



\$~80, 81

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

+ W.P.(C) 11972/2022, CM APPL. 35761/2022. CM APPL. 1439/2023,
CM APPL. 14073/2023, CM APPL. 53136/2023

NIPPON DATA SYSTEMS LIMITED

.....Petitioner

Through: Mr. Tanmaya Mehta, Mr. Vikram
Singh Dalal, Mr. Kartik Sharma and
Mr. Yashpriya Sahran, Advocates.

versus

UNION OF INDIA AND ANR.

.....Respondent

Through: Mr. Arun Sanwal, Advocate.

+ W.P.(C) 11990/2022, CM APPL. 35783/2022, CM APPL.
53137/2023

NIPPON DATA SYSTEMS LIMITED

.....Petitioner

Through: Mr. Tanmaya Mehta, Mr. Vikram
Singh Dalal, Mr. Kartik Sharma and
Mr. Yashpriya Sahran, Advocates.

versus

UNION OF INDIA & ANR.

.....Respondents

Through: Mr. Arun Sanwal, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

30.09.2024

%

1. The Petitioner's grievance arises from blacklisting order dated 16th
August, 2022,¹ whereby Respondent No. 2/ Telecommunications

¹ "the impugned order"



Consultants India Limited² has banned the Petitioner from engaging in any business across TCIL for all items/ goods/ work/ services, for a period of two and a half years commencing from the date of the said order.

2. Prior to the instant proceedings, Petitioner filed a writ petition [W.P.(C) 10157/2022] challenging the blacklisting order dated 07th February, 2022. In the said proceedings, on 3rd August, 2022, the Court recorded Respondent No. 2's decision to withdraw the backlisting order, granting them liberty to initiate fresh proceedings. In compliance with the said order, Respondent No. 2 issued a show cause notice dated 05th August, 2022 which culminated in the present impugned order. Consequently, W.P.(C) 11990/2022 was filed in response to the issuance of the show cause notice, while W.P.(C) 11972/2022 now challenges the resultant blacklisting order.

3. Mr. Tanmaya Mehta, counsel for the Petitioner, highlights that a considerable amount of time has elapsed since the passing of the impugned order. In the absence of any interim relief in the Petitioner's favour, the blacklisting period stipulated in the order is now virtually at its end. He states that the Petitioner's limited concern is to ensure that they may not be prevented from participating in future tenders issued by TCIL or any other government entities. Mr. Mehta further submits that this order of blacklisting, ought not be perceived as a perpetual ban. To that effect, he has drawn the attention of this Court to clause of the tender notice issued on 2nd November, 2021, which has a note to the following effect:

"1.15. NOTE:

To be noted and complied by the bidder.

² "TCIL"



Note 1:

- a) Any efforts on the part of the applicant or its agent to exercise influence or to pressurize the employer/purchaser would result in rejection of his application. Canvassing of any kind is prohibited.
- b) Even though a bidder may satisfy the eligibility criteria, he would be liable to be disqualified if it is discovered that bidder has made misleading or false representation or deliberately suppressed the information in the forms, statements and enclosures required in the submitted documents.
- c) The works awarded to contractor shall be cancelled by TCIL in case of their poor performance, abandoning of the allotted work and abnormal delay in completion of work, bankruptcy and for activities detrimental to the interest of TCIL. The decision of TCIL in this regard shall be final and binding on the contractor. The work shall then be executed by TCIL or through other agency at the risk and cost of the contractor.”

4. Relying on this clause, Mr. Mehta argues that while the Petitioner will ensure full transparency in future tenders, nonetheless, a past blacklisting, which has now run its course, has the potential of being a perpetual disqualification. His concern is that the concluded blacklisting order might continue to overshadow the Petitioner’s eligibility, thereby unjustly barring them from participating in future tenders.

5. On the other hand, Mr. Arun Sanwal, counsel for the Respondent, refers to another clause to the same tender notice which stipulates as under:

“1.4. ELIGIBILITY CRITERIA

XX ... XX ... XX

- j) The Bidder should not be blacklisted/debarred/banned/restricted by any Union Govt./State Govt. /PSU as on date of submission of the Bid. “No-Conviction Certificate” duly signed by authorized signatory signing the bid, should be submitted in the prescribed format.”

6. Relying on this clause, Mr. Sanwal states that he has instructions to clarify that, once the blacklisting period expires, the Petitioner will be eligible to participate in future TCIL tenders. He further submits that the clause only disqualifies bidders who are blacklisted, debarred, banned, or restricted as of the date of submission of the bid, thereby implying that past



blacklisting, once concluded, does not automatically render a bidder permanently ineligible.

7. Having considered the facts and contentions advanced by the parties, the present petitions are disposed of with the following directions:

a. The Petitioner shall be free to participate in all future bids of TCIL and other Union Government/ State Government/ Public Sector Undertaking immediately on the expiry of the period of blacklisting specified in the impugned order effective from 16th January, 2025.

b. Should any tender conditions require disclosure, the Petitioner shall truthfully disclose all previous blacklisting or debarment orders. However, the impugned blacklisting order shall not be deemed to constitute a bar on participation in future bids. The evaluation of such bids shall be conducted by the relevant tendering authority based on the merits of each case, in accordance with the law.

8. With the above directions, the present petitions, along with pending application(s), if any, are disposed of.

SANJEEV NARULA, J

SEPTEMBER 30, 2024

nk