

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of judgment: 21.04.2009

+ W.P.(C) 8365/2009, C.M. No. 5230/2009 (Stay Application)

KULPREET KAUR SOLE PROP. GOVIND TRAVELS Petitioner

Through : Mr. Jagjit Singh, Advocate.

Versus

UOI & ANR.

..... Respondents

Through : Mr. A.K. Bhardwaj, Advocate.

CORAM:**HON'BLE MR. JUSTICE S. RAVINDRA BHAT**

1. Whether the Reporters of local papers may be
Allowed to see the judgment? YES
2. To be referred to Reporter or not? YES
3. Whether the judgment should be reported in
the Digest? YES

S. RAVINDRA BHAT, J (OPEN COURT)

1. Issue notice. Mr. A.K. Bhardwaj, Advocate accepts notice. With consent of counsels for parties, the matter was heard finally, for disposal.

2. The petitioner is aggrieved by an order dated 25.03.2009 so far as it determines that its further business relationship with the firm, M/s. Govind Travels is banned for a period of two years in the date of the letter.

3. The facts necessary for deciding the case are that the petitioner entered into a contract with the Respondent No.2 for supply of vehicles on hire-basis; the contract was to be in force for three years, i.e. from 01.04.2007 till 31.03.2010. It was submitted that when the contract was

subsisting, the petitioner gave notice of termination on 19.08.2008 in view of the then prevailing circumstances in “INS India”, the respondents’ naval vessel. The said letter is in the following terms:

“19th August, 2008

GOVIND TRAVELS

*Principal Director of Administration
DOA, A Block Hutments
Dalhousie Road
New Delhi*

Sir,

Due to present prevailing circumstances in INS India, we are compelled to serve you notice for the termination of contract for hiring of CNG Mini Buses.

As per the terms and conditions of the contract, this notice is served 30 days in advance and we will withdraw our services w.e.f. 20th September, 2008.

Thanking you,

Yours faithfully,

*Sd/-
(KULPREET KAUR)
For GOVIND TRAVELS”*

4. The petitioner alleges to having written further letter on 19.09.2008 after issuing the notice of termination, after which the respondents wrote back stating that approval for release of pending bills and security deposit was being processed. Whilst the matter stood thus, the respondents issued the impugned order, in the following terms:

“DA/CM/0773/TPT/HV

25 Mar 09

*The Proprietor
M/s Govind Travels,*

A-120, Lajpat Nagar-1,
New Delhi-110 024

BANNING OF M/S GOVIND TRAVELS FOR A PERIOD OF TWO YEARS

1. Reference your contract agreement with IHQ MoD (Navy), New Delhi No.DA/CM/0773/TPT/HV/2007-10 (Govind) dated 30 Mar 07 regarding hiring of CNG Mini Buses (36 seaters) and other vehicles on Rate Contract basis.
2. The Rate Contract for hiring of CNG Mini Buses (36 seaters) and other vehicles for the offices of IHQ-MoD (Navy) was concluded with your firm for the period 01 Apr 07 to 31 Mar 10. However, in view of your continuous poor services and your subsequent withdrawal, the Rate Contract was terminated with the approval of the competent authority in Jan 09.
3. Further, it has been observed that the services provided by you, during the currency of the contract, were not as per stipulated contractual obligations. Despite this being brought your notice by numerous warning letters and show cause notices, issued by the Contract Operating Authority, vis. the Commanding Officer, INS India, there was no improvement in the quality of services provided.
4. In view of the foregoing, the Competent Authority has directed that further business relations with your firm be suspended for a period of two years from the date of signing of this letter.
5. Request acknowledge receipt.

Yours faithfully,
Sd/-
(Shankar Mathur)
Commodore
Principal Director of Administration”

5. The petitioner states that the impugned order was issued illegally and was not preceded by any Show Cause Notice or fair opportunity to represent against such action. It is contended that in the past, the Courts have intervened in such circumstances and quashed such blacklisting orders not preceded by fair procedure or notice intimating the consequence.

6. It is a fairly well established proposition that every facet of State functioning has to accord with principles of fairness, reasonableness and non-arbitrariness. Thus, before taking any decision which affects individuals or commercial concerns adversely, or have an adverse impact

on their activities or affect their Fundamental Rights, some semblance of fair procedure has to be adopted. On questions such as blacklisting, the Supreme Court had as far back as *Erusian Equipments & Chemicals v. State of West Bengal* 1975 (1) SCC 70 stated as follows:

“XXXXXX

XXXXXX

XXXXXX

.....The activities of the Government have a public element and, therefore, there should be fairness and equality. The State need not enter into any contract with any one but if it does so, it must do so as fairly without discrimination and without unfair procedure. Reputation is a part of person's character and personality. Blacklisting tarnishes one's reputation.

XXXXXX

XXXXXX

XXXXXX

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.”

This was reiterated subsequently in many other judgments. In *Raghunath Thakur v. State of Bihar and Ors* 1989 (1) SCC 229, it was held as follows:

“It has to be realized that blacklisting any person in respect of business ventures has civil consequence for the future business of the person concerned in any event. Even if the rules do not express so, it is an elementary principle of natural justice that parties affected by any order should have right of being heard and making representations against the order.”

7. Therefore, the requirement of having to issue a Show Cause Notice as a prelude to an adverse blacklisting order, [which is virtually a determination not to engage in trade or commercial relations with a citizen or business entity, amounts to complete deprivation of that citizen's (or concerns) Fundamental Rights to carry out trade with state agency, although for a certain point of time] are obligatory, and non derogable.

8. The materials on record show that the respondents did not issue a Show Cause Notice or even intimate the petitioner that they were contemplating blacklisting it for two years or

suspending business with it for two years or the reason for such drastic action. Clearly, the impugned order falls within the ambit of the rule enunciated in *Erusian Equipment (supra)* and applied in subsequent decisions. The impugned order dated 25.03.2009 to the extent it directs further business relationship with petitioner firm to be suspended for two years is hereby quashed.

9. Nothing stated here shall preclude options available to the respondents to suspend the business relationship provided they act in accordance with law, issue Show Cause Notice, and grant reasonable opportunity for that purpose, to the petitioner.

10. The writ petition and the accompanying application are allowed in the above terms.

S. RAVINDRA BHAT
JUDGE

APRIL 21, 2009
‘ajk’