

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 17048 of 2014

Date of Decision: 4.10.2016

M/s Outdoor Communication, New Delhi

....Petitioner.

Versus

State of Punjab and others

...Respondents.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE RAMENDRA JAIN.**

PRESENT: Mr. Chetan Mittal, Senior Advocate with
Mr. Udit Garg, Advocate for the petitioner.

Mr. Rajinder Goyal, Additional Advocate General, Punjab.

Mr. Sanjeev Soni, Advocate for respondents No.2 to 4.

AJAY KUMAR MITTAL, J.

1. In this writ petition filed under Articles 226/227 of the Constitution of India, the petitioner has prayed for issuance of a writ in the nature of certiorari for quashing the order dated 4.8.2014 (Annexure P-21) issued by respondent No.2 debarring and blacklisting the petitioner from working as a contractor for the Municipal Corporation.

2. A few facts necessary for adjudication of the present writ petition as narrated therein may be noticed. Respondent No.2 issued an advertisement dated 11.6.2005 (Annexure P-1) inviting Expression of Interests, in respect of renovation/maintenance of the toilet blocks and the maintenance of the Garbage Collection Centres in the markets of SAS Nagar, Mohali. In response, thereto, the petitioner submitted its bids/

tenders. The petitioner being the highest bidder was allotted the aforesaid

work. An agreement dated 25.8.2005 (Annexure P-2) was executed between the petitioner and respondent No.2 for a period of five years. At the time of execution of the agreement, a list (Annexure P-2/A) of 22 garbage collection centres was given to the petitioner whereas possession of only 20 sites was handed over. The petitioner vide letter dated 21.8.2007 (Annexure P-3) informed respondent No.2 that only 34 locations had been provided to it for construction of the garbage points. Further, the factum of renovation of eight toilet blocks was also intimated. Vide letter dated 23.5.2008 (Annexure P-4), respondent No.2 was told that due to demolition of three garbage collection centres by the Municipal Corporation, the petitioner had suffered huge losses and vide letter dated 1.8.2008 (Annexure P-5), respondent No.2 was requested to provide alternative sites in lieu of the demolished sites. The petitioner obtained an internal correspondence (noting sheet) dated 29.4.2010 (Annexure P-6) under the Right to Information Act, 2005 prepared by the Inspector of the Municipal Corporation and submitted for approval of the higher authorities, wherein it has been admitted that the complete sites of garbage collection centres were not handed over to the petitioner and out of the centres handed over to the petitioner, some had been damaged by the Municipal Corporation/GMADA while widening the roads or beautifying the city. Further, as per the noting dated 1.11.2013 (Annexure P-6A), the garbage collection centres constructed by the petitioner were also not handed over to the petitioner. The petitioner continued to deposit the licence fee of the handed over sites to respondent No.2 and in total deposited an amount of ₹ 24,89,000/- as is discernible from calculation sheet (Annexure P-7). Two of the business rival of the petitioner, namely, Super Publicity Private Limited and Taksh

Media Private Limited, filed a complaint dated 10.7.2012 (Annexure P-8) before respondent No.2 levelling serious allegations of pending dues of ₹ 80 lacs. Thereafter, they filed CWP No. 13112 of 2012 for cancellation of the contract allotted to the petitioner and this Court vide order dated 16.7.2012 (Annexure P-9) disposed of the said writ petition with a direction to respondent No.2 to pass a speaking order on the representations of the petitioners therein. In pursuance thereto, respondent No.3 vide order, Annexure P-10, observed that an amount of ₹10,87,500/- was outstanding regarding licence fee against the petitioner. The Executive Officer, Municipal Corporation vide letter dated 27.7.2012 (Annexure P-11) raised a demand of ₹10,87,500/- from the petitioner in respect of balance licence fee. The petitioner furnished reply dated 27.8.2012 (Annexure P-12) to the said letter. The Municipal Corporation vide letter dated 8.10.2012 (Annexure P-13) informed the petitioner that the demand of ₹10,87,500/- had been raised for the handed over locations only. Further, the Municipal Corporation vide letter dated 24.10.2013 (Annexure P-14) raised a demand of ₹ 2,88,39,000/-. The petitioner submitted a representation dated 11.11.2013 (Annexure P-15) to respondent No.4 for withdrawal of the letters, Annexures P-11 and P-14, respectively. Again respondent No.4 issued a notice dated 20.1.2014 (Annexure P-16) to the petitioner for depositing the licence fee of Garbage Collection Centre and Toilet Block to which the petitioner submitted reply dated 30.1.2014 (Annexure P-17). Respondent No.4 vide letter dated 11.2.2014 (Annexure P-18) called the representative of the petitioner for personal hearing. The petitioner vide letters dated 17.2.2014 and 3.3.2014 (Annexure P-19 Colly) requested for a date for personal hearing. However, respondent No.4 vide letter dated 7.3.2014 (Annexure P-20) directed the

petitioner to deposit the entire dues without affording any further opportunity of hearing. Thereafter, respondent No.2 debarred and blacklisted the petitioner as communicated by respondent No.4 vide letter dated 4.8.2014 (Annexure P-21). Hence, the present writ petition. Upon notice of motion having been issued, respondents No.2 to 4 filed written statement pleading that the petitioner was liable to pay the licence fee plus penalty of ₹ 2,88,39,000/-. Despite service of notice, the petitioner neither deposited the amount nor appeared for personal hearing on two dates, i.e. on 20.2.2014 and 4.3.2014. It was further pleaded that respondent No.2 filed a civil suit against the petitioner for recovery of ₹ 2,88,39,000/- which is pending. The other averments made in the writ petition were controverted and a prayer for dismissal of the writ petition was made. The petitioner denied the averments made in the written statement and reiterated that of the averments made in the writ petition by filing the replication.

3. Learned counsel for the petitioner in view of pronouncement of the Apex Court in **M/s Kulja Industries Ltd. v. Chief General Manager, W.T. Project BSNL, AIR 2014 SC 9** has assailed the order dated 4.8.2014 (Annexure P-21) on the ground that the petitioner had been blacklisted/debarred for the unlimited period. The challenge has also been made by contending that it is without issuance of any notice and without affording an opportunity of hearing to the petitioner. The power of respondent No.2 to blacklist/debar the petitioner under the contract has also been questioned. It was also urged that the impugned order does not satisfy the test of being a reasoned and speaking order and is, thus, liable to be quashed. According to the learned counsel, the impugned order has been passed in violation of the principles of natural justice.

4. On the other hand, learned counsel for the respondents supported the order passed by respondent No.2 and prayed for dismissal of the writ petition.

5. After hearing learned counsel for the parties, we find merit in the contentions raised by the learned counsel for the petitioner.

6. The order dated 4.8.2014 (Annexure P-21) impugned herein reads thus:-

“As per the Proposal No. 317 dated 22.5.2014 passed by the Municipal Corporation, SAS Nagar, M/s Outdoor Communication Private Limited, New Delhi, has been debarred and blacklisted. This is sent for your kind information.”

7. A perusal of the above order shows that it is not a speaking order. Further, the said order has been passed without affording any opportunity of hearing to the petitioner. It has only been noticed that as per Proposal No. 317 dated 22.5.2014 passed by the Municipal Corporation, SAS Nagar, the petitioner has been debarred and blacklisted. The respondents have not assigned any reasons for debarring and blacklisting the petitioner permanently. The petitioner was required to be issued a show cause notice by respondent No.2 and thereafter pass a speaking reasoned order after affording an opportunity of hearing to the petitioner. Respondent No.2 has failed to adhere to the aforesaid legal requirements and, therefore, the order, Annexure P-21 is legally unsustainable.

8. Delving into the issue relating to the passing of the speaking order by an authority whether administrative, *quasi judicial or judicial*, it was laid down by the Supreme Court in **M/s Kranti Associates Pvt. Ltd.**

and another v. Sh. Masood Ahmed Khan and others, (2010) 9 SCC 496

as under:-

“17. The expression ‘speaking order’ was first coined by Lord Chancellor Earl Cairns in a rather strange context. The Lord Chancellor, while explaining the ambit of Writ of Certiorari, referred to orders with errors on the face of the record and pointed out that an order with errors on its face, is a speaking order. (See 1878-97 Vol. 4 Appeal Cases 30 at 40 of the report).

18. This Court always opined that the face of an order passed by a quasi-judicial authority or even an administrative authority affecting the rights of parties, must speak. It must not be like the ‘inscrutable face of a Sphinx’.

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51. Summarizing the above discussion, this Court holds:

- a. In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.
- b. A quasi-judicial authority must record reasons in support of its conclusions.
- c. Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.
- d. Recording of reasons also operates as a valid

restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

e. Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.

f. Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

g. Reasons facilitate the process of judicial review by superior Courts.

h. The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice.

i. Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

j. Insistence on reason is a requirement for both judicial accountability and transparency.

k. If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

l. Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process.

m. It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harward Law Review 731-737).

n. Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR 553, at 562 para 29 and Anya vs. University of Oxford, 2001 EWCA Civ 405, wherein the Court referred to Article 6 of European Convention of Human Rights which requires,

"adequate and intelligent reasons must be given for judicial decisions".

o. In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".

9. Further, the Apex Court in **Canara Bank v. V.K. Awasthy** AIR 2005 SC 2090 while dealing with the doctrine of principles of natural justice had noticed as under:-

“8. Natural justice is another name for commonsense justice. Rules of natural justice are not codified canons. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a commonsense liberal way. Justice is based substantially on natural ideals and human values. The administration of justice is to be freed from the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties. It is the substance of justice which has to determine its form.

9. The expressions “natural justice” and “legal justice” do not present a water-tight classification. It is the substance of justice which is to be secured by both, and whenever legal justice fails to achieve this solemn purpose, natural justice is called in aid of legal justice.

Natural justice relieves legal justice from unnecessary technicality, grammatical pedantry or logical prevarication. It supplies the omissions of a formulated law. As Lord Buckmaster said, no form or procedure should ever be permitted to exclude the presentation of a litigants' defence.

10. The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. The first and foremost principle is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should appraise the party determinatively the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play. The concept has gained significance and shades

with time. When the historic document was made at Runnymede in 1215, the first statutory recognition of this principle found its way into the "Magna Carta". The classic exposition of Sir Edward Coke of natural justice requires to "vocate interrogate and adjudicate". In the celebrated case of Cooper v. Wandsworth Board of Works, (1963) 143 ER 414, the principle was thus stated:

"Even God did not pass a sentence upon Adam, before he was called upon to make his defence. "Adam" says God, "where art thou has thou not eaten of the tree whereof I commanded thee that though should not eat".

Since then the principle has been chiselled, honed and refined, enriching its content. Judicial treatment has added light and luminosity to the concept, like polishing of a diamond.

11. Principles of natural justice are those rules which have been laid down by the Courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice."

10. In **Kulja Industries Limited's case (supra)**, the Supreme Court was considering whether the blacklisting could be permanent and the factors to be kept in mind while doing so. It was held that blacklisting is in

the nature of penalty and determination of time period rests primarily with the authority. The relevant observations read as under:-

“24. Suffice it to say that ‘debarment’ is recognised and often used as an effective method for disciplining deviant suppliers/contractors who may have committed acts of omission and commission or frauds including misrepresentations, falsification of records and other breaches of the regulations under which such contracts were allotted. What is notable is that the ‘debarment’ is never permanent and the period of debarment would invariably depend upon the nature of the offence committed by the erring contractor.

25. In the case at hand according to the respondent-BSNL, the appellant had fraudulently withdrawn a huge amount of money which was not due to it in collusion and conspiracy with the officials of the respondent-corporation. Even so permanent debarment from future contracts for all times to come may sound too harsh and heavy a punishment to be considered reasonable especially when (a) the appellant is supplying bulk of its manufactured products to the respondent-BSNL and (b) The excess amount received by it has already been paid back.

26. The next question then is whether this Court ought to itself determine the time period for which the appellant should be blacklisted or remit the matter back to the

authority to do so having regard to the attendant facts and circumstances. A remand back to the competent authority has appealed to us to be a more appropriate option than an order by which we may ourselves determine the period for which the appellant would remain blacklisted. We say so for two precise reasons. Firstly, because blacklisting is in the nature of penalty the quantum whereof is a matter that rests primarily with the authority competent to impose the same. In the realm of service jurisprudence this Court has no doubt cut short the agony of a delinquent employee in exceptional circumstances to prevent delay and further litigation by modifying the quantum of punishment but such considerations do not apply to a company engaged in a lucrative business like supply of optical fibre/HDPE pipes to BSNL. Secondly, because while determining the period for which the blacklisting should be effective the respondent-Corporation may for the sake of objectivity and transparency formulate broad guidelines to be followed in such cases. Different periods of debarment depending upon the gravity of the offences, violations and breaches may be prescribed by such guidelines. While, it may not be possible to exhaustively enumerate all types of offences and acts of misdemeanour, or violations of contractual obligations by a contractor, the respondent-Corporation may do so as far as possible to reduce if not

totally eliminate arbitrariness in the exercise of the power vested in it and inspire confidence in the fairness of the order which the competent authority may pass against a defaulting contractor.”

11. In view of the above, the order dated 4.8.2014 (Annexure P-21) does not satisfy the requirements of being a reasoned order as enunciated by the Apex Court in **M/s Kranti Associates Pvt. Ltd's case (supra)** and is passed in violation of the principles of natural justice as per law laid down by the Supreme Court in **V.K. Awasthy's case (supra)**, as noticed hereinabove.

12. For the aforesaid reasons, the writ petition is allowed and the order dated 4.8.2014 (Annexure P-21) passed by respondent No.2 is quashed. The matter is remitted to respondent No.2 to pass a fresh speaking order after affording an opportunity of hearing to the petitioner in accordance with law. Needless to say that anything observed herein above shall not be taken to be an expression of opinion on the merits of the controversy.

(AJAY KUMAR MITTAL)
JUDGE

October 4, 2016
gbs

(RAMENDRA JAIN)
JUDGE

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes