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

Decided on 27.07.2023

+ W.P.(C) 6605/2018

DHIRAJ GUPTA

..... Petitioner

Through: Mr. Praveen K. Chauhan, Ms. Karishma, Mr. Narendra Malik, Advocates (Mobile No. 9828954807).

versus

SOUTH DELHI MUNICIPAL CORPORATION & ANR

..... Respondents

Through: Ms. Aakanksha Kaul, Advocate for MCD.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

PRATEEK JALAN, J. (ORAL)

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1. By order dated 13.12.2022, the submission of learned counsel for the petitioner was recorded as follows:-

"1. Learned counsel for the petitioner submits that disputes have arisen between the parties in relation to the parking contracts for the two sites at Bhagwan Mahavir Marg, Vasank Kunj, New Delhi and Uphar Cinema, Green Park, New Delhi and on this account, the petitioner has been blacklisted by the respondents for an indefinite period.

2. Learned counsel for the petitioner, on instructions, submits that outstanding dues with respect to the parking site at Bhagwan Mahavir Marg, Vasant Kunj, New Delhi stands paid and in this regard, reference is made to the 'amended Speaking Order' dated 19.12.2018 passed by the respondent(s). He further submits that insofar as dues for the parking site at Uphar Cinema, Green Park, New Delhi are concerned, a suit for recovery has been filed by the respondent(s). He, on



instructions, submits that the prayer made in the present petition is now confined only to the indefinite period of blacklisting and in this regard has relied on the judgments passed by the Supreme Court in Vetindia Pharmaceuticals Limited v. State of Uttar Pradesh & Anr. reported as (2021) 1 SCC 804, M/s Chauhan Builders Raibareli v. The State of Uttar Pradesh & Ors. reported as SLP (C) No. 32840/2018 as well as a judgment passed by this Court in M/s MI2C Security Facilities Pvt. Ltd. V. North Delhi Municipal Corporation & Ors. reported as MANU/DE/1262/2021.”

2. I have heard Mr. Praveen K. Chauhan, learned counsel for the petitioner, and Ms. Aakanksha Kaul, learned Standing Counsel for the respondent-Municipal Corporation of Delhi [“MCD”].
3. As recorded in the order dated 13.12.2022, as far as monetary dues of the petitioner are concerned, in respect of one parking site, the dues have already been satisfied and, in respect of the other parking site, MCD has filed a suit for recovery.
4. The only remaining issue is therefore with regard to the order of the respondent blacklisting the petitioner. The impugned cancellation order dated 28.03.2015 purports to cancel the parking site allotted to the petitioner on the ground of pending dues, and to blacklist it from the panel of registered parking contractors. An amended speaking order dated 19.12.2018, which has been placed on record by the respondents, reiterates the contents of the aforementioned cancellation order dated 28.03.2015 and states that a civil suit has already been filed for recovery. However, neither in the order dated 28.03.2015, nor in the amended speaking order, has any time limit been fixed for blacklisting. Mr. Chauhan submits that such indefinite orders of blacklisting are legally impermissible.
5. The Supreme Court, in *Kulja Industries Ltd. v. Western Telecom*



Project BSNL & Ors.,¹ while remanding the matter for fresh determination, observed as follows:

*“25. Suffice it to say that “debarment” is recognised and often used as an effective method for disciplining deviant suppliers/contractors who may have committed acts of omission and commission or frauds including misrepresentations, falsification of records and other breaches of the regulations under which such contracts were allotted. **What is notable is that the “debarment” is never permanent and the period of debarment would invariably depend upon the nature of the offence committed by the erring contractor.**”²*

6. In *Daffodills Pharmaceuticals Ltd & Anr. v. State of Uttar Pradesh & Anr.*,³ the Court set aside an indefinite directive barring purchase from a specific supplier as the debarment order “*was made over 4 years and 2 months ago*”.⁴

7. *Daffodills Pharmaceuticals*⁵ was followed in *Vetindia Pharmaceuticals Ltd. vs State of UP & Anr.*⁶, relied upon by Mr. Chauhan. The Court set aside an order of blacklisting due to long passage of time since the blacklisting order was passed. The Court observed as follows:-

“12. In view of the aforesaid conclusion, there may have been no need to go into the question of the duration of the blacklisting, but for the arguments addressed before us. An order of blacklisting operates to the prejudice of a commercial person not only in praesenti but also puts a taint which attaches far beyond and may well spell the death knell of the organisation/institution for all times to come described as a civil death...

14. Since the order of blacklisting has been found to be unsustainable by us, and considering the long passage of time, we are not inclined to remand the matter to the authorities. In *Daffodills Pharmaceuticals*, relied upon by the appellant, this Court has observed that an order of

¹ (2014) 14 SCC 731

² Emphasis supplied.

³ (2020) 18 SCC 550.

⁴ Paragraph 17.

⁵ Supra [note 3].

⁶ (2021) 1 SCC 804.



blacklisting beyond 3 years or maximum of 5 years was disproportionate.⁷

8. Mr. Chauhan also draws attention to the decision of the Supreme Court in *M/s Chauhan Builders Raibareli vs State of UP & Ors*⁸ and of this Court in *MI2C Security Facilities Pvt. Ltd. vs NDMC & Ors*⁹, which are to similar effect. The latter decision held as follows:-

“9. We have already noticed that black listing cannot be forever, and it is well settled that it has to be for a reasonable period. We are also of the view that the negative consequences of black listing cannot continue beyond the period of the black listing itself, otherwise the purpose of black listing for a particular period loses its significance. The authority which black listed the petitioner, namely the DDA, itself restricted the same up till 31.12.2020. That being the position, the petitioner was entitled to participate in any tendering process initiated by the DDA after 31.12.2020. Merely because the petitioner had been black listed once by the DDA, it could not legally be made as a reason to permanently debar the petitioner from tendering by the respondent corporation. The only reasonable way in which all the aforesaid clauses can be read and understood, is that they refer to current black listing and not to black listing in the past which may have happened and ended.”¹⁰

9. It is clear from the aforesaid decisions of the Supreme Court and this Court that blacklisting orders cannot be permanent in nature. In the present case, the blacklisting has already been in effect for more than eight years. Despite being given the opportunity by order dated 13.12.2022, the respondents have not come forward to propose to the Court a reasonable time for the blacklisting to be in operation.

10. In such circumstances, the writ petition is disposed of by setting aside the impugned order dated 28.03.2015, insofar as it directed the blacklisting of the petitioner for an indefinite period.

⁷ Emphasis supplied.

⁸ Order dated 16.08.2022 in Civil Appeal No. 005298/2022.

⁹ 2021 SCC OnLine Del 3682.

¹⁰ Emphasis supplied.



11. Needless to say, this order will not prejudice the respective cases of the parties in the pending civil suit filed by them.

PRATEEK JALAN, J

JULY 27, 2023

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