

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

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Date of Decision: 16.12.2013

+ **W.P.(C) 1464/2011**
CSS DEOPA

..... Petitioner

Through : Mr. Ankur Chibber, Adv.
versus

UOI AND ANR

..... Respondents

Through : None.

CORAM:

HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J. (Oral)

W.P.(C) 1464/2011 & CM Nos. 3106/2011 & 9532/2012(both applications for stay)

The petitioner, who is the proprietor of M/s. Jai Malanath Security Services was empanelled with the Directorate General of Settlement on 21st November, 2005. The said empanelment was renewed on 12th December, 2007. The learned counsel for the petitioner submits that the said empanelment was open ended in the sense that it was not to expire in a particular time period. Vide communication dated 27th January, 2011, issued by Joint Director (Employment), the petitioner was disempanelled, for violation of para 37(b) of DGR instructions. Being aggrieved, the petitioner is before this Court seeking the following reliefs:-

“(a) Issue writ of certiorari or any other appropriate writ or direction or order quashing the Letter of Disempanelment No.2112/SA/1667/Emp dated 27.1.2011 and

(b) issue writ of mandamus or any other appropriate writ or directions or order directing the respondents to empanel the security agency of the petitioner.”

2. In their counter-affidavit, the respondents have admitted that the petitioner was empanelled on 21st November, 2005, after he had taken premature retirement from Indian Navy. According to the respondents, the ceiling limit of allocation of guards to individuals proprietary security agency is 300 guards cumulatively in a four year period or 63 years of age of the proprietor, whichever is earlier. It is further stated that the petitioner had already availed his quota of 300 guards but he did not disclose correct strength in his N-2 Returns. He had shown only 100 guards in his N-2 Returns whereas he has crossed the limit of 300 guards which he did not disclose to respondents.

As regards disempanelment of the petitioner without any notice or hearing, it is stated in the counter-affidavit that no show-cause notice is required to be issued to the petitioner as per the terms and conditions of his empanelment.

3. The main contention of the petitioner is that he has been disempanelled without issuing show-cause notice or giving any opportunity of hearing to him. The order of disempanelment to the extent it is relevant reads as under:

“DISEMPANELMENT

1. Reference your N-2 dated 07 Nov., 2010.

2. *Your agency viz. M/s. Jai Malanath Security Services, Emp No.1667 is hereby disempanelled for violation of para 37(b) of DGR instructions*

*Jt. Director (Emp.)
For DGR”*

4. The learned counsel for the petitioner has drawn my attention to the order dated 13th August, 2012 passed by this Court in W.P.(C) No. 428/2012 titled **Appaches Security and Allied Services Pvt. Ltd.** In the aforesaid case, the petitioner who was empanelled with the Directorate General of Resettlement (in short “DGR”) was disempanelled without following the principles of natural justice. Being aggrieved, he filed the aforesaid writ petition. When the attention of the learned counsel for the respondents was drawn to the fact that no show-cause notice or opportunity of hearing had been given to the aforesaid petitioner, the learned counsel appearing for the respondents stated, on instructions, that they would withdraw the impugned letter and issue a fresh show-cause notice to the petitioner calling upon him to answer the allegations against him. The impugned letter was, therefore, set aside with a direction that the respondent No.2 shall issue a show-cause notice if he so deems fit and the said show-cause notice also indicates that the petitioner is entitled to an oral hearing. The date, time and venue of the hearing were also required to be specified in the notice.

5. In **Raghunath Thakur vs. State of Bihar and Ors. (1989) 1 SCC 229**, where Supreme Court, inter alia, held as under:-

“4. ... It has to be realized that black-listing 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.”

In **Vinay Construction Co. & Ors. vs. Municipal Corporation of Delhi and Anr.** [116(2005) DLT 14], this Court rejected the contention that there can be indefinite period of blacklisting, holding that since blacklisting carries a very severe consequence and needs to be for a prescribed period.

In **A. Rajendran vs. The General Manager** [Writ Petition No.17517 of 2002 decided on 16.10.2003], the Madras High Court, noticing that the order of blacklisting the petitioner did not specify the period of blacklisting, quashed the said order, thereby upholding the contention that blacklisting could not be for an indefinite period.

In **Well Protect Manpower Service Pvt. Ltd. v. Delhi Development Authority & Ors.** 117(2005) DLT 293 (DB), this Court, inter alia, held as under:-

“14. There is no gainsaying that any order or decision in matters involving civil consequences has to be made consistently with rules of natural

justice. A "civil consequence" is an infraction of not merely property or personal rights but also of material deprivations and non-pecuniary damages. [See: Mohinder Singh Gill and Anr. v. The Chief Election Commissioner and Ors. [1978]2SCR272]. It is true that the rules of natural justice can neither be cast in a rigid mould nor put in a legal strait jacket. They "are not cut and dried. They vary indefinitely" said Lord Denning M.R. in Regina v. Home Secretary, Ex. P. Santillo, (1981) Q.B. 778. Thus, the principles of natural justice are flexible and have to be adopted to the circumstances prevailing in any particular case. Nonetheless, it is an elementary principle of natural justice that parties affected by any order should have the right of being heard and making representations against the order. It is an equally implied principle of rule of law that any order having civil consequence should be passed only after following the principles of natural justice [SEE: Raghunath Thakur v. State of Bihar: AIR1989SC620]. Undoubtedly black listing of any person in respect of business ventures entails serious civil consequences for his future business and Therefore, any authority taking such a decision must act in accordance with the principles of natural justice. While dealing with a similar issue in Erusian Equipment and Chemicals v. State of West Bengal and Anr. [1975]2SCR674 , their Lordships of the Supreme Court observed thus:

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.

6. For the reasons stated above, the impugned order dated 27th November, 2011 is hereby quashed. The respondents shall, however, be at liberty to pass a fresh order after giving show-cause notice followed by an opportunity of hearing to the petitioner. If the respondents decide to issue a show-cause notice to the petitioner, the date, time and place for oral hearing will also be given in the said notice. The petitioner, in case such a notice is issued to him, shall respond to the same within one week of the receipt of the notice and shall appear on the appointed date, time and place for the purpose of oral hearing. A fresh order will then be passed by the respondent within two weeks of the oral hearing of the petitioner and considering the reply, if any, filed by him. If the petitioner is aggrieved by the order so passed by the respondents, he can avail such remedy, as may be available to him in law.

The writ petition stands disposed of in terms of this order. No orders as to costs.

V.K. JAIN, J

DECEMBER 16, 2013
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