



2024:CGHC:47136

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Reserved for Order on : 23.09.2024

Order Passed on : 29/11/2024

WPC No. 3207 of 2022

1 - M/s Mahatma Gandhi Salt Mundy (A Sole Proprietorship Firm Having GSTN- 33 ABYPC 5638 B1 ZQ, Sole Proprietor Mr. Arumugam Chakravarthy (Chakravarthy AB), S/o. Arumugam N., (UID No. 5932 5384 0584) Aged About 47 Years, 14 Marappa 3rd Street Surampatti Nall Road, Erode, Tamil Nadu 638009, Also At Kh. No. 197/66, Samnapur Road Kawardha Chhattisgarh Through Their Legally Appointed Attorney Mr. Sagar Surana S/o Mr. Dinesh Surana (UID No. 5687 1167 4369) Aged About 39 Years, House No. 143, Ward No. 6, Berala, Bemetara (C.G.)

---- Petitioner

versus

1 - State Of Chhattisgarh Through Its Secretary, Department Of Food, Civil Supplies And Consumer Protection (New Secretariat), Atal Nagar Nava Raipur, Raipur District Raipur, Chhattisgarh

2 - Chhattisgarh State Civil Supplies Corporation Limited Through It's Managing Director, Block 7A, II Floor, Sector 24, Office Complex, Head Quarter, Atal Nagar, Nava Raipur, Raipur District Raipur (C.G.)

3 - Tender Evaluation Committee For The System Tender No. 99564 Of Chhattisgarh State Civil Supplies Corporation Limited Through It's Managing Director, Block- 7A, II Floor, Sector 24, Office Complex Head Quarter, Atal Nagar, Nava Raipur Raipur, District Raipur (C.G.)

---- Respondents

For Petitioner	: Mr. Raj Kamal Singh, Advocate with Mr. Suryapratap Yuddhveer Singh, Advocates
For Respondents-State No.1	: Ms. Poorva Tiwari, Panel Lawyer
For Respondent No.2 & 3	: Mr. V.R. Tiwari, Sr. Advocate assisted by Mr. Atul Kesharwani and Mr. Anish Tiwari, Advocates

Hon'ble Shri Justice Parth Prateem Sahu

CAV ORDER

1. Petitioner has filed this petition seeking following relief (s) :-

“10.1 This Hon'ble Court may please be kind enough in calling the entire record pertaining to the subject Tender Process.

10.2 This Hon'ble Court may please be kind enough in quashing and setting aside the impugned decision of the respondent No.2 Corporation communicated vide Annexure P-1 regarding Blacklisting of Petitioner and Forfeiture of their Earnest Money Deposit related with the respondent corporation's Tender Reference Letter No./Gur/Kray Nivida/2022-23/14 Nava Raipur dated 09.05.2022, System Tender No.99564.

10.3 This Hon'ble Court may please be kind enough in granting the cost and any other relief to the petitioner.”

2. Learned counsel for petitioner submits that respondents No.2 and 3 have floated NIT vide Letter No. Gur/Kray Nivida/ 2022- 23/14 Nava Raipur dated 09.05.2022 (Tender No.99564). Petitioner along with others participated in the tender process and submitted its technical bid and financial bid. In the technical session, petitioner became successful and thereafter its financial bids were also opened. Upon opening of financial bids, petitioner was declared to be successful as his financial bid was found to be lowest than of others (L-1) i.e. Rs.52.00 per quintal. He contended that immediately after opening of financial bid, petitioner realized that due to typographical error, instead of Rs.5200/-, it was erroneously mentioned as Rs.52/- per quintal only, which prima-facie appears to be an error. Petitioner immediately

submitted letter on 21.06.2022 mentioning that it was not possible to supply goods on Rs.52/- per quintal and requested to consider the rates as Rs.5200/- per quintal. The said letter was not considered and it was replied mentioning that financial bid of petitioner was found to be L-1 and it was accepted by Corporation and further mentioned that letter submitted by petitioner dated 21.06.2022 after opening of financial bid was not accepted and directed to submit stamp paper of Rs.100/-. Petitioner again submitted letter reiterating the same facts and further requested to return back the earnest money if offer rate is not acceptable. Respondent No.2 thereafter had issued impugned letter dated 06.07.2022 (Annexure P-1) arbitrarily forfeiting the amount of security deposit of Rs.1.00 Crore deposited along with bids, blacklisted petitioner's firm for a period of three years and further stated that action would be taken under Clause 16.2 of the tender documents. The action by respondent authorities is per-se arbitrary. They failed to realize that it was a bonafide mistake and no reasonable man can come to conclusion that any person can supply jaggery (subject matter of tender) at Rs.0.52 paise per KG and Rs.52/- per quintal. Respondent No.2 being State subsidiary ought to have acted fairly and reasonably. Petitioner has not committed any wrong to the extent that he could have been blacklisted nor there is any basis for initiating proceedings for recovery of relevant expenses or to impose costs for risk and damages. He also contended that no show-cause notice was issued to petitioner before passing the order of blacklisting for a period of three years. Petitioner was not given an opportunity of

hearing through a show-cause notice specifying the reasons for such action. In support of his contention, he places reliance upon the decision of Hon'ble Supreme Court in case of **Gorkha Security Services Vs. Govt. (NCT of Delhi) & Ors**, reported in **(2014) 9 SCC 105**. He also submits that case of petitioner would fall within the explanation called of by Hon'ble Supreme Court in case of **W.B. State Electricity Board Vs. Patel Engineering Co. Ltd. & Others**, reported in **(2001) 2 SCC 451**.

3. Learned counsel for respondents opposes the submission of learned counsel for petitioner and would submit that this writ petition is not maintainable as petitioner is having efficacious alternate remedy of arbitration as per tender documents. Petitioner has never asked to revoke the bid. Bid was opened on 21.06.2022 and only after opening of the bid, petitioner wrote letter mentioning that due to typographical error, rate quoted in the financial bid has been mentioned as Rs.52.00 per quintal instead of Rs.52,000/- per quintal. He contended that according to Section 5 of the Indian Contract Act, 1872 proposal can be revoked before its acceptance and not thereafter. Acceptance of petitioner's bid was communicated on 28.06.2022 and thereafter, petitioner has written letter on 01.07.2022 to consider the letter dated 28.06.2022. Amendment on the price of bid from Rs.52/- to Rs.5200/- would amount to alteration of bid price, which is not permissible. He contended that decisions of Hon'ble Supreme Court relied upon by learned counsel for petitioner are of no help to petitioner. In fact the

principles summarized in the case relied upon by learned counsel for petitioner would be in favour of answering respondents.

4. I have heard learned counsel for parties and perused the documents placed on record.
5. Petitioner along with writ petition has filed tender documents (Annexure P-3) issued by respondent No.2. In the tender documents, bid start date is mentioned as 12.05.2022, bid opening date from 15.06.2022 to 17.06.2022 and pre-bid as 25.05.2022. NIT was for supply of jaggery of 16670 MT. Petitioner has also enclosed documents as Annexure P-7, which demonstrate the submission of the financial bid by petitioner and other two participants. Under Item Code, article is mentioned as GURR 01, Description – Gurr, Unit - in Quintals, quantity and rate per unit. In the financial document, there is specific mention that one unit means one quintal.
6. Petitioner has participated in the tender process and mistake, if any, as stated by learned counsel for petitioner, has been brought to the knowledge of the authorities by petitioner only after opening of the financial bid. Tender documents contain a specific dispute resolution clause under Clause 35, which stipulates that any disputes would be submitted to the Managing Director of Respondent No. 2 for resolution. The decision relied upon by learned counsel for petitioner in case of **W.B. State Electricity Board (Supra)** is on different facts while dealing different issue for adjudication before Hon'ble Supreme Court.

7. Respondents in the impugned order have also blacklisted petitioner for a period of three years. Specific contention raised by learned counsel for petitioner in the writ petition is that order of blacklisting is passed without issuing show cause notice and without giving proper opportunity of hearing to petitioner, which is not controverted by respondents in their reply in categorical terms.
8. Hon'ble Supreme Court in case of **Gorkha Security Services (supra)** has observed in para 16, 17, 29, which is as under :-

“**16.** It is a common case of the parties that the blacklisting has to be preceded by a show-cause notice. Law in this regard is firmly grounded and does not even demand much amplification. The necessity of compliance with the principles of natural justice by giving the opportunity to the person against whom action of blacklisting is sought to be taken has a valid and solid rationale behind it. With blacklisting, many civil and/or evil consequences follow. It is described as “civil death” of a person who is foisted with the order of blacklisting. Such an order is stigmatic in nature and debars such a person from participating in government tenders which means precluding him from the award of government contracts.

17. Way back in the year 1975, this Court in *Erusian Equipment & Chemicals Ltd. v. State of W.B.* [*Erusian Equipment & Chemicals Ltd. v. State of W.B.*, (1975) 1 SCC 70] , highlighted the necessity of giving an opportunity to such a person by serving a show-cause notice thereby giving him opportunity to meet the allegations which were in the mind of the authority contemplating blacklisting of such a person. This is clear from the reading of paras 12 and 20 of the said judgment.

Necessitating this requirement, the Court observed thus:
(SCC pp. 74-75)

“12. Under Article 298 of the Constitution the executive power of the Union and the State shall extend to the carrying on of any trade and to the acquisition, holding and disposal of property and the making of contracts for any purpose. The State can carry on executive function by making a law or without making a law. The exercise of such powers and functions in trade by the State is subject to Part III of the Constitution. Article 14 speaks of equality before the law and equal protection of the laws. Equality of opportunity should apply to matters of public contracts. The State has the right to trade. The State has there the duty to observe equality. An ordinary individual can choose not to deal with any person. The Government cannot choose to exclude persons by discrimination. The order of blacklisting has the effect of depriving a person of equality of opportunity in the matter of public contract. A person who is on the approved list is unable to enter into advantageous relations with the Government because of the order of blacklisting. A person who has been dealing with the Government in the matter of sale and purchase of materials has a legitimate interest or expectation. When the State acts to the prejudice of a person it has to be supported by legality.

* * *

20. Blacklisting has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for purposes of gains. The fact that a disability is created by the order of blacklisting indicates that the relevant authority is to have an objective satisfaction. Fundamentals of fair play

require that the person concerned should be given an opportunity to represent his case before he is put on the blacklist.”

29. No doubt, rules of natural justice are not embodied rules nor can they be lifted to the position of fundamental rights. However, their aim is to secure justice and to prevent miscarriage of justice. It is now well-established proposition of law that unless a statutory provision either specifically or by necessary implication excludes the application of any rules of natural justice, in exercise of power prejudicially affecting another must be in conformity with the rules of natural justice.

9. Hon'ble Supreme Court in case of **UMC Technologies (P) Ltd. v. Food Corporation of India & Anr.**, reported in **(2021) 2 SCC 551** has observed in para 18, 19, 21, which reads as under :-

“18. This Court in *Gorkha Security Services v. State (NCT of Delhi)* [*Gorkha Security Services v. State (NCT of Delhi)*, (2014) 9 SCC 105] has described blacklisting as being equivalent to the civil death of a person because blacklisting is stigmatic in nature and debars a person from participating in government tenders thereby precluding him from the award of government contracts. It has been held thus: (SCC p. 115, para 16)

“16. It is a common case of the parties that the blacklisting has to be preceded by a show-cause notice. Law in this regard is firmly grounded and does not even demand much amplification. The necessity of compliance with the principles of natural justice by giving the opportunity to the person against whom action of blacklisting is sought to be taken has a valid and solid rationale behind it. With blacklisting, many civil

and/or evil consequences follow. It is described as “civil death” of a person who is foisted with the order of blacklisting. Such an order is stigmatic in nature and debars such a person from participating in government tenders which means precluding him from the award of government contracts.”

19. In light of the above decisions, it is clear that a prior show-cause notice granting a reasonable opportunity of being heard is an essential element of all administrative decision-making and particularly so in decisions pertaining to blacklisting which entail grave consequences for the entity being blacklisted. In these cases, furnishing of a valid show-cause notice is critical and a failure to do so would be fatal to any order of blacklisting pursuant thereto.

21. Thus, from the above discussion, a clear legal position emerges that for a show-cause notice to constitute the valid basis of a blacklisting order, such notice must spell out clearly, or its contents be such that it can be clearly inferred therefrom, that there is intention on the part of the issuer of the notice to blacklist the noticee. Such a clear notice is essential for ensuring that the person against whom the penalty of blacklisting is intended to be imposed, has an adequate, informed and meaningful opportunity to show cause against his possible blacklisting.

10. In the case at hand, no show cause notice as to why action of blacklisting be taken against petitioner is issued, hence, the letter/order dated 06.07.2022 (Annexure P-1) so far as it relates to blacklisting petitioner for a period of three years is not sustainable and accordingly it is set-aside.

11. With respect to other part of the order, in view of specific Clause -16 in the tender document of the consequence of amendment in rates, turning back and not executing agreement, petitioner is having other efficacious alternate remedy under Clause-35 of the tender documents of raising dispute before the Managing Director of respondent No.2 and time is also specified therein and further procedure is also prescribed, therefore, in view of the efficacious remedy available in favour of petitioner I am not inclined to entertain this writ petition with respect to forfeiture of amount submitted towards bid.
12. Considering the fact that petitioner has approached this Court within time prescribed for raising the dispute, petitioner is granted further two months time to raise the dispute pursuant to the communication dated 06.07.2022 and if such dispute is raised, the respondent authorities shall consider and decide the same expeditiously in accordance with law within the time as prescribed under Clause -35 of the tender documents.
13. Accordingly, this petition is allowed in part to the extent indicated herein-above.

Sd/-
(Parth Prateem Sahu)
Judge

Balram