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

Pronounced on: 04.03.2024

+ **W.P.(C) 16767/2023 and CM APPL.67524/2023 (Stay)**

CCS COMPUTERS PRIVATE LIMITED

..... Petitioner

Through: Mr. Vijay Nair, Mr. Manoranjan
Sharma, Ms. Himanshi Madan and
Mr. Rishu Kant Sharma, Advs.

Versus

NEW DELHI MUNICIPAL COUNCIL & ANR. Respondents

Through: Mr. Raj Kumar, ASC for NDMC
(through v/c), Ms. Mehak Nakra,
ASC (Civil), GNCTD along with
Ms.Disha Choudhary and Mr.
Abhishek Khari, Advs. for R-
1/NDMC.

Mr. Ashish Prasad, Ms. Mukta Dutta
and Mr. Sam L. Mathew, Advs. for R-
2.

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

JUDGMENT

1. The present petition under Article 226 of the Constitution of India has been filed by the petitioner *inter alia* seeking quashing/setting aside of the Letter dated 07.12.2023 issued by the respondent no. 1, whereby the petitioner has been blacklisted from NDMC for participating in any bid in NDMC for a period of 03 years from the date of issue of the said letter.

2. Briefly stated, the facts are that the education department of respondent no. 1 had floated a tender for procurement of 4159 electronic tablets wherein the petitioner had participated and submitted its bid



purportedly on behalf of the respondent no.2 along with the requisite documents. The respondent no. 2 who was the original equipment manufacturer had purportedly authorized the petitioner to act on its behalf for the purpose of the bid. The petitioner had also furnished a Bank Guarantee towards the Earnest Money Deposit, as mandated in terms of tender conditions. After scrutiny of the bid documents, an email dated 02.09.2022 was issued by respondent no. 1 to the petitioner stating that the turnover certificate of respondent no. 2 submitted as part of the bid documents, appeared to be forged. Accordingly, the petitioner was directed to verify the correctness of the turnover certificate as submitted. The petitioner is stated to have conducted an internal inquiry wherein its Inquiry Officer held that employees of the petitioner forged the turnover certificate, however, holding that no fault for the same could be attributed to the petitioner company. Meanwhile, respondent no. 1 issued a Show Cause Notice dated 09.09.2022 calling upon the petitioner to explain the forgery in the submission of the bid documents. The petitioner filed its detailed response to the Show Cause Notice on 21.09.2022. More than a year later, the respondent no. 1 issued the impugned letter on 07.12.2023. The said letter reads as under:

*"To,
M/s CCS Computers Pvt. Ltd.
3rd Floor, Skipper House,
62-63 Nehru Place, New Delhi -19*

***Subject: Blacklisting due to forged documents/data submitted in tender
big –reg.***

- 1. Whereas, Education Department, NDMC had floated tender for procurement of Pre loaded tablets on GeM GEM/2022/B/2217105
Dated: 28/05/2022*
- 2. Whereas, you submitted bid against the above tender and against OEM*



turnover, you mentioned Rs. 128,20,10,671/- instead of actual OEM turnover of Rs. 28,20,10,671/- by forging the OEM document.

3. *Whereas, you were also given an opportunity to be heard in person by the undersigned on 15/09/2022 at 11:00 am in the room 5016 at 5th Floor, NDMC Palika Kendra on the matter, however, no satisfying reply has been submitted by you.*
4. *Therefore, with the approval of competent authority, NDMC, it is intimated that M/s CCS Computers Pvt. Ltd. has been blacklisted from NDMC for participating in any bid in NDMC for a period of 03 years from the date of issue of this letter.*

*Sd/-
(R P Sati)
Director (Education)”*

3. Learned counsel for the petitioner has broadly submitted as under:
 - a. The elaborate submissions/explanations furnished by the petitioner in response to the Show Cause Notice dated 21.09.2022, have not been noticed at all in the impugned blacklisting letter dated 07.12.2023, and this amounts to a serious infraction of the principles of natural justice.
 - b. The General Financial Rules, 2017, cited in counter affidavit filed by the respondent no.1 as basis for the blacklisting, were not mentioned in any prior communication, including the Show Cause Notice issued by the respondent no.1, and thus no opportunity was given to the petitioner to respond to the said rules.
4. Learned counsel for the respondent no.1 has submitted that the impugned letter dated 07.12.2023 is valid and justified inasmuch as the petitioner admits that its employees have forged the documents submitted as part of the bid documents. It is submitted that the petitioner company cannot escape its liability and is liable for the acts committed by its employees



during course of their employment. It is submitted that the respondent no.1 as per Rules 151 (Debarment from bidding) and 175 (Code of Integrity) of the General Financial Rules, 2017 has taken action against the petitioner. However, he does not dispute that the General Financial Rules, were not mentioned in any prior communication exchanged between the petitioner and the respondent no.1.

5. The respondent no.2 has also filed a counter affidavit in the present proceedings wherein it is stated that the petitioner had participated in the concerned tender in its individual capacity as seller of electronic tablets and respondent no. 2's authorization to the petitioner was limited to quoting, negotiating, and finalizing the sale of its specific product. It is further averred that the turnover certificate submitted by the petitioner with the respondent no.1, was manipulated without knowledge of the respondent no.2.

6. I have heard the parties and perused the record.

7. The requirement to give reasons for a decision if such decision affects anyone prejudicially, and particularly in the context of a blacklisting/debarring action, is well entrenched in our jurisprudence. Recently, the Supreme Court in **SBI v. Rajesh Agarwal**¹, has held as under:

"94. Before concluding, we also want to address the argument by the borrowers that the requirement of passing a reasoned order must be read into the Master Directions on Frauds. The borrowers also relied on Jah Developers wherein it was held that a final decision of the Review Committee declaring the borrower as a "wilful defaulter" must be made by a reasoned order. We agree with this contention of the borrowers because : (i) a reasoned order allows an aggrieved party to demonstrate that the reasons which persuaded the authority to pass an adverse order against the interests of the aggrieved party are extraneous or perverse; and (ii) the

¹ (2023) 6 SCC 1



obligation to record reasons acts as a check on the arbitrary exercise of the powers. The reasons to be recorded need not be placed on the same pedestal as a judgment of a court. The reasons may be brief but they must comport with fairness by indicating a due application of mind."

8. A bare perusal of the impugned letter dated 07.12.2023 reveals that the same contains no reasoning whatsoever for blacklisting the petitioner for three years. The said letter simply makes a blanket statement that respondent no.1 is not satisfied with the response of the petitioner and thereafter proceeds to blacklist the petitioner from NDMC tenders for a period of three years. None of the submissions/explanations furnished by the petitioner has been dealt by the respondent no.1 in the impugned letter. Further, there is no reasoning as to the period of debarment of the petitioner. This has resulted in serious infraction of principles of natural justice.

9. In *Isolators & Isolators v. M.P. Madhya Kshetra Vidyut Vitran Co. Ltd.*², the Supreme Court has held that it would not be enough to put the concerned party only on notice of debarment, without specifically putting it on notice as to the penalty proposed to be imposed. Relevant extracts of the said decision are as under:

"38. As regards the question of penalty, we find force and substance in the contentions urged on behalf of the appellant that such an imposition cannot be approved for two major factors:

38.1. The first and foremost being that in the show-cause notice dated 26-11-2019, the appellant was put to notice only as regards the proposition of debarment and in the said notice, nothing was indicated about the proposed imposition of penalty. Though in the cancellation orders dated 19-11-2019 and 21-11-2019, the respondents purportedly reserved their right to take appropriate steps, those orders cannot be read as show-cause notice specifically for the purpose of imposition of penalty. The submissions on behalf of the respondents in this regard that the said orders dated 19-11-2019 and 21-11-2019 have attained finality do not take their case any

² (2023) 8 SCC 607



further. Finality attaching to the action of cancellation cannot be read as a due notice for imposition of penalty even if the respondents chose to employ the expression “cancelled with imposition of penalty” in those orders. Looking to the terms of contract, quantification of the amount of penalty (if at all the penalty is considered leviable) could not have been carried out without affording adequate opportunity of response to the appellant. That being the position, the action of the respondents in imposing the penalty without even putting the appellant to notice as regards this proposed action cannot be approved.

38.2. Secondly, the authority concerned has proceeded to impose the maximum of penalty to the tune of 10% of the deficit supply without specifying as to why the maximum of penalty was sought to be imposed. In this regard, the relevant factors as indicated by the appellant could not have been ignored altogether. Unfortunately, the High Court has totally omitted to consider this aspect of the grievance of the appellant.”

10. In the present case, failure on the part of the respondent no. 1 to disclose to the petitioner its reliance upon the General Financial Rules for the purpose of blacklisting the petitioner, has also resulted in denial of principles of natural justice. This court in **Well Protect Manpower Services (P) Ltd. v. DDA**³, while dealing with same rules, has held as under:

“51. A bare perusal of the aforesaid reveals that debarment for a period of three years, in terms of the Office Memorandum dated 02.11.2021, is contemplated only in those cases where a bidder has been convicted of an offence (a) under the Prevention of Corruption Act, 1988; and (b) under the Penal Code, 1860. Admittedly, the same is not applicable to the petitioner herein. As such, reliance placed on the aforesaid Office Memorandum dated 02.11.2021 for the purpose of debarment of the petitioner for a period of three years is contrary to the express stipulations contained therein, and therefore, cannot pass muster. Faced with this situation, learned standing counsel for the respondents submits that in the present case, this Court may confine the debarment of the petitioner for a period of two years on the basis that the petitioner had breached “the Code of Integrity”, referred to in the said Office Memorandum.

52. The aforesaid contention of learned standing counsel for the DDA cannot be accepted for obvious reasons. Firstly, it is not for this Court to

³ 2023 SCC OnLine Del 1007 : (2023) 303 DLT 135



exercise primary jurisdiction for the purpose of considering the period of debarment/blacklisting of the petitioner. The exercise necessarily has to be conducted by the authority concerned. Secondly, it is incumbent for the respondent no. 1 to put the petitioner on notice as regards the reliance sought to be placed on the Office Memorandum dated 02.11.2021 for the purpose of determining the period of debarment of the petitioner and also for the purpose of reaching the conclusion that the petitioner is in breach of “the Code of Integrity” referred to therein. This has not been done in the present case.

53. It has been held in Gorkha Security Services v. Government (NCT of Delhi), (2014) 9 SCC 105 that:

“in order to fulfil the requirements of principles of natural justice, a show-cause notice should meet the following two requirements viz:

- (i) The material/grounds to be stated which according to the department necessitates an action;*
- (ii) Particular penalty/action which is proposed to be taken. It is this second requirement which the High Court has failed to omit.”*

54. From a perusal of the averments made in the counter affidavit filed on behalf of the respondents, the submissions of learned standing counsel for the respondents, and the contents of the written submissions filed on behalf of the respondents, it is evident that the Office Memorandum dated 02.11.2021 constitutes vital material which has been taken into account for the purpose of:—

- (i) reaching the conclusion that the petitioner is required to be debarred and/or that the petitioner is in breach of “the Code of Integrity” referred to therein;*
- (ii) determining the period of debarment of the petitioner.*

55. Admittedly, the said Office Memorandum dated 02.11.2021 was never referred to in any of the correspondence between the parties or in the Show Cause Notices issued by the respondent no. 1.

56. In the circumstances, failure on the part of the respondent no. 1 to disclose to the petitioner its reliance upon the Office Memorandum dated 02.11.2021 for the purpose of debarment of the petitioner, has resulted in denial of principles of natural justice and has vitiated the decision-making process. Whether or not the petitioner is in breach of “the Code of Integrity” and if so, what is the extent/duration of debarment of the petitioner is an aspect which necessarily has to be determined/adjudicated by the respondents after affording an opportunity of hearing to the petitioner, and after putting the petitioner on notice as to the reliance sought to be placed thereon.”



11. Therefore, it was incumbent on the respondent no.1 to put the petitioner to notice as to the reliance sought to be placed on the General Finance Rules for the purpose of determining the period of blacklisting of the petitioner and also for the purpose of reaching the conclusion that the petitioner is in breach of “the Code of Integrity” referred to therein. Further, even assuming the petitioner is in breach of “Code of Integrity”, it was impermissible for the respondent no.1 to have blacklisted the petitioner for a period of three years, the same being contrary to the Rule 151(iii)⁴ of the General Finance Rules, which prescribes maximum debarment for a period of two years in such cases.

12. As held in *Well Protect* (supra), “whether or not the petitioner is in breach of “the Code of Integrity” and if so, what is the extent/duration of debarment of the petitioner is an aspect which necessarily has to be determined/adjudicated by the respondent no.1 after affording an opportunity of hearing to the petitioner, and after putting the petitioner on notice as to the reliance sought to be placed thereon.”

13. In the circumstances, the impugned letter dated 07.12.2023 is quashed. The respondent no. 1 is also directed to take down the impugned letter from its website. However, the respondent no. 1 would be at liberty to issue a fresh Show Cause Notice to the petitioner, putting the petitioner to notice as to the reliance sought to be placed on the General Finance Rules, for the purpose of debarment of the petitioner. Needless to say, the response

⁴ 151 (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.



of the petitioner shall be duly considered by the respondent no.1 and a reasoned order shall be passed if any action is proposed to be taken.

14. The present writ petition, along with the pending application, is disposed of in the aforesaid terms.

MARCH 04, 2024/hg

SACHIN DATTA, J