



2024:DHC:3272



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

Date of decision: 24th APRIL, 2024

IN THE MATTER OF:

+ **W.P.(C) 5295/2023 & CM APPL. 20632/2023, 20635/2023**

GA DIGITAL WEB WORD PVT LTD

..... Petitioner

Through: Dr. Sarvam Ritam Khare, Ms.
Jayasree Narasimhan and Mr. Akash
Shukla, Advs.

versus

**THE GROUP GENERAL MANAGER TELECOMMUNICATIONS
CONSULTANTS INDIA LTD**

..... Respondent

Through: Mr. Vikalp Mudgal and Mr. Arun
Sanwal, Advs.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The Petitioner has approached this Court challenging the communication dated 25.05.2021 banning the Petitioner from doing any business with the Respondent for a period of three years from 25.05.2021, and communication dated 18.10.2022, rejecting the representation dated 10.09.2022 submitted by the Petitioner pursuant to the Order dated 05.09.2022, passed by this Court in W.P. (C) No. 12750/2022, wherein the Petitioner had challenged the communication dated 25.05.2021.
2. Shorn of unnecessary details, the facts, leading to the present Writ Petition are that on 19.10.2020 the Respondent invited bids for empanelment



of agency for outsourcing recruitment of contractual manpower for the Respondent/Company. It is stated that the Petitioner submitted its bid on 10.11.2020. The Petitioner received a communication from the Respondent on 15.12.2020 stating that the Petitioner had not disclosed the details about a ban imposed on the Petitioner by M/s BHEL for a period of three years from 06.05.2020 for filing false a False CA Certificate in a tender floated by BHEL. The communication also mentions that the Petitioner has not adhered to the conditions of the tender insofar as the petitioner has not mentioned the details of the banning order in the No Conviction Certificate which was provided during submission of the tender. The Petitioner gave a reply to the Respondent on 17.12.2020 by stating that the blacklisting Order passed by the BHEL had been challenged before the Hon'ble Chairman, BHEL as the same has been passed without following the principles of natural justice and the matter is under consideration of the appellate authority. A Show Cause Notice dated 20.04.2021 was issued by the Respondent to the Petitioner seeking reply as to why action should not be taken against the Petitioner and penalty should not be imposed on the Petitioner for submitting a false No Conviction Certificate because in spite of being banned for three years by BHEL, the Petitioner gave a self-declaration had he had not been blacklisted by the Central Government or any State Government or any agency of the Central or State Government or any Public Sector Undertakings. Reply to the Show Cause Notice was given by the Petitioner. The reply was considered by the Respondent and the impugned Order dated 25.05.2021 was passed blacklisting the Petitioner for a period of three years from 25.05.2021. The Period of blacklisting is to end on 24.05.2024. The



Petitioner also preferred an appeal before the Chairman of the Respondent and the Independent External Monitor, TCIL pursuant to which an order dated 08.04.2022 was passed confirming the Blacklisting of the Petitioner imposed vide order dated 25.05.2021 . In the interregnum, On 02.11.2021, the Department of Expenditure, Ministry of Finance, has brought out an Office Memorandum No. F.1/20/2018-PPD to bring uniformity in the process of blacklisting a firm in all Government Departments. The said Office Memorandum prescribes a maximum blacklisting of two years in case a bidder is found guilty of breaching code of integrity. The Petitioner challenged the Blacklisting Order dated 06.05.2020 passed by BHEL before the Madras High Court by filing a W.P. (MD) 8910/2021 and the High Court of Madras by its Order dated 07.07.2022 came to a conclusion that the Petitioner has not supplied any false documents to the BHEL and had quashed the Order passed by the BHEL debarring the Petitioner herein from participating in any tenders floated by the BHEL. It is also stated that the Petitioner approached this Court by filing W.P.(C) 12750/2022 seeking quashing of the impugned banning order dated 25.05.2021. It is stated that this Court, after noticing the Order passed by the Madras High Court had directed the Appellate Authority to consider the appeal given by the Petitioner against the banning Order and take further decision in accordance with law. *Vide* Communication dated 18.10.2022, the representation of the Petitioner has been rejected.

3. The Petitioner has approached this Court challenging the banning Order dated 25.05.2021 and the communication dated 18.10.2022 rejecting the representation of the Petitioner.



4. It is stated by the learned Counsel for the Petitioner that the banning order has been passed on the basis of the order passed by the BHEL banning the Petitioner from participating in the tenders issued by the BHEL for a period of three years. He states that since the Order passed by the BHEL has been set aside by the High Court of Madras vide Order dated 07.07.2022 in W.P. (MD) 8910/2021, the very basis of the impugned banning order ceases to exist and, therefore, the Petitioner ought not to have been banned by the Respondent herein. It is further contended by the learned Counsel for the Petitioner that in any event the Respondent, which is a Public Sector Undertaking, is governed by the Office Memorandum dated 02.11.2021 by which the Government has brought uniformity in blacklisting a company by prescribing a maximum banning period of not more than two years. It is stated by the learned Counsel for the Petitioner that the Petitioner has already undergone a banning of a period of two years and, therefore, the banning order must be held to have worked itself out.

5. Per contra, learned Counsel for the Respondents contends that the basis of banning order was that the Petitioner had given false information insofar as a false No Conviction Certificate along with the tender document. He draws the attention of this Court to Clause 11 of Section 1 of the tender document to state that the Petitioner had to give a self declaration that the Petitioner has not been blacklisted by any State Government, Government of India, any agency of the State Government or the Central Government or by any Public Sector Undertakings. He states that the Petitioner has given a false declaration while submitting its tender in November, 2020 that the Petitioner had not been banned by any of the instrumentalities mentioned in



the tender document, which is not correct as the Petitioner had been banned by BHEL on 06.01.2020 and, therefore, the Petitioner has been blacklisted by the impugned Order dated 25.05.2021 and the fact that the Petitioner has been exonerated by the Madras High Court on 07.07.2022 will have no effect on the banning order dated 25.05.2021. He also states that the Office Memorandum dated 02.11.2021 will have no bearing on the banning order dated 25.05.2021 as the same was passed before the said Office Memorandum and the Officer Memorandum is not retrospective in nature to have any effect on the banning orders passed before the issuance of the said Memorandum.

6. Heard the learned counsels for the parties and perused the material on record.

7. The Petitioner participated in a tender floated by the Respondents inviting bids for empanelment of agency for outsourcing recruitment of contractual manpower for the Respondent/Company. As per the tender document, the tenderer had to give a self-declaration that it has not been banned by any of the Government, be it Central Government, State Governments or any PSUs or Autonomous Body or any of its agencies and that the tenderer has to furnish a no conviction certificate along with the bid.

Relevant clause of the tender document reads as under:

“11. The bidder should not have been blacklisted by any Government - Central Govt./ State Govt./ PSU/ Autonomous Govt. Body or Provincial or any of its agencies. "No Conviction Certificate" by the bidder should be submitted.”

8. Admittedly, the Petitioner had been banned by BHEL w.e.f.



06.01.2020. The order of debarment had not been set aside by any of the authorities till November, 2020 and, therefore, on the date when the Petitioner participated in the tender, the Petitioner had submitted a false self-declaration. The fact that an appeal against the banning order was pending before the Appellate Authority of the BHEL does not mean that the banning order had been stayed or had not been given effect to. Material on record also discloses that the Petitioner had filed a Writ Petition before the Madras High Court in 2021 and the Madras High Court set aside the banning order vide Order dated 07.07.2022 which is after the Petitioner had submitted its bid in the tender in question.

9. Clause 15 of Section 1 of the Tender document confers a duty upon the participating entities to submit genuine documents and lays down the consequences for filing false information, Clause 15 reads as under

- a. *“15.The bidder should give an undertaking on the company's letterhead (duly signed and stamped) that all the documents/certificates/information submitted by them against the tender is genuine. In case any of the documents/certificates/information submitted by the bidder is found to be false or forged, action as deemed fit may be initiated by TCIL at its sole discretion.”*

10. Clause 2.29 of Section 2 of the tender document further provides the respondent the power to Debar the petitioner in case of submission of false documents. Clause 2.29 of the tender document reads as under:

*“2.29 SUBMISSION OF FORGED DOCUMENTS
Bidders should note that TCIL may verify authenticity
of all the documents/certificate/information submitted*



by them against the tender. In case at any stage of tendering process or Contract/PO execution etc., if it is established that bidder has submitted forged documents/certificates/information towards fulfillment of any of the tender/contract conditions, TCIL shall immediately reject the bid of such bidder(s) or cancel/terminate the contract and forfeit bid security submitted by the bidder. TCIL reserves the right to debar defaulting bidder from participating in future bids for a minimum period of 12(twelve) months.”

11. A perusal of the abovementioned clauses shows that in case the Respondent found that any bidder has furnished incorrect information then the Respondent had the right either to reject the bid of such bidder(s) or cancel/terminate the contract and forfeit bid security submitted by the bidder or debar the defaulting bidder from participating in future bids for a minimum period of 12 months.

12. In view of the above, this Court cannot find any fault in the communication dated 25.05.2021 by which the Petitioner had been blacklisted by the Respondents. However, this Court cannot lose its sight on the fact that the Madras High Court has virtually exonerated the Petitioner from its blacklisting issued by BHEL inasmuch as it found that the Petitioner had not submitted any forged documents while submitting its tender for BHEL. Relevant portion of the Order passed by the Madras High Court reads as under:

“10. A look at the show cause notice dated 16.08.2019 would show that the petitioner was blamed for having produced the fake certificate because M/s.Shiv and Associates took the stand that they did not issue the said certificate. Since M/s.Shiv and Associates had subsequently clarified in unambiguous terms that they



had very much issued the said certificate and that it was not forged, the very basis on which the impugned action was taken goes. While I could understand why the original order was passed, I would not appreciate the respondent for having passed the order dated 24.02.2021. The respondent ought to have re-visited the issue in the light of the affidavit submitted by none other than M/s.Shiv and Associates.

11. Ban order was passed as early as on 06.01.2020. We are now in July 2022. The respondent contemplated banning the petitioner for a period of three years. A full 2½ years have elapsed. The petitioner has suffered enough. Since I have come to the conclusion that the offending document was a genuine document and not a fake document, the impugned communication is quashed. This writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.”

13. The Petitioner has also challenged the order of blacklisting dated 25.05.2021 by filing a Writ Petition, being W.P.(C) 12750/2022, before this Court and a coordinate Bench of this Court vide Order dated 05.09.2022, after noticing the Order passed by the High Court of Madras, has passed the following order:

“Bearing in mind the narrow contour of the controversy which remains, this Court is of the considered opinion that the ends of justice would warrant the issue of blacklisting of the petitioner in terms of the order of 25 May 2021 being duly reviewed by the competent authority of the respondent.

The petitioner is consequently granted liberty to move a representation that it may choose to make in this regard within a period of one week from today.



The competent authority may duly review that representation bearing in mind the judgment subsequently rendered by the Madras High Court on 07 July 2022 and to take a further decision in accordance with law and preferably within a period of six weeks. All contentions of respective parties on merits are kept open.

The writ petition along with pending application stands disposed of on the above terms.”

14. The representation given by the Petitioner has been rejected vide Order dated 18.10.2022 on the ground that the Petitioner has been banned for giving false information that the Petitioner had not been banned by any public authority on the date when the Petitioner filed its bid in the tender in question. The said reasoning does not require any interference. However, considering the fact that the Madras High Court has exonerated the Petitioner of its blacklisting by BHEL, the fact that the banning period in the present case would come to an end in May, 2024 and in light of the Office Memorandum dated 02.11.2021 which prescribes banning of any firm by Government agencies for a maximum of two years, this Court is inclined to dispose of the present Writ Petition by reducing the banning period of three years to the period already undergone.

15. Resultantly, the present writ petition is disposed of, along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

APRIL 24, 2024

Rahul