



2025:DHC:1186



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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment pronounced on: 24.02.2025+ W.P.(C) 10154/2024 & CMAPPLs.41726/2024, 41727/2024, 63396/2024

PRICEWATERHOUSECOOPERS PRIVATE LIMITED.....Petitioner

Through: Mr. Sanjay Jain (Sr. Advocate) along with Mr. Piyush Joshi, Ms. Sumiti Yadava, Ms. Meghna Sengupta, Ms. Harshita Sukheja, Mr. A. D. Rama Ratna Sarma, Ms. Palak Jain, Advocates.

versus

UNION OF INDIA THROUGH THE SECRETARY
DEPARTMENT OF AGRICULTURE AND FARMERS WELFARE
MINISTRY OF AGRICULTURE AND FARMERS WELFARE &
ORS.Respondents

Through: Mr. Bhagvan Swarup Shukla, CGSC along with Mr. Sarvan Kumar, Advocate for UOI.
Mr. R. Venkat Prabhat, SPC along with Mr. Daksh Pandit, Ms. Kamna Behrani and Mr. Ansh Kalra, Advocates.
Ms. Shweta Bharti, Ms. Sonali Kumar, Ms. Sukriti Verma, Ms. Vanshika Gupta, Advocates for R-2.

CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA

JUDGMENT**FACTUAL MATRIX**



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1. The present petition filed by the petitioner seeks to assail an Office Memorandum dated 16.07.2024 (hereinafter '*impugned OM*') which *inter alia* disqualified the petitioner for a period of 5 years from participating in any Request for Proposals (RFA) issued by the Integrated Nutrient Management Division (Organic Farm Divisions) (hereinafter referred as '*INMD*'), Department of Agriculture & Farmers Welfare, Ministry of Agriculture and Farmers Welfare (respondent no.1) and a communication/email dated 22.07.2024, in terms of which, account of the petitioner on the Government e-Market Place (GeM) portal (respondent no.2) was suspended for 30 days i.e., between 22.07.2024 to 21.08.2024.
2. The disputes between the parties have arisen in the context of a Request for Proposal (RFA) dated 04.01.2024 issued by the INMD of respondent no.1 on the portal of respondent no. 2 for selection of a consultancy firm for establishment of Programme Monitoring Unit (hereinafter referred as "*PMU*") for the Mission Organic Value Chain Development for North Eastern Region (hereinafter referred as "*MOVCDNER*").
3. It is stated that the petitioner in response to the aforesaid RFP, on 17.02.2024, submitted technical proposal on the GeM Portal. However, since there was no option to upload the Annexure II (Financial Proposal Format) separately on the said portal, pursuant to a telephonic guidance, the same was submitted in hard copy on 19.02.2024. It is stated that the financial proposal clearly mentioned annual price for the services as Rs. 3,46,92,000/-
4. Thereafter, the petitioner sent an email/communication dated 20.03.2024 to the respondent no.1, confirming the submission of the annual



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total fees (in rupees, including GST) as well as informing that the applicable fee for the entire period of 3 years will be three times the quoted amount.

The said communication reads as under: -

“To

*The Director (Organic) INM Division, DA&FW Government of India
Krishi Bhawan, New Delhi – 110001.*

Subject: Regarding the financial proposal for Selection of Consultancy Firm for Establishment of Programme Monitoring Unit (PMU) for Mission Organic Value Chain Development for North-eastern Region (MOVCDNER) under Integrated Nutrient Management (INM) Division, Department of Agriculture & Farmers Welfare, Government of India (dated 04.01.2024)

Dear Sir,

I, the undersigned, confirm that we have submitted the Annual Total fees (in ₹, including GST) as the financial quotation through online portal and in hard copy as per the template provided in the RfP. And for the entire period of three years the applicable fees will be three times the quoted amount.

This is for your kind consideration please.

*Regards
Shashi”*

5. Pursuant thereto, on 18.04.2024, the petitioner received an email/ communication from respondent no.2, intimating that the petitioner has been selected as a service provider in a contract generated on the GeM portal bearing no. GEMC-511687740337905. In terms of the generated contract, the service was stipulated to commence on 01.05.2024 and conclude on 01.05.2027.

6. In the aforesaid contract however, the total cost for the project (lump sum) for the entire three years was stipulated to be Rs.3,46,92,000/-. It is the case of the petitioner that the contract generated by the GeM portal



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constituted only the annual cost as referred to in the financial proposal submitted in the format provided in Annexure-II of the RFP and does not reflect the total cost as submitted by the petitioner. Accordingly, the petitioner vide an email/communication dated 24.04.2024, highlighted *inter alia* the aforesaid grievance to the respondent no.1. The relevant communication dated 24.04.2024 reads as under:

“Date: 24rd April 2024

*Director (Organic), INM Division
Department of Agriculture & Farmers Welfare,
Ministry of Agriculture & Farmers Welfare,
Government of India, Krishi Bhawan,
New Delhi, Delhi-110001, India*

Subject: Regarding the RfP for Consultancy Firm for Establishment of a Programme Monitoring Unit (PMU) for Mission Organic Value Chain Development For North Eastern Region (MOVCDNER)

Reference: Contract: GEMC-511687740337905; dated 18-Apr-2024 received from GeM.

Dear Sir,

We thank you for the acceptance of our proposal and the opportunity provided to us and selecting us to work with you for the engagement mentioned.

We have received the contract intimation from the GeM portal on 18th April 2024. However, we received the contract document “GEMC-511687740337905” on 19th of April 2024.

In reference to the above, we wanted to seek your guidance and submit a few clarifications from our end:

- *As per the contract document, page 1, ‘Service Details’, mention the contract period from 01-May-2024 to 01-May-2027. However, on the same page, against the ‘Description’ the ‘Total cost of the project’ is mentioned for only one year.*

○ *This is our humble submission for your kind consideration that, in reference to Page 4 of the contract document under ‘Additional Required*



Data/Document(s): Buyer', where in the 'Price Break Up Format' is in congruence with the RfP document, dated 04-01-2024 provided to us (10.2 page no 36 of RFP), stipulates only Annual cost (Annexure 1) and the same was used by us in our financial proposal document as well as on GeM portal.

- *We would like to bring to your notice that, there was no section to upload the financial proposal with price break up on the GeM portal and it was a mandatory document as per the RfP (dated 04-01-2024). We have communicated the same prior to the submission of the proposal (Annexure 2) and accordingly the hard copy of the financial proposal with price break-up has been submitted in a closed envelope (Annexure 3). In addition to that, we have also communicated over email that our quote is annual total fee (with applicable taxes) as per the template provided in the RfP (Annexure 4).*
- *Further, we would like to bring your kind attention to Page 5 of the contract document, Section 1.1 of the 'General Terms and Conditions' and the governing document (page 23; Point ii of section 6): The prices wherein the bidder is required to indicate offer price in the price schedule (on GeM portal) is as per the bidding document (Annexure 5). In adherence to the above, we have quoted only annual cost on the GeM portal (with applicable taxes).*
- *In light of the above, it is our submission and request that since our quotation is for annual total price (with applicable taxes) and the total duration of the assignment is for three years, the total cost for the project(lumpsum) in the contract document be amended accordingly.*
- *We have received another email communication from GeM to submit the PBG by 22nd April 2024. However, our understanding is that the bidder gets 15 days to comply with the same. Thus, kindly allow us 15 days of time to submit the PBG upon the acceptance of the contract.*

We request your kind consideration and guidance on the above-mentioned points.

We are at your disposal for any discussion on this matter and would request your time to discuss the same as per your convenience.

Thanks and Regards,"



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7. In the meantime, *vide* a communication/email dated 02.05.2024, the petitioner requested respondent no.2 to extend the deadline for payment of Annual Milestone Charge (AMC) /Transaction Charge (TC) and Performance Bank Guarantee by 3 weeks (21 days) since the resolution of issues pertaining to the contract with the respondent no.1 were pending. However, a show-cause notice dated 05.05.2024 was issued to the petitioner by respondent no.2 on account of non-payment of AMC/TC within the prescribed timelines as stipulated under the GeM Revenue Policy. Further, an email/communication dated 06.05.2024 by respondent no.1 directed the petitioner to deploy a team for providing service as per RFP, since the petitioner had not reported for taking over charge of PMU under MOVCDNER on the commencement of the contract.

8. On 09.05.2024, the petitioner, once again wrote to respondent no. 1, requesting them for time to discuss the matter and to modify the total cost of the project (lumpsum) under the contract, since the petitioner's quotation in its financial proposal was an annual total price, for each year of the total duration (i.e., 3 years) of the assignment.

9. *Vide* a letter dated 10.05.2024, petitioner also informed respondent no. 2 of the ongoing correspondence between the petitioner and the respondent no. 1, for taking necessary steps to amend the total contract price for three years, in order for the petitioner to accept the contract. Further, although the petitioner on 09.05.2024 paid the TC as against the invoice generated by respondent no. 2, the petitioner clarified that the said payment should not be construed as acceptance/deemed acceptance of contract and the petitioner would only be required to submit Performance Bank Guarantee, in case the issue with respondent no.1 is resolved and the



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petitioner accepts the contract thereof.

10. However, a communication/email was issued by respondent no. 2 on 16.05.2024, requiring the petitioner to show cause for delay in delivery which allegedly as per contract constituted a 'serious MILD deviation' under the Incident Management Policy of GeM.

11. Ultimately, after further correspondences were exchanged between the parties, the respondent no.1 issued the impugned OM dated 16.07.2024 which states as under:-

*“ F.No. 9-1/2023-org.fmg (e-128145)
Government of India
Ministry of Agriculture & Farmers Welfare
Department of Agriculture & Farmers Welfare
INM Division (Organic Farming Cell)*

*Krishi Bhawan, New Delhi
Dated: 16th July 2024*

OFFICE MEMORANDUM

Subject: Engagement of consulting agency for establishing Project Management Unit (PMU) for MOVCDNER Scheme under Krishionnati Yojana - reg.

This is with reference vide RFP issued by Department of Agriculture & Farmers Welfare, through GeM (Tender No. GEM/2024/B/4429193) and OM dated 8th July 2024 (F. No. 9-1/2023-org.fmg (e-128145).

2. Multiple opportunities were given to PwC to deploy their team after they had initially agreed to provide the services from 1st May 2024, notified on GeM.

3. MOVCDNER is a challenging programme being implemented by Ministry of Agriculture & Farmers Welfare and the issue created by PricewaterhouseCoopers (PwC), i.e. filling the price of one year instead of the stipulated three years, reflects their negligence or incompetence.

4. INM Division, DA&FW has decided to cancel the RFP and issue a fresh RFP. However, it is requested that PwC should be disqualified from



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participating in any RFP issued by INM Division at least for the next 5 years.

5. Further, it is also requested to take any stricter action against PwC, as per procedure laid down in GeM guidelines.

6. This issues with the approval of the Competent Authority.”

12. On 19.07.2024, the petitioner addressed a further communication seeking to arrive at some kind of mutual resolution and intimating its willingness to deploy its resources and requested for a meeting to discuss further modality. However, the same was not acceded to by the respondent no.1 and as a consequence thereof, email dated 22.07.2024 came to be issued by the respondent no.2 which reads as under:-

“Dear Sir/Madam,

Please note that in accordance with the GeM Incident Management policy and as decided by Competent Authority with regard to incident number 1881041, the transactions from your GeM account have been suspended for transaction for a period of 30 days starting from 22-Jul-2024 and ending on 21-Aug-2024. This is due to Delay in Delivery, as per contract for order number- GEMC-511687740337905

During such time your carted products (if any), will be removed from cart(s) and you will not be able to:

- 1) Enter into fresh transaction.*
- 2) Upload products.*
- 3) Participate in bids/RA. If already participated in ongoing bids, your bids/RA will be withdrawn.*
- 4) Carted products will be taken out.*

However, you will be able to complete the transactions already finalized, such as delivery, payment receipt etc.

*Regards,
GeM Admin.”*

SUBMISSIONS ON BEHALF OF THE PETITIONER



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13. Learned senior counsel for the petitioner has contended that:
- (i) the impugned OM virtually seeks to blacklist the petitioner for five years without affording an opportunity of hearing to the petitioner.
 - (ii) it is submitted that the adverse/stigmatic comments which have been made in the said OM, have no basis and are uncalled for.
 - (iii) it is further submitted that the respondent no.1 has misinterpreted the financial bid submitted by the petitioner. It is submitted that the confusion was created on account of the terminology of the last column of the format prescribed *vide* Annexure II, the same reads as under:-

Personnel	No.	Monthly Rate (in ₹, excluding taxes)	Annual total (in ₹, excluding taxes)	Total (in ₹, with applicable taxes)

It is further submitted that it was the petitioner's understanding that the total amount to be indicated as per the last column of the aforesaid table was the total amount payable annually, inclusive of the applicable taxes. Necessarily, the amount payable over 3 years would be three times the said amount. It is submitted that the mis-interpretation was caused due to the terminology used in the format provided by the respondent no.1 itself. It is pointed that for the purpose of subsequent tenders the respondents have changed the relevant format and the same now reads as under:



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Personnel	No.	Monthly Rate (in ₹, excluding taxes)	Annual Total (in ₹, excluding taxes)	Total (For 3 years) (in ₹, with applicable taxes)

It is further stated that the aforesaid change/amendment brought out by the respondents themselves is indicative of the fact that the petitioner is not responsible for the internal confusion at the respondents' end. In the circumstances, it is contended that the impugned OM and the action purported to be taken *vide* impugned email dated 22.07.2024 deserves to be set aside.

(iv) it is further submitted that despite acknowledging that the decision rendered by the respondent no.1 in the impugned OM is impermissible under applicable law, respondent no.2 without any authority or ground, unilaterally issued a suspension order by relying upon the GeM Incident Management Policy. It is contended that the policy is not applicable to the facts and circumstances of the present case.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS

14. Learned counsel for the respondent no.2 has submitted that currently the petitioner is not under any suspension in the light of the order dated 25.07.2024 passed by this Court which, *inter alia*, reads as under:

"12. The Court has considered the aforementioned contentions. At this interim stage, on the basis of the documents and contentions presented by Mr. Jain, there is a strong prima facie case to indicate that the action taken by the Respondents is clearly a misconstruction of the terms of the RfP. Particularly in light of the Petitioner's clarification issued to



Respondent No.1 vide communication dated 20th March, 2024, there could not be any room for doubt that the quotation submitted by the Petitioner were only on annual basis and could not be considered to be a composite quotation for the entire duration of the contract. A contract should be interpreted in a manner that reflects the understanding of both parties at the time of its execution. The explicit confirmation in the communication from the Petitioner supports the argument that the terms were clear and understood by both parties at the outset. In any event, Respondent No.1 ought to have afforded reasonable opportunity to the Petitioner to defend itself before issuing the Impugned Office Memorandum which calls upon Respondent No. 2 to blacklist the Petitioner from the entire Government tendering process.

13. In matters relating to imposition of blacklisting, the jurisdiction under Article 226 of the Constitution of India, 1950, calls upon this Court to examine the issue of proportionality and also the fairness in the State action. The instant case clearly falls in the domain of the Court to exercise of its power under Article 226 of the Constitution.

14. Accordingly, till the next date of hearing, the Impugned Office Memorandum dated 16th July, 2024 and Impugned communication dated 22nd July 2024 shall remain stayed. It is made clear that the Petitioner shall be entitled to participate in all the ongoing tenders on the GeM portals.

15. Accordingly, Respondent No. 2 is directed to immediately make the necessary changes in the GeM portal, in order to facilitate the Petitioner to participate in the tenders on the said portal.”

15. It is further submitted by learned counsel for the respondent no.2 that the action sought to be taken by the respondent no.2 was in terms of the Incident Policy of GeM with reference to Incident no.1881041 raised by respondent no.1 on the GeM portal.

16. Learned counsel for the respondent no.1 and 3 strenuously opposes the present petition on the ground that the stand taken by the petitioner is lacking in *bona fides*. It is submitted that there was no confusion as regards the offer price in the bid submitted by the petitioner, however, the petitioner sought to resile from his bid with a view to charge much more amount than



what was quoted.

17. It is submitted that the petitioner also resorted to engage in prolonged discussion/s which hampered the implementation of the scheme. It is also submitted that petitioner deserves to be debarred/penalised since the offer as set out in the bid, which came to be accepted by the respondents, was reneged by the petitioner. Reliance is also placed on ***Tata Motors Limited Vs. The Brihan Mumbai Electric Supply & Transport Undertaking (Best) and Others*** in Civil Appeal No. 3897 of 2023 to contend that the present petition is not maintainable.

REASONING AND CONCLUSION

18. Having considered the rival submissions of the respective counsel, I find merit in the submissions on behalf of the petitioner that the impugned OM dated 16.07.2024 and the action proposed to be taken *vide* the email dated 22.07.2024 have been issued in utter disregard of the principles of natural justice inasmuch as no opportunity of hearing was provided to the petitioner prior to issuance thereof.

19. The impugned OM dated 16.07.2024 gives a sweeping finding that the petitioner was negligent and incompetent; and made a recommendation/direction for blacklisting of the petitioner (for atleast five years). At the very least, it was incumbent on the respondents to afford an opportunity of hearing to the petitioner before making such a sweeping observations/reaching the conclusion that the petitioner was required to be blacklisted 'for atleast five years'. Moreover, the impugned communication dated 22.07.2024, also unilaterally substituted the decision of impugned OM without affording any opportunity of hearing or prior intimation/notice to



the petitioner.

20. Further, reliance placed by the learned counsel for the respondent nos.1 and 3, on the judgment of the Supreme Court in ***Tata Motors Limited Vs. The Brihan Mumbai Electric Supply & Transport Undertaking (Best) and Others*** (supra), does not advance the case of the said respondents. The judgment rightly lays down that the Court would normally loath to interfere in contractual matters, “unless a clearcut case of arbitrariness, mala fide or bias or irrationality is made out”. However, the observations made in the said judgment do not digress from the settled legal position as regards adherence to procedural requirement/s and scrupulous compliance with the principles of natural justice for the purpose of taking debarring/blacklisting action against any bidder.

21. It has been held in a catena of judgments that blacklisting virtually amounts to civil death and therefore affording an opportunity of hearing in consonance with the principles of Natural Justice before blacklisting is an obligatory prerequisite. The Supreme Court in ***Blue Dreamz Advertising Pvt ltd & Anr. vs Kolkata Municipal Corporation & Ors.*** (2024) SCC OnLine SC 1896 has reiterated the aforesaid view and has held as under:

“22. Blacklisting has always been viewed by this Court as a drastic remedy and the orders passed have been subjected to rigorous scrutiny. In Erusian Equipment & Chemicals Ltd. v. State of West Bengal, (1975) 1 SCC 70, this Court observed that

“20. Blacklisting has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for purposes of gains. The fact that a disability is created by the order of blacklisting indicates that the relevant authority is to have an objective satisfaction....”

23. In *Mr. B.S.N. Joshi (supra)*, this Court held that:

“41. ... When a contractor is blacklisted by a department he is



debarred from obtaining a contract, but in terms of the notice inviting tender when a tenderer is declared to be a defaulter, he may not get any contract at all. It may have to wind up its business. The same would, thus, have a disastrous effect on him. Whether a person defaults in making payment or not would depend upon the context in which the allegations are made as also the relevant statute operating in the field. When a demand is made, if the person concerned raises a bona fide dispute in regard to the claim, so long as the dispute is not resolved, he may not be declared to be defaulter.”

(Emphasis supplied)

24. This Court in *Kulja Industries Ltd. (supra)* after setting out the legal position governing blacklisting/debarment in USA and UK held that:

“25. Suffice it to say that “debarment” is recognised and often used as an effective method for disciplining deviant suppliers/contractors who may have committed acts of omission and commission or frauds including misrepresentations, falsification of records and other breaches of the regulations under which such contracts were allotted. What is notable is that the “debarment” is never permanent and the period of debarment would invariably depend upon the nature of the offence committed by the erring contractor.

26. In the case at hand according to the respondent BSNL, the appellant had fraudulently withdrawn a huge amount of money which was not due to it in collusion and conspiracy with the officials of the respondent Corporation. Even so permanent debarment from future contracts for all times to come may sound too harsh and heavy a punishment to be considered reasonable especially when (a) the appellant is supplying bulk of its manufactured products to the respondent BSNL, and (b) the excess amount received by it has already been paid back.”

25. What is significant is that while setting out the guidelines prescribed in USA, the Court noticed that comprehensive guidelines for debarment were issued there for protecting public interest from those contractors and recipients who are non-responsible, lack business integrity or engage in dishonest or illegal conduct or are otherwise unable to perform satisfactorily. The illustrative cases set out also demonstrate that debarment as a remedy is to be invoked in cases where there is harm or potential harm for public interest particularly in cases where the person's conduct has demonstrated that debarment as a penalty alone will protect public interest and deter the person from repeating his



actions which have a tendency to put public interest in jeopardy. In fact, it is common knowledge that in notice inviting tenders, any person blacklisted is rendered ineligible. Hence, blacklisting will not only debar the person concerned from dealing with the concerned employer, but because of the disqualification, their dealings with other entities also is proscribed. Even in the terms and conditions of tender in the present case, one of the conditions of eligibility is that the agency should not be blacklisted from anywhere.

26. In other words, where the case is of an ordinary breach of contract and the explanation offered by the person concerned raises a bona fide dispute, blacklisting/debarment as a penalty ought not to be resorted to. Debarring a person albeit for a certain number of years tantamounts to civil death inasmuch as the said person is commercially ostracized resulting in serious consequences for the person and those who are employed by him.

27. Too readily invoking the debarment for ordinary cases of breach of contract where there is a bona fide dispute, is not permissible. Each case, no doubt, would turn on the facts and circumstances thereto.”

22. Apart from the aspect of non-compliance with the principles of natural justice, on a *prima facie* conspectus, this Court is also satisfied that a genuine confusion was created on account of phraseology of the relevant financial proposal format as prescribed in Annexure II of the RFP. The same does not clearly indicate whether the last column was to indicate the total amount for all the three years, or the annual amount with applicable taxes. It is also noteworthy that soon after the submission of the financial proposal on 19.02.2024, the petitioner addressed an email dated 20.03.2024 setting out clearly that the petitioner had quoted the annual total fees (in rupees, including GST) and that the applicable fee for the entire period of 3 years will be thrice the said amount. There was no cogent and timely response to the said email.

23. In any event, this Court is not inclined to uphold the impugned OM and the communication/email dated 22.07.2024 on the ground of infraction



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of the principles of natural justice.

24. Accordingly, the impugned Office Memorandum dated 16.07.2024 and the communication/email dated 22.07.2024, are set aside.

25. It is made clear that any action proposed to be taken by the respondents against the petitioner with regard to the subject tender or any other account, shall be preceded by a cogent and self-contained show cause notice, and an opportunity of hearing followed by a reasoned order to be issued by the concerned respondent/s.

26. With the aforesaid directions, the present petition stands disposed of. All pending applications also stand disposed of.

SACHIN DATTA, J

FEBRUARY 24, 2025/sl, at