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

+ **W.P.(C) 11270/2024 & CM APPL. 46674/2024**

M/S CONARCH ASSOCIATES

.....Petitioner

Through: Mr. Ashutosh Kumar Jha, Ms. Priyanka Jain and Mr. Ishwar Chandra, Adv.

versus

UNION OF INDIA AND ORS.

.....Respondents

Through: Mr. Apoorv Kurup, CGSC with Mr. Arnav Mittal, G.P. and Ms. Aanchal, Adv. for R-1, 4 & 5.
Mr. Lakshay Chaudhary, Adv. for R-2.
Mr. Suman K Doval, Adv. for R-2.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

ORDER

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02.09.2024

1. In the order dated 28.08.2024, the appearance of Mr. Suman K. Doval was inadvertently recorded as Ms. Suman K., Advocate for respondent No.
2. Learned counsel submits that he actually did not appear on that date. Consequently, the appearance of Ms. Suman K., Advocate for Respondent No. 2, is hereby deleted from the order dated 28.08.2024.



2. Learned counsel appearing for respondent No. 2 submits that he has filed the counter affidavit; however, the same is currently not on record. He is directed to place the counter affidavit on the digital record of the Court.
3. He also submits a hard copy of the said counter affidavit, which has been duly perused by the Court.
4. The primary issue in the present writ petition pertains to the ban imposed upon the petitioner regarding business dealings *vide* impugned letter dated 03.07.2024.
5. The respondent no.2 has thereby informed the petitioner that all the business dealings with the petitioner, including its allied/sister concerns, proprietorships, and partner entities, are banned for a period of two years in respondent No. 2 as well as its subsidiaries and joint venture companies, effective from the date of issuance of the impugned letter i.e., 03.07.2024.
6. While entertaining this writ petition, the Court, on 14.08.2024, had *prima facie* observed that the impugned letter appears to be unsustainable on account of absence of reasons in arriving at the conclusion so recorded.
7. Accordingly, respondent no.2 was directed to file its counter affidavits.
8. On 28.08.2024, in light of an application being CM APPL. 49270/2024 filed by the petitioner, an interim order was passed, staying the operation of the impugned order until the following date of hearing i.e., today.
9. Learned counsel for respondent no.2, while addressing the Court regarding the impugned letter and the counter affidavit, submits that respondent no.2 had thoroughly examined the facts and circumstances and



duly considered the reply filed by the petitioner before issuing the impugned letter.

10. Learned counsel asserts that the position of respondent no. 2 is unequivocal; rather, the petitioner has engaged in *malafide*, unlawful and improper conduct with respect to the dealings with respondent no.2.

11. Learned counsel for the petitioner vehemently opposes the aforesaid submissions and argues that the impugned letter lacks any cogent justification for the action taken. He asserts that the impugned letter has been issued without giving any consideration to the reply filed by the petitioner and in the absence of any reasons provided in the impugned letter, the same deserves to be set aside.

12. I have considered the submissions made by the parties and perused the record.

13. The relevant extract of the impugned letter dated 03.07.2024 reads as under:-

“Ref:

- i. LOA No: IRCON/9043/BD.KHU-MON/Ballast Tender/2019- 20/1/3 Dated: 23/09/2019
- ii. Suspension letter no. IRCON/9043/BD.KHU-MON/EDW/CO/21/2024/7590 dated 04.04.2024
- iii. Show Cause Notice vide letter no. IRCON/EDW/CO/KMPRU21/2024 dated 18.05.2024
- iv. Your reply to Show cause notice dated 27.05.2024

The subject work was awarded by IRCON to you vide LOA No. IRCON/9043/BD.KHU-MON/Ballast Tender/201 9- 20/1/3 dated 23.09.2019. Later the parties executed a Contract Agreement dated 2nd December, 2019.

In reference to the Show cause notice issued to you vide letter under ref. at (iii) above, your reply vide your letter no. NIL dated 27.05.2024 under ref. (iv) above has been considered, it is noted that you have resorted to malafide, unlawful and Improper Conduct on your part in matter relating to IRCON.



Therefore, as per decision of the competent authority it is hereby informed that business dealing with M/s Conarch Associates and their Allied/Sister concerns/Proprietor/Partner are banned for a period of two years in Ircon International Limited, its subsidiaries and joint venture companies from the date of issue of this letter.

This letter issues with the approval of the Competent Authority.”

14. A perusal of the aforesaid letter would indicate that the same refers to the issuance of a show cause notice and a reply thereto. However, it does not specify as to how and in what manner the reply to the show cause notice was considered or why the same was deemed unsatisfactory. It is apparent that respondent no.2 has directly reached the conclusion without adequately considering the petitioner’s response, thus, rendering the action taken by respondent no.2 unsustainable in the eyes of the law. The impugned order does not record any reason, much less a cogent reason.

15. Moreover, it is well settled that once an order is passed by an authority which mentions certain reasons for passing the same, the said reasons cannot be supplemented by way of an affidavit or otherwise. On this aspect, it is pertinent to refer to the law laid down by the Supreme Court in the case of *Mohinder Singh Gill v. Chief Election Commr.*¹, wherein, it has been held as under:-

“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in Gordhandas Bhanji [Commr. of Police, Bombay v. Gordhandas Bhanji, 1951 SCC 1088 : AIR 1952 SC 16] :

¹ (1978) 1 SCC 405



“Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.”

Orders are not like old wine becoming better as they grow older.

16. Considering the foregoing, in the absence of there being any reason assigned in the impugned letter which may allude to the appropriate consideration of the reply furnished by the petitioner, the Court finds that the same is unsustainable and is accordingly, set aside.

17. However, respondent no.2 shall be at liberty to pass a fresh reasoned order. All the rights and contentions are left open.

18. Needless to state, if an adverse order is passed, the petitioner shall be at liberty to pursue all appropriate legal recourse.

PURUSHAINDR KUMAR KAURAV, J

SEPTEMBER 2, 2024/N