

(2013) 07 BOM CK 0021

In the Bombay High Court

Case No : Writ Petition No. 816 of 2012 and Civil Application No. 264 of 2012

M/s. Everest Enterprises

APPELLANT

Vs

Airport Authority of India and Others

RESPONDENT

Date of Decision : 01-07-2013

Acts Referred:

Citation : (2014) 1 ALLMR 75

Hon'ble Judges : U.V. Bakre, J;A.P. Lavande, J

Bench : Division Bench

Advocate : M.S. Joshi and Ms. Prachi, for the Appellant; S.D. Padiyar, for the Respondent

Judgement

A.P. Lavande, J.—Heard Mr. Joshi, learned counsel for the petitioner and Mr. Padiyar, learned counsel for the respondents. Rule. By consent heard forthwith.

2. By this petition, the petitioner challenges order dated 16/11/2012 passed by the Respondent No. 3, by which the petitioner has been debarred from participating in all tenders floated by the Airport Authority of India, for a period of three years from the date of issuance of the letter for the reasons stated therein.

3. Briefly, the facts relevant for the purpose of disposal of this petition are as under:

The petitioner was awarded contract for Mechanized Environmental Support Services (Up-keeping) at Goa Airport pursuant to open bid vide letter dated 16/4/2008. The said contract was extended from time to time and last contract was entered into on 21/2/2011 which was to expire on 31/8/2011, but the same was terminated on 1.4.2011. Thereafter, show cause notice dated 6/9/2012 was issued by Respondent No. 3 to the petitioner calling upon the petitioner to show cause as to why the petitioner should not be black listed and debarred from participating in any of the tenders floated by the Airport Authority of India, as there were deficiencies and omissions on the part of the petitioner to make

alternate arrangements, thereby causing additional burden on the Airport Authority of India since the Airport Authority of India had to make all arrangements at their own cost.

4. The petitioner replied to the said show cause notice by reply dated 14/9/2012. Thereafter, the petitioner sent yet another reply dated 2/11/2012. The respondent No. 3 by order dated 16/11/2012, which is impugned in the present petition has debarred the petitioner from participating in any of the tenders floated by the Airport Authority of India for a period of three years. One of the main grievances made by the petitioner in the petition is that while passing the impugned order, the respondent No. 3 did not take into consideration the second reply dated 2/11/2012.

5. Mr. Padiyar, learned counsel for the respondents submits that he has been instructed by respondent No. 3 that respondent No. 3 has no objection if the impugned order dated 16/11/2012 is set aside and in that event the respondent No. 3 will pass fresh order after considering the replies filed by the petitioner, within reasonable time as may be fixed by the Court and subject to the condition that until fresh order is passed by respondent No. 3, the petitioner is not permitted to participate in any fresh tender, if any, floated by the Airport Authority of India.

6. Learned counsel for the petitioner has no objection if such an order is passed by the respondent No. 3.

7. In view of the above, we pass the following order:

(i) The impugned order dated 16/11/2012 passed by respondent No. 3 is quashed and set aside.

(ii) Respondent No. 3 shall pass fresh order after considering the replies dated 14/9/2012 and 2/11/2012 given by the petitioner in accordance with law expeditiously and in any case, within a period of four weeks from today and shall communicate the same to the petitioner within one week, thereafter.

(iii) Till the order is passed by the respondent No. 3, the petitioner shall not be entitled to take part in tenders, if any, floated by the Airport Authority of India.

8. Writ Petition stands accordingly disposed of.

9. In view of the disposal of the petition the Civil application No. 264 of 2012 stands disposed of. Certified copy of this order be expedited.