



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

% **Judgment reserved on: 14 December 2023**
Judgment pronounced on: 08 January 2024

+ **LPA 128/2019 & CM APPL. 9189/2019 (Stay)**

M/S JAGDAMBA SALES CORPORATION Appellant
Through: **Mr. K.G. Sharma and Mr. R.K. Goel, Advs.**

versus

STATE (GNCT OF DELHI) & ORS. Respondents
Through: **Mr. Rajeev Aggarwal, ASC with Ms. Samridhi Vats, Adv.**

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

RAVINDER DUDEJA, J.

1. The present Letter Patents Appeal is directed against the judgment/order dated 19th December 2018 passed by the learned Single Judge, whereby, the learned Single Judge was pleased to dismiss Writ Petition bearing No. WP (C) No. 13736/2018 preferred by the appellant.

2. The appellant has been blacklisted vide order dated 19th January 2018 on account of failure on its part to comply with its obligation to lift 5000 quintals of mustard de-Oiled cake (Khal) and 15000 numbers of empty gunny bags from Central Jail Factory, Central Jail No. 2, Tihar, New Delhi. Appellant was the highest bidder and was thus awarded the rate contract for lifting the mustard de-Oiled cake (Khal). The agreement dated 11th August 2016 was duly executed between the



parties. The appellant submitted performance security of Rs, 26,31,250/- in the form of bank guarantee dated 10.08.2016. The same was valid till 10th October 2017. As per the auction terms and agreement, appellant was bound to lift the entire quantity of 5000 quintals of mustard de-Oiled cake (Khal) on or before 30th June 2017. During the period between 13th October 2016 till 22nd June 2017, the appellant firm lifted about 1515.30 quintals of mustard de-Oiled cake (Khal). Upon receipt of extension letter from the appellant, it was granted one month's time for lifting work portion of the mustard de-Oiled cake (Khal), but it did not lift any further quantity. Consequently, the respondents passed an order dated 19th January 2018, thereby blacklisting the appellant for an indefinite period. Aggrieved by the same, the appellant filed WP (C) No. 2660/2018, impugning the blacklisting order. The petition was allowed with the blacklisting order being set aside and the matter remanded to the respondents to pass fresh order after considering the submissions of the appellant. Thereafter, respondents passed an order dated 25th September 2018, blacklisting the appellant for a period of five years. The appellant again preferred Writ Petition bearing WP (C) No. 11433/2018. The said petition was disposed on 23th October 2018 with a direction to the respondents to pass a fresh order considering the principles set out by the Hon'ble Supreme Court in **Kulja Industries Ltd. Vs. Chief General Manager, BSNL: AIR 2014 SC 9, (2014) 14 SCC 731**. After fresh consideration of the matter, Superintendent (Prison), PHQ passed a reasoned order dated 04th December 2018 thereby debarring the appellant firm from any business activity for a limited period of three years w.e.f. 27th



December 2017 and forfeited the security deposit amounting to Rs. 26,31,250/-.

3. The learned counsel of the appellant has mainly contended that the business of the firm came to a stand still due to an unprecedented situation created by demonization, due to which, the appellant firm could not lift the entire quantity of mustard de-Oiled cake (Khal) within the stipulated period. The learned counsel has also assailed the impugned order on the ground of disproportionately arguing that besides imposing a heavy penalty and forfeiture of the security deposit, the appellant firm has been blacklisted and therefore the appellant has been made to suffer disproportionately.

4. *Per contra*, the learned counsel for the respondents has argued that the appellant had failed to lift the mustard de-Oiled cake (Khal) even upto 22.06.2017 i.e. several months after the high value currency was demonetized. It is argued that the failure on the part of the appellant to lift the mustard de-Oiled cake (Khal) resulted in a large area of the jail being used as storage for mustard de-Oiled cake (Khal) and the respondent had also lost value on account of loss in weight of the mustard de-Oiled cake (Khal) on account of it getting dried. It is also submitted that the respondents had followed the rules of natural justice, the appellant was duly heard after giving it a Show Cause Notice and before imposition of the penalty of forfeiture and blacklisting.

5. Admittedly, Central Jail, Tihar had conducted an auction of 5000 quintals of mustard de-Oiled cake (Khal) and approximately 15000 number of empty gunny bags. Being a successful bidder, an agreement



was entered between the appellant and the respondents. As per the terms of the auction notice, the highest bidder to whom the contract is awarded was to collect the mustard de-Oiled cake (Khal)/empty gunny bags from the Jail Factory on weekly basis at its own expense. Clause 14 of the auction notice stipulated that the successful bidder shall be bound to complete the lifting of minimum 350 quintals of mustard de-Oiled cake (Khal) and minimum 350 numbers of empty gunny bags per month and if it were to fail to lift the material as per terms and conditions, a penalty @ 2.5% of the value of the item involved in delayed lifting per week subject to a maximum duration of 10 weeks was to be levied for the period till material was lifted by the successful bidder. Clause-11 of the auction notice clearly stipulated that the EMD/Security Deposit shall be forfeited, if the successful bidder becomes a defaulter and fails to comply with any of the terms and conditions forever to participate and do any business activity with the Prisons department in future.

6. The contract between the parties was valid till 30.06.2017 and was extendable by a period of three months but the appellant could only lift approximately 1515 quintals till June 2017. The competent authority has noted in its order that sufficient opportunities were given to the appellant for lifting. The competent authority also took note that Sh. Suresh Goel, Partner of the appellant firm had personally appeared before the Superintendent Jail No. 2, Tihar on 24.05.2017 and submitted an undertaking in writing that it will lift mustard de-Oiled cake (Khal) within three days. Nevertheless, the extended term of three



days also elapsed and it failed to comply with the auction terms and the written undertaking.

7. Several notices were also issued to the appellant from time to time and despite grant of time, the appellant failed to comply with the auction terms. There were repeated defaults on the part of the appellant and that too despite the assurance given by them. The competent authority has also noted in Para-21 of its order that the acts on the part of M/s. Jagdamba Sales Corporation resulted in the Prison department suffering huge loss by approximately 10% of the total quantity of the materials due to the mustard de-Oiled cake (Khal) getting dried, which comes to around 300 quintals. In addition, approximately 10% of the oldest unlifted quantity had become rotten and could not be used even for animal feed, which also comes to around 300 quintals. Thus, the Prison Department suffered a loss of approximately 600 quintals of mustard de-Oiled cake (Khal) because of non-lifting of the tendered quantity till the end of the contract period and also within the extended period of one month. It also noted in the order that the Prison Department faced hardships on account of paucity of space occupied by the huge quantity of unlifted material and losing weight due to dryness by long time storage.

8. It is apparent on a reading of the aforesaid terms and conditions that the respondents were within their rights not only to impose penalty but also to forfeit the EMD/Security Deposit and take necessary action to debar the appellant firm from business activity. Thus, there is no disproportionality of punitive action. Taking note of the aforesaid terms and conditions as also after considering the submissions of the



appellant, the learned Trial Judge dismissed the petition. The relevant paras of the orders are reproduced hereunder”-

“10. It is seen that the concerned authority of the respondent had considered the aforesaid contentions. Insofar as the petitioner’s contention that there was an unprecedented situation created on account of the demonetization of the high value currency, the respondent authority had noted that the petitioner had consistently failed to lift Mustard De-Oiled Cakes upto 22.06.2017, which is several months after the high value currency were demonetized. It is pointed out that even as on 22.06.2017, 3484.70 quintals (out of 5000 that the petitioner had agreed to lift) remained to be lifted. The concerned authority has reasoned that the lifting pattern indicated the conduct of the petitioner was irresponsible apart from being in violation of the terms of the contract. It is also pointed out that the failure on the part of the petitioner to lift Mustard De-Oiled cake has resulted in a significant area of the jail being used as storage for a Mustard De-Oiled cake. Further, the respondents had also lost value on account of loss in weight of the product in question (Mustard De-Oiled cake) on account of dryness.

11. In order to explain its failure, the petitioner also contended that imposition of the GST regime had adversely affected the petitioner. Plainly, such commercial difficulties, if any, do not provide any excuse to the petitioner.

12. The concerned authority has also noted that repeated notices were given to the petitioner to lift the remaining quantity of Mustard De-Oiled cake but despite such opportunities, the petitioner had failed to do so.

13. It is apparent from the plain reading of the impugned Order that the concerned authority has not only acted on the ground that the petitioner has failed to perform the contract but has determined that the such failure was wilful and indicated the sense of irresponsibility.

14. This Court finds no infirmity with the aforesaid order.

15. Mr Sengh, learned senior counsel appearing for the petitioner had contended that the respondent authority has not considered the factors as mentioned in *Kulja Industries Ltd. v. Chief General Manager, BSNL: AIR 2014 SC 9* while determining the quantum of punishment.

16. The said contention is also unpersuasive, as a plain reading of the impugned Order does indicate that the concerned authority has also



taken into account various factors while determining the quantum of blacklisting including the conduct of the petitioner.

17. The scope of judicial review on the present petition is limited and this Court is unable to accept that there are any such grounds for exercise of such jurisdiction. The impugned order has been passed after following the principles of natural justice and due application of mind. The said decision cannot be considered as perverse or unreasonable so as to fail the Wednesbury test. Further, indisputably, the respondents are entitled to pass the impugned decision (See: *Patel Engineering Limited v. Union of India & Another : (2012) 11 SCC 257*).”

9. On a careful perusal of the reasons assigned by the learned Trial Judge and as stated above, it is evident that the learned Single Judge has duly appreciated the contentions of the parties. We find no perversity or illegality in the order passed by the learned Single Judge. There is no merit in the appeal. Appeal is therefore dismissed along with pending application.

RAVINDER DUDEJA, J.

YASHWANT VARMA, J.

JANUARY08, 2024/RM