt. Ltd., F-2, 2nd Floor, Khasra No. 737/3 & 737/6, Near MCD School, Main 100 Futa Road, Burari, Delhi-110084 is hereby debarred from participation in any tender contract of any type in the Sports Wing of DDA for a period of three years from the date of issue of this order."

44. As is evident from the foregoing, the debarring order takes into account the chain of correspondence between the petitioner and the respondent no.1 since 2019 on the issue of failure on the part of the petitioner to submit PSARA training certificates and police verification documents in respect of the security guards deployed by the petitioner. The impugned order rightly concludes that the petitioner was in breach of Clause 62 of the relevant terms and conditions of the contract agreement which, as noticed hereinabove, contemplates that the deployed security guards must be trained as per PSARA Act.

45. The next issue that arises for consideration is whether there was any justification in debarring the petitioner for a period of three years from participation in any tender in the sports wing of the respondent DDA.

46. A perusal of the counter affidavit filed on behalf of the respondent no. 1 reveals that the rationale for inflicting a three year debarment on the petitioner was on the basis of an Office Memorandum dated 02.11.2021 issued by the Ministry of Finance, Government of India. The relevant averments in the Counter Affidavit filed on behalf of the respondents, are as under:-

"3.a.xvi. Although the response of the Petitioner dated 27-09-2021 was highly evasive and misconceived, the Respondent/DDA gave a personal hearing to the Petitioner on 27-07-2022 to ensure that due opportunity is given to the Petitioner to present the information as sought and, resolve the issue. However, the Petitioner still failed to make due compliances.

The Respondent/DDA was constrained to pass the Impugned Order dated 21-09-2022 which was commensurate to the persistent and cumulative discrepancies, wrongdoings, violations of the contractual provisions committed by the Petitioner.

xvii. It is pertinent to mention here that such action was taken as per the OM dated 02-11-2021 issued by the Ministry of Finance, Government of India which is annexed herewith as Annexure R10.”

47. The aforesaid Office Memorandum dated 02.11.2021, provides as under:-

“Attention is drawn towards Rule 151 of General Financial Rules (GFRs), 2017 regarding 'Debarment from Bidding' which is reproduced as under:

(i) A bidder shall be debarred if he has been convicted of an offence

(a) under the Prevention of Corruption Act, 1988; or

(b) the Indian Penal Code or any other law for the time being in force, for causing any loss of life or property or causing a threat to public health as part of execution of a public procurement contract.

(ii) A bidder debarred under sub-section (i) or any successor of the bidder shall not be eligible to participate in a procurement process of any procuring entity for a period not exceeding three years commencing from the date of debarment. Department of Commerce (DGS&D) will maintain such list which will also be displayed on the website of DGS&D as well as Central Public Procurement Portal.

(iii) A procuring entity may debar a bidder or any of its successors, from participating in any procurement process undertaken by it, for a period not exceeding two years, if it determines that the bidder has breached the code of integrity. The Ministry/ Department will maintain such list which will also be displayed on their website.

(iv) The bidder shall not be debarred unless such bidder has been given a reasonable opportunity to represent against such debarment.”

48. “The Code of Integrity” referred to in paragraph (iii) of the aforesaid extracted portion of the Office Memorandum dated 02.11.2021 finds mention in a document annexed to the aforesaid Office Memorandum titled as “Guidelines on Debarment of firms from Bidding”, relevant portion of which is reproduced as under:-

“6. Code of Integrity as contained in Rule 175 of the GFRs is reproduced as under:

No official of a procuring entity or a bidder shall act in contravention of the codes which includes

(i) prohibition of

(a) making offer, solicitation or acceptance of bribe, reward or gift or any material benefit, either directly or indirectly, in exchange for an unfair advantage in the procurement process or to otherwise influence the procurement process.

(b) any omission or misrepresentation that may mislead or attempt to mislead so that financial or other benefit may be obtained or an obligation avoided.

(c) any collusion, bid rigging or anticompetitive behavior that may impair the transparency, fairness and the progress of the procurement process.

(d) improper use of information provided by the procuring entity to the bidder with an intent to gain unfair advantage in the procurement process or for personal gain.

(e) any financial or business transactions between the bidder and any official of the procuring entity related to tender or execution process of contract; which can affect the decision of the procuring entity directly or indirectly.

(f) any coercion or any threat to impair or harm, directly or indirectly, any party or its property to influence the procurement process.

(g) obstruction of any investigation or auditing of a procurement process.

(h) making false declaration or providing false information for participation in a tender process or to secure a contract;

(ii) disclosure of conflict of interest.

(iii) Disclosure by the bidder of any previous transgressions made in respect of the provisions of sub-clause (i) with any entity in any country during the last three years or of being debarred by any other procuring entity.”

49. A bare perusal of the aforesaid reveals that debarment for a period of three years, in terms of the Office Memorandum dated 02.11.2021, is contemplated only in those cases where a bidder has been convicted of an offence (a) under the Prevention of Corruption Act, 1988; and (b) under the

Indian Penal Code, 1860. Admittedly, the same is not applicable to the petitioner herein. As such, reliance placed on the aforesaid Office Memorandum dated 02.11.2021 for the purpose of debarment of the petitioner for a period of three years is contrary to the express stipulations contained therein, and therefore, cannot pass muster. Faced with this situation, learned standing counsel for the respondents submits that in the present case, this Court may confine the debarment of the petitioner for a period of two years on the basis that the petitioner had breached “the Code of Integrity”, referred to in the said Office Memorandum.

50. The aforesaid contention of learned standing counsel for the DDA cannot be accepted for obvious reasons. Firstly, it is not for this Court to exercise primary jurisdiction for the purpose of considering the period of debarment/blacklisting of the petitioner. The exercise necessarily has to be conducted by the authority concerned. Secondly, it is incumbent for the respondent no. 1 to put the petitioner on notice as regards the reliance sought to be placed on the Office Memorandum dated 02.11.2021 for the purpose of determining the period of debarment of the petitioner and also for the purpose of reaching the conclusion that the petitioner is in breach of “the Code of Integrity” referred to therein. This has not been done in the present case.

51. It has been held in ***Gorkha Security Services vs. Government (NCT of Delhi) & Ors***, (2014) 9 SCC 105 that:

“in order to fulfil the requirements of principles of natural justice, a show-cause notice should meet the following two requirements viz:

- (i) The material/grounds to be stated which according to the department necessitates an action;*
- (ii) Particular penalty/action which is proposed to be taken. It is this second requirement which the High Court has failed to omit.”*

52. From a perusal of the averments made in the counter affidavit filed on behalf of the respondents, the submissions of learned standing counsel for the respondents, and the contents of the written submissions filed on behalf of the respondents, it is evident that the Office Memorandum dated 02.11.2021 constitutes vital material which has been taken into account for the purpose of:-

- (i) reaching the conclusion that the petitioner is required to be debarred and/or that the petitioner is in breach of “the Code of Integrity” referred to therein;
- (ii) determining the period of debarment of the petitioner.

53. Admittedly, the said Office Memorandum dated 02.11.2021 was never referred to in any of the correspondence between the parties or in the Show Cause Notices issued by the respondent no.1.

54. In the circumstances, failure on the part of the respondent no.1 to disclose to the petitioner its reliance upon the Office Memorandum dated 02.11.2021 for the purpose of debarment of the petitioner, has resulted in denial of principles of natural justice and has vitiated the decision-making process. Whether or not the petitioner is in breach of “the Code of Integrity” and if so, what is the extent/duration of debarment of the petitioner is an aspect which necessarily has to be determined/adjudicated by the respondents after affording an opportunity of hearing to the petitioner, and after putting the petitioner on notice as to the reliance sought to be placed thereon.

55. In the circumstances, the impugned order dated 21.09.2022 is quashed. However, the respondent no. 1 would be at liberty to issue a fresh Show Cause Notice to the petitioner, putting the petitioner to notice as to the reliance sought to be placed on the Office Memorandum dated 02.11.2021 and “the Code of Integrity” referred to therein, for the purpose of debarment of the petitioner.

56. The present writ petition is disposed of in the aforesaid terms; however, with no order as to costs.

SACHIN DATTA, J.

FEBRUARY 23, 2023

JK/ssc

