



2024:DHC:1277



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

Date of decision: 16th FEBRUARY, 2024

IN THE MATTER OF:

+ **W.P.(C) 9235/2022 & CM APPL. 58240/2023**

E5 INFRASTRUCTURE PVT LTD

..... Petitioner

Through: Mr. Gopal Jain, Sr. Advocate with
Mr. Rohit Tiwari, Ms. Tanya, Mr.
Saurabh D. Karan Singh, Mr.
Shaantnu Devansh, Mr. Shobhit
Tiwari and Ms. Shivani, Advocates.

versus

NATIONAL HIGHWAYS AUTHORITY OF INDIA Respondent

Through: Mr. Santosh Kumar, Standing
Counsel with Mr. Daksh Arora,
Advocates.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The Petitioner has approached this Court challenging the Show Cause Notice dated 29.09.2021 and the subsequent Debarment Order dated 02.11.2021 passed by the Respondent/NHAI debaring the Petitioner from participating in any ongoing and future bids of Respondent/NHAI for a period of 5 years from the date of issue of the notice.
2. During the pendency of the writ petition, an application being CM APPL. 35854/2023 was filed by the Petitioner for preponing the date of hearing of the writ petition on the ground that almost two years have passed after the Impugned Debarment Order dated 02.11.2021 was issued by the



2024:DHC:1277



Respondent/NHAI and the writ petition has not been heard. The matter was heard by this Court on 21.11.2023. Two years had lapsed and it was the principal contention of the Petitioner that since two years have lapsed and the Financial Rules prescribes maximum period of debarment for two years, the Impugned Order debaring the Petitioner for a period of five years must be set aside.

3. The facts of the case, in brief, are that a Notice Inviting Bids was issued by the Respondent/NHAI on 19.12.2019 for construction of Foot Over Bridges in Gurgaon-Kotputli-Jaipur section of NH-8 from Km 42.700 to Km 273.000 (approximately 125.600 km) in the State of Haryana and Rajasthan through Engineering, Procurement and Construction mode (*hereinafter referred to as "Project"*). The Petitioner participated in the bid and was declared as the successful bidder and the project was allotted to the Petitioner on 25.06.2020. A contract was entered into between the Petitioner and the Respondent/NHAI for the said Project on 07.08.2020 and the work commenced from 23.08.2020. Unfortunately, during the execution of the project, one Mr. R. K. Chawla, who was the employee of URS Scott Wilson India Private Limited, consulting contractor of the Respondent/NHAI, was killed outside the office premises of the Respondent/NHAI at Jaipur on 26.08.2021. On 27.08.2021, an FIR was registered at P.S. Vaishali Nagar for the offences under Sections 302 and 34 IPC against one Karandeep Sheoran, Director and other employees of the Petitioner. Resultantly, URS Scott Wilson India Private Limited exited from the contract invoking force majeure i.e., due to the death of their employee R. K. Chawla and for safety and security of its personnel.



2024:DHC:1277



4. The Respondent/NHAI, thereafter, received a letter dated 13.09.2021 from the Commissioner of Police stating that an FIR has been registered against Karandeep Sheoran, Director and other employees of the Petitioner for their alleged involvement in the murder of R. K. Chawla. The Respondent/NHAI, thereafter, on 29.09.2021 issued a Show Cause Notice to the Petitioner to show cause as to why the Petitioner should not be debarred from participating in any ongoing projects and future bids of NHAI. The said Show Cause Notice was issued on basis of the incident i.e., murder of R. K. Chawla. Pursuant to the issuance of the Show Cause Notice, the Impugned Debarment Order dated 02.11.2021 was issued by the Respondent/NHAI debarring the Petitioner from participating in any ongoing and future bids of NHAI for a period of 5 years from the date of issuance of the notice.

5. It is stated in the writ petition that the Petitioner has not been given a meaningful opportunity of being heard. It is stated that the Show Cause Notice which relied upon the letter dated 13.09.2021 sent by the Commissioner of Police to the Respondent/NHAI has not been supplied by the Respondent/NHAI to the Petitioner. It is further stated that Clause 27.8 of the contract only states that the Petitioner could have only been debarred for a period of two years in case of fraud and corrupt practices. It is stated that no justification has been given by the Respondent/NHAI in debarring the Petitioner for a period of 5 years. It is stated that there are about 1500 families who would be rendered jobless if the debarment of the Petitioner would continue for 5 years. It is also stated that the General Financial Rules, 2017 (GFR 2017) provides the framework for the debarment from bidding.



2024:DHC:1277



It is stated that Rule 151 of the GFR 2017 specifically provides that a bidder can be debarred for a maximum of three years if found convicted for any offence under the Indian Penal Code (IPC) or any other law in force in India for causing loss of life/property. Rule 151 of the GFR 2017 further provides a debarment for a period of two years if the bidder breaches the code of integrity. It is further stated that the Code of Integrity has been laid down in Rule 175 of the GFR, 2017 which states that the Code of Integrity will be considered as breached by any entity if there is any coercion or any threat to impair or harm, directly or indirectly, any party or its property to influence the procurement process. It is, therefore, stated that since two years have passed after the Impugned Debarment Order dated 02.11.2021 was issued by the Respondent/NHAI, the Order of Debarment should automatically be revoked as the debarment for a period of 5 years is contrary to the terms of the Contract and the General Financial Rules, 2017.

6. Counter affidavit has been filed by the Respondent/NHAI in the writ petition.

7. Learned Senior Counsel appearing for the Petitioner primarily relied upon the aforesaid submissions made in the writ petition. He further contends that the debarment cannot exceed more than two years as laid down in GFR 2017.

8. Learned Senior Counsel for the Petitioner places reliance upon a Judgment passed by the Apex Court in Swaran Singh Chand vs. Punjab State Electricity Board and Others, (2009) 13 SCC 758 to contend that when the State lays down the rules for taking any action against an employee which would cause civil or evil consequence, it is imperative on its part to



2024:DHC:1277



scrupulously follow the same. He also places reliance upon a Judgment passed by the Apex Court in State of Andhra Pradesh vs. Viswanadula Chetti Babu, (2010) 15 SCC 103 to contend for the proposition that when a statutory authority is required to do a particular thing in a particular manner, the same must be done in that manner alone.

9. Reliance has also been placed by the Petitioner on a Judgment passed by a Division Bench of this Court in Montecarlo Limited & Anr. vs. National High Speed Rail Corporation Limited in **W.P.(C) 5127/2021** to establish that an authority issuing a tender is bound to adhere to essential terms, norms, standards and the procedures laid down by it and cannot deviate from them arbitrarily.

10. *Per contra*, learned Counsel for the Respondent contends that the Debarment Order has not been passed in accordance with debarment guidelines of the GFR 2017. He states that GFR 2017 does not apply to the facts of this case for the reason that guidelines on Debarment of firms from bidding was notified on the very same date when the Impugned Debarment Order was passed i.e., on 02.11.2021. It is also contended that there is an inherent right vested with the authority to debar and the authority is empowered *dehors* the GFR, 2017. He contends that since the chargesheet has been filed against the Director and other employees of the Petitioner regarding their alleged involvement in the murder of Mr. R. K. Chawla, the Respondent need not wait till the conviction takes place. He contends that if the Petitioner had not been debarred, it would have sent a very bad message in the society regarding projects of the NHAI, and that other independent agencies would also be reluctant to associate with the Respondent/NHAI.



2024:DHC:1277



He states that not only would it have external ramifications, but it would also bring down the morale of the Officers as they would be afraid to take any action against the Petitioner-company for any future breaches.

11. Heard learned Counsel appearing for the Parties and perused the material on record.

12. The facts are not disputed. Chargesheet has been filed against the Director and other employees of the Petitioner-company, even though they are no longer in the services of the Petitioner, for the murder of Mr. R. K. Chawla who was the employee of URS Scott Wilson India Private Limited, consulting contractor of the Respondent/NHAI. The prime contention of the Petitioner is that the debarment could not have been for a period exceeding 2 years in terms of GFR 2017. For the said purpose reliance has been made by the Petitioner upon GFR 2017. Rules 151 and 175 which lay down the structure of debarment from bidding and also define the Code of Integrity read as under:

“Rule 151 Debarment from bidding.

(i) A bidder shall be debarred if he has been convicted of an offence—

*(a) under the Prevention of Corruption Act, 1988;
or*

(b) the Indian Penal Code or any other law for the time being in force, for causing any loss of life or property or causing a threat to public health as part of execution of a public procurement contract.

(ii) A bidder debarred under sub-section (i) or any



successor of the bidder shall not be eligible to participate in a procurement process of any procuring entity for a period not exceeding three years commencing from the date of debarment. Department of Commerce (DGS&D) will maintain such list which will also be displayed on the website of DGS&D as well as Central Public Procurement Portal.

(iii) A procuring entity may debar a bidder or any of its successors, from participating in any procurement process undertaken by it, for a period not exceeding two years, if it determines that the bidder has breached the code of integrity. The Ministry/Department will maintain such list which will also be displayed on their website.

(iv) The bidder shall not be debarred unless such bidder has been given a reasonable opportunity to represent against such debarment.

Rule 175 (1) Code of Integrity

No official of a procuring entity or a bidder shall act in contravention of the codes which includes

(i) prohibition of

(a) making offer, solicitation or acceptance of bribe, reward or gift or any material benefit, either directly or indirectly, in exchange for an unfair advantage in the procurement process or to otherwise influence the procurement process.

(b) any omission, or misrepresentation that may mislead or attempt to mislead so that financial or other benefit may be obtained or an obligation avoided.



(c) any collusion, bid rigging or anticompetitive behavior that may impair the transparency, fairness and the progress of the procurement process.

(d) improper use of information provided by the procuring entity to the bidder with an intent to gain unfair advantage in the procurement process or for personal gain.

(e) any financial or business transactions between the bidder and any official of the procuring entity related to tender or execution process of contract; which can affect the decision of the procuring entity directly or indirectly.

(f) any coercion or any threat to impair or harm, directly or indirectly, any party or its property to influence the procurement process.

(g) obstruction of any investigation or auditing of a procurement process.

(h) making false declaration or providing false information for participation in a tender process or to secure a contract;

(ii) disclosure of conflict of interest.

(iii) Disclosure by the bidder of any previous transgressions made in respect of the provisions of sub-clause (i) with any entity in any country during the last three years or of being debarred by any other procuring entity.

(2) The procuring entity, after giving a reasonable opportunity of being heard, comes to the conclusion that a bidder or prospective bidder, as the case may



2024 : DHC : 1277



be, has contravened the code of integrity, may take appropriate measures.”

13. A reading of the aforesaid Rules shows that a bidder can be debarred for a maximum of 3 years if he has been convicted of an offence under the Prevention of Corruption Act, 1988 or under the Indian Penal Code, or under any other law for the time being in force, for causing any loss of life or property or causing a threat to public health as part of execution of a public procurement contract. Similarly, it also states that if any bidder breaches the Code of Integrity which includes in its ambit any coercion or any threat to impair or harm, directly or indirectly, any party or its property to influence the procurement process, the bidder can be debarred for a period of two years. The aforesaid Rules do not deal with heinous offences like murder. Undoubtedly, if a contractor indulges in an act of murder which will have the effect of demoralising the officers of the Respondent/NHAI or any consulting contractor or employees of the consulting contractor, it cannot be said that the time for debarment should be restricted to the General Financial Rules. General Financial Rules, 2017 cannot be said to be applicable to heinous crimes like murder, kidnapping for ransom or assaulting Officers etc., or using of any force which will have the effect of demoralising the morale of employees of any organisation.

14. This Court is of the opinion that the contention of the petitioner that the debarment could only be issued for a period of 2 years under Rule 151(iii) r/w Rule 175(i)(f) of the GFR, 2017 and that the order of debarment dated 02.11.2021 should automatically be revoked after a period of 2 years has elapsed and that the debarment for a period of 5 years is contrary to the



2024:DHC:1277



terms of the Contract and the General Financial Rules cannot be accepted.

15. The argument of the Petitioner contending that the debarment could have only been imposed for a duration of 2 years in accordance with Rule 151(iii) read with Rule 175(i)(f) of the General Financial Rules (GFR), 2017, and further contending that the debarment order issued on 02.11.2021 should be automatically rescinded upon the expiration of the said 2-years period, is untenable. The contention that the imposition of a 5-year debarment is inconsistent with the provisions of the Contract and the General Financial Rules also has to be rejected.

16. The Apex Court in State of Odisha v. Panda Infraproject Ltd., (2022) 4 SCC 393 has held as under:

“28. Duration of blacklisting cannot be solely per offence. Seriousness of the lapse and the incident and/or gravity of commission and omission on the part of the contractor which led to the incident should be the relevant considerations. In a given case, it may happen that the commission and omission is very grave and because of the serious lapse and/or negligence, a major incident would have taken place. In such a case, it may be the contractor's first offence, in such a case, the period/duration of the blacklisting/banning can be more than three years. However, as the said guidelines are not under challenge, we rest the matter there and leave it to the State Government to suitably amend and/or modify the said office memorandum. However, what we have observed above can be a guide while determining the period of debarment/blacklisting.”

(emphasis supplied)

17. The Apex Court in State of Kulja Industries Ltd. v. Western Telecom Project BSNL, (2014) 14 SCC 731 has held as under:



“16. A literal construction of the provisions of Paras 31 and 32 extracted above would mean that the power to disqualify or blacklist a supplier is available to the purchaser only in the three situations enumerated in Paras 31 and 32 and no other. Any such interpretation would, however, give rise to anomalous results. We say so because in cases where a supplier is found guilty of much graver offences, failures or violations, resulting in much heavier losses and greater detriment to the purchasers in terms of money, reputation or prejudice to public interest may go unpunished simply because all such acts of fraud, misrepresentation or the like have not been specifically enumerated as grounds for blacklisting of the supplier in Paras 31 and 32 of the tender document. That could in our opinion never be the true intention of the purchaser when it stipulated Paras 31 and 32 as conditions of the tender document by which the purchaser has reserved to itself the right to disqualify or blacklist bidders for breach or violation committed by them. If the bidders who commit a breach of a lesser degree could be punished by an order of blacklisting there is no reason why a breach of a more serious nature should go unpunished, be ignored or rendered inconsequential by reason only of an omission of such breach or violation in the text of Paras 31 and 32 of the tender document. Paras 31 and 32 cannot, in that view, be said to be exhaustive; nor is the power to blacklist limited to situations mentioned therein.”

(emphasis supplied)

18. A perusal of the abovementioned paragraphs show that a breach of a serious nature cannot go unpunished, ignored or rendered inconsequential and that the gravity of commission and omission on the part of the contractor which has led to the incident is of a relevant consideration while computing the period of debarment.



2024:DHC:1277



19. A Coordinate Bench of this Court in Shoghi Communications Ltd vs. Union of India & Anr, **2011 SCC OnLine Del 329** has observed as under:

“10. Unlike the facts in Mekaster Trading Corporation v. Union of India and Indian Oil Corporation Ltd. v. SPS Engineering Ltd., it cannot be said that no reasons have been given in the instant case for blacklisting the Petitioner. The charge that forgery was committed of the End User Certificate, purportedly issued by the NSG, is a serious matter and could not have been overlooked in the interests of national security. Also, unlike the facts in R.K. Machine Tools and TSL Defence Technology, the FIR registered in the instant case has progressed to a criminal trial which is at the stage of prosecution evidence. Consequently, the reason cited for the MOD for deciding to stop dealing with SCL cannot be said to be unjustified or arbitrary in the facts and circumstances of the case.”

(emphasis supplied)

20. In the aforesaid case also there was a charge of forgery on the part of the contractor and the chargesheet had been filed and recording of evidence had commenced and in those facts, the debarment was not said to be unjustified.

21. Another Co-ordinate Bench of this Court in M/s Sabharwal Medicos Pvt. Ltd. vs. Union of India and Ors., **2013 SCC OnLine Del 3839** has held that it is for the competent authority which is issuing an order of blacklisting/debarring to decide, whether the facts and circumstances of the case justify blacklisting/debarring or not and the Court should not substitute its own views to the views taken by the competent authority, unless it is shown that the decision taken was not taken by a competent authority or is otherwise wholly arbitrary or perverse in nature. Paragraph No.12 of the



said Judgment reads as under:

“12. Primarily it is for the authority competent to order blacklisting/debarring to decide, whether the facts & circumstances of the case justify blacklisting/debarring or not. The Court cannot substitute its own views for the view of the competent authority in this regard and cannot interfere with the decision taken by it, unless it is shown that the decision is taken by an authority which was not competent in this regard was taken without following the principles of natural justice or is otherwise wholly arbitrary or perverse in nature. Even otherwise, it would be difficult to dispute that the forged bids could be submitted only by in conspiracy with the person, who ultimately got the order, in connection to which the said forged bids were submitted. A perusal of the charge-sheet would show that it is the petitioners before this Court who got the orders in question. The State, in my view, is entitled to take decision, not to enter into any contract with a person, who resorts to forgeries for the purpose of securing orders from it, thereby polluting the tendering process itself. Once the investigation by a State Agency is carried out and it culminates in filing of a charge-sheet, the State cannot be expected to wait for the outcome of the prosecution and in the meanwhile, continue to deal with persons whose conduct has come under a serious cloud. To take a different view will place unreasonable fetters on the right of the State not to enter into contracts with persons, whom it finds to be undesirable.”

22. In the facts of the present case, this Court is of the view that since the erstwhile Director and other employees of the Petitioner-company are allegedly involved in the murder of an employee of the independent contractor of the Respondent/NHAI, the debarment for a period of 5 years



2024:DHC:1277



cannot be said to be disproportionate or arbitrary. The Show Cause Notice was only based on the unfortunate incident which occurred on 26.08.2021. The FIR had been lodged against the Director and the other employees of the Petitioner-company and a chargesheet has also been filed implicating the Director and the other employees of the Petitioner-company. There is merit in the contention of the learned Counsel for the Respondent/NHAI that this will demoralise the officers of the Respondent/NHAI. The debarment of Petitioner for a period of 5 years is, therefore, cannot be said to be unjustified. Taking into account the facts and circumstances of this case, this Court is of the opinion that the period of debarment for 5 years is not excessive.

23. In view of the above, this Court is not inclined to interfere with the Order of Debarment dated 02.11.2021 debarring the Petitioner for a period of 5 years, and the fact that two years have already elapsed after the Impugned Debarment Order dated 02.11.2021 has been passed by the Respondent/NHAI is of no consequence in the facts and circumstances of this case.

24. Resultantly, the writ petition is dismissed, along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

FEBRUARY 16, 2024

S. Zakir