

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

WC No.2183/2022

CM No.5906/2022

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M/s ICA Edu Skills Pvt. Ltd.

A Company incorporated under the Companies Act

Having its Registered Office at Unit No.ECSL

1401 ECO Center Business Park EM Block Sector

V Kolkata-700 091, West Bengal Through its

authorized representative Assistant Vice-President

Mr. Sachin Katyal (Aged-35 years) S/o Mr. Ashok

Kumar Katyal

.....Petitioner(s)

Through: Mr. Harish V.S., Advocate

Vs

1. Union Territory of Jammu & Kashmir through
Commissioner/ Secretary to the Govt.,
Department of Rural Development and
Panchayati Raj, Room No.43, 1st Floor, Civil
Secretariat, Jammu-

..... Respondent(s)

2. Chief Operating Officer
Himayat Mission Management Unit J&K Rural
Livelihoods Mission, Government of J & K
16/AD, Gandhi Nagar, Jammu 180 004

Through: Mr. S.S.Nanda, Sr. AAG along with Mr. Kewal
Sharma, State Project Manager, Himayat
Mission, Rural Development Department.

**Coram: HON'BLE MS. JUSTICE MOKSHA KHAJURIA KAZMI,
JUDGE**

JUDGMENT (ORAL)

21.12.2023

1. By this petition filed under Article 226 of the Constitution of India, petitioner herein has challenged "Notice of Imposition of major Penalty" No.COO/JKSRLM/HMMU/21/2078/ 1538-43 dated 20.09.2022 issued by respondent No.2 (being Suo Moto imposition of major penalty) under Section 10.3.2 of the Standard Operating Procedure of the Deen Dayal Upadhyaya

Grameen Kaushalya Yojana (DDU-GKY), whereby project of the petitioner has been terminated with immediate effect and penalty to the tune of Rs.2,85,21,133 has been imposed on it on the ground of some anonymous complaint received against the petitioner and alleged recovery of certain incriminating material during surprise visit.

Factual Matrix

2. The petitioner, which is a private limited company incorporated under the Companies Act, 1956, is engaged in the business of training and placement of rural youth under the Deen Dayal Upadhyaya Grameen Kaushalya Yojana (herein referred to as 'DDU-GKY', for short) project across the Country. Respondent No.2 is stated to be the head of the Himayat Mission Management Unit, Jammu and Kashmir State Rural Livelihood Mission (JKRLM) working under the administrative control of the Department of Rural Development and Panchayati Raj. Respondent No.2 has a primary role in stewardship and monitoring of the Projects under DDU-GKY in the State. The role and responsibilities of both the petitioner and respondent No.2 are supposed to be discharged strictly in accordance with the procedures/notifications issued under the DDU-GKY Guidelines framed by the Ministry of Rural Development, Government of India. All the procedures, roles and responsibilities of State Rural Livelihood Mission (SRLM) and the Project Implementing Agency (PIA), right from sanction of the project till completion of the same are clearly laid down in the Standard Operating Procedure (SOP) read with such other notification that may be issued by respondent No.1 from time to time.

3. On 11.07.2018, a Project was sanctioned in favour of the petitioner under the DDU-GKY Scheme for skilling of 2984 candidates, to be selected by the petitioner in all the districts across the State with focus on remote/backward areas for the Trade (a) Accounts Assistant using Tally; (b) Hospitality Assistant; and (c) Departmental Manager vide sanction order No.34-HMMU of 2018 dated 11.07.2018. The total cost of the project was Rs.28,52,11,325/- and the tenure of the project was three years, which, however, was extended upto 9th October, 2022.

4. It is stated that based on an anonymous complaint alleged to have been received by respondent No.2 on 12th September, 2022, respondent No.2 deployed a team of four members to the business premises of the petitioner on 13th September, 2022 at 12.30 p.m. to conduct surprise visit. It has been pleaded by the petitioner that the contents of the complaint were not made known to the petitioner. It is stated that the surprise visit was not authorized by any authority. The team entered the business premises of the petitioner and upon entering the business premises of the petitioner, broke open certain drawers, which were under lock and key of the senior officials of the petitioner. The Inspection Team conducted the surprise visit/search without any search warrant or without keeping any independent witness. It is also stated that no power, authority, process or procedure is provided either in the Guidelines, SOP etc. with respect to search without any warrant. According to the petitioner, certain material/documents were picked up by the search team sent by respondent No.2 but the same was not disclosed. Petitioner states that neither the inspection report was prepared nor was it uploaded in terms of the Guidelines and SOP as being practiced by the Inspecting officials from time to

time. The Inspection Team also did not draw any Mahazar/Panchanama, as required under law. Respondent No.2 even failed to seek any explanation from the petitioner and to afford any opportunity to it to rebut the allegations in accordance with law. The show cause notice dated 15.09.2022 is stated to have been served upon the petitioner containing various allegations against the petitioner but the record/information relied upon by respondent No.2, was not shared with the petitioner for rebuttal. Moreover, the show cause notice did not even mention the nature of the proposed action to be taken against the petitioner and the relevant clause of SOP under which action was proposed to be taken. It is further stated that the show cause notice did not specify any time limit within which the petitioner was to submit his response/objection to the same.

5. It has been pleaded by the petitioner that while it was in the process of collecting the facts and preparation of response/reply to the show cause notice, impugned order dated 20.09.2022 i.e. "Notice of Imposition of Major Penalty" in terms of Section 10.3.2 of the Standard Operating Procedure of DDU-KGY came to be issued by respondent No.2, whereby project of the petitioner was terminated with immediate effect and penalty to the tune of Rs.2,85,21,133/- has been imposed on the petitioner. It has been stated that the impugned order is not only without jurisdiction but also in violation of the principles of natural justice as no reasonable opportunity has been given to the petitioner to file its objection/explanation to the show cause notice. Furthermore, the petitioner has not been heard before passing the impugned order. As per the petitioner, the Inspecting Authority is bound to conduct inspection in the following manner:-

- During the course of inspection, the Inspecting Authority calls for furnishing the relevant information/records for verification at the premises of a PIA, including verification of accounts, Registers, Attendance Registers, CCTV Footage, etc.
 - The PIA is duty bound to furnish the information/records sought for by the Inspecting Authority during the course of inspection.
 - The Inspecting Authority verifies the information/records on a random basis.
 - It is mandatory for the inspecting authority to record the inspection through GPS enabled video/audio clips.
 - Upon conclusion of the inspection, the Inspecting Authority prepares an inspection report along with action points for compliance by the PIA, before leaving the premises of the PIA.
 - The Inspection Report is duly signed by the Official of the PIA present during the inspection along with a witness, concurring to the observations/findings of the Inspecting Authority.
 - The Inspection Report is uploaded on the website of the Department by the Inspecting Authority immediately.
 - The PIA is duty bound to cure the defects/non-compliances pointed out during the course of inspection as contained in the Inspection Report, in a time bound manner and report the compliances thereof the authorities.
6. According to the petitioner, on 12.09.20222 an anonymous complaint alleged to have been received by respondent No.2 against the petitioner,

however, neither copy of the complaint nor contents of the same were made known to the petitioner. On 13.09.2022, business premises of the petitioner was searched by a team of four people at the behest of respondent No.2 without following the guidelines or SOP prescribed and even without any search warrant from the competent authority. Even Mahazar/Panchanama was not prepared. On 15.09.2022, a show cause notice was issued by respondent No.2 to the petitioner as to why strict penal action should not be taken against it without specifying the time period within which response was to be tendered by the petitioner. The proposed action was also not indicated in the show cause notice. On 20.09.2022, i.e. 5th day from the date of issuance of show cause notice, impugned order of penalty came to be passed thereby terminating the project of the petitioner and imposing penalty of Rs.2,85,21,133/-, being 10% of the total project cost as direct and suo motu imposition of penalty.

7. *Per contra*, reply has been filed by the respondents wherein it is stated that in view of the complaint received on 12th September, 2022 highlighting fraudulent practices being carried out by the Project Implementing Agency (PIA),, ICA Edu Skills Private Limited, surprise visit by the joint team of HMMU and Technical Support Agency (TSA) to Himayat Mission was made to the UT office of PIA located at Digiana, Jammu as per the directions of the authority, where the following incriminating items/documents were recovered in presence of the PIA staff:

1. 30 original placement documents of candidates
2. 18 Rubber stamps of different employers
3. 02 ATM Cards
4. 253 Original Bank Passbooks

5. Original Bank Deposit Slips

8. It is stated that based on the above, Himayat Mission Management Unit (HMMU) imposed a Suo Motu Penalty vide impugned notice after due approval from the competent authority (Administrative Secretary, RDD & PR). It has been further stated by the respondents that Police Station Anti-Corruption Bureau Central, J&K has lodged an FIR NO.08/2021 on the basis of grievance received on JKIGRAMS web portal alleging that one of the PIAs has adopted fraudulent means in claiming the second installment of funds. As per the respondents, investigation in the matter is underway in respect of 14 PIAs in whose favour second installment of funds have been released under Himayat and petitioner is one among them. It is stated that HMMU is the nodal agency in the UT of J&K for implementation and monitoring of the scheme and can conduct inspection at any point of time to ascertain that there is no misuse of Govt. funds and ensure that there are no malpractices being adopted by the PIAs.

9. The respondents further state that the inspecting team requested the staff of the petitioner to show the records but the staff members did not cooperate. Accordingly, the inspecting team searched for the records on their own where incriminating material/document was found in presence of the staff of the petitioner. The Inspecting Team requested the staff of PIA to sign the document on which the items/documents found was recorded, however, it was refused by them. Therefore, the inspecting team took the geo tagged photographs of the documents/material found in presence of the staff. Signatures of the staff were also taken to keep the record of attendance at the time of visit. It is further stated by the respondents that there is no such

requirement of search warrant etc as the procedure adopted during the course of inspections were as usual for monitoring purpose. Since the nature of default was grave, so the *Suo Moto* penalty was imposed on the PIA after due approval from the competent authority. The show cause notice was issued to the PIA on 15.09.2022 and no response was received from the petitioner, as such, imposition of *suo moto* penalty is justified. It is further submitted that the petitioner had an option to file an appeal before the appellate authority in case of any grievance against the impugned order/notice.

Submissions

10. Mr. Harish V.S. learned counsel for the petitioner assails the impugned order on the ground that in terms of Clause 10.3.2 read with Clause 10.4 of the SoP, authority competent to impose *suo motu* major penalty is Principal Secretary, Rural Development Department, J&K whereas in the instant case respondent No.2 i.e. Chief Operating Officer has exercised the powers in terms of Clause 10.3.2 to impose *suo motu* major penalty.

11. Learned counsel for the petitioner submits that the surprise visit/inspection was conducted without any information to the petitioner. Neither the alleged complaint attributed against the petitioner has been shared with the petitioner nor any information regarding seizure of the incriminating material from the business premises of the petitioner has been provided to the petitioner, to enable the petitioner to reply the show cause notice. Learned counsel for the petitioner submits that the impugned order is liable to be quashed, as it suffers from non-application of mind and violates the principles of natural justice.

12. Mr. Nanda, learned counsel appearing for the respondents has relied upon Clause 10.3.2 to justify the impugned order. He states that since incriminating material was found during surprise visit/inspection of the business premises of the petitioner, therefore, respondents have rightly invoked Clause 10.3.2 of the SOP.

13. Heard learned counsel for the parties and perused the material on record.

14. Perusal of the show cause notice indicates that the same was issued on 15th September, 2022. However, show cause notice does not mention of the time period within which the petitioner had to respond to the same. The show cause notice appears to have been issued after approval was granted by the Commissioner/Secretary to Govt., Department of Rural Development and Panchayati Raj on 14th September, 2022 which is evident from e-office File No.1295189 dated 14.09.2022..

15. Mr. Harish, learned counsel for the petitioner has rightly submitted that the show cause notice was issued on 15.09.2022 on the basis of approval received from the Secretary, Rural Development Department on 14.09.2022, however, it did not provide within how many days the petitioner had to respond to the notice and while the petitioner was preparing reply to the show cause notice, "Notice of Imposition of Major Penalty" was issued on 20.09.2022.

16. Mr. Kewal Sharma, State Project Manager, Himayat Mission, has stated that the competent authority i.e. Commissioner/Secretary, RD Department had approved direct imposition of penalty in terms of Clause 10.3.2 against the petitioner on 15.09.2022. From the statement of the officer present in the Court, it becomes clear that though the impugned order imposing direct

penalty against the petitioner was issued on 20th September, 2022 by respondent No.2 but the same was already approved by respondent No.1 on 15th September, 2022 without considering for the response of the petitioner.

17. The learned counsel for the petitioner has rightly stated that he had drafted the response to the show cause notice on 21st September, 2022 but could not submit the same because the respondents had already issued the impugned order on 20th September, 2022 and as such, the petitioner has been condemned unheard in violation of the principles of natural justice.

18. In order to appreciate the contention of learned counsel for the respondent that the suo motu penalty has been imposed upon the petitioner in terms of Clause 10.3.2 of the SOP, Clause 10.3.2 is reproduced hereunder:-

“10.3.2 Suo Motu Imposition of Penalty

Notwithstanding the process delineated in 10.3.1 above, in exceptional cases(for example, diversion of funds, fraudulent practices, persistent defaults, actions that affect the safety of candidates), the competent authority may decide to impose penalty *suo motu* on a PIA. In such cases, penalty will be imposed directly on the PIA without issuance of any Alter or Notice. However, the PIA will retain the right to appeal against the penalty, and the appeal process will be followed as described above.”

19. In the impugned order it is reflected that the order has been passed by the competent authority in terms of Clause 10.3.2 of the Standard Operating Procedures and in para 3 of the impugned order it is stated that if the petitioner organization wish to prefer an appeal against the penalty the appeal shall be

filed to the appropriate authority as per SF 10.1B within 20 days of receipt of the impugned notice/order. The relevant extract of 10.1B reads thus:-

SF 10.1B: Competent Authority for handling default procedures

Category	Competent authority of SRLM	Recipient & Respondent PIA	Copy for information
Yellow Alert	Authority to issue & escalate: The person designated to issue such notices*	Project Head	MoRD: Joint Secretary(Skills) CTSA: Head of Skills unit of the organization PIA: Authorized signatory & CEO
Red Alert	Authority to issue, escalate & close the alert: The person designated to issue such notices*	Authorized signatory	MoRD: Joint Secretary (Skills) CTSA: Head of organization PIA: Project head & CEO
Issue of Show cause Notice	Issuing Authority- COO/Skills, SRLM	Authorized signatory	MoRD:Joint Secretary (Skills) CTSA: Head of Skills unit of the organization PIA:Project head & CEO
Imposition of minor penalty/Termination of penalty proceedings Imposition of major penalty	COO/Skills, SRLM CEO/SRLM or equivalent(who is a level higher than COO/Skills, SRLM)	Authorized signatory	MoRD: Joint Secretary (Skills) CTSA: Head of skills unit of the organization PIA: Project head & CEO
Appellate Authority	Minor penalty: CEO/SRLM or equivalent (who is a level higher than COO/Skills, SRLM)	Authorized signatory	MoRD: Joint Secretary (Skills) CTSA:Head of skills unit of the organization PIA: Project head &

	Major Penalty: Principal Secretary, RD, State Government		CEO
Direct imposition of penalty	Minor penalty: CEO/SRLM or equivalent (who is a level higher than COO/Skills, SRLM) Major Penalty: Principal Secretary, RD, State Government	Authorized signatory	MoRD:Joint Secretary (Skills) CTSA: Head of Skills unit of the organization PIA: Project head & CEO

20. Perusal of the above extract indicates that the competent authority prescribed for imposing direct penalty is none other than the Principal Secretary to Government, Rural Development Department. In terms of 10.1.B, there is no provision of filing an appeal against the order passed by the Principal Secretary or for that matter Commissioner/Secretary, RD Department in case of major penalty. If the plea of the respondents is accepted, the impugned order insofar as paragraph No.3 and 4 are concerned would only reflect non-application of mind of the respondents.

21. In view of above, it is quite clear that the petitioner has been prejudiced by the action of the respondents as the two courses referred to in the SOP and guidelines on the basis whereof the respondents have possibly issued the impugned order do not justify the action taken by them in any way. If the impugned order is taken to be the outcome of the inspection preceded by a show cause notice, then the petitioner ought to have been heard which admittedly has not been done. The other course stated to have been adopted by the respondents in the instant case is that the impugned order is issued in

pursuance to Clause 10.3.2 providing for *suo moto* imposition of penalty which also suffers from non-application of mind as the petitioner has only been informed of his right to file appeal against the impugned order before the “appropriate authority” without specifying the authority before whom an appeal could have been filed.

22. Learned counsel for the respondents as well as the State Project Manager, Himayat Mission, who was present in the Court have failed to substantiate the action taken by the respondents in terms of the order impugned. The respondents have failed to follow the procedure laid down in SOP, as such, have committed procedural irregularities. The impugned order is not only stigmatic without following principles of natural justice but has also left the petitioner without any alternative remedy of filing an appeal as reflected in the impugned order.

23. In view of the above, the impugned order dated 20.09.2022 is quashed. However, the respondents are at liberty to initiate any action strictly in accordance with law, SOP and guidelines laid down in this regard from time to time.

(Moksha Khajuria Kazmi)
Judge

Jammu
21.12.2023
Vinod, PS

Whether the order is reportable: Yes