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

+ W.P.(C) 16503/2023

H.S. SERVICE PROVIDER

.....Petitioner

Through: Mr. Kirtiman Singh, Sr. Adv. along
with Mr. Praveen Kumar, Mr. Rohit
Singh, Mr. Ranjeev Khatana and Mr.
Neeraj Srivastava, Advs.

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Mr. Mukul Singh, CGSC along with
Ms. Ira Singh and Mr. Aryan Dhaka,
Advs.

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

ORDER

% **07.01.2025**

CM APPLs.66478/2023 (Stay) and 136/2025 (under Section 151 CPC seeking the petitioner to participate in the newly floated tenders)

1. CM APPL.136/2025 has been filed on behalf of the petitioner seeking the following prayers:

“A. allow the petitioner to participate in the tenders as follows:

Sr. No.	Tender No.	Bid Publication Date	Last date of submission
1	GEM/2024/B/5724009	18.12.2024	08.01.2025
2	GEM/2024/B/5723617	18.12.2024	08.01.2025
3	GEM/2024/B/5723881	18.12.2024	08.01.2025
4	GEM/2024/B/5723753	18.12.2024	08.01.2025
5	GEM/2024/B/5692988	18.12.2024	08.01.2025
6	GEM/2024/B/5723449	18.12.2024	08.01.2025



7	GEM/2024/B/5721480	18.12.2024	08.01.2025
8	GEM/2024/B/5722042	18.12.2024	08.01.2025
9	GEM/2024/B/5721917	18.12.2024	08.01.2025
10	GEM/2024/B/5722241	18.12.2024	08.01.2025
11	GEM/2024/B/5724204	18.12.2024	08.01.2025

2. The present petition itself assails an order/letter dated 27.03.2023 which reads as under:

“
Government of India
Ministry of Railways
(Railway Board)

No.2019/EnHM/27/02

New Delhi, dated 27.03.2023

As per attached list.

Sub: Banning of business dealings with M/s H.S. Service Provider, 1197 -A, Modi Bada Sadar Cantt, Jabalpur (M.P)- 482001 for 03 (Three) years.

1. M/s H.S. Service Provider, 1197-A, Modi Bada Sadar Cantt, Jabalpur (M.P) -482001 was served with a Memorandum and Statement of charges for banning of business dealings with them for malpractices committed by them for getting work related to tender no.JBP/M/Tender/10/2014 through forged documents.

1. Reply to the Memorandum submitted by M/s H.S. Service Provider vide their letter No. HSSP/JBP/R-MRM/RB/2022-1505 dated 15.01.2022 has been considered in detail by the Competent Authority, who has concluded that M/s H.S. Service Provider has indulged in malpractices.

2. It has therefore, been decided by Ministry of Railways (Railway Board) to ban business dealing with **M/s H.S. Service Provider, 1197-A, Modi Bada Sadar Cantt, Jabalpur (M:P)-482001** and also with **their allied/sister concerns/and partners for 03 (Three) years** commencing with immediate effect on Indian Railways and Production Units etc.

3. Receipt of this letter may please be acknowledged.

(Shailender Singh)



Executive Director/ME (EnHM & PProj.)
Railway Board
[Phone: 030-47572: MTNL No.011-23047572]
e-mail address: advenhm@rb.railnet.gov.in”

3. Learned senior counsel for the petitioner submits that the impugned order has been passed without affording an opportunity of hearing to the petitioner. Further, it is submitted that the order itself is non-speaking and does not even take note of, or in any manner address the issues / defences raised by the petitioner in response to the memorandum dated 26.10.2022, issued by the respondent.

4. It is stated that grave prejudice has been caused to the petitioner as a result of continuation of the banning order. It is submitted that the petitioner has in effect been banned / debarred since 23.02.2015 as the termination letter by which the contract of the petitioner was terminated itself states that the petitioner shall be “debarred from participation in the tender for executing the work”.

5. A perusal of the records in the case reveals that after the aforesaid communication dated 23.02.2015 came to be issued to the petitioner a writ petition [Writ Petition No.7017/2016] came to be filed by the petitioner before the High Court of Madhya Pradesh, which was disposed of vide order dated 12.09.2016. The said order, *inter-alia*, directed as under:

“The learned counsel appearing for the respondent Railway Zone, on advance copy, submits that the respondent authorities shall give an opportunity of hearing to the petitioner and thereafter, shall take a decision afresh.

In view of the statement of the learned counsel for the respondents, the petition is disposed of with a direction to the effect that the parties shall produce a copy of the order passed by this Court alongwith a copy of the petition before the concerned authority within two weeks from today and on their doing so the authority concerned shall give a notice to the



petitioner proposing to take action regarding debarring/blacklisting of the petitioner and thereafter, after giving opportunity of representing and filing a reply to the same, the authority concerned shall take a fresh decision in the matter in accordance with law by passing a reasoned order.

It is also observed that as this Court has already granted an interim order on 12.5.2016 and has permitted the petitioner to participate in the tender proceedings subject to final disposal of the petition, the said interim arrangement shall continue till the matter is decided by the respondent authorities.

It goes without saying that as ordered by this Court on 12.5.2016, the participation of the petitioner in the tender proceedings would be subject to the final decision taken by the authorities. It is however made clear that in case the petitioner does not approach the authorities alongwith a certified copy of the order and a copy of the petition within two Weeks, the aforesaid interim arrangement made by this Court shall not be given effect to and the respondents would be at liberty to proceed against it. It is made clear that this Court has not considered the dispute arising between the parties under the contract, in respect of which the petitioner would be at liberty to raise the dispute in terms of the agreement arrived at between the parties.

*With the aforesaid observation, the petition stands disposed of.
Certified copy as per rules.”*

6. It further transpires that after the aforesaid order was passed, the petitioner approached the concerned authorities whereupon the memorandum dated 19.06.2019 came to be issued on the petitioner. Notably, the said memorandum proposed to banning business dealing with the petitioner for “forever”. The said memorandum was responded to by the petitioner. It appears that the said memorandum remained unadjudicated.
7. It further appears that the directions contained in the order dated 12.09.2016 passed by the High Court of Madhya Pradesh was not complied with inasmuch as the petitioner was not permitted to participate in any tender floated by the respondent.
8. After a protracted period of time, another memorandum dated



26.10.2022 came to be served on the petitioner which proposed the banning of the petitioner for a period of three years. The same was responded to by the respondent on 05.12.2022. Broadly two defences were raised by the petitioner. Firstly, it was contended that in effect, the petitioner had been banned since 2015 inasmuch as it had not been permitted to participate in any bid issued by the respondent. Secondly, it was contended that after the concerned contract with the respondent was terminated, an order dated 31.01.2017, was passed by the concerned authority whereby the financial penalty / recovery to the tune of Rs.28,78,752/- was worked out against the petitioner. The said amount has already been recovered by the respondent. As such, it is submitted that the banning of the petitioner for an inordinately long period of time, is not only unjustified but also virtually results in double jeopardy to the petitioner.

9. Having considered the aforesaid aspects, I find merit in the aforesaid contentions raised on behalf of the petitioner.

10. It is apparent that even though the memorandum dated 26.10.2022 proposes the banning of the petitioner for a period of three years, in effect the petitioner has been incarcerated for the entire period after 23.2.2015. Further, it is also *ex facie* apparent that none of the contentions sought to be raised by the petitioner in response to the memorandum dated 26.10.2022 have been noticed, much less dealt with, in the impugned order dated 27.03.2023. Clearly, the said order is a cryptic, non-speaking order and as such, *prima facie*, does not withstand scrutiny of law.

11. In the circumstances, the order dated 27.03.2023 is stayed during the pendency of the present petition. In view thereof, the petitioner would be at liberty to participate in the tenders set out in CM-136/2025 or any other



future tender, during the pendency of the present petition.

12. The applications stand disposed of in the above terms.

SACHIN DATTA, J

JANUARY 7, 2025/cl