

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.42903 OF 2016

DATED : 15.12.2016

Between :

M/s.GSK-VISHWA(JV),
(A joint venture of M/s.GSK Infrastructure with
M/s.Vishwa Infrastructure & Services Pvt.Ltd., Hyderabad),
R/o.H.No.1-8-288. Plot No.32,
Sindhi Colony, P.G.Road,
Secunderabad, rep., by its Authorised representative,
G.Santosh Kumar, S/o.G.Shankar Rao,
Age 35 yrs, Occu : Business & another.

.. Petitioners

And

The State of Telangana,
Rep., by its Special Chief Secretary,
Municipal Administration and Urban Development Department,
Secretariat, Secretariat Building,
Saifabad, Hyderabad & others.

.. Respondents



This court made the following :

THE HON'BLE SRI JUSTICE P.NAVEEN RAO**WRIT PETITION No.42903 OF 2016****ORDER :**

In this writ petition petitioner challenges the order of the Director (Projects), of the respondent-Sewerage Board, blacklisting the petitioner holding that he is not entitled to transact any business of the Government. This order was passed on account of a tragic incident of death of a person on 25/26.06.2016 in Madhapur area, where the petitioner was entrusted with the work of laying of sewerage pipe line. The allegation was that in a trench dug, where the petitioner was executing the work, a person fell into it and was subjected to electrocution and died.

2. Heard learned counsel for the petitioner and learned Standing counsel for Respondents 2 to 5.

3. Learned Senior Counsel appearing for the petitioner argued the matter extensively on various issues contending that the petitioner is no way concerned with the alleged incident and that the trench belong to the GHMC and at the spot where the incident occurred, petitioner has already completed the work 15 days prior to the incident. The respondent-authorities admit that the work was already completed. However, it is primarily contended that on a show cause notice issued to the petitioner on 28.06.2016 petitioner filed detailed explanation on the same day. This explanation was not considered by the authority who passed the order impugned. There is no reference to the explanation submitted by the petitioner in the order impugned. He would

further submit that in the explanation submitted by the petitioner, he has explained that he is no way concerned with the incident.

4. On this issue, learned Standing Counsel for the Board, fairly submits that the order does not reflect the explanation submitted by the petitioner. He would submit that the explanation was forwarded to the Government by letter dated 18.08.2016 and Government could have considered the explanation and passed orders on 22.11.2016 to blacklist the petitioner and in terms thereof the order impugned is passed. Learned Standing counsel does not deny the fact that even Government order do not reflect consideration of explanation and there is no discussion on the defence taken by the petitioner.

5. Learned Senior counsel also submits that when enquiry was ordered into the incident and a report was submitted after conducting enquiry and after examining the witnesses, copy of the report was not furnished to the petitioner. The report supports the stand of the petitioner. Even though report is furnished to the Government and the explanation seems to have been forwarded to the Government, Government did not take into consideration the explanation and directed the Board to blacklist the petitioner and based on the said direction, the petitioner is blacklisted by the order impugned. Neither the Government order nor the order of the Board reflect that the explanation submitted by the petitioner was considered before passing the said orders.

6. Blacklisting of a contractor would have serious civil and evil consequences. A contractor would be prohibited from undertaking any work with the same employer. He cannot undertake any work

with any other Government Organization, since there is always a clause to mention about any adverse action taken by the previous employer, where the work is executed and on such disclosure the contract would not be awarded, even if he fulfils all other norms. Thus, when an order of blacklisting has got such civil and evil consequences, the mandatory requirement by the competent authority is to observe the elementary principle of furnishing of report of enquiry, consideration of explanation and if necessary to afford due opportunity.

7. Thus, there is clear denial of principles of natural justice and reasonable opportunity. The equity and justice demands that due opportunity should be afforded to the petitioner and on that ground alone the order is liable to be set aside. Accordingly the order impugned is set aside and the matter is remitted to the competent authority, with the following directions :

(i) Since earlier the report of the enquiry was not furnished to the petitioner, liberty is granted to petitioner to submit additional explanation, if so advised, within a period of one week from today.

(ii) On submission of such additional explanation, the Managing Director, Hyderabad Metropolitan Water Supply & Sewerage Board-2nd respondent, shall consider the earlier explanation as well as additional explanation and by assigning due reasons in support of his decision, pass appropriate orders as warranted by law, and communicate the decision to the petitioner within a further period of one week, from the date of receipt of additional explanation. If no additional explanation is filed, within one week as directed above, after the expiry of time granted, the

competent authority may consider only the earlier explanation and pass appropriate order by assigning due reasons.

8. According to G.O.Ms.No.94, though the competent authority is Chief Engineer or higher authority of the respondent-Board to take action and to blacklist the contractor, it requires approval by the Government. Prior to the order dated 28.11.2016, Government passed orders on 22.11.2016 directing the Board to take action to blacklist the petitioner in accordance with G.O.Ms.No.94. In terms of G.O.Ms.No.94 the order of the Government dated 22.11.2016 has to be read as granting consent to the competent authority of the Board to take action with reference to blacklisting of a contractor i.e., petitioner and therefore, no further consent is required from the Government. However the Managing Director, shall independently consider the explanation submitted by the petitioner uninfluenced by the views expressed by the Government, in its order dated 22.11.2016.

9. Learned Senior counsel appearing for the petitioner also submits that petitioner is undertaking works already entrusted to him, but on account of order impugned, he is now prohibited from undertaking the work. Learned Standing counsel submits that petitioner has committed so many irregularities when he is executing other works and four persons died in such incident and therefore he cannot be permitted to undertake any work.

10. Leaving it open to the respondent-Board to take action as warranted by law, on the alleged incidents occurred elsewhere, since the contracts are not terminated, petitioner may be permitted to continue execution of the works, till a decision is taken, as

directed above. However, the Chief General Manager (Projects) shall personally inspect all the sites where the petitioner is executing the works and ensure that all safety precautions are taken by the petitioner, while undertaking the work and only on he being satisfied with observance of all such safety norms by the petitioner, on written certificate issued by him, petitioner may be granted permission to undertake the works already entrusted to him.

11. With the above directions, the Writ Petition is disposed of. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

15th December, 2016
Rds

P.NAVEEN RAO,J

