

Court No. - 21

Case :- WRIT - C No. - 35844 of 2023

Petitioner :- M/S Shri Balaji Construction Navin Basti And Another

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Ajay Mishra, Shri Krishna Mishra

Counsel for Respondent :- C.S.C., Manvendra Nath Singh

Hon'ble Manoj Kumar Gupta, Acting Chief Justice
Hon'ble Donadi Ramesh, J.

1. Heard Sri Shri Krishna Mishra, learned counsel for the petitioners, Sri Rajiv Gupta, learned Additional Chief Standing Counsel for respondents no. 1, 2 and 3 and Sri Manvendra Nath Singh, learned counsel appearing on behalf of respondent no. 4. With their consent, the petition is being disposed of finally without calling for any formal counter affidavit.

2. The petitioner firms had executed work of tree plantation, filling of mud and construction of drains in pursuance of contracts awarded in their favour. It seems that on basis of a complaint made by one Vipin Kumar that the petitioners had not executed full work but have received payment of entire contract money, an inquiry was got conducted through a Joint Committee. Thereafter order was passed on 20.08.2022 by Executive Officer, Nagar Panchayat, Bidhuna declining to grant no-objection certificate to the petitioners for participating in future tender. The said order was subjected to challenge by the petitioners in Writ No. 25920 of 2022. The contention of the petitioners therein was that the impugned order is being treated as an order of blacklisting by the respondents and therefore, no-objection certificate to participate in future tender was being withheld. The order was challenged on the

ground that it was passed on basis of an ex-parte inquiry and without giving any notice or opportunity of hearing to the petitioners. In the said writ petition, after the respondents placed on record their version by means of counter affidavit, the order dated 08.04.2022 was held to be violative of principles of natural justice and was quashed with liberty to the respondents to pass fresh order after complying with the principles of natural justice. Thereafter, another order was passed on 24.06.2023 again directing for recovery of 35% of the contract money on basis of the same inquiry. The petitioners challenged the same by filing Writ-C No. 21791 of 2023. When the matter was taken up by a co-ordinate Bench on 11.07.2023, it was informed that the impugned order had been withdrawn and therefore, the said writ petition was disposed of as infructuous. Thereafter, respondent no. 4 had issued show cause notice dated 21.08.2023 to the petitioners. The petitioners submitted their separate replies to the show cause notice. Thereafter, the impugned order has been passed again directing for recovery of 35% of the contract money and the previous order by which recovery was directed and blacklisting was ordered, was kept intact. Aggrieved thereby, the instant petition has been filed.

3. Learned counsel for the petitioners vehemently contended that once again the impugned order has been passed in gross violation of the principles of natural justice. Copy of the complaint of Vipin Kumar was not supplied to the petitioners. The inquiry got conducted by the Joint Committee was ex-parte, without any information to the petitioners. They were not associated with the inquiry nor were granted any opportunity to lead evidence. The enquiry report, according to the petitioners, is even otherwise against the record, as the payments were made after measurement of the work at the site by the concerned officer and the same were

duly recorded in the measurement book. The petitioners have taken specific objections with regard to the manner in which inquiry was got conducted and why the report submitted by the Enquiry Committee cannot be relied upon. However, while passing the impugned order respondent no. 4 has merely reproduced the objections filed by the petitioners but has not dealt with the same. He has blindly relied on the report of the Enquiry Committee and has thereafter concluded that the petitioners are guilty of the charges levelled against them. It is submitted that non consideration of the reply of the petitioners vitiates the impugned order. Moreover, the order does not contain any reason for arriving at the conclusion that the charges are proved and this also vitiates the impugned order.

4. Sri Manvendra Nath Singh, learned counsel appearing on behalf of respondent no. 4 concedes that in the impugned order except for reproducing the reply submitted by the petitioners, there is no independent consideration of the pleas taken by them therein. He also could not show that the Enquiry Committee associated the petitioners in the Enquiry conducted by it or granted them any opportunity to submit their defence before the Committee. He, therefore, states that he has no objection in case this Court directs respondent no. 4 to pass a fresh order.

5. We are satisfied that the impugned order does not comply with the principles of natural justice. One of the essential ingredients of principles of natural justice is to consider the explanation submitted by the person against whom the order is being passed. In the instant case, as noted above, there is no application of mind to the objections submitted by the petitioners against the inquiry report. The order has been passed in a casual and pedantic manner, ignoring the fact that in the previous round of litigation also the

order passed by respondent no. 4 was set aside holding that it does not reflect application of mind.

6. Having regard to the above, we hereby quash the impugned order but leave it open to respondent no. 4 to pass fresh order consistent with the principles of natural justice.

7. The writ petition stands allowed to the extent indicated above.

(Donadi Ramesh, J.) (Manoj Kumar Gupta, A.C.J.)

Order Date :- 22.11.2023

Ruhi H.