

IN THE HIGH COURT OF SINDH AT KARACHI

Constitution Petition No. D – 976 of 2023

PRESENT:

Mr. Justice Aqeel Ahmed Abbasi,
Chief Justice &
Mr. Justice Abdul Mobeen Lakho.

Priority

1. For hearing of Misc. No.4532 of 2023
2. For hearing of Main Case.

28.02.2024.

Mr. Shehenshah Hussain, Advocate for the petitioner along with
Syed Arshad Ali, Advocate.

Mr. Abdul Hakeem, Advocate for the respondent.

Mr. Khaleeq Ahmed, Deputy Attorney General.

ORDER

1. Through instant petition, the petitioner has impugned the letter dated 24.10.2022 issued by respondent No.1/Sui Southern Gas Company Limited, whereby, petitioner has been blacklisted/Cross Debar for a period of one year from enlistment of respondent No.1 on the allegation that petitioner could not fulfill the contractual obligation within the specified time, therefore, while invoking the provision of Clause 19(1)(b) of PPRA Rules, 2004.

2. Learned counsel for the petitioner submits that petitioner was never provided any opportunity of being heard, nor any personal hearing was given to the petitioner before taking such drastic action, whereas, petitioner was prevented by sufficient cause for the delay in fulfillment of the contractual obligation as according to learned counsel, NOC obtained by the respondent, was already expired and inspite of such fact, petitioner tried to complete the tender, however, delay occurred on this account, according to learned counsel, there has been

no allegation of fraud/misrepresentation or any misconduct on the part of the petitioner, whereas, respondents in addition to cancelling the contract without resorting the arbitration proceedings, have also blacklisted/Cross Debar the petitioner, which has destroyed the reputation of the petitioner.

3. Learned counsel for the petitioner further submits that the petitioner is a well reputed/recognized government contractor, who has never been blacklisted or Cross Debar, however, on account of impugned letter, there is black spot on the reputation of the petitioner, who is not seeking revival of the contract but to request that the order of blacklisting/Debarring, which has otherwise arbitrary, therefore, the same may be declared to be illegal.

4. Notices of instant petition have been issued, pursuant to which, comments have been filed on behalf of respondent No.1, wherein, it has been stated that since the petitioner could not complete / fulfill the contractual obligation within the stipulated period while invoking the provision of Clause 19(1)(b) of PPRA Rules, 2004 and in terms of Clause 19(1)(a)(b) of PPRA Rules, 2004 of the tender documents, such action has been taken. It has been further contended that the petitioner has a right to file Review in terms of Clause 19(3) of PPRA Rules, 2004 before the PEPRA Authorities against the impugned letter, which remedy has not been availed by the petitioner, hence instant petition is not maintainable. While concluding his submissions, learned counsel for the respondent submits that without prejudice to hereinabove, instant petition otherwise has become infructuous as the period of one year has been expired.

5. Such contention of the learned counsel for the respondent has vehemently opposed by the learned counsel for the petitioner, who submits that since the impugned letter is patently illegal and has been issued in violation of principle of Natural justice as no personal hearing

or opportunity of being heard has been provided to the petitioner before passing final order of blacklisting/Cross Debar, whereas, the remedy of filing a Review against the impugned order/letter before the same authority is otherwise superfluous as the respondent No.1 has already expressed the views, therefore, petitioner has approached this Court by filing instant petition for redressal of grievance and enforcement of fundamental rights to carry on lawful business activities as in view of blacklisting/Cross Debarring, petitioner could not procure any work as well it was a matter of livelihood.

6. Learned counsel for the petitioner further submits that neither in the tender documents, nor in the PEPR Rules, 2014, there is any authority is vested in the respondent No.1 to blacklist/Cross Debar a Contractor, merely on account of delay, unless other ingredients of fraud and/or misrepresentation etc. are attracted, whereas, respondent has not been able to establish that there was deliberate delay on the part of the petitioner and proper opportunity of being heard would have been provided to the petitioner by the respondent, where, the petitioner could have explained his position for the delay in execution of the contract, whereas, in the instant case, the cause of delay was an expired NOC obtained by the respondent No.1 from the KDA Authorities, who did not allow the petitioner to carry out the work in a considerable time.

7. We have heard the learned counsel for the parties as well as the learned DAG, which prima facie, reflects that proper opportunity of being heard has not been provided to the petitioner, neither any specific ground for blacklisting/Cross Debarring has been mentioned nor any Show Cause Notice has been issued. Moreover, the arbitrary clause available in the tender documents, which appears to have not been invoked, whereas, nothing has been brought on record to deny the assertion of the petitioner that the NOC obtained by the respondent

from the KDA Authorities was not expired. Under the facts and circumstances, respondent could have cancelled the contract of the petitioner on account of non-performance, however, the drastic action of blacklisting/Cross Debarring the petitioner, who otherwise has never been blacklisted/Cross Debarred, was not justified under the relevant Rules.

8. Accordingly, instant petition is allowed, consequently, the impugned letter is hereby set-aside.

CHIEF JUSTICE

JUDGE

A.S.