



2024:DHC:8735



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Decided on: 08.11.2024

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W.P.(C) 16377/2023 & CM APPL. 65939/2023

M/S MAAN BUILDERS PVT. LTD.

.....Petitioner

Through: Mr. Vishal Gupta, Advocate.

versus

UNION OF INDIA AND ORS

.....Respondents

Through: Mr. Farman Ali, SPC with Ms. Usha Jamnal, Advocate along with Mr. Manoj Kumar Yadav, ASO/CE-I, RB, Mr. Siri Krishnan, CLA/C, Kashmere Gate, Delhi and Mr. Tarun Kumar, Office Superintendent, CA O/C office, Kashmere Gate, Northern Railways.

CORAM:**HON'BLE MR. JUSTICE PRATEEK JALAN****PRATEEK JALAN, J. (ORAL)**

1. The petitioner has filed this petition, under Article 226 of the Constitution, against the order dated 17.02.2023, by which the petitioner and its allied/sister firms were debarred for a period of two years from dealing with the Indian Railways and its production units. The principal ground of challenge is that the impugned order does not disclose any reasons.

2. The impugned order reads as follows:

“No.2022/CE-I/CBL/I/Maan Builders (3409117) New Delhi, Dated

Signature Not Verified

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Signing Date: 12.11.2024
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:17.02.2023

As per list attached.

Sub: Banning of business dealings with M/s Mann Builders , SCO-44, 2nd floor, Sector-12, Panchkula, Haryana-134112 and its allied/sister concerns.

M/s Maan Builders was served with a Memorandum and Statement of charges/Misconduct for banning of business dealings with them for concealing of information/submitting incorrect information by deviating from the contractual agreement with malafide intention,

2. Reply to the Memorandum submitted by M/s Maan Builders through Northern Railway has been considered in detail by the Competent Authority, who has concluded that M/s Maan Builders has concealed information/submitting incorrect information with malafide intention violating general conditions of contract.

3. It has therefore, been decided by Ministry of Railways (Railway Board) to ban business dealing with M/s Maan Builders, SCO-44, 2nd floor, Sector-12, Panchkula, Haryana-134112 and also with their allied/sister concerns/and partners for a period of 02 (two) years commencing with immediate effect on Indian Railways and Production Units etc. Zonal Railways/Production Units shall ensure to deactivate the login ID of M/s Maan Builders, SCO-44, 2nd floor, Sector-12, Panchkula, Haryana-134112 and its allied/sister firms for above-mentioned period.

4. Receipt of this letter may please be acknowledged.”¹

3. Mr. Vishal Gupta, learned counsel for the petitioner, submits that the impugned order does not contain any reasons whatsoever, for imposition of a harsh penalty of debarment/backlisting upon the petitioner. Mr. Farman Ali, learned counsel for the respondents, on the other hand, has produced the record in support of the contention that the petitioner's representation was duly considered and the petitioner was also granted a personal hearing.

4. As far as a decision to debar businesses from contracts with government or public sector undertakings is concerned, the courts have emphasized adherence to the requirement of natural justice. The recent

¹ Emphasis supplied.



judgment of a Coordinate Bench in *Oasis Projects Ltd. vs. National Highway and Infrastructure Development*² considers the decisions of the Supreme Court *inter alia* in *Kulja Industries Ltd. v. Western Telecom Project BSNL*³, *UMC Technologies (P) Ltd. v. Food Corp. of India*⁴, and of this Court in *Diwan Chand Goyal v. National Capital Region Transport Corporation*⁵, and summarises the law thus:

“29. The law on blacklisting or banning or debarring is very clear and has been fully settled by Supreme Court almost a decade ago in *Kulja Industries Ltd. v. Western Telecom Project BSNL*, (2014) 14 SCC 731 that blacklisting, debarring, suspension are all similar terminologies. **There could be various grounds for debarment or blacklisting, in such cases the compliance of principles of natural justice is of utmost importance**.....

30. Similarly, in *Diwan Chand Goyal v. National Capital Region Transport Corporation*, 2020 : DHC : 2685, the Court summarized all the general principles with respect to blacklisting, in the following terms:

45. Upon a reading of the aforesaid judgments cited on behalf of both the parties, the general principles, which emerge, with respect to blacklisting are;

(a) Principles of natural justice have to be complied with before the order of blacklisting is passed;

(b) Natural justice or audi alteram partem does not always require a hearing to be granted. Serving of show cause notice and affording an opportunity to reply to the same, is considered as being adequate opportunity and is sufficient adherence to the principles of natural justice;

(c) **Blacklisting constitutes civil death and has extremely grave consequences**. Thus, the same is amenable the judicial review if the same is by

² (2024) SCC OnLine Del 2549

³ (2014) 14 SCC 731

⁴ (2021) 2 SCC 551

⁵ W.P.(C) 3301/2020 decided on 02.09.2020



governmental authorities;

(d) Any order of blacklisting ought to contain proper reasons. The reasons need not be detailed or elaborate. It is sufficient to be brief, pithy and concise;

(e) Reasons should be supplied to the affected party;

(f) Decision taken ought not to be arbitrary or discriminatory.

(g) Blacklisting orders being amenable to judicial review can be judged on the standard of proportionality. Thus, the period of blacklisting as also terms and conditions thereof have to be proportionate to the irregularities or conduct of the bidder.”⁶

5. The drastic repercussion of an order of blacklisting on the business of a contracting party has been characterised as a “civil death”⁷. The adequacy of the reasons contained in the impugned order must be determined, keeping in mind the effect of the order.

6. It is clear from the impugned order that, while the respondents have referred to the show cause notice issued to the petitioner and the reply received, no reasons have been stated for rejecting the representation of the petitioner. The recitation of the conclusion cannot be a substitute for providing reasons. Looked at from any angle, the impugned order is inadequate to inform the petitioner of the reasons which weighed with the respondents.

7. The order dated 17.02.2023 is therefore set aside.

8. While issuing notice in this petition on 19.12.2023, interim orders were not pressed, in view of the lapse of time since the impugned order

⁶ Emphasis supplied.

⁷ Gorkha Security Services v. Govt. (NCT of Delhi) [(2014) 9 SCC 105]; Blue Dreamz Advertising (P) Ltd. v. Kolkata Municipal Corpn. [2024 SCC OnLine SC 1896]



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was issued. Unfortunately, the petition was not taken up thereafter till 30.09.2024. Resultantly, as of today, a period of almost one year and nine months, out of the debarment period of two years, has elapsed. While setting aside the order dated 17.02.2023, it is directed that if the Union of India considers it necessary to impose the debarment for the balance period, it will communicate its decision and reasons in writing to the petitioner, and will not implement the order for a period of two weeks thereafter, to enable the petitioner to take legal recourse, if so advised.

9. The writ petition, alongwith pending application, is disposed of in these terms.

PRATEEK JALAN, J

NOVEMBER 8, 2024

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