



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No.7158 of 2023 (O&M)

Date of Decision: 03.12.2024.

M/s Rajinder Infrastructure Pvt. Ltd.

....Petitioner

Versus

State of Punjab and others

....Respondents

**CORAM: HON'BLE MR. JUSTICE ARUN PALLI
HON'BLE MR. JUSTICE VIKRAM AGGARWAL**

Present: Mr. Akshay Bhan, Senior Advocate with
Mr. Shaurya Khanna, for the petitioner.

Mr. Vipin Pal Yadav, Addl. A.G., Pujjab.

Mr. R.S. Khosla, Senior Advocate with
Mr. Yogender Verma, Advocate for GMADA.

VIKRAM AGGARWAL J.

1. The petitioner (M/s Rajinder Infrastructure Pvt. Ltd.) assails the communication dated 11.08.2021 (Annexure P-3) vide which the petitioner was debarred from participating in the tendering processes for the works of the Greater Mohali Area Development Authority (for short 'GMADA') and Punjab Urban Development Authority (for short 'PUDA') for an indefinite period i.e. till the outcome of the Court cases pending against the petitioner and to quash the order dated 06.07.2022 (Annexure P-21) vide which the representation filed by the petitioner against the order dated 11.08.2021 was rejected.

2. Pursuant to request for proposal (RFP) (Annexure P-1) having been invited by the respondents for widening and up-gradation of 200 feet wide PR-4 road from Village Boothgarh to Togan in New

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Chandigarh Area S.A.S. Nagar, including three number bridge and five years of maintenance (Civil and Public Health Works) on Engineering, Procurement and Construction (E.P.C.) Mode, the petitioner participated. A total of seven bids, including that of the petitioner were received by the respondents. Six bidders out of the seven including the petitioner, were found to be technically qualified. Accordingly, financial bids of these six bidders were opened. However, the petitioner, not having been found to be L-1, failed to secure the aforesaid tender and the same was awarded to the company which had submitted the lowest bid.

3. Despite the fact that the petitioner had not been allotted the work, the respondents invoked Clause 2.6.2 of the RFP and issued communication dated 11.08.2021 (Annexure P-3) prohibiting the petitioner from participating/bidding in tenders of GMADA/ PUDA in the future also. It is the case of the petitioner that the said order was passed without issuing any show-cause notice to the petitioner and without affording any opportunity of hearing. The ground on which the petitioner was debarred was that the petitioner had not disclosed at the time of participating in the tender process that FIR No.6 dated 08.06.2017 had been registered by the Vigilance Bureau against the petitioner and even charges had been framed by the Special Court S.A.S. Nagar, vide order dated 25.07.2019, against various persons including one of the then Directors of the petitioner company, namely, Gurinder Pal Singh.

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4. Aggrieved by the aforesaid action, the petitioner submitted that repeated representations dated 13.12.2021, 25.02.2022, 09.05.2022 and 13.06.2022 (Annexures P-10 to P-13) requesting the respondents to grant an opportunity of hearing of the petitioner and to reconsider the issue. A number of factual aspects were sought to be brought to the notice of the respondents including the factum of the concerned Director, namely, Gurinder Pal Singh having resigned w.e.f. 29.09.2021.

5. The representations did not evoke any response and a fresh RFP dated 26.11.2021 (Annexure P-19) was issued. This led the petitioner to file CWP No.13736 of 2022 before this Court impugning the communication dated 11.08.2021. The said writ petition was disposed of vide order dated 04.07.2022 (Annexure P-20) on a statement having been given by learned counsel representing the respondents that the representations submitted by the petitioner had been considered and that the decision taken on them would be conveyed to the petitioner forthwith. Under the circumstances, the petitioner was granted liberty to file a fresh writ petition in case the petitioner wanted to challenge the decision so taken.

6. Pursuant to the aforesaid, an order dated 06.07.2022 was served upon the petitioner, which too was a cryptic and non-speaking order (Annexure P-21). In the meantime, respondents issued more requests for proposal (Annexures P-22 and P-23) and, for, the petitioner had been debarred from participating in the tendering processes, the instant writ petition has been preferred.

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7. The writ petition has been opposed by the respondents. In the written statement filed by respondent No.2 and 3, the action taken has been justified. It has been averred that the petitioner had mis-represented and had suppressed the fact regarding the pendency of the criminal case against the petitioner leading to initiation of action against the petitioner. Details of the averments are not essential for the purposes of the decision of the instant writ petition. Suffice it to mention that reliance in the written statement has been placed upon the provisions of Clause 2.6.2 of the RFA while justifying the impugned orders.

8. Short reply by way of an affidavit of the Superintending Engineer (C-2), GMADA on behalf of respondents No.2 and 3 has been filed in Court today, which is taken on record.

9. We have heard learned counsel for the parties.

10. Learned Senior counsel representing the petitioner has vehemently submitted that the orders under challenge are wholly illegal and arbitrary besides being totally non-speaking and cryptic. It has been submitted that neither any show-cause notice was issued prior to the passing of the initial order dated 11.08.2021 nor at the time of the passing of subsequent order dated 06.07.2022 and further no opportunity of hearing was granted at any stage. Still further, learned Senior counsel submits that the petitioner has been debarred for an indefinite period which is also violative of the settled law. Reference has been made to Clause 2.6.2 of the RFP and it has been submitted that no misrepresentation was there on the part of the petitioner. Learned Senior



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counsel submits that even as per the provisions of Cause 2.6.2, the maximum debarment, even if it was in accordance with law, could have been for a period of one year and here, the petitioner has already suffered debarment for a period of three and half years w.e.f. 11.08.2021 to date. Reference has been made by learned Senior counsel to the judgments in the case of *Kulja Industries Limited Vs. Chief General Manager, Western Telecom Project (2014) 14 SCC 731, SMS Infrastructure Limited Vs. State of Punjab and others; AIR 2014 (Punjab & Haryana) 84, Zee Laboratories Vs. Union of India and others, 2015 (47) RCR (Civil) 709, The Blue Dreamz Advertising Pvt. Ltd. Vs. Kolkata Municipal Corporation 2024 8 SCR 189, Kranti Associates Pvt. Ltd. Vs. Masood Ahmed Khan and others, (2010) 9 SCC 496, Manubhai Ratilal Patel through Ushaben Vs. State of Gujarat and others, (2013) 1 SCC 314 and VVijay Singh Vs. State of Uttar Pradesh and (2012) 5 SCC 242*. Learned Senior counsel submits that in view of the aforesaid, the impugned orders are not sustainable and, therefore, deserve to be set aside.

11. *Per contra*, learned Senior counsel representing the respondents has opposed the submissions made by learned counsel for the petitioner. However, on a specific query raised by this court as to how the orders under challenge were sustainable in the absence of any show-cause notice having been issued and any hearing having been granted and further as to how the petitioner could have been black-listed for an indefinite period i.e. till the conclusion of the cases, keeping in view the



principles of natural justice, the provisions of Clause 2.6.2 of the RFP and the law on the subject, reliance upon which has been placed by learned Senior counsel representing the petitioner, Mr. R.S. Khosla, learned Senior counsel representing the respondents very fairly concedes that both orders under challenge i.e. order dated 11.08.2021 and order dated 06.07.2022 are not defensible. He, therefore, under instructions, submits that the said orders be deemed to have been withdrawn. Learned Senior counsel submits that proceedings shall be initiated afresh in accordance with law and a show-cause notice shall be issued to the petitioner enabling the petitioner to submit response to the same. Thereafter, an opportunity of hearing shall be granted to the petitioner and after the same, a fresh order shall be passed and for the purpose of affording an opportunity of hearing, the petitioner shall be duly intimated and further that the fresh order, after completion of all formalities, shall be passed within a period of six weeks from today.

12. Learned Senior counsel is agreeable to the aforesaid course suggested by learned Senior counsel representing the respondents and submits that the writ petition be disposed of in terms of the said statement.

13. The writ petition is accordingly disposed of in terms of the statements given by learned counsel representing the parties binding them to the same. The Court is sanguine that the authority concerned shall pass a speaking order in accordance with law after affording due opportunity of hearing to all concerned.

Needless to assert that this order shall not constitute an expression of opinion on the merits of the case of either party, for, as indicated above, the authority concerned shall examine the concerns/grievances of the petitioner, strictly in accordance with law.

(ARUN PALLI)
JUDGE

(VIKRAM AGGARWAL)
JUDGE

December 03, 2024
Rekha

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No