

\$~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ LPA 860/2013 & CM APPL. 18089/2013

M/S. GORKHA SECURITY SERVICES Appellant

Through: Mr. Sudhir Nandrajog, Senior
Advocate with Mr. Tarkeshwar
Nath and Mr. B.K. Pandey,
Advocates

versus

GOVT. OF NCT OF DELHI & ORS. Respondents

Through: Ms. Zubeda Begum, Standing
Counsel for GNCT of Delhi.

Reserved on : 18th November, 2013

% Date of Decision : 29th November, 2013

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J:

1. Present letters patent appeal has been filed challenging the judgment and order dated 25th October, 2013 passed by learned Single Judge, whereby appellant's writ petition being W.P.(C) 6718/2013 was dismissed. The relevant portion of the impugned order reads as under:-

"11. It would thus be seen that the contract between the parties specifically empowered the respondents to blacklist the petitioner firm. Therefore, when the show-cause notice received by the petitioner expressly mentioned of such action as may be deemed appropriate by the Competent Authority, the petitioner could easily visualize that the action proposed by the Competent Authority could include blacklisting of the petitioner – firm.

Considering the express terms of the contract between the parties, it was not necessary for the respondent to specifically refer to the proposed blacklisting in the show-cause notice issued to the petitioner. The purpose of show-cause notice is primarily to enable the noticee to meet the grounds on which an action is proposed against it and such grounds were fully detailed in the show-cause notice issued to the petitioner. In fact, even prior to issue of the show-cause notice, the petitioner was aware of the issues between the parties through the notice dated 04.08.2012. It would, therefore, be difficult to say that the petitioner did not know what case it had to meet while responding to the show-cause notice. In any case, the petitioner did respond to the show-cause notice without claiming the ambiguity in the said notice and, therefore, it is not open to it to assail the impugned order on the ground that there was no specific reference to the proposed blacklisting of in the said notice.

XXXX

XXXX

XXXX

XXXX

14. As regards, the last contention that there was no breach of the terms of the contract, I find that the Competent Authority after taking into consideration the reply submitted by the petitioner has come to the conclusion that there were numerous breaches of the terms and conditions of the agreement by the petitioner. On a perusal of the response to the show-cause notice, I find that some of the grievances of the respondents, as stated in the notice, were not even denied in the reply. If the petitioner feels that the few findings recorded by the respondents in the impugned order are factually incorrect, the appropriate remedy for the petitioner would be to approach the civil court in this regard since disputed questions of facts cannot be gone into in a writ petition. It is primarily for the competent authority to decide, after considering the reply, if any, furnished by the noticee and taking into consideration the facts and circumstances of the case as to whether there was any breach of the terms of the contract on the part of the noticee or not and whether the acts and omissions attributed to the noticee justify blacklisting or not. The writ court cannot substitute its own view for the view of the Competent Authority and cannot interfere with such a decision unless it is shown that the decision so taken by the Competent

Authority was wholly arbitrary or perverse in nature. That, however, cannot be said with respect to the conclusion drawn in the impugned order.”

2. Mr. Sudhir Nandrajog, learned senior counsel for appellant submitted that Clause 27(a)(c)a. of the T&C, which dealt with blacklisting, was not attracted to the present case as it applied only to cases of delay in execution/commencement of work. He further submitted that learned Single Judge failed to appreciate that no separate show cause notice had ever been issued to the appellant before blacklisting. Mr. Nandrajog lastly submitted that the order of blacklisting passed by respondents did not deal with any of the contentions advanced by the appellant on merits.

3. Having heard learned senior counsel for appellant and on a perusal of the paper book, this Court finds that Clause 27(a)(c)a. of the T&C reads as under:-

“a...(sic) In case the contractor fails to commence/execute the work as stipulated in the agreement or unsatisfactory performance or does not meet the statutory requirements of the contract, Department reserves the right to impose the penalty as detailed below:-

- i) 20% of cost of order/agreement per week, upto two weeks' delays.*
- ii) After two weeks delay Principal Employer reserves the right to cancel the contract and withhold the agreement and get this job be carried out preferable from other contractor(s) registered with DGR and then from open market or with other agencies in DGR registered agencies are not in a position to provide such Contractor(s). The difference if any will be recovered from the defaulter contractor and also shall be black listed for a period of 4*

years from participating in such type of tender and his earnest money/security deposit may also be forfeited, if so warranted.”

(emphasis supplied)

4. In the opinion of this Court, respondents are entitled to blacklist the appellant not only on the ground of delay in execution/commencement of work but also on independent grounds of unsatisfactory performance and/or if the appellant's work did not meet the contractual requirement. Consequently, appellant's submission that Clause 27(a)(c)(a)ii of T&C is attracted only if there is delay in execution/commencement of work, is not correct.

5. Further, this Court is of the view that the contract between the parties did not contemplate a second show cause notice prior to blacklisting. In our opinion, appellant would have well known that on the basis of the grounds mentioned in the show cause notice dated 6th February, 2013, it could be blacklisted in accordance with Clause 27(a)(c)(a)ii of T&C. Consequently, we are in agreement with the view of learned Single Judge that keeping in view the express terms of the contract between the parties, it was not necessary for the respondents to specifically refer to the proposed action of the blacklisting in the show cause notice issued to the appellant.

6. We are also not impressed with the argument that competent authority while passing the blacklisting order did not decide the appellant's reply on merits. In fact, the learned Single Judge's finding that "*some of the grievances of the respondents, as stated in the notice, were not even denied in the reply*", has not even been controverted in the present appeal. In any event, we find that the appellant did not comply with the contractual terms

or the labour laws. For instance, during the hearing it was not disputed that payment of wages was not made by the respondent by ECS mode even though the contract stipulated so.

7. Consequently, present appeal and application being bereft of merits are dismissed but with no order as to costs.

MANMOHAN, J

CHIEF JUSTICE

NOVEMBER 29, 2013

rn