

MANU/MH/4977/2023

**IN THE HIGH COURT OF BOMBAY**

Writ Petition No. 2261 of 2023

**Decided On:** 05.12.2023

Proactive In & Out Advertising Pvt. Ltd. **Vs.** The Union of India and Ors.

**Hon'ble Judges/Coram:**

*A.S. Chandurkar and Firdosh P. Pooniwalla, JJ.*

**Counsels:**

*For Appellant/Petitioner/Plaintiff: Mutahhar Khan i/b Rajesh O. Gupta*

*For Respondents/Defendant: T.J. Pandian and T.C. Subramanian & Gautam*

**JUDGMENT**

**Firdosh P. Pooniwalla, J.**

- 1.** RULE. Rule made returnable forthwith and heard finally by consent of the parties.
- 2.** This Petition challenges the termination letter dated 25th October, 2020 issued by Respondent No.1 terminating the contract awarded to the Petitioner.
- 3.** By a Letter of Acceptance dated 24th July, 2020, the subject contract was awarded to the Petitioner. Further, by a letter dated 27th July, 2020, the bid of Respondent No.2 was rejected by Respondent No.1 and Respondent No.2 was also blacklisted for a period of five years.
- 4.** Respondent No.2 had filed a Writ Petition in this Court, being Writ Petition No. 2420 of 2022, challenging the said rejection and the said blacklisting. Subsequently, on 14th August, 2020, Respondent No.2 sought leave of this Court to withdraw the said Petition, and, accordingly, by an Order dated 14th August, 2020 passed by this Court, the said Writ Petition was disposed of as withdrawn.
- 5.** As per the terms of the said contract, the Petitioner submitted to Respondent No.1 a Bank Guarantee issued by Yes Bank for a sum of Rs.1,10,41,167/-.
- 6.** Thereafter, by a letter dated 27th August, 2020, issued by Respondent No.1 to the Petitioner, the Petitioner was intimated that, on account of a complaint lodged by Respondent No.2 in the Vigilance Department, Respondent No.1 was putting on hold the commencement of the subject contract till further orders from the Vigilance Office.
- 7.** By a letter dated 15th September, 2020, the Petitioner gave its reply to the said letter dated 27th August, 2020.
- 8.** Subsequently, by an undated letter (which according to the learned Counsel for Respondent No.1 is dated 25th October, 2020), the letter of acceptance issued to the Petitioner was cancelled and terminated by Respondent No.1.
- 9.** It is not in dispute that the said letter of termination was issued without giving any opportunity of any hearing to the Petitioner. The same is also recorded in paragraph 5 of the Order dated 5th November, 2020 passed by this Court in this Petition.

**10.** Since, after issuance of a tender and after inviting bids, the said contract has been awarded to the Petitioner, and the Petitioner has taken certain steps in pursuance thereof, including by furnishing a Bank Guarantee, we are of the view that, before the said letter of acceptance was terminated, the Petitioner ought to have been furnished the material on the basis of which the same was done and also ought to have been given a personal hearing. In view of the fact that the same has not been done, we are of the view that the said letter dated 25th October, 2020 terminating the letter of acceptance is required to be quashed and set aside.

**11.** In these circumstances and for the aforesaid reasons, we pass the following orders:-

(i) The letter dated 25th October, 2020, at page No.192 of the Petition (Exh. 'O') is hereby quashed and set aside;

(ii) Respondent No.1 is hereby directed to take a fresh decision in respect of the said contract after furnishing to the Petitioner the material sought to be relied on it and after giving a personal hearing to the Petitioner;

(iii) It is made clear, that during the pendency of the said decision and for a period of one week thereafter, the letter dated 27th August,2020 (Exh. 'N' to the Petition) issued by Respondent No.1 putting on hold the commencement of the subject contract will continue to remain in force;

(iv) Respondent No.1 is directed to furnish to the Petitioner the material sought to be relied upon on by it within a period of 15 days from the date of this Order;

(v) Respondent No.1 is also directed to take the necessary decision in the matter, after giving an oral hearing to the Petitioner, within a period of four weeks from the date of this Order.

**12.** Rule is made absolute in the aforesaid terms.

**13.** In the facts and circumstances of the case, there will be no order as to costs.

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