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

+ **LPA 832/2023 & CM APPL. 65984-65986/2023**

UNION OF INDIA

..... Appellant

Through: Mr. Ravi Prakash, Cgsc with Mr.
Farman Ali, Ms. Astu Khandelwal,
Mr. Yasharth Shukla, Advocates.

versus

VERT EQUIPMENT PRIVATE LIMITED & ANR. Respondents

Through: Mr. Atul Nanda, Sr. Advocate with
Ms. Rameeza Hakeem, Mr. Balaji
Subramaniam, Mr. Akash Kundu, Mr.
Martand Singh and Ms. Yartika
Aggarwal, Advocates.

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Date of Decision: 22nd December, 2023

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MINI PUSHKARNA

J U D G M E N T

1. Present appeal has been filed challenging the judgment dated 05th September, 2023 passed by the learned Single Judge in *W.P. (C) 2857/2023*. By the impugned judgment, the learned Single Judge has allowed the writ petition filed on behalf of respondent herein, thereby holding that indefinite extension of suspension of Business Dealings with the respondent no. 1 herein without issuance of Show Cause Notice, is not sustainable. Thus, appellant has been directed to issue a Show Cause Notice in that regard and pass a reasoned order after hearing the respondents.



2. Facts in brief are as follows:

2.1 Respondent no.1 has been in the business of providing engineering equipment to the Government of India and the Indian Army since 2007.

2.2 By order dated 14th August, 2020, the respondent no.1 was suspended from Business Dealings by the appellant – Ministry of Defence, Government of India (“MoD”) for a period of one year from the date of issuance of the said order. The said suspension order was subsequently extended vide MoD Notes dated 03rd September, 2021, 10th January, 2022 and 16th August, 2023. It may be clarified here that the last extension order dated 16th August, 2023 has been issued after the judgment was reserved by the learned Single Judge on 12th July, 2023.

2.3 Against the suspension order dated 14th August, 2020 and extension orders dated 03rd September, 2021 and 10th January, 2022, the respondents filed writ petition being *W.P.(C) 2857/2023*. The said writ petition was allowed by the learned Single Judge by the impugned judgment dated 05th September, 2023, whereby it was held that mere fact that the case involves defence procurement, does not justify non-issuance of a Show Cause Notice. Hence, the present appeal has been filed.

3. On behalf of the appellant, following submissions have been made:

3.1 The present case concerns defence procurement and cannot be equated with an ordinary tender process. Therefore, the same levels and parameters of scrutiny are *ipso facto* not applicable.

3.2 In matters pertaining to defence procurements, the parameters of scrutiny are clearly limited and not as broad as judicial scrutiny applicable to other cases of award of works or procurement of goods/material.

3.3 The orders passed by the appellant which were subject matter of



challenge before the learned Single Judge, were one of suspension of Business Dealings with the appellant and not a ban. In terms of the express provisions of the “Guidelines of the Ministry of Defence for Penalties in Business Dealings with Entities” (hereinafter referred to as “MoD Guidelines”) dated 21st November, 2016 and 30th December, 2016, the respondent is not entitled to a Show Cause Notice prior to the issuance of an order of suspension. Therefore, the learned Single Judge erred in issuing the direction for issuance of a Show Cause Notice.

3.4 The MoD Guidelines dated 21st November, 2016 and 30th December, 2016 make it clear that the object of Ministry of Defence is to deal with entities which are not tainted or under any suspicion or cloud, for the purpose of defence procurement. An order of suspension is *ipso facto* not a penalty and does not need to be preceded with a Show Cause Notice.

3.5 Suspension of Business Dealings against an entity on the receipt of intimation regarding initiation of criminal investigation or enquiry against such entity is a well established and well known ground for suspension. The same is also provided for in Clause D.2 of the MoD Guidelines dated 21st November, 2016.

4. On the other hand, learned counsel appearing for the respondents has justified the impugned judgment passed by the learned Single Judge. It has further been brought to the notice of this Court that when the appellant took the decision in the year 2020 of suspending the business with respondent no. 1, the appellant had been aware the same for more than six years, through communication dated 15th July, 2014 and 25th August, 2014 addressed to it by the CBI, that a Closure Report had been filed in the F.I.R. dated 30th March, 2012, whereas in the F.I.R. dated 19th October, 2012, Mr. Ravinder



Rishi had not been charge-sheeted. It is further stated that Mr. Ravinder Rishi, who was the promoter of respondent no. 1 and named in both the F.I.R.s, had passed away on 13th March, 2016.

5. During the course of hearing, this Court had requisitioned the original file of the MoD in order to peruse the reasoning which weighed with the appellant for extension of the suspension order against the respondent no.1.

6. We have heard learned counsel for the parties and have perused the record.

7. The appellant proceeded to pass suspension order dated 14th August, 2020 against the respondent no.1 on the basis of registration of CBI case in F.I.R dated 30th March, 2012 and F.I.R dated 19th October, 2012, wherein Mr. Ravinder Rishi, who was the promoter of respondent no.1, was named in both the F.I.Rs. The suspension order dated 14th August, 2020 reads as under:

**“Government of India
Ministry of Defence
D (Vigilance)**

Subject: *Suspension of M/s Vectra Advanced Engineering Pvt Ltd (VAEPL) for a period of one year from in terms of the ‘Guidelines of the Ministry of Defence for Penalties in business dealings with entities’-reg.*

Consequent to the registration of the CBI case in FIR No. RC AC1 2012 A0004 dated 30.03.2012 (Tatra Truck Deal Case) and the FIR No. RC AC1 2012 A0014 dated 19.10.2012 (Case of alleged bribery filed by Gen VK Singh, ex COAS) Hon’ble Raksha Mantri has approved suspension of business dealings with M/s VAEPL for a period of one year from the date of issue of this letter in terms of Para D2 of the Guidelines of the Ministry of Defence for Penalties in business dealing with entities issued vide MoD ID Not. 31013/1/2016-D(Vig) dated 21.11.2016

2. It is requested that strict compliance of the above decision may be



ensured by all Wings in this Ministry and Services.

(Gopal Prasad)
Deputy Director (Vigilance)

SA to RM Secretary (DP) Secretary (Def Fin) Secretary (DRDO)
VCOAS VCNS VCAS CISC DG (Coast Guard)
SS & DG (Acq) AS(JN) AS (NVC) AS&FA (Acq.) JS&AM (MS)
JS&AM (Air) JS (Lands & Works) & CVO JS&AM (LS)
JS (Armed Forces) TM (LS) TM(MS) TM(Air)

MoD ID No. 31022/1/2020/D(Vig.) dated 14.08.2020

Copy to: PS to RM PS to RRM SO to Defence Secretary
Copy also to: US, D(IT) for uploading the Order on the webpage of
the Ministry."

8. Subsequently, the said period of suspension was reviewed and the suspension was extended by six months w.e.f. 14th August, 2021 vide MoD Note dated 03rd September, 2021. The said period of suspension was again extended by six months w.e.f. 14th February, 2022 vide MoD Note dated 10th January, 2022 and again by six months w.e.f. 14th August, 2022 vide MoD Note dated 10th August, 2022. This extension was further extended by six months w.e.f. 14th February, 2023 vide MoD Note dated 07th March, 2023. The last extension of the suspension period was done vide MoD Note dated 16th August, 2023.

9. The MoD Guidelines dated 21st November, 2016 in Clauses C and D provide for causes of suspension, procedure for suspension and review of suspension of Business Dealings with an entity in the following terms:

“(C) Causes of Suspension and Banning of Business Dealings with Entities

C.1 The competent authority may levy financial penalties and/or suspend/ban business dealings with an entity for one or more of the grounds listed below:-

- a) *Violation of Pre-Contract Integrity Pact (PCIP) (where such PCIPs are entered into between the Ministry of*



Defence and an entity).

- b) Resort to corrupt practices, unfair means and illegal activities during any stage of bid/contract to secure a contract, even in cases where PCIP is not mandated.*
- c) Violation of Standard Clause in the contract of agents/agency commissions.*
- d) If national security consideration so warrant.*
- e) Non-performance or under performance under the terms and conditions of contract(s) or agreements(s) not covered in grounds listed in (a) to (c) above in accordance with provisions in contract or agreement.*
- f) Any other ground for which the competent authority may determine that suspension or banning of business dealings with an entity shall be in the public interest.*

(D) Suspension

D.1 Suspension of business dealing with an entity may be ordered by the competent authority pending a full proceeding into allegations or facts related to any grounds enumerated in paragraph C.1 (a) to (f) above.

D.2 The competent authority may suspend business dealings with an entity when it refers any complaint against the entity to CBI or any investigating agency or when intimation is received regarding initiation of criminal investigation or enquiry against any entity.

D.3 An order of suspension of business dealings with an entity will be issued for such period as the competent authority may deem fit. The period of suspension shall not ordinarily exceed one year. A review of the Order of suspension of business dealings with an entity shall be undertaken within six months of the issue of such an Order and before expiry of the period specified therein. The suspension of an entity may be extended beyond the period of one year, on the order of the Competent Authority for subsequent periods of six months each. The total period of suspension of business dealings with an entity shall not exceed the maximum period of banning of business dealings with an entity for the same cause of action.”

10. Perusal of the aforesaid Clause clearly shows the MoD has the authority to suspend Business Dealings with an entity, when intimation is received regarding initiation of criminal investigation or inquiry against any entity. Thus, in the present case vide order dated 14th August, 2020, the



Business Dealings with the respondent no. 1 were suspended consequent to registration of CBI case in F.I.R. dated 30th March, 2012 and F.I.R. dated 19th October, 2012 in which the owner/promoter of respondent no. 1 was named.

11. Further, MoD Guidelines dated 30th December, 2016 clearly provide that it is not necessary to give any Show Cause Notice to an entity before issuing the order of suspension of Business Dealings with the said entity. The provisions for suspension of Business Dealings as provided in MoD Guidelines dated 30th December, 2016, read as under:

“XXX XXX XXX”

Suspension of Business Dealings

8. *Business dealings with an entity may be suspended under the circumstances listed at Para D.1 and D.2 of the Guidelines. The Competent Authority for suspension of business dealings with entities under the Guidelines shall be the Raksha Mantri.*

9. *It is not necessary to give any show-cause notice to the entity before issuing the order of suspension of business dealings with an entity.*

10. *On receipt of information regarding allegations or facts on the basis of which it is proposed to suspend business dealings with an entity, the Competent Authority may constitute a Committee to further examine the facts and make recommendation for suspension or otherwise.*

11. *The order of suspension of business dealings with an entity shall be issued for such period as the Competent Authority may deem fit. The total period of suspension of business dealings with an entity shall not exceed the maximum period of business dealings with an entity for the same cause of action.*

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16. *A review of order of suspension shall be undertaken before expiry of the period specified therein or within six months of the issue of such order, whichever is earlier. The concerned Wing of Ministry of Defence shall examine the case for review and submit the proposal for extension or revocation of suspension order or otherwise to the Competent Authority for consideration and appropriate decision.*



17. The Competent Authority may constitute a Committee to further examine and make recommendation for extension or revocation of suspension or otherwise. Such Committee shall be headed by a two-star or equivalent rank officer.

18. Similar procedure as mentioned in Para 16 above shall be followed for subsequent reviews on six monthly basis and the order of revocation or further extension of the order of suspension shall be issued before the expiry of the order of suspension in vogue, with the approval of the Competent Authority.

XXX XXX XXX”

12. Thus, the MoD Guidelines provide that a Committee may be constituted to examine and make recommendation for extension or revocation of suspension or otherwise.

13. The original file containing the office noting that deals with the extension of suspension period of the respondent, shows that the suspension of the respondent no. 1 has been extended time and again on the ground of F.I.R. lodged by CBI against Mr. Ravinder Rishi, owner/promoter of the respondent no. 1. It has been noted that with respect to F.I.R. dated 30th March, 2012, the CBI has filed Closure Report in the matter on 28th April, 2014. However, the Trial Court proceedings have been stayed by this Court in *Criminal Revision Petition No. 129/2020* and this Court has still not accepted the Closure Report. With respect to the other F.I.R. dated 19th October, 2020, it is noted by the MoD that the case is under trial at the stage of prosecution evidence. Therefore, recording that the status of CBI F.I.R.s has not changed, and till the time there is meaningful progress in the two F.I.R.s, the period of suspension of Business Dealings with respondent no. 1 has been recommended to be extended. It is further noted that the suspension may be reviewed in future if there is any significant development in the CBI F.I.R.s.



14. This Court notes that in terms of the MoD Guidelines, the business with respondent no. 1 was suspended by the appellant without issuance of any Show Cause Notice. Subsequent extension of suspension has also been continued by the appellant on the basis of recommendation of the Committee constituted for reviewing the suspension of respondent no. 1. However, no hearing has been granted to the respondent no. 1 at any stage of extension of the suspension period.

15. The procedure prescribed for review of suspension and for consideration by the Committee every six months without giving any opportunity to the entity concerned, has been held by the learned Single Judge to be not within the spirit of fairness, impartiality, rigor and correctness which the MoD Guidelines have contemplated in its preamble.

Thus, the learned Single Judge has held as follows:

“XXX XXX XXX

*49. Thus, the Hon’ble Supreme Court in **Madhyamam Broadcasting (supra)** was of the view that even in cases where national security considerations are raised, the duty of the State to act fairly cannot be precluded. It is only in a case where national security would outweigh the duty of fairness that principles of natural justice can be excluded. It was also held that the impact of the order would have to be assessed and the same ought to be proportionate and not disproportionate. Thus, even in cases where national security is cited as a reason, the same has to be borne out from the record as justifying a suspension or ban without compliance with the principles of natural justice. It was further held that the expression national security does not have a fixed meaning. The manner in which judicial review would have to be done in a case where issues of national security are raised is laid down by the Hon’ble Supreme Court in **Madhyamam Broadcasting (Supra)**.*

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56. The aforesaid decisions make it clear that the principles of natural justice ought to be complied with generally and that even if no prejudice is caused, following of procedural guarantees is mandatory. It is only when national security concerns overweigh the duty of fairness that the said procedure can be given a go by. In each and



every case when the principles of natural justice are not followed, there has to be a justification and merely citing national security considerations is not enough. The material should reveal that there would be national security considerations, justifying non-grant of opportunity of reply or hearing.

57. In view thereof, there is a need to read the MoD Guidelines, the Procedure for Penal Action, and the FAQs in a manner so as to bring them within the four corners of law. In order for these documents to operate within the realm of legally permissible limits, they shall have to be implemented in a legally permissible manner. Although the Competent Authority's power to take action of suspension, banning or financial penalties in the larger public interest or for national security considerations cannot be in doubt, the procedure to be followed while exercising this power would have to be reasonable, non-arbitrary and in compliance with the principles laid down in the aforementioned decisions.

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61. In view thereof, for a prolonged suspension, all the procedural safeguards i.e., the recourse to principles of natural justice provided in the MoD Guidelines in case of debarment/ banning would also be applicable to suspension. Accordingly, if any entity is suspended, a review within 6 months has to be done and it is expected that the authorities shall ordinarily issue a show-cause notice setting out the grounds for which suspension has been resorted to and make out the grounds which would lead to a ban on the entity. In this process, the show-cause notice has to consist of the grounds which could be any of the grounds contained in Clause C1 (a) to (f). A reply would have to be sought after properly considering the reply, a reasoned order shall have to be passed. Further, the period of suspension and banning cannot be indefinite, unless in exceptional circumstances.

XXX XXX XXX"

16. This Court is in complete agreement with the learned Single Judge on this aspect, as there cannot be any indefinite suspension of business, as in the present case, without granting opportunity of hearing to the entity concerned. The Principles of Natural Justice and fairness cannot be ignored by the MoD at the time of consideration of extension of period of suspension of business. There cannot be any unrestricted authority to take decisions without hearing the other party or giving a reasonable opportunity to



represent its counter case.

17. In view of the aforesaid, this Court finds no infirmity with the directions passed by the learned Single Judge to the appellant herein to issue a Show Cause Notice to respondent no. 1 herein. However, this Court notes that the present case pertains to suspension and not banning of the respondent no.1. Therefore, the directions passed by the learned Single Judge are modified to the extent that the Show Cause Notice shall be issued by the appellant within a period of two weeks from today, setting out the reasons for suspension. It is further directed that in case Show Cause Notice is not issued by the appellant within two weeks and reasoned order is not passed within three months thereafter, after affording an opportunity of reply and hearing to respondent no. 1 in terms of the directions of the learned Single Judge, the period of suspension shall automatically stand revoked after the expiry of the aforesaid timelines.

18. Accordingly, the present appeal is dismissed along with the pending applications in terms of the aforesaid directions.

ACTING CHIEF JUSTICE

MINI PUSHKARNA, J

DECEMBER 22, 2023

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