

S/L 5
06.11.2025
Court No.25
Swd

WPA 19176 of 2025

**HRD Commercial and Industrial Security Force
Private Limited and Anr.**

**Vs.
Union of India and Ors.**

*Mr. Arka Kumar Nag,
Mr. Subham Das,
Mr. Ratikanta Pal,
Mr. S. Dutta.
Mr. Kaushik Bandyapadhyay.*

...for the Petitioner.

*Mr. Rabindra Nath Bag, Sr. Adv,
Mr. Asutosh Pathak,
Mr. Sk. Md. Nasim Akram,
Mr. Piyas Chowdhury,
Mr. Md. Abdul Gani.*

...for the Respondent No.1 to 5.

*Mr. Mr. Ayan Poddar,
Ms. Shweta Bharti,
Ms. Yashodhra B. Roy,
Ms. Darshita Sethia,
Ms. Anjal Shaw.*

...for the Respondent No.6.

1. The petitioner has filed the present application challenging the impugned order dated 21st February, 2025, passed by the respondent No.5 by debarring the petitioner from all contracts, awarded bid, participated bids or tenders or future bids for tenders that have been published or will be published by Department of Ordnance (C&S) and its allied establishments for the upcoming five years. The respondent No.5 has also decided to forfeit of bank guarantee / security deposit made by the petitioner in favour of the principal controller of accounts, Kolkata, with respect to

performance security deposit by intimating the paying authority for this service contracts concluded by the respondent with the petitioner.

2. The respondents have awarded the contract to the petitioner for manpower outsourcing services for the period from 27th of March, 2023 to 27th March, 2024. The respondent Nos. 1 to 5 extended the contract period of the petitioner initially from 28th March, 2024 to 31st May, 2024. Again the respondents have issued an extension of the contract of the petitioner from 1st June, 2024 to 31st July, 2024 and that third extension on 1st August, 2024 to 31st August, 2024. It is the case of the petitioner that the petitioner has accepted the first extension order from 28th March, 2024 to 31st May, 2024. Subsequently, the petitioner has not accepted the extension given by the respondent Nos.1 to 5 to the petitioner.
3. It is also submitted that till 26th May, 2024 the petitioner has supplied the manpower interms of the first extension. As the petitioner has not accepted the second and third extension and also intimated to the respondent according to the petitioner has not supplied any manpower to the respondents. The respondents had issued a show-cause notice on 29th January, 2025, intimating that with regard to the payment of the manpower supplied by the petitioner from 27th March, 2023 till 26th May, 2024 was cleared but thereafter payment was not cleared and accordingly respondents have called for a clarification from the petitioner on or before 31st January, 2024 as to why appropriate action shall not be initiated against the

petitioner. On receipt of the said notice, the petitioner has send a reply on 30th January, 2025, intimating that the wages payment in respect of the entire period of 27th March, 2023 to 26th March, 2024 has been cleared by the petitioner and it was also informed that the second extension offer communicated by the respondents dated 31st May, 2024 was not accepted and the same was duly communicated to the respondent by a letter dated 7th August 2024.

4. Learned Counsel for the petitioner has drawn the attention to this Court to Clause 2.1 of the tender document and submits that as per the said clause the purchaser reserves the right to increase or decrease the quantity to be ordered upto 50% of the bid quantity at the time of placement of the contract. The purchaser also reserved the right to increase the order quantity upto 50% contracted quantity during the currency period of the contract at the contracted rates and the bidders are bound to accept the orders accordingly. He submits that the petitioner has complied with the said clause by providing the manpower as per the requirement of the respondents with regard to original contract and first extension contract. As regard to the second and third contract does not affect the petitioner as the petitioner has not accepted the second and third extension.
5. The learned Counsel for the petitioner further relied upon Defence Procurement Manual particularly 7.13.5 (g) wherein it is mentioned that the repeat order is to be place within six months from the date of completion of

the supply against the previous order and it should be placed only once.

6. Relying the said clause, the learned Counsel for the petitioner submits that the respondents have issued first extension within a period of six months and the petitioner has complied with said order by supplying the manpower. The respondents have debarred the petitioner for non-compliance of the extension order and non-payment of the wages to the employee with regard to the second and third contract. As per the said clause the respondent cannot issued any further extension other than the first extension.
7. Learned Counsel for the petitioners further submits that the respondent no. 5 had issued the impugned order without considering the Clause 2.1 as the 2.1 is only with regard to the supply the quantity of the manpower during the currency period of the contract nor with regard to the extension of contract.
8. Per contra, Mr. Rabindra Nath Bag, learned Senior Advocate for the respondent nos. 1 to 5 submits that as per contract dated 21st March, 2023 the scope of work job description as well as the format of price breakup has been accepted by the petitioners. He submits that to determine the quantity in terms of man-days for outsourcing manpower requires the scope of work, calculation of total work hours needed and then to be divided by the expected man hours per day per person. He submits that the quantity is expressed as total number of man-days representing the sum of each individual days

worked to complete the project. He submits that in the instant case the mandate is required quantity as per the scope of work of contract which the petitioners have accepted.

9. Learned counsel for the respondents submit that the respondents have issued show-cause notice to the petitioners by calling upon the petitioners for clarification but the clarification which the petitioners have submitted, the respondents were not satisfied with the said clarification, accordingly the impugned order was passed. He has relied upon the guidelines of the debarment of firms of bidding wherein it provides that in cases where the department is proposed to be limited to a single Ministry, the appropriate orders can be issued by the Ministry itself, thereby banning all its business dealing with the debarred firm. He further submits that in the present case, the work of the petitioners dealt by the single Ministry and as such the impugned order is passed by the single Ministry by debarring the petitioner for violation of the terms and conditions of the contract.
10. Learned counsel for the respondent nos. 1 to 5 has further relied upon Clause 7.13.1 of Defence Procurement Manual, 2009, issued by the Ministry of Defence, Government of India and submits that as per the said provision the repeat order and option Clause can be made more than once provided that altogether these orders do not exceed 50 per cent of the original order of quantity. In support of the submission, the learned counsel for the respondent nos. 1 to 5 submits that if the total quantity of

the manpower supplied by the petitioners is taken into consideration, it respond that it has not been exceeded 50 per cent of the original order and as such the second and the third extension issued by the respondents are in accordance with law.

11. Heard the learned counsel for the respective parties perused the materials on record.
12. This Court finds that the work order was issued to the petitioners for manpower of outsourcing services initially for a period of one year from 27th March, 2023 to 27th March, 2024 and subsequently the same was further extended from 28th March, 2024 to 31st May, 2024. The petitioners have accepted the first extension. It is admitted case of both the parties that the petitioners have cleared all the dues of the manpower supplied by the petitioners to the respondents till 26th May, 2024, after 26th May, 2024 the petitioners have not paid the minimum wages to the manpower has the petitioners have not supplied manpower to the respondents. As per record it reveals that though the respondents have issued the extension order no. 2 dated 31st May, 2024 but the petitioners by a communication dated 7th August, 2024 informed the respondents that the respondents are not interested for extension. He submits that since 27th May, 2024 the petitioners have not supplied any manpower to the respondents.
13. In the reply to the show-cause notice dated 29th January, 2025 the petitioners have also categorically mentioned in paragraph no. 3 of the said reply stating as follows:

*“3. The 2nd extension offer communicated vide your letter No. 511687714493310/2023-24/Extn-2 dt-31.05.2024 did not accept by this office and the decision taken by our company has been conveyed to you vide our letter No. **C & I.S.F.P.L/KOL/GEN/24/2427 dtd. 07.08.2024.** As our company did not accept your 2nd extension offer, acceptance of 3rd extension offer issued on 11.07.2024 does not arise. In view of the above, under what authority you are asking our company to clarify the matter once more? Under no circumstances you can take any action on our company as per available values of the contract.”*

14. After receipt of the letter dated 30th January, 2025 the respondents have issued the impugned notice dated 21st February, 2025 by debarring the petitioners for five years for participating or running contracts, awarded bids, participated bids or tenders and future bids or tenders that have been published and will be published by the Directorate of Ordinance (C and S) and its allied establishments for five years. In the said order the respondent no. 5 has also forfeited the bank guarantee/security deposit of the petitioners.
15. This Court finds that once the petitioners have already communicated the respondents that the petitioners are not intending to accept the second extension and it is the specific case of the petitioners have not employed any manpower to the respondents after the 26th May, 2024, this Court failed to appreciate that how the respondents have passed the impugned order by debarring the petitioners for five years. This Court also failed to

appreciate that the show-cause notice was issued on 29th January, 2025 but in the said notice the respondents have not mentioned about the letter issued by the petitioners dated 7th August, 2024 wherein the petitioners have categorically informed to the respondents that they are not willing to accept the second extension. Ignoring the letter submitted by the petitioners on 7th August, 2025, how the respondents can compel the petitioners to continue the work for supply of manpower. Clause 2.1 of the contract provides decrease and increase the quantity of the manpower but it does not reveals that the said Clause can extend the time period of contract.

16. The learned counsel for the respondents submits that though the petitioners have not supplied the manpower from 27th May, 2024 onwards but the workers who were earlier used to work in the establishment of the respondents were continued with the work and the respondents No.1 to 5 have paid the wages to the worker.
17. Learned counsel for the petitioners submits that the petitioners have categorically denied for extension of the time period for supply of manpower and the persons, who worked with the respondents from 27th May, 2024 onwards are not connected with the petitioners. Clause 7.13.1 which the respondents had relied upon provides that the repeat order or option Clause may be exercised more than once, provided altogether these orders do not exceed 50 per cent of the original order quantity. Clause 7.13.5 (g) provides that repeat order is to be placed within six months from the date of completion of the supply

against the previous orders and it should be placed only once. The show-cause notice issued by the respondents does not reflect that the petitioners have informed the respondents that the petitioners are not intending to accept the second extension. The show-cause notice also does not reflect that the respondents have informed the petitioners that till 27th May, 2024 the manpower supplied by the petitioners is less than 50 per cent. As per Clause 7.13.1 repeat order and option Clause should not be made as a matter of course as these clauses have an impact on price. Repeat orders and option Clauses provided only in exceptional circumstances.

18. Considering the facts and circumstances, this Court finds that Clause 7.13.1 which the respondents have relied upon is not covered in the present case and the said case is not made out in the show-cause notice.
19. This Court further finds that the Clause 7.13.5 (g) categorically provides that the repeat order is to be placed within six months from the date of completion of the supply against the previous order and it should be placed only once. In the present case, the first extension order was complied with by the petitioners by providing the manpower for the period from 28th May, 2024 to 26th May, 2024.
20. It is a settled legal position that for a show-cause notice to constitute the valid basis of a black listing order, such notices must spell out clearly or its contents be such that it can be clearly inferred therefrom, that there is an intentions on the part of the issues of notice to blacklist

the notices. Such clear notice is essential for ensuring that the person against whom the penalty of blacklisting is intended to be imposed. In the present case, the same is missing. In the show-cause notice it is only mentioned that appropriate action will be taken.

21. Considering the above, this Court finds that the impugned order dated 21st February, 2025 is not sustainable under law and is liable to be set aside and accordingly set aside.
22. Learned counsel for the respondents further submits that the persons who had worked in the establishment of the respondents from 27th May, 2024 till 31st August, 2024, the respondents have already paid the minimum wages to the said workers.
23. WPA 19176 of 2025 is allowed.
24. Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

(Krishna Rao, J.)