

Court No. - 40

Case :- WRIT - C No. - 32012 of 2023

Petitioner :- M/S Amit Traders Tours and Travel Agency

Respondent :- State of U.P. and 3 Others

Counsel for Petitioner :- Kali Charan Yadav, Prathamesh Upadhyay

Counsel for Respondent :- C.S.C., Ashok Kumar Singh

Hon'ble Mahesh Chandra Tripathi, J.

Hon'ble Prashant Kumar, J.

1. Heard learned counsel for the petitioner, Sri Ambrish Shukla, learned Additional Chief Standing Counsel for respondent nos.1 and 2 and Sri Ashok Kumar Singh, learned counsel for respondent no.3.

2. By means of this petition, the petitioner has sought following reliefs:-

"A) issue a suitable writ, order or direction in the nature of certiorari quashing the order dated 09.08.2023 passed by the District Magistrate, Basti whereby he has permitted Chief Treasury Officer, Basti to float a fresh tender.

B) issue a suitable writ, order or direction in the nature of certiorari quashing the new tender dated 14.08.2023 as Bid Number:GEM/2023/B/3828079 and further proceeding to it.

C) issue a suitable writ, order or direction in the nature of mandamus directing the respondent no.1 to 3 not to interfere in the contract date 02.07.2023 in between petitioner and Basic Education Department, Basti."

3. It appears from the record that the petitioner firm is regularly engaged with the Basic Education Department, Basti for providing Cab and taxi hiring services since the year 2020. On 20.06.2022 the Basic Education Department, Uttar Pradesh floated a tender for 'Monthly Basis Cab and Taxi Hiring Services'. The petitioner also participated in the said tender and was accorded the contract for the period from 21.06.2022 to 20.03.2023. As the contract of the year 2022-23 was ended, therefore, the Basic Education Department had issued the bid on 19.06.2023 for monthly basis cab and tax hiring services for the financial year 2023-24. The petitioner firm participated in the said bidding and finally, the petitioner firm was selected and the contract between the Basic Education Department, Basti and the petitioner firm was executed

on 02.07.2023. During the year 2023-24 the petitioner firm started to supply 18 vehicles to the Basic Education Department, Basti. Meanwhile, on the direction of the Chief Treasury Officer, Basti dated 22.07.2023, an enquiry was made by the Finance and Accounts Officer (Basic), Basti and the report was submitted by him on 27.07.2023, wherein no irregularity was found in the contract dated 02.07.2023. On receipt of the said enquiry report, the Chief Treasury Officer had passed an order on 04.08.2023 directing to float a new tender as per law. By the impugned order dated 09.8.2023, the District Magistrate had directed to complete all formalities for the new tender.

4. Learned counsel for the petitioner in this backdrop submits that the contract of the petitioner is valid upto 03.07.2024 and without cancelling the said agreement, the respondents cannot issue fresh tender. Before passing the impugned order, neither the respondents have given any notice nor provided opportunity of hearing to the petitioner to rebut the allegation and as such, the impugned order has been passed in violation of principle of natural justice. Therefore, the impugned order dated 09.08.2023 as well as the new tender dated 14.08.2023 are unsustainable in the eyes of law and the same are liable to be set aside.

5. So far as the factual and legal aspect of the matter is concerned, the same is not disputed by learned counsel for the respondents.

6. Bare perusal of the impugned order reveals that the impugned order has been passed by the respondent no.2 without giving any kind of opportunity to the petitioner. A fact finding authority is under statutory obligation to consider with due care every fact for and against the petitioner and to record its finding in a manner, which would clearly indicate as to whether the facts on which the order was passed have been established. Absence of the findings to disclose reasons in an order in the manner indicated above would render the order to be indefensible/unsustainable. Reason is the heart beat of every conclusion. In the absence of reasons the order becomes lifeless. Non recording of reasons renders the order to be violative of principles of natural justice. Reasons ensures transparency and fairness in decision making. It enables litigant to know reasons for acceptance or rejection of his prayer. It is statutory requirement of natural justice. Thus, failure to give reasons amounts to denial of justice.

7. The principle of natural justice has twin ingredients; firstly, the person, who is likely to be adversely affected by the action of the authorities, should be given notice to show cause thereof and

granted an opportunity of hearing and secondly, the orders so passed by the authorities should give reason for arriving at any conclusion showing proper application of mind. Violation of either of them could in the given facts and circumstances of the case, vitiate the order itself. Such rule being applicable to the administrative authorities certainly requires that the judgment of the Court should meet with this requirement with higher degree of satisfaction. The order of an administrative authority may not provide reasons like a judgment but the order must be supported by the reasons of rationality. The distinction between passing of an order by an administrative or quasi-judicial authority has practically extinguished and both are required to pass reasoned orders.

8. In **A.K. Kraipak and others Vs. Union of India and Others**, reported in (1970) 1 SCR 457, Hon'ble Supreme Court held that the concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules namely (i) no one shall be a Judge in his own cause (*nemo dabet esse judex propria causa*) and (ii) no decision shall be given against a party without affording him a reasonable hearing (*audi alteram partem*). Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice."

9. For the aforesaid reasons, we find that the impugned order dated 09.08.2023 cannot be sustained in the eyes of law and it is, accordingly, quashed. The matter is remanded back to the District Magistrate, Basti (respondent no.2) for deciding the matter afresh after affording opportunity of hearing to the petitioner within a period of six weeks from the date of receipt of certified copy of the order.

10. The writ petition is, accordingly, partly allowed.

Order Date :- 7.11.2023

Manish Himwan