

URMILA
PRAMOD
INGALE

Digitally signed
by URMILA
PRAMOD
INGALE
Date:
2025.03.25
18:26:11
+0530

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 5650 OF 2024

Everest Enterprises ... Petitioner
Versus
Hindustan Aeronautics Limited and anr. Respondents

Adv. Sumit Khanna a/w Adv. Dashang Doshi i/b Dewani Associates, for the Petitioner.

Adv. Kajal Gupta a/w Adv. Shweta Singh i/b M.V.Kini & Co., for the Respondents No.1 and 2.

**CORAM : ALOK ARADHE, CJ &
M.S.KARNIK, J.**

DATE : 24th MARCH, 2025

Order [Per M.S.Karnik, J.] :

1. This petition under Article 226 of the Constitution of India takes an exception to the order dated 16th March 2024 passed by the Deputy General Manager (Works) whereby the petitioner has been debarred from participating in further HAL tenders for a period of 24 months i.e. 2 years from 23rd February 2024 to 22nd February 2026.

2. Perusal of the impugned order dated 16th March 2024 reveals that the order indicates two reasons for debarment, however, the order does not disclose that any notice whatsoever was issued to the

petitioner before passing the same; neither does it show that the petitioner in any manner was associated with any inquiry preceding the impugned order. The reason indicated is that during the scrutiny of Bankers solvency certificate submitted by the petitioner while participating in the tender process, the said document was verified and the Bank concerned reported to the respondents that it did not issue the solvency certificate to the petitioner. The other reason indicated in the impugned order is that during the scrutiny of another document, namely, similar nature of work experience certificate, on further enquiry, it was found that the petitioner had never worked with the employer which had issued the said work experience certificate.

3. Learned counsel for the petitioner submitted that the said discrepancy found during the verification is not attributable to the petitioner. The petitioner relied upon the solvency certificate dated 04th December 2023 issued by the DCB Bank and has enclosed with the writ petition the balance confirmation letter and the balance confirmation slip issued by the DCB Bank which, according to the petitioner, show that the solvency certificate was issued. Similarly, the petitioner relied upon a letter issued by the Executive Secretary to ED (CHT), Centre for High Technology, Ministry of Petroleum & Natural Gas, Government of India, Noida, wherein it has been clearly stated that the petitioner is working in

CHD, Noida, since 2020. The said letter/communication is dated 27th February 2024.

4. Learned counsel for the respondent vehemently opposed the petition. It is submitted that during the scrutiny Banker's solvency certificate submitted by the petitioner and upon its verification, it was revealed by the concerned Banker that it did not issue such solvency certificate. This according to learned counsel disentitles the petitioner to any relief in exercise of the extra ordinary jurisdiction of this Court under Article 226 of the Constitution of India. Furthermore, it is submitted when it is found as a matter of fact that the certificate of work experience itself is doubtful, there is no reason then to entertain this petition. It is submitted that there is no procedure prescribing the issuance of show cause notice or for giving the petitioner an opportunity to submit an explanation before passing of the order of debarment. It is further submitted that the petitioner had applied through the online process relying upon fabricated documents and hence, this is not a case where this Court should entertain the present writ petition.

5. We have heard learned counsel. Having considered the submissions, we find that the petitioner though has some explanation to offer, however, he was denied the said opportunity as no show cause

notice has been issued to the petitioner before passing the impugned order. It is settled law that debarring a firm from participation in any tender process by a public authority visits such a firm with serious civil consequences and accordingly before taking any decision of debarring, the party concerned needs to be issued a show cause notice mentioning therein the basis of intended action of debarment and requiring the party concerned to submit its explanation. That it was an online tender process is hardly of any consequence in a case of violation of the principles of natural justice.

6. If any authority is to be cited in support of the settled law, we may refer to the decisions of the Hon'ble Supreme Court in **Gorkha Security Services Vs. Government (NCT of Delhi) & ors.**, reported in **(2014) 9 SCC 105** and in **State Bank of India and ors. Vs. Rajesh Agarwal & Ors.**, reported in **(2023) 6 SCC 1**.

7. The impugned order dated 16/03/2024 is thus passed in violation of principles of natural justice and accordingly, the same is quashed and set aside.

8. This Court vide order dated 09th May 2024 had, till further orders, stayed the operation of the impugned order debarring the petitioner from participating in the further HAL tenders.

9. Needless to mention it would be open for the respondent – Hindustan Aeronautics Ltd to issue a show cause notice mentioning therein the basis of the intended action of debarment and requiring the petitioner to submit its explanation in compliance with the principles of natural justice before passing any order.

10. The petition is allowed in the above terms. No order as to costs.

(M.S.KARNIK, J.)

(CHIEF JUSTICE)