

\$~13

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

+ W.P.(C) 8773/2014 and CM No.20148/2014 and 2631/2015

HCL INFOSYSTEM LTD.

..... Petitioner

Through: Mr. Rajiv Nayar, Sr. Advocate with
Ms.Anindita Roy Chaudhury and Ms.Vatsala Rai,
Advocates

versus

UNION OF INDIA

..... Respondent

Through: Ms. Monika Arora, CGSC with Mr.
Abhishek Chaudhary, Advocate

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

21.04.2015

%

1. By virtue of this writ petition, challenge is laid to communications dated 25.12.2014 and 02.12.2014 which are appended as Annexure P1(collectively) at pages 35 to 37 of the paper book.

2. Shorn of verbiage, the principal ground, on which challenge is laid to the aforementioned orders, is that, the purported show cause notice dated 16.05.2014 (in short SCN), issued to the petitioner, did not indicate the penal action, which the respondent proposed to take against the petitioner.

3. In sum, it is the contention of the petitioner that by virtue of the impugned orders, it has been black-listed without the penal action, that the respondent, proposed to take being indicated in the SCN.

W.P.(C) 8773/2014

page 1 of 4

3.1 Mr. Nayar in support of his submissions relies upon judgment of the Supreme Court in the case of *Gorkha Security Services Vs. GNCTD, (2014) 9 SCC 105*. In particular, reference is made to paragraph 21 and 22 of the said judgement.

4. Ms. Arora, when confronted with this position, concedes that the SCN does not advert to the penal action that the respondent, at that stage, proposed to take against the petitioner. Ms. Arora, though says, in paragraph 10 of the said SCN, the respondent did indicate that they would “initiate appropriate legal / administrative action”, against the petitioner.

5. In my view, this would not suffice. The reason for this is, the observations of the Supreme Court in the aforementioned judgment, in particular, those which are made in paragraph 22 at page 119. For the sake of convenience, the same are extracted hereinbelow :-

“..22. The High Court has simply stated that the purpose of show-cause notice is primarily 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 extent. However, it is equally important to mention as to what would be the consequence if the noticee does not satisfactory meet the grounds on which an action is proposed. To put in 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..”

(emphasis is mine)

6. The expression “appropriate legal/ administrative action” is capable of being construed in several ways. It is not possible to discern from what is stated in paragraph 10 of the SCN that respondent proposed to blacklist the petitioner.

7. It is important to bear in mind, that the reason, courts insist on a reference being made to the proposed penalty, in the SCN, is to enable the delinquent to state his case in one-go, both with regard to the merits of the case as well as the proposed punishment.

7.1 Quite obviously, delinquent’s reply with regard to the proposed punishment would proceed on the basis that, even if he were, unable to satisfy the adjudicating authority that he did not have a statable case, vis-a-vis the alleged infraction, there were circumstances in play which required consideration, from the point of view of the punishment to be imposed in the matter. It is quite possible that the authority, adjudicating the SCN, while finding the delinquent guilty of the infraction articulated in the SCN, may, in the given circumstances, come to a conclusion that it was not a case for imposition of punishment or, was a case in which a punishment, lesser than that which was proposed in the SCN, ought to be imposed.

7.2 Plainly, if this methodology is followed by an adjudicating authority, it will enure to the benefit of both parties as it will not only hasten the process of adjudication, but also imbue the proceedings with requisite fairness.

8. In these circumstances, the impugned orders are set aside leaving it open to the respondent to recommence the process in accordance with the law.

9. With the aforesaid observations in place, the captioned petition and the pending applications are disposed of.

10. Dasti.

RAJIV SHAKDHER, J

APRIL 21, 2015

yg

W.P.(C) 8773/2014

page 4 of 4