

(2013) 08 DEL CK 0181

In the Delhi High Court

Case No : Writ Petition (C) 6652 of 2011

M/s. Roshan Lal Vohra and Another

APPELLANT

Vs

MCD and Others

RESPONDENT

Date of Decision : 12-08-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 7 AD 604

Hon'ble Judges : S. Ravindra Bhat, J;Najmi Waziri, J

Bench : Division Bench

Advocate : Siddhartha Joshi and Mr. Ankur Arora, for the Appellant; H.S. Phoolka, Mr. Mini Pushkarna, Standing Counsel, Ms. Anupama and Mr. Shantanu Tyagi, for the Respondent

Final Decision : Allowed

Judgement

S. Ravindra Bhat, J.—The petitioners, in these proceedings under Article 226, challenges an order dated 02.08.2011 by which it was blacklisted by the respondent-South Delhi Municipal Corporation which succeeded to the erstwhile Municipal Corporation of Delhi. The blacklisting order was to subsist till 23.3.2011. Briefly, the facts are that the petitioner was awarded a contract for certain works by the Corporation on 19.02.2008; the period of completion of the contract was 18 months. The Corporation contended that despite issuance of reminders and letters cautioning that performance of the work was unsatisfactory and unnecessarily delayed, the petitioner took no remedial measures. It, therefore, terminated the contract on 16.3.2009 and sought to levy the penalty of Rs. 36,84,846/-. Those were challenged by the writ petitioner. Its writ petition was dismissed; consequently, it preferred an appeal-L.P.A. No. 778/2010, which is pending on the file of the Court.

2. In the meanwhile, the Corporation had issued a blacklisting order (concurrently along with the termination order). That was the subject matter of another writ proceedings WP (C) 8130/2009. The petitioner's complaint then

was that the principles of natural justice had not been followed and the blacklisting order was not preceded by any opportunity of hearing. This Court allowed the petition and quashed the order (hereafter referred to as first blacklisting order) on 1.7.2009. In the wake of this development on 13.9.2010, the Corporation issued a show cause notice and, pending enquiry, issued an order directing the suspension of the petitioner from amongst its enlisted contractors. This order-dated 13.09.2010-was challenged in WP (C) 6718/2010; the writ petition was dismissed. The suspension order ultimately culminated in the order impugned in the present proceedings dated 2.8.2011 whereby blacklisting was directed for a period of six months ending on 23.3.2012.

3. It was contended that the respondent Corporation despite being repeatedly asked why the petitioner was singled out for blacklisting, was unable to offer satisfactory explanation to the Court in this regard, characterising the blacklisting order in this case as arbitrary, learned counsel submitted that existence of the power-administrative in nature-did not mean that the Corporation should have taken recourse to it lightly. Learned counsel stressed upon the fact that the contract itself had provided remedies in the form of recession of the agreement and the suitable monetary compensation in the form of damages/compensation-a course which was in fact adopted by the Corporation. Having elected to it, the Corporation ought not to have visited the petitioner with the penalty of blacklisting which impeded its rights to engage in commercial activity not only with the respondent but with other State agencies due to the stigma attached to it.

4. Mr. H.S. Phoolka, Learned Senior counsel for the Corporation relied upon paragraph 23.3 (c), of the instructions applicable in respect of enlisted contractors (of the Corporation) issued in 2008. It was submitted that this condition empowered the Corporation to black list the contractor or an agency who persistently violated any important condition of any contract. Counsel highlighted that despite repeated reminders and letters starting from 5.5.2008, 13.5.2008 and 27.5.2008, the petitioner did not care to take any remedial action; on the other hand at the relevant time only 7 % of the contracted work had been completed in 10 months out of 18 months. It was under these circumstances that the respondent decided to impose administrative sanctions in the form of blacklisting. Counsel contended that suspension order ought not to be taken as a punitive one in the circumstances of this case since its validity was tested in separate writ proceedings but eventually upheld. It was also urged that the blacklisting order cannot be termed as disproportionate and while examining it the decision makers had taken into account the previous suspension period.

5. During the course of hearing, learned counsel for the petitioner submitted that according to the instructions obtained from Mr. Anil Vohra, (Proprietor of the petitioner, who is present), LPA 778/2010 would be withdrawn and appropriate remedies in accordance with law by way of filing a suit impugning the decision of the MCD to recover the sum of Rs. 36,84,846/-, would be made.

6. This Court has carefully considered the submissions. In furtherance of the directions made in the course of these proceedings, the respondent filed two affidavits. Along with one of them, a chart or list containing names of 62 agencies who were black listed for the past three years was furnished.

7. The power to blacklisting an agency which is engaged in trade or commerce with a State agency is undoubtedly an administrative one; at the same time, the Courts do recognise that when imposed it can act harshly inasmuch as the subject would be debarred from participating in further contractual activity for the period in question. Often such administrative orders also end up barring the concern from effectively participating in any commercial activity with other State agencies. Having regard to the competitive working condition at the market place and the nature of eligibility conditions which are tailored in the present time, Courts have always been circumspect and careful while examining the validity of blacklisting orders. In some decisions such orders have been termed as so drastic as amounting to civil death till the time they are in force.

8. Keeping the above observations in mind, this Court immediately notices that the Corporation's justification in issuing blacklisting order in the present case is that despite lapse of ten months and several reminders during the course of that period, the petitioner was able to perform only 7% of the work awarded. A careful scrutiny of the respondent's contentions would reveal that no less than five of the letters/reminders relied upon by it were issued within a span of three weeks in May, 2008. Now, if the Corporation was satisfied in that period of time (barely three months from the commencement of works in February, 2008) that the petitioner had defaulted to such an extent, surely, it also contributed to the delay in the sense that it did not opt to cancel the contract and seek its contractual remedies by way of damages etc. within reasonable time. The only explanation given in this case is that the Corporation felt it necessary to give more time to the petitioner. Such explanation in this Court's opinion tests anyone's credibility.

9. The previous discussion would reveal that the petitioner was visited with the suspension order which in fact meant that it could not participate in any tender issued by the respondent Corporation or any other agency or enter into fresh contract for the period in which such suspension order was in force. As a matter of fact the suspension order was in force for a period of six months from 2.11.2010. Although, learned counsel for the respondent submitted that while imposing the blacklisting order the period of suspension too was taken into consideration, this Court is of the opinion that having regard to the overall conspectus of the circumstances, the imposition of blacklisting order for the limited duration between 2.8.2011 to 23.3.2012 was not warranted; it was a disproportionate response in the peculiar facts and circumstances of the case. This is all the more so that for the entire duration that such order was in force despite the interim orders granted by the Court the petitioner was unable to participate effectively in any other tender activity, as a result of the stigma

attached to the order.

10. In view of the above discussion and taking note of the petitioner's statement that it would agitate its grievance with regard to the recovery of damages/ compensation by the Corporation taken in LPA 778/2010 by filing separate suit proceedings and the said LPA would be withdrawn within a period of one week, this Court is of the opinion that the ends of justice would be met with if the impugned order is set aside. The order dated 2.8.2011 is accordingly set aside. However, this Court clarifies that it has not expressed its opinion on the merits of the petitioner's contentions with regard to the legality or otherwise of the order dated 16.3.2009 seeking to recover Rs. 36,84,846/-. All contentions of both parties in that regard are expressly reserved. The petitioner is at liberty to prefer such proceedings as are available to it in law. A copy of this order shall be placed on record in LPA 778/2010, which is directed to be listed before the appropriate roster Bench subject to orders of Hon'ble the Acting Chief Justice, on 27.08.2013. The writ petition is allowed in the above terms.