

OD-4

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

IA NO: GA/1/2025
APOT/93/2025
WPO/229/2025

SHREE DURGA INDUSTRY & ANR.
VS.
UNION OF INDIA & ORS.

BEFORE :

THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)
Dated : 8TH APRIL, 2025

Appearance:

Mr. Srijib Chakraborty, Adv.
Mr. Pankaj Agarwal, Adv.
Mr. Rittick Chowdhury, Adv.
Ms. Muskan Agarwal, Adv.
Mr. Debaut Banerjee, Adv.

..for appellants

Mr. Dhiraj Kumar Trivedi, Sr. Adv./DSGI

Ms. Amrita Pandey, Adv.

Mr. Ghanshyam Pandey, Adv.

...for respondent no.1/UOI

Mr. Ayan Poddar, Adv.

Ms. Shweta Bharti, Adv.

Ms. Yashodhara B. Roy, Adv.

Ms. Khusboo Ruia, Adv.

Ms. Darshita Sethia, Adv.

Ms. Prakarti Shrivastava, Adv.

...for respondent nos.2 & 3

THE COURT: This intra-court appeal by the appellants/writ petitioners is directed against the order dated 2nd April, 2025 passed in WPO 229 of 2025. The said writ petition was filed by the appellants praying for issuance of a writ of Mandamus to set aside the suspension order dated March 28, 2025, thereby

restoring the appellants/writ petitioners' account on the GeM portal. The petitioners had uploaded the details for listing the products as services to be offered by them. There were two such cases, which have been mentioned now as incident nos. 2100450 and 2100455. By two e-mails both dated 27.2.2025, the appellants were informed that an incident has been raised by GeM Admin against their account on GeM portal and the details of the same were given. The incident is identical for both the incident nos. 2100450 and 2100455. The reason mentioned in the said e-mails is that listing the products/services not in the relevant categories and/or listing the same with vague/conflicting product specifications/details or irrelevant/false product image. It needs to be pointed out that in the reason mentioned in the said e-mails the relevant reason has not been identified or in other words, the irrelevant reason has not been struck off. The appellants submitted their response on 28.2.2025, which is identically in respect of both the incidents. The appellants stated that at the time of listing of the product, due to some online technical glitches inasmuch as the option of selecting "no" to BIS License was not available, their technical staff to proceed further with the listing of the product was compelled to select "yes" in the relevant option, however, he mentioned "NA" indicating Not Available in the next page. Further, the appellants requested that they may be directed as to how they should correctly proceed in such situation. Thereafter, show-cause notices both dated 3.5.2025 were issued, which are identical to the incident report in e-mail dated 27.2.2025. The appellants submitted their response to both the show-cause notices vide reply dated 4.3.2025 reiterating

the earlier stand and also giving the appropriate details about their new product and stating that they have re-uploaded the said product by selecting correct option and the same may be viewed by Gem Admin. Further, the appellants stated that they have already updated the said product with the option "No" against BIS license and as such, they again requested not to escalate the incident any further and allow them to remove the previous defective uploading of the said product. Though the appellants responded to the show-cause notices by replies dated 4.3.2025, till 11.3.2025 no decision was taken which compelled the appellants to address the GeM Admin by letter dated 11.3.2025 stating that they are shocked to see that various of their products are being marked with red sign and thereby marking them out as OEM with lesser credibility in the market. It is thereafter the GeM Admin took the decision and communicated the same by e-mail dated 20.3.2025 in respect of incident no. 2100455 by which the appellants were informed that the incident is closed accepting the justification provided by the appellants in their response letter. However, in respect of incident no. 2100450, by e-mail dated 28.3.2025 the reply given to the show-cause notice was not accepted and the appellants were suspended from transactions for a period of 30 days from 28.3.2025 and ending on 27.4.2025. In the said e-mail dated 28.3.2025, which was impugned in the writ petition, whereby the appellants were suspended from the transaction for aforementioned 30 days period, there are also three more penalties imposed on the appellants stating that the appellants will not be able to enter into fresh transactions; upload products and participate in

bids/RA. If already participated in the ongoing bids, their bids/RA will be withdrawn.

So far as the first two penalties out of the three penalties are concerned, it may emanate out of the order of suspension because during the period of suspension the appellants cannot enter into fresh transaction or upload products. However, the third penalty of withdrawing the bids in which already the appellants had participated has far-reaching consequences and that was beyond the scope of the show-cause notice issued to the appellants.

Furthermore, on going through the Government e Marketplace Incident Management Policy, applicable w.e.f. 25.11.2024, in Clause 1.8, the definition of suspension has been given, which states that the seller will not be able to participate in new Bids and will not be able to access the market place to offer new offerings or upload current offerings. Thus, the definition of suspension clearly shows that it can be prospective. That apart, there was no show-cause notice provided to the appellants proposing that in the event their reply is not satisfactory the bids in which they have already participated and such ongoing bids will also be withdrawn. Therefore, such penalty is wholly without jurisdiction.

Apart from that, when two incidents were reported to the appellants in incident nos. 2100450 and 2100455 containing identical allegations to which the appellant submitted their response, which were also identical, followed by show-cause notices which were also identical for which reply was given by the appellants, which was also identical, in one case the GeM Admin found the

explanation to be satisfactory and closed the proceedings. Therefore, if there is any distinguishing feature in the second case namely in incident no. 2100450, the same should have been explicitly stated in the order of suspension dated 28.3.2025. Therefore, this is also one more ground for us to interfere with the order of suspension.

The learned Advocate appearing for the Ge M Admin pointed out that the learned Single Judge had relegated the appellants to avail the appellate remedy and a period of 10 days was granted and he has got instructions from the GeM Admin that if appeal is preferred, the same will be disposed of within two days. Clause 8 deals with the provisions of appeal. In sub-clause (b) of Clause 8, the option of appeal can be availed only if there is any additional material evidence which was not available for consideration at the time of taking a decision by the competent authority of GeM Admin. Thus, the appellants having pleaded an identical case in respect of both the incidents of which one case was dropped, they cannot be expected to produce any fresh material. Apart from that, as pointed out earlier, the first intimation to the appellants by e-mail dated 27.2.2025 itself was vague inasmuch as the relevant reason was not indicated and the irrelevant reasons were not struck off. Apart from that, the withdrawal of the ongoing bids without issuing show-cause notice is clearly without jurisdiction and in violation of the principles of natural justice, which will be a good ground not to relegate the appellants to avail the appellate remedy. That apart, in respect of the ongoing bids, no incident was reported

and the appellants were permitted to submit their bids and they have also participated in those contracts and the contracts are in progress.

Thus, for the above reasons, we are of the clear view that the order of suspension dated 28.3.2025 is without jurisdiction and in violation of the principles of natural justice in so far as it not only relates to the withdrawal of the ongoing bids but also with regard to suspension for a period of 30 days, since the GeM Admin had decided in favour of the appellants in respect of an identical incident being incident no. 2100455 and there was no reason indicated as to why an order of suspension has been passed in respect of incident no. 2100450.

For the above reasons, the appeal is allowed.

The order passed by the learned Single Bench is set aside and the writ petition is allowed and the order of suspension, impugned in the writ petition, is quashed.

The appellants are at liberty to avail the benefit of listing their products in the GeM portal which shall be dealt with by the GeM Admin in accordance with the relevant Regulations.

The application IA No: GA/1/2025 also stands allowed.

(T.S. SIVAGNANAM, C.J.)

(CHAITALI CHATTERJEE (DAS), J.)