

**Rajesh Gupta Vs. Mcd**

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**Court :** Delhi

**Decided On :** Aug-10-2009

**Reported in :** 166(2010)DLT581

**Judge :** Hima Kohli, J.

**Appeal No. :** W.P.(C) 9236/2009 and C.M. 6920/2009

**Appellant :** Rajesh Gupta

**Respondent :** Mcd

**Advocate for Def. :** Maninder Acharya, Adv.

**Advocate for Pet/Ap. :** Anusuya Salwan, Adv

**Judgement :**

**Hima Kohli, J.**

1. The present writ petition is filed by the petitioner praying inter alia for quashing the letter dated 06.05.2009 issued by the respondent proposing to take certain actions against the petitioner including debarring him from tendering with the respondent/MCD for a period of five years.

2. The main grievance raised by the petitioner in the present proceedings is that the impugned decision, communicated to the petitioner has not been passed by

the Enlisting Authority which, in the case of the petitioner, is a committee chaired by the Additional Commissioner (Engineering). An earlier writ petition filed by the petitioner against the respondent MCD, registered as WP(C) 5738/2008, was allowed vide order dated 22.01.2009 and the earlier circular dated 07.10.2008 issued by the respondent blacklisting the petitioner without affording him an opportunity of hearing was quashed. Counsel for the petitioner submits that thereafter, a fresh notice dated 25.03.2009 was issued to the petitioner pursuant to which, he filed a detailed representation dated 30.03.2009 running into nine page (Annexure P-30), followed by another two page representation of even date (Annexure P-31).

3. The petitioner is also aggrieved by the fact that without considering the detailed representation dated 30.03.2009 (Annexure P-30), the respondent, hastily acted upon the two page representation of the same date (Annexure P-31), which fact is stated to be apparent from a perusal of the impugned order dated 08.04.2009 issued by the Superintending Engineer (Projects), City Zone, MCD. Learned Counsel submits that the respondent was bound to consider the detailed submissions on merits made by the petitioner in the nine page representation as well and deal with the issues addressed, while passing the impugned speaking order dated 08.04.2009 and that by brushing aside/ignoring the detailed representation made on merits, and confining himself only to the two page representation made additionally by the petitioner on the same date, the respondent has not acted in accordance with law. She states that none of the submissions made by the petitioner on the merits of the matter have been considered in the impugned order.

4. The factum of the respondent not considering the detailed representation of the petitioner is borne out from a perusal of the impugned order dated 08.04.2009, wherein only the submission of the petitioner limited to the extent that 'he was unable to execute the work due to unprecedented increase in the market and that it was difficult for the petitioner to complete the work in the period of inflationary trend specifically after the stipulated period of the contract', was taken note of and it was held that the petitioner did not have anything further to state and the matter was decided in favour of the MCD. This was followed by the impugned letter dated

06.05.2009 issued to the petitioner, rescinding the work awarded to the petitioner for construction of RUB at the level of crossing at Sarai Kale Khan-Nizamuddin on the risk and cost of the petitioner, forfeiting the earnest money deposited by the petitioner against the said work order and debarring him for further tendering with the respondent for a period of five years.

5. It is well settled that a blacklisting order, debarring a person from tendering involves serious civil consequences for his future business [Refer: Erusian Equipments & Chemicals Ltd. v. State of West Bengal and Anr. reported as : (1975) 1 SCC 70, Raghunath Thakur v. State of Bihar and Ors. reported as : AIR 1989 SC 620 and Grosos Pharmaceuticals (P) Ltd. and Anr. v. State of U.P. and Ors. reported as : (2001) 8 SCC 604]. The procedure adopted by the respondent while passing such an order, ought to meet the requirements of the principles of audi alteram partem. Hence, it was incumbent upon the respondent to have passed an order only after taking into consideration both the representations submitted by the petitioner, more so when it is admitted that both the representations were duly received by the office of the respondent. As the respondent has completely ignored the submissions made by the petitioner in the detailed representation (Annexure P-30), it cannot be held that while passing the impugned order of blacklisting, the respondent acted in conformity with the principles of natural justice.

6. As a result, the impugned communication dated 06.05.2009 and the order dated 08.04.2009 passed by the respondent are set aside with directions to the respondent to consider the case of the petitioner afresh. The respondent shall afford an opportunity of hearing to the petitioner by issuing a notice within one week from today. The petitioner shall appear before the Competent Authority in terms of the said notice and make his submissions including those on merits. The respondent shall pass a speaking order thereafter, in accordance with law and duly communicate the same to the petitioner, within a period of four weeks from the date of granting a hearing to the petitioner.

7. In case the petitioner is aggrieved by the orders that may be passed by the respondent, he shall be entitled to seek his remedies in accordance with law.

8. The writ petition is disposed of alongwith the pending application.

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