

Court No. - 6

Case :- WRIT - C No. - 886 of 2024

Petitioner :- M/S Shyam Enterprises, Unnao Thru. Its
Proprietor Gopal Pandey

Respondent :- State Of U.P. Thru. Prin. Secy. Deptt. Of
Geology And Mining, Lko. And 4 Others

Counsel for Petitioner :- Yugal Kishor Tripathi

Counsel for Respondent :- C.S.C.

Hon'ble Alok Mathur, J.

1. Heard Sri Sandeep Dixit, learned Senior Advocate assisted by Sri Yugul Kishore Tripathi, learned counsel for the petitioner as well as Sri Ravi Singh Sisodiya, learned Chief Standing Counsel for the respondents.

2. By means of present writ petition the petitioner has challenged the order dated 30.08.2023, passed by the District Magistrate, Unnao whereby he has canceled the mining lease granted to the petitioner in addition to levy of penalty and also black listing him.

3. It has been submitted by learned counsel for the petitioner that present dispute relates to mining lease pertaining to Gata No. 286, area 26.0566 hectares, situated at Village – Katari Pariyar, Tehsil – Sadar, District – Unnao. The mining lease was executed in favour of petitioner on 18.12.2019, for a period of five years from the date of execution of the mining lease for excavating ordinary sand. It is submitted that the petitioner commenced the mining operation and complied with all the statutory prescription and deposited the royalty with the respondents regularly.

4. It is stated that subsequently, the petitioner received notice dated 07.04.2021, requiring him to reply to the allegations levelled against him for violation of Rule 41(h)(i) of the U.P. Minor Mineral (Concession) Rules, 1963 (*hereinafter referred to as "the Rules, 1963"*), for mining in the area beyond the lease area. The petitioner filed his reply to the said show cause notice and proceedings were concluded by levying penalty of Rs.5,00,000/- on the petitioner by means of order dated 03.09.2021.

5. It is next submitted that subsequently, it seems that certain inspection was carried out in the mining area of the petitioner and report was submitted on 06.06.2023 to the District Magistrate, Unnao alleging that lifter and suction machines

were found at the distance of one kilometers from the mining area of the petitioner. In the said enquiry statements of local people were also recorded and allegation was that the petitioner was using machines to excavate the sand from the mining area. The petitioner was served with show cause notice dated 10.06.2023, requiring him to explain for violation of Rule 41(h) (i) of the Rules, 1963. The District Magistrate by means of order dated 30.06.2023 also suspended the lease deed dated 18.12.2019. The petitioner submitted his reply on 04.07.2023, stating that the inspection report was never served upon the petitioner and consequently he could not submit a proper reply to the show cause notice.

6. On the objections being taken by the petitioner that inspection report has not been supplied to him, the respondents provided a copy of the inspection report to the petitioner on 01.08.2023. It is stated that after receiving the inquiry report the petitioner submitted additional reply on 14.08.2023. The District Magistrate by means of order dated 30.08.2023, cancelled the lease deed of petitioner and also black listed him in exercise of power under Rule 61(2) of the Act, 1963.

7. The petitioner being aggrieved by the order of cancellation dated 30.08.2023, canceling his mining lease and imposing penalty for violation of provisions of Act, 1963 and also black listing the petitioner in exercise of power under Rule 61(2) of the Act, 1963, challenged the said order before this Court by filing Writ Petition No. 8309 (M/S) of 2023 – M/s Shyam Enterprise Vs. State of U.P. and Others. The said writ petition was disposed of by this Court by means of order dated 03.10.2023, whereby the petitioner was directed to exhaust alternative remedy of revision against the impugned order of cancellation.

8. The revision was maintainable before the Commissioner of the Division but subsequently there was amendment and revision was now maintainable before the State Government and accordingly, the petitioner preferred revision before the State Government. The said revision was duly considered by the State Government and rejected by means of order dated 22.12.2023.

9. By means of present writ petition the petitioner has challenged the order dated 30.08.2023, passed by the District Magistrate as well as order dated 22.12.2023, passed by the State Government in exercise of revisional jurisdiction affirming the order passed by the District Officer (Mining).

10. While assailing the aforesaid orders, the petitioner has submitted that the order has been passed in gross violation of principles of natural justice and response of the petitioner has

not been considered by the District Officer while canceling the mining lease. It is submitted that petitioner has submitted his reply on 04.07.2023 and the contents of his reply are reproduced in the impugned order but while recording the findings defense and explanation offered by the petitioner have not where been considered by the District Officer.

11. Another ground raised by the petitioner for assailing the said orders is that by means of impugned order the petitioner has been black listed illegally and arbitrarily in violation of principles of natural justice. It is submitted that perusal of the show cause notice issued to the petitioner dated 30.06.2023, would indicate that no notice was given to the petitioner with regard to black listing and no opportunity of hearing was given to the petitioner before black listing him for a period of two years. It is on account of these facts it is submitted that the impugned orders are illegal and arbitrary and deserve to be set aside.

12. Learned counsel for the petitioner has lastly submitted that the respondents were under mandate to consider the directions issued by the coordinate Bench of this Court in the case of Ranveer Singh Vs. State of U.P. and Others, 2017 (1) ADJ 240 where detailed procedure has been outlined by this Court with regard to procedure to be adopted by the respondents while considering the matters pertaining to cancellation of mining lease but the directions of this Court have been flouted at every stage of the proceedings, and therefore have sought interference of this Court.

13. Learned Standing Counsel on the other hand has opposed the writ petition. He has submitted that there were serious allegations against the petitioner for having violated the conditions of the lease and also that mining in an area beyond the leased area and also excavating more sand then what was prescribed. It is submitted that such allegations are extremely serious and there was credible material with regard to allegations levelled against petitioner and it is further stated that full opportunity was given to the petitioner before passing of the impugned order canceling his lease deed.

14. It is next submitted by learned Standing Counsel that considering the fact that full opportunity was given to petitioner and the show cause notice was issued to him and his reply was duly considered hence there was no violation of principles of natural justice and prays for dismissal of writ petition.

15. Heard learned counsel for the parties and perused the record.

16. The only question which arises for consideration by this Court is as to whether the impugned order of cancellation of the

mining lease has been passed by the District Officer (Mining) after complying with the statutory prescription and also in accordance with the judgment of this Court in the case of Ranveer Singh (supra).

17. It is noticed that when allegations against the petitioner came to light an enquiry was ordered. On the basis of enquiry report a show cause notice was issued to petitioner on 20.06.2023 and his lease was also suspended by means of order dated 30.06.2023. The petitioner in his reply has pointed out that the enquiry report on the basis of which action has been taken against him has not been provided to him. Subsequently, even the enquiry report was made available to the petitioner on 01.08.2023. The petitioner further filed his reply to the contents of the enquiry report on 14.08.2023. It is noticed that while passing the impugned order dated 30.08.2023, the District Officer (Mining) has duly noticed the reply given by the petitioner. He has infact quoted the entire response of the petitioner in the order but while returning finding with regard to allegations levelled against the petitioner, there is no mention of defense taken by the petitioner with regard to each of the allegation levelled against him. The District Officer (Mining) has merely reiterated the finding stated in the report of enquiry officer while affirming the allegations levelled against petitioner.

18. This Court is of the considered view that mere submission of reply by the delinquent person in pursuance of show cause notice is not in compliance with the rule of "*Audi Alterum Partem*". The right to be reasonably heard includes due consideration of the reply by the competent authority in the decision making process. It is for this reason that adequate reasons have to be given by the authority concerned while considering the response of a person to the allegations levelled against him during the enquiry. It is necessary that the competent authority while considering the charges is mandated to consider the reply submitted to the charge sheet. Non consideration of the reply would render the decision arbitrary and liable to be set aside.

19. In the judgment of **Ranveer Singh (supra)**, it is has been laid down by this Court in para 44 as under :-

"44. Once the liability was to be fastened on the shoulder of petitioner, then it was the obligation of the State to prove by way of credible evidence available that it was the petitioner, who has indulged in illegal mining and in the said direction, apart from issuing show cause notice, all the evidence that was sought to be relied upon i.e. the incumbents who have carried out the search and survey and the incumbents who have come

forward to depose against petitioner, their names ought to have been disclosed and they ought to have been produced to support the case of State that petitioner in fact has indulged in illegal mining. Not only this as a part of process, petitioner was entitled to have reasonable opportunity of defending himself by questioning the veracity of evidence produced against him and by adducing his own defence evidence, if any. Decision maker is bound to act fairly, as under the scheme of things provided for, the determination made by him will entail civil consequences, as qua the person charged with illegal mining on charges being proved financial liability would be shouldered and in contra situation, the State would be at loss."

20. After perusal of above mentioned facts, it is clear that there has been no compliance of the directions given in the judgment of **Ranveer Singh (supra)**.

21. In the present case, after noticing the reply of the petitioner there is no mention or any discussion with regard to the response submitted by the petitioner. Remaining part of the impugned order is merely reiteration of the allegations levelled against the petitioner which find mention in the inquiry report and have been duly affirmed by the District Officer (Mining).

22. In the aforesaid facts this Court is of the considered view that the order impugned cannot be said to be passed observing the principles of natural justice. There is no reason ascribed in the impugned order showing the defense taken by the petitioner with regard to allegations levelled against him. It was incumbent upon the District Officer (Mining) to have dealt with each allegation and consider the response of the petitioner with regard to each allegation and return his finding against the same. By not considering the response of the petitioner, it cannot be said that the District Officer (Mining) has complied with the principles of natural justice and this Court is of the considered view that the impugned order is arbitrary and illegal.

23. It is also noticed that the petitioner has been black listed for a period of two years from grant of any mining lease. There is no dispute with regard to the fact that no show cause notice was given to the petitioner prior to passing the said order which prevents the petitioner from obtaining mining lease for next two years.

24. Law in this regard has been settled by the Hon'ble Supreme Court in the case of UMC Technologies Private Limited Vs. Food Corporation of India and Another - Civil Appeal No. 3687 of 2020 (arising out of S.L.P. (C) No. 14228 of 2019, decided on 16.11.2020). In the said case the Apex Court has further relied upon its previous judgment rendered in the case of Gorkha Security Services Vs. Government (NCT of Delhi) and

Others, 2014 (9) SCC 105. The Apex Court in UMC Technologies Private Limited (supra) in para 20 and 21 has held as under :-

"20. In the present case, the factum of service of the show cause notice dated 10.04.2018 by the Corporation upon the appellant is not in dispute. Rather, what Shri Banerji has argued on behalf of the appellant is that the contents of the said show cause notice were not such that the appellant could have anticipated that an order of blacklisting was being contemplated by the Corporation. Gorkha Security Services (supra) is a case where this Court had to decide whether the action of blacklisting could have been taken without specifically proposing/contemplating such an action in the show cause notice. For this purpose, this Court laid down the below guidelines as to the contents of a show cause notice pursuant to which adverse action such as blacklisting may be adopted:

"Contents of the show-cause notice

21. The central issue, however, pertains to the requirement of stating the action which is proposed to be taken. The fundamental purpose behind the serving of show-cause notice is to make the noticee understand the precise case set up against him which he has to meet. This would require the statement of imputations detailing out the alleged breaches and defaults he has committed, so that he gets an opportunity to rebut the same. Another requirement, according to us, is the nature of action which is proposed to be taken for such a breach. That should also be stated so that the noticee is able to point out that proposed action is not warranted in the given case, even if the defaults/breaches complained of are not satisfactorily explained. When it comes to blacklisting, this requirement becomes all the more imperative, having regard to the fact that it is harshest possible action.

22. The High Court has simply stated that the purpose of show-cause notice is primarily that the purpose to enable the noticee to meet the grounds on which the action is proposed against him. No doubt, the High Court is justified to this agent. However, it is equally important to mention as to what would be the consequence if the noticee does not satisfactorily meet the grounds on which an action is proposed. To put it otherwise, we are of the opinion that in order to fulfil the requirements of principles of natural justice, a show-cause notice should meet the following two requirements viz:

- (i) The material/grounds to be stated which according to the department necessitates an action;*
- (ii) Particular penalty/action which is proposed to be taken. It*

is this second requirement which the High Court has failed to omit.

We may hasten to add that even if it is not specifically mentioned in the show-cause notice but it can clearly and safely be discerned from the reading thereof, that would be sufficient to meet this requirement."

21. Thus, from the above discussion, a clear legal position emerges that for a show cause notice to constitute the valid basis of a blacklisting order, such notice must spell out clearly, or its contents be such that it can be clearly inferred therefrom, that there is intention on the part of the issuer of the notice to blacklist the noticee. Such a clear notice is essential for ensuring that the person against whom the penalty of blacklisting is intended to be imposed, has an adequate, informed and meaningful opportunity to show cause against his possible blacklisting."

25. In the present case non issuance of show cause notice would be fatal to an order of black listing against any individual and this Court has no hesitation in holding that the order of black listing of the petitioner is illegal and arbitrary and deserves to be set aside.

26. In the light of above, this Court is of the considered view that the impugned order dated 30.08.2023 and revisional order dated 22.12.2023, are illegal and arbitrary and are hence set aside. Considering the fact that this Court has set aside the impugned orders on the ground that proper opportunity was not given to the petitioner before passing the impugned orders, accordingly the matter is remitted back to the District Officer (Mining)/District Magistrate, Unnao for passing fresh order after giving full opportunity of hearing to the petitioner.

27. Let the aforesaid exercise be conducted expeditiously and be concluded within a period of six months from the date of production of certified copy of this order in accordance with law.

28. The petitioner undertakes to cooperate in the proceedings before the District Officer (Mining). The petitioner is granted liberty to file any response they want within maximum period of two weeks from today, before the competent authority.

29. The writ petition stands allowed.

Order Date :- 6.2.2024

A. Verma

(Alok Mathur, J.)