

(1995) 05 DEL CK 0034

In the Delhi High Court

Case No : C.M. No. 4388 of 1994 and C.M. No. 7896 of 1994

M/s. Unibros

APPELLANT

Vs

All India Radio and others

RESPONDENT

Date of Decision : 26-05-1995

Acts Referred:

Citation : AIR 1995 Delhi 368 : (1995) 59 DLT 539

Hon'ble Judges : Dr. M.K. Sharma, J;D.P Wadhwa, J

Bench : Division Bench

Advocate : Arun Jaitley and Rajesh Lakhanpl, for the Appellant; K.T.S. Tulsi, Addl. Solicitor General, Madan Lokur and Ms. Meera Bhatia, for the Respondent

Judgement

Dr. M. K. Sharma, J.—This writ petition by petitioner is directed against the order dated 10-10-1994 issued by the Chief Engineer (Civil), Civil Construction Wing of the Directorate General, All India Radio, suspending the business with the petitioner for tendering for the works under Civil Construction Wing at All India Radio. The petitioner is a registered partnership firm and is enlisted as Class 1 (Building) contractors in the department of Indian Posts and Telegraphs (Civil Engineering Wing), New Delhi. Because of the aforesaid enlistment the petitioner is entitled to give tender for construction work of any amount/level. Through press notice dated 7-10-1994 respondent No. 3 invited tenders for the work of "Construction Purview Theatre "B" Wing at Siri Fort Auditorium, New Delhi. In pursuance of the said notice inviting tender the petitioner vide letter dated 5-10-1994 requested the respondent No. 3 to supply the tender documents for the works mentioned in the said notice inviting tender. However, by letter dated 17-10-1994 the respondent No. 3 refused to issue the tender documents to the petitioner for the said work stating that the department vide Memorandum dated 10-10-1994 has banned further business with the firm and accordingly the tender documents were not issued. On 17-10-1994 the petitioner received a copy of the order dated 10-10-1994 whereby the respondent No. 2 has passed an order to the effect of "suspending business with the petitioner for tendering

Civil Construction Wing, All India Radio". Accordingly, in the present writ petition the petitioner has challenged the legality and/or validity of the aforesaid order dated 10-10-1994. By order dated 21-10-1994, this Court issued notice to the respondents to show as to why Rule Nisi be not issued and on the said stay application filed by the petitioner this court, directed that the petitioner might be given tender documents regarding construction of Preview Theatre "B" Wing at Siri Fort Auditorium, New Delhi, as per advertisement.

2. The respondents have contested the case by filing the counter affidavit stating, inter alia, that while applying for pre-qualification for construction of Mandi House Phase II contract in 1988, the petitioner had stated that it had executed a work of value not less Rs. 4 Crores in the last 3 years. It is further stated that in support of the said-statement the petitioner submitted a certificate from M/s. Maruti Udyog Limited and that on subsequent verification and investigation by the Government through its investigating agency it was found that the petitioner furnished incorrect information and that in fact the petitioner never executed any contract of minimum value of Rs. 4 Crores. It is further stated in the said counter affidavit that the contract allegedly executed by the petitioner for Maruti Udyog Limited consisted of five different and distinct contracts and that the petitioner had deliberately furnished false information. According to the respondents in view of the aforesaid conduct on the part of the petitioner of furnishing false information it was decided to suspend business dealings with the petitioner and that action for issuing a show cause notice for blacklisting the petitioner was being taken separately.

3. During the course of arguments by the counsel for the parties it has been brought to our notice that investigating authority on completion of the investigation recommended that the petitioner should be blacklisted. We are told that the investigating authority initiated the investigation in the year 1988 itself and submitted the report on 29-12-1992.

4. Mr. Arun Jaitley appearing for the petitioner submitted before us that even during period of investigation by the investigating authorities and also after submission of report by the investigating authority on 29-12-1992 the petitioner has been allotted contracts by the respondents. It is further submitted before us that the petitioner completed the contracts awarded to them for construction of Mandi House Phase II successfully, and in that respect even certificates have been issued by the officers of the respondents. The counsel for the petitioner further submitted before us that the allegations brought against the petitioner in the impugned order that it has submitted false information are also incorrect and baseless which he could prove if he was given an opportunity of hearing. According to the petitioner no show cause was issued by the respondents prior to or after issuance of the impugned order, thereby violating the principles of natural justice.

5. Subsequent to the aforesaid report, we find that no first information report has been lodged against the petitioner and no show cause notice for blacklisting

the petitioner has been issued till date except issuance of the aforesaid order on 10-10-1994 which is impugned in this writ petition. Mr. K.T.S. Tulsi, learned Additional Solicitor General, appearing for the respondents fairly admitted that there is a long delay in processing the matter and accordingly no show cause notice could be issued to the petitioner for the purpose of initiating action for blacklisting the petitioner as proposed. In our view the sword of proposed proceedings for blacklisting the petitioner cannot be kept hanging on the head of the petitioner for such a long period of time. We are also not satisfied with the Explanation submitted by the respondents for not initialing such proceedings till this date. In our view the petitioner could not be kept under suspension indefinitely and consequently deprived from getting works from the Civil Wing of All India Radio on the basis of a proposed action of blacklisting thereby affecting his civil rights.

6. The learned Additional Solicitor General, however, submitted before us that the respondents are prepared to issue a show cause notice to the petitioner in the proceedings for blacklisting within a course of two days and also prepared to complete the entire proceedings within a course of 15 days provided the petitioner submits its reply to show cause notice within 3 days from the receipt of the show cause notice. In our opinion the offer made by the learned Additional Solicitor General is fair and reasonable. In the light of the aforesaid submissions of the learned Additional Solicitor General we direct the respondents to issue a show cause notice in the proceedings for blacklisting the petitioner within 2 days from today, against which the petitioner shall submit their reply within 3 days of the receipt thereof. After submission of the show cause by the petitioner the respondent shall fix the matter for affording a personal hearing of the petitioner, if he so desires, and complete the entire proceedings within 10 days thereafter.

7. We have no hesitation in our mind that before taking a final decision in the matter the respondents shall give a personal hearing to the petitioner and would definitely take into consideration the contentions of the petitioner raised before us and also the papers and records which might be placed on behalf of the petitioner. With the aforesaid directions and observations we dispose of this petition in the aforementioned terms.

8. Order accordingly.