



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

% **Judgment reserved on : 24 September 2024**
Judgment pronounced on : 19 November 2024

+ **W.P.(C) 13947/2022 & CM APPL. 42658/2022**

**M/S GAYATRI WEBTECH PVT. LTD THROUGH SHRI
RAJESH TRIPATHI DIRECTORPetitioner**
Through: Mr. Sanjay Bansal, Adv.

versus

DELHI DEVELOPMENT AUTHORITY & ANR.

.....Respondents
Through: Mr. Sanjay Katyal and Ms.
Kritika Gupta, Advs. for R-1/
DDA

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. The petitioner is invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, 1950, challenging the decision taken by the respondents for debarring the petitioner from participating in any tenders called by the respondents for a period of three years as per the order dated 21.09.2022.

2. Shorn of unnecessary details, the petitioner, which is engaged in the business of providing services for maintenance and manpower outsourcing services in the sports wing of DDA¹ since 2011, was issued a work order in terms of tender issued for the deployment of a Plumber/fitter at Commonwealth Games Village Sports Complex

¹ Delhi Development Authority



[“CWGVSC”] for a period of 12 months to be reckoned from 01.02.2020, for the tender amount of ₹ 3,33,975/- and it is stated that the work order remained in existence upto 10.09.2021. It appears that there was one Plumber employed by the petitioner (*hereinafter referred by the pseudonym name ‘X’*) and the case of the petitioner is that the Plumber was marking his attendance but was not physically present at the site and he was not even wearing proper uniform during the duty hours, which was required to be worn in terms of the NIT² and that X used to leave the site after marking attendance besides engaging in heated arguments with the Supervisors during working hours, and therefore, the said Plumber was called to the office and was fired from the job after 10.09.2021 in terms of the notice dated 11.08.2021. It appears that when the petitioner intimated to the respondents about the termination of services of the Plumber and allowed them to engage another Plumber *vide* email dated 07.09.2021, the respondents issued a Show Cause Notice [“SCN”] dated 01.11.2021 to call upon the petitioner to explain as to why their contract be not terminated for terminating the services of the Plumber without their permission, alleging violation of Clause 66 of the NIT.

3. It is stated that the petitioner filed a reply dated 14.11.2021 and after affording a personal hearing on 25.07.2022, the impugned order dated 21.09.2022 was passed whereby the petitioner had been debarred from participating in the tenders called by the Sports Wing of the DDA for a period of three years from 21.09.2022.

4. The respondents in their counter-affidavit filed through Mr.

² Notice Inviting Tender



Dharmendra Sharma, Director, Sports, DDA has sought to justify the impugned order dated 21.09.2022 alluding to the terms & conditions of the contract and pointing out that the public notice and order dated 16.04.2021 had been issued by the DDMA³ whereby the CWGVSC was declared as 'extended COVID Care Facility' for housing and treatment of COVID⁴ patients, which required crucial role to be played by the frontline workers such as Plumber at the COVID-Care Centre for maintenance of water supplies, water fitting etc. at such critical and unforeseen times. It is stated that since no prior permission was taken before terminating the services of Plumber 'X', not only contract was terminated but the petitioner was debarred from participating in tenders to be floated by the respondents for a period of three years.

ANALYSIS & DECISION:

5. I have given my thoughtful consideration to the submissions advanced by the learned counsels for the parties. I have also gone through the relevant records of the instant case.

6. **First things first**, it would be relevant to reproduce the impugned order dated 21.09.2022, which reads as under:

3. CWGVSC was required to provide the housekeeping and allied manpower for 'COVID Care Centre', as per the letter of DM/DDMA East District Delhi. Plumber with detailed knowledge of plumbing and pipelines at CWGVSC was critical for maintenance of the COVID Care Centre, yet M/s Gayatri decided to remove plumber from its roll and did not pay his dues.

4. Due to the above violations of **Clauses 47(a) to (e)**, Show Cause Notice was issued to the agency vide letter No. F-3 (249)/CWGVSC/DDA/238 dt. 01 Nov 2021 and agency's response was received vide letter No. Nil dt. 15 Nov 2021 and email dt. 07

³ District Disaster Management Authority (East)

⁴ Coronavirus Disease-2019



Dec 2021. The Show Cause Notice also included the Issue of written complaint of the plumber dt. 07 Sep 2021 against the agency for not paying him salary/ extracting money for giving salary. Correcting of the mistake by paying the employee at a later stage does not absolve the agency of their wrong doings s but establishes the fact of the charges. The termination of plumber was also on flimsy ground of not wearing proper uniform, etc. and hence, the agency's response was found to be unsatisfactory.

5. In view of the above, the Agency violated clause 21 of the contract agreement for not paying the mandatory wages to its employee; Clauses 24 & 30 regarding forfeiting of Security Deposit and Clause 29(c) regarding forfeiting of Performance Guarantee and Clause 47 regarding termination of Contract.

6. Notwithstanding the above, again an opportunity of personal hearing was given to the agency vide letter No. F-3(249)CWGVSC/DDA/111 dt. 21 July, 2022. During the personal hearing the Agency reiterated their old statements and no additional input was provided to their earlier response.

7. In view of the above, M/s Gayatri Webtech Pvt. Ltd., has violated the terms and conditions of the Contract Agreement. After due consideration, M/s. Gayatri Webtech Pvt. Ltd., FF-23, One Mart Mall, Sec-06, Vasundhra Ghaziabad, UP-2010122 is hereby debarred from participation in any tender/contract of any type in the Sports Wing of DDA for a period of three years from the date of issue of this order.

This issues with the approval of the Competent Authority.”

7. A careful perusal of the aforesaid order cancelling the tender would show that the petitioner was found to have violated Clause 47 (a) to (e) of the Contract Agreement. At this juncture it would be appropriate to refer to the aforesaid clauses in NIT, which read as under:

“47. Termination of Contract. :-

a. If the Contractor at any time defaults in executing the job work with due diligence and care and continues to do so, and/ or the Contractor commits fault in complying with any of the terms and conditions of the agreement and does not remedy It, or take effective steps/measures to remedy it, or fails to complete the work as per the terms and conditions and does not complete them within the period specified in the notice given to him in writing, the D.DA may without prejudice to any other right or remedy, which shall



have accrued or shall accrue thereafter to the Contractor, shall cancel the contract/agreement after one month's notice and security deposit/contract performance guarantee will also be liable to be forfeited by the D.DA The D.D.A. on such cancellation, shall have powers to carry out/execute the work through other agencies, or by any other means at the risk and cost of the Contractor.

b. The D.DA reserves the right to terminate the contract. without assigning any reason, by giving to the Contractor one month's notice of its intention to do so and on the expiry of the said period of notice, the contract/agreement shall come to an end without prejudice to any right or remedy that may be accrued to the Contractor.

c. If any information furnished by Contractor is found to be incorrect or false at any time, the tender/contract/agreement is liable to be terminated after one month's notice and the security deposit will also be liable to be forfeited to the D.DA.

d. In case the Contractor wants to terminate the tender/contract/agreement, it shall have to give three months notice in advance to this effect to the D.D.A

e. Commissioner (Sports) reserves the right to reject all or any offer without assigning any reason and the same shall not be questionable before any forum, court of law, etc.”

8. A bare perusal of the aforesaid clauses of NIT would show that there was no stipulating that any manpower resource employed or deployed by the petitioner at the CWGVSC could only be replaced on termination of the services except upon approval or permission of the respondent/DDA. It appears that the genesis of the action that was taken by the respondent emanated from the order dated 16.04.2021 whereby the DM/Chairman (DDMA), East during the COVID-19 pandemic period passed certain directions purportedly under Sections 10(2)(1), 33, 34 and 65 of the Disaster Management Act, 2005 [**“DM Act”**] whereby CWGVSC was requisitioned for suitable facilities and temporary Hospital of appropriate bed strength to cater to the patients suffering from COVID symptoms. The order *inter alia* also provided that the requisition of CWGVSC included an indoor stadium as well as



the adjoining grounds, near Akshardham Metro Station along *with manpower and other resources* for converting the same site into an extended COVID-19 facility for the purpose of housing and treatment of persons during the COVID-19 pandemic.

9. There is no *iota* of doubt that such measures brought into effect by the DDMA w.e.f. 16.04.2021 were purportedly in the exercise of the powers under Sections 34⁵ and 35⁶ of the DM Act. However, it

⁵ **34. Powers and functions of District Authority in the event of any threatening disaster situation or disaster.**—For the purpose of assisting, protecting or providing relief to the community, in response to any threatening disaster situation or disaster, the District Authority may—

- (a) give directions for the release and use of resources available with any Department of the Government and the local authority in the district;
- (b) control and restrict vehicular traffic to, from and within, the vulnerable or affected area;
- (c) control and restrict the entry of any person into, his movement within and departure from, a vulnerable or affected area;
- (d) remove debris, conduct search and carry out rescue operations;
- (e) provide shelter, food, drinking water and essential provisions, healthcare and services;
- (f) establish emergency communication systems in the affected area;
- (g) make arrangements for the disposal of the unclaimed dead bodies;
- (h) recommend to any Department of the Government of the State or any authority or body under that Government at the district level to take such measures as are necessary in its opinion;
- (i) require experts and consultants in the relevant fields to advise and assist as it may deem necessary;
- (j) procure exclusive or preferential use of amenities from any authority or person;
- (k) construct temporary bridges or other necessary structures and demolish structures which may be hazardous to public or aggravate the effects of the disaster;
- (l) ensure that the non-governmental organisations carry out their activities in an equitable and non-discriminatory manner;
- (m) take such other steps as may be required or warranted to be taken in such a situation.

⁶ **35. Central Government to take measures.**—(1) Subject to the provisions of this Act, the Central Government shall take all such measures as it deems necessary or expedient for the purpose of disaster management.

(2) In particular and without prejudice to the generality of the provisions of sub-section (1), the measures which the Central Government may take under that sub-section include measures with respect to all or any of the following matters, namely:—

- (a) coordination of actions of the Ministries or Departments of the Government of India, State Governments, National Authority, State Authorities, governmental and non-governmental organisations in relation to disaster management;
- (b) ensure the integration of measures for prevention of disasters and mitigation by Ministries or Departments of the Government of India into their development plans and projects;
- (c) ensure appropriate allocation of funds for prevention of disaster, mitigation, capacity-building and preparedness by the Ministries or Departments of the Government of India;



appears that the petitioner was apprised about such measures by the respondent/DDA *vide* letter dated 17.08.2021, which reads as under:

“Deployment of Manpower at CWG Village Sports Complex

1. Reference DM/Chairman DDMA, East District Order No.DM(E)/DRM/NCOV1258/ 2020/2412-2425 dt. 16.04.2021.
2. CWG Village Sports Complex has been requisitioned by DM/DDMA East District Delhi under Disaster Management Act al n9 with staff and being used as COVID Care Centre.
3. Your employees have been working in COVIO Care Center. They have been trained to work there and have acquired necessary experience.
4. These employees shall not be Chalged without our permissions as they are front line workers and working in COVID Care Center.”

10. It must be noted that the learned counsel for the petitioner rightly urged that the two years have already gone by and the petitioner stands stigmatized due to an arbitrary exercise of powers by the respondents. The bottom line is that the petitioner as an employer of the Plumber was competent to take action for any misconduct which was taken *vide* letter dated 11.08.2021. The directions of the DDMA were although in the public domain, were only communicated to the petitioner after the termination letter dated 11.08.2021 on 17.08.2021. At the cost of repetition, while the DDMA was competent to take such

(d) ensure that the Ministries or Departments of the Government of India take necessary measures for preparedness to promptly and effectively respond to any threatening disaster situation or disaster;

(e) cooperation and assistance to State Governments, as requested by them or otherwise deemed appropriate by it;

(f) deployment of naval, military and air forces, other armed forces of the Union or any other civilian personnel as may be required for the purposes of this Act;

(g) coordination with the United Nations agencies, international organisations and governments of foreign countries for the purposes of this Act;

(h) establish institutions for research, training, and developmental programmes in the field of disaster management;

(i) such other matters as it deems necessary or expedient for the purpose of securing effective implementation of the provisions of this Act.

(3) The Central Government may extend such support to other countries affected by major disaster as it may deem appropriate.



measures for requisition of the CWGVSC and also manpower resources in such difficult and critical times, the impugned order dated 21.09.2022 debaring the petitioner for three years cannot be sustained for the simple reason that the debarment is governed by notification issued by the Government of India, Department of Expenditure, Ministry of Finance, Procurement Policy Division dated 02.11.2021⁷, lays down the following guidelines:

“Guidelines on Debarment of firms from Bidding”

Attention is drawn towards Rule 151 of General Financial Rules (GFRs), 2017 regarding 'Debarment from Bidding' which is reproduced as under:

(i) *A bidder shall be debarred if he has been convicted of an offence-*

(a) under the Prevention of Corruption Act, 1988; or

(b) the Indian Penal Code or any other law for the time being in force, for causing any loss of life or property or causing a threat to public health as part of execution of a public procurement contract.

(ii) *A bidder debarred under sub-section (i) or any successor of the bidder shall not be eligible to participate in a procurement process of any procuring entity for a period not exceeding three years commencing from the date of debarment. Department of Commerce (DGS&D) will maintain such list which will also be displayed on the website of DGS&D as well as Central Public Procurement Portal.*

(iii) *A procuring entity may debar a bidder or any of its successors, from participating in any procurement process undertaken by it, for a period not exceeding two years, if it determines that the bidder has breached the code of integrity. The Ministry/ Department will maintain such list which will also be displayed on their website.*

(iv) *The bidder shall not be debarred unless such bidder has been given a reasonable opportunity to represent against such debarment.*

2. This department has received a reference from Department of Commerce with a proposal that the task of universal banning of firms as per Rule 151 (ii) of GFRs as above may be undertaken by Department of Expenditure or should be decentralized to individual

⁷ F.1/20/2018-PPD



line Ministries/ Departments as DGS&D had been wind up on 31.10.2017. Central Public Procurement Portal (CPPP) or the Department of Expenditure can then maintain a master data of all such banned firms and it can be made available in public domain.

3. In context of above, all Issues regarding debarment have been reviewed in consultations with major procuring Ministries Departments and it is decided to issue attached 'Debarment Guidelines' in suppression to all earlier instructions on this subject.

4. This issues with the approval of Finance Secretary.”

11. A bare perusal of the aforesaid guidelines would show that a bidder can only be debarred if there is a conviction for committing an offence under the Prevention of Corruption Act, 1988 or under the Indian Penal Code or any other law for the time being in force whereby loss of life or property has occasioned or there is any threat to the public health. Thus, while the act of the respondents in terminating the contract must be held to be justified, the debarment of the petitioner from participating in the tender process for three years was clearly *non est* in law.

12. In view of the foregoing discussion, the present writ petition is allowed and the decision of the respondents dated 21.09.2002 debarring the petitioner from participating in the tender process for a period of three years is hereby quashed.

13. The present writ petition along with the pending application stands disposed of.

DHARMESH SHARMA, J.

NOVEMBER 19, 2024

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