
(2010) 10 DEL CK 0083

In the Delhi High Court

Case No : Writ Petition (C) No. 6718 of 2010

Roshan Lal Vohra and Sons and Another

APPELLANT

Vs

M.C.D. and Others

RESPONDENT

Date of Decision : 01-10-2010

Acts Referred:

Citation : (2010) 10 DEL CK 0083

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Sidharth Joshi, for the Appellant; H.S. Phoolka Mini Pushkarna and Ajay Aggarwal, Executive Engineer (Projects-I), Central Zone, M.C.D., for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—The petitioner, being a Class I Contractor enlisted with the respondent MCD, has preferred this petition impugning the Circular dated 15th September, 2010 of the respondent MCD ordering suspension of business of the petitioner with the respondent MCD for a period of six months and the notice dated 13th September, 2010 inviting the petitioner to show cause as to why the petitioner should not be debarred from tendering in respondent MCD for an appropriate period, for not following the terms and conditions of the NIT/Work Order/Contract and for persistently violating the important conditions of the Contract.

2. The Counsel for the petitioner has urged only two arguments impugning the aforesaid action of the respondent MCD. Firstly, it is contended that the respondent MCD had earlier also blacklisted the petitioner and inter alia challenging which the petitioner had earlier filed WP(C) No. 8130/2009. It is contended that the order so blacklisting the petitioner was struck down vide judgment dated 1st July, 2010 in the earlier writ petition and the respondent MCD cannot for the same reason initiate proceedings for blacklisting the petitioner and suspend the business of the petitioner. Secondly, it is urged that

the show cause notice dated 13th September, 2010 has not been issued by the appropriate authority and is liable to be struck down for this reason alone. Attention in this regard is invited to the Instructions of the respondent MCD for enlistment of Contractors in respondent MCD. Clause 23 of the said Instructions inter alia provide that "enlisting authority" shall have the right inter alia to suspend business with the Contractor and/or to debar him or to remove him from the approved list of Contractors. On enquiry as to which is the enlisting authority, the Counsel for the petitioner draws attention to the reply obtained to an RTI query dated 22nd September, 2009 in which the enlisting authority is described as comprising of a Committee with the Additional Commissioner (Engineering) as Chairman and seven Members and a Member Secretary. It is argued that it is only the said Committee which can take action as has been taken and the action in the present case having admittedly not been taken by the said Committee of nine Members and the show cause notice having been issued by the Executive Engineer and the Circular dated 15th September, 2010 having been issued by the Administrative Officer, Engineering Department are bad for the said reason. Reliance in this regard is placed on the following judgments:

- (i) Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others,
- (ii) Collector of Central Excise, Jaipur Vs. Alcobex Metals,
- (iii) Collector of Central Excise v. Oil & Natural Gas Commission 1998 (103) E.L.T. 3 (S.C.).
- (iv) H.C. Chandel Vs. Union of India and Another,
- (v) Pranalal Manilal Parikh v. State of Gujarat (1995) 4 SLR 694.

3. Insofar as the first contention aforesaid of the petitioner is concerned, the earlier order of the respondent MCD blacklisting the petitioner was set aside by this Court for the reason of the principles of natural justice having not been followed before making that order; neither any show cause notice nor a hearing was given to the petitioner. This Court without entering into the merits of the case held that no case for blacklisting was made out. As such, it was enquired from the Counsel for the petitioner as to why inspite of the earlier judgment, it is not open to the respondent MCD to on the same cause of action initiate proceedings in accordance with law and principles of natural justice for blacklisting the petitioner. The Counsel for the petitioner contends that if the respondent MCD intended to do so, it ought to have obtained permission from this Court in the earlier writ petition and without that, cannot do so.

4. I am unwilling to agree. The respondent MCD would have been debarred from blacklisting the petitioner had the finding been given that no case for blacklisting was made out and/or that the petitioner was not at fault. The order was set aside only because of non compliance of the requisite procedure. The said order is akin to rejection of a plaint and which does not bar the party whose plaint is rejected from filing a fresh suit.

5. As far as the second contention aforesaid of the petitioner is concerned, the senior Counsel for the respondent MCD appearing on advance notice has invited attention again to the Instructions aforesaid and which, are provided to have been issued with the prior approval of the Commissioner (MCD). It is argued that the executive power of the respondent MCD vests in the Commissioner, MCD. Attention is also invited to the Circular dated 15th September, 2010 in which it is recorded that the same was as per the decision of the Commissioner, MCD. The same Circular also records the factum of the show cause notice having been issued to the petitioner and the enquiry being under way and the suspension of business with the petitioner with immediate effect for the reason thereof. It is argued that thus the order of suspension of business as well as the issuance of the show cause notice is with the decision of the Commissioner, MCD and it is only that the Circular has been communicated by the Administrative Officer and the show cause notice by the Executive Engineer. The senior Counsel for the respondent MCD also offers in the Court, the record to show that the decision for issuance of the show cause notice has been taken by the Additional Commissioner (Engineering) and by Member Engineering-cum-Chief Engineer.

6. The Counsel for the petitioner rejoins by contending that the decision had to be taken by the entire Committee and cannot be of the Chairman and one Member only.

7. The petitioner in reply to the show cause notice ought to urge all the aforesaid contentions. The petitioner rather than doing so, has filed this petition on the basis of the judgments aforesaid. However, each of the aforesaid judgments is in relation to the show cause notices issued by the Authority either under an Act or under the rules framed under an Act and the said judgments cannot be held to apply in the present case where the action is contractual in nature. The Instructions aforesaid cannot also be said to be having the same stature as rules framed under the Delhi Municipal Corporation Act, 1957.

8. Since the petitioner has been given an opportunity to reply to the show cause notice, I desist from answering the contention of the petitioner of the notice having not been given by the requisite Authority though from the Circular it is clear that the same is with the consent of the Commissioner, MCD.

9. The Counsel for the petitioner states that the show cause notice does not state as to before whom the reply thereto has to be submitted. Though ordinarily the reply is expected to be given to the authority issuing the show cause notice but the senior Counsel for the respondent MCD states that the petitioner shall be communicated and given fresh opportunity to file the reply. In my opinion the Court in exercise of writ jurisdiction should not interfere at the initial stage only and allow the proceedings to be culminated and all objections taken at this preliminary stage can be taken if remain aggrieved from the final decision.

There is no merit in the petition. The petition is dismissed in limine. No order as to costs.