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HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 03-03-2017

Judgment delivered on 19-06-2017

WPC No. 2423 of 2016

1. Bharti Printers, Near Durg Rajnandgaon Gramin Bank, G.E. Road, Kumhari, District Durg (CG) through Proprietor Neeraj Chandrakar, S/o Shri Rupendra Chandrakar, aged about 30 years, R/o C/o G-17, Shri Ram Park, Ring Road No.1, Pt. Deendayal Upadhyay Nagar, Near Sector-2, Raipur, Dist. Raipur (CG).

---- Petitioner

Versus

1. State of Chhattisgarh, through the Secretary, School Education Department, Secretariat, Mahanadi Bhawan, New Raipur, Police Station Rakhi, Post Office Rakhi, Dist. Raipur (CG) PIN 492 002.
2. Yunish Ali, Managing Director, CG Pathya Pustak Nigam, 2nd Floor, Haribhoomi Press Parisar, Dhamtari Road, Tikrapara, Raipur (CG).
3. Ashok Chaturvedi, General Manager, CG Pathya Pustak Nigam, 2nd Floor, Haribhoomi Press Parisar, Dhamtari Road, Tikrapara, Raipur (CG).
4. CG Pathya Pustak Nigam, 2nd Floor, Haribhoomi Press Parisar, Dhamtari Road, Tikrapara, Raipur (CG) through Managing Director.

---- Respondent

For Applicant	Mr. Y.C. Sharma, Advocate
For Respondent/State	Mr. Arun Sao, Dy. Adv. General
For Respondents No.2&3	Mr. Bhaskar Payashi, Advocate
For Respondent No.4	Mr. Kashif Shakeel, Advocate

Hon'ble Mr. Justice Prashant Kumar Mishra

CAV Order

1. The matter pertains to petitioner’s press registration for which it has been found ineligible by the Chhattisgarh

Pathya Pustak Nigam (henceforth 'the Corporation') vide its impugned communication dated 2-8-2016 (Annexure – P/2) and 3-9-2016 (Annexure – P/1). Although the relevant period is over, yet the matter was heard on merits because the petitioner apprehended that the impugned orders would come in its way when the petitioner applies for registration for the year 2017-18 as well.

2. Facts of the matter, in brief, are that vide communication dated 30-9-2014 the petitioner was allowed press registration for the year 2014-15, however, the registration was cancelled on 17-12-2014 without providing any opportunity of hearing to the petitioner for the reason that the petitioner did not had the printing machines. The petitioner, later on, purchased the printing machines. This order was assailed before the Division Bench of this Court in WPC No.80 of 2015. The said writ petition was disposed of on 19-1-2016 in the following manner :

> 1) We have heard Learned counsel for the Petitioner and Respondent No.2.
>
> 2) The Petitioner is aggrieved by the order dated 17.12.2014 cancelling his provisional registration for publication of text books on the ground that he did not possess any printing machine for last three years.
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> 3) Learned counsel for the Petitioner submits that he has filed a representation on 31.12.2014 that he fulfilled the

conditions of the tender notice for the year 2014-15 published by Respondent No.2 specifically stating that he also possessed printing machines as mentioned as item No.2 of the eligible conditions for the press registration.

4) Rather than to ask for a counter affidavit at this stage we are inclined to direct consideration of the representation of the Petitioner pursuant to the order dated 17.12.2014, as in our opinion eligibility has to be tested on basis of requirements fulfilled by him as mentioned in the tender notice and not on basis of any previous events except to the extent that it may be provided for in the conditions of the eligibility.

5) The order dated 17.12.2014 is set aside with a direction to Respondent No.2 to consider the representation of the Petitioner dated 31.12.2014, especially with regard to his claim for possession of the required nature of printing machines and then pass a fresh and reasoned speaking order in accordance with law.

6) Let such consideration be done and consequential orders be passed within a maximum period of four weeks from the date of receipt and/or production of certified copy of this order.

7) The writ petition is allowed.

3. Pursuant to the above order of the Division Bench of this Court, the Corporation allowed the petitioner's representation on 11-2-2015 clearly recording a finding that

the petitioner was in possession of the printing machines and had also satisfied the previous experience of completing printing orders up to the tune of Rs.50.00 lacs in each of 3 previous years.

4. One Shesh Narayan Sharma, thereafter, filed a Public Interest Litigation before this Court, bearing WP (PIL) No.27 of 2015, arraying the present petitioner as respondent No.3 therein, for enquiry into the alleged corruption in the Corporation. The said PIL was dismissed by the Division Bench of this Court on 4-7-2016.

5. Petitioner's registration continued for the year 2015-16 during which the petitioner completed the printing work of the quantity of 170 MTs. At the time of registration for the year 2015-16, the petitioner was informed on 22-9-2015 that the printing machines possessed by him is sufficient for printing to the limit of 300 MTs, therefore, the petitioner is not required to submit documents once again. For the year 2015-16 also the petitioner was granted work order on 8-1-2016 and 28-1-2016 which are part of the record of this writ petition.

6. Thereafter, the unsuccessful PIL petitioner lodged a complaint with the Chairman of the Corporation on 30-4-2016 (Annexure – P/21) questioning the correctness of the transaction between Kokila Printers and the petitioner in which the petitioner had purchased the printing machines

owned by Kokila Printers. Acting on this complaint, the petitioner was informed on 27-5-2016 (Annexure – P/22) that the process of registration for the year 2016-17 is kept pending till the enquiry is complete. The petitioner replied to the said communication, however, vide communication dated 3-6-2016, the petitioner was again directed to show cause and explain the validity or lawfulness of purchase of printing machines from Kokila Printers. In this communication the printing completed by the petitioner from the year 2011 to 2014 was also questioned. The petitioner was also directed on 6-6-2016 to provide details of payment of the Value Added Tax (henceforth 'the VAT') to the State Government and eventually the impugned order dated 2-8-2016 (Annexure – P/2) was passed, which was assailed by the petitioner in WPC No.2087 of 2016. The said writ petition was disposed of by this Court on 22-8-2016 in the following manner :

> 1) Heard.
>
> 2) The petitioner has assailed the legality and validity of the order passed by respondent No.2, refusing to consider its application for registration as 'Printers' for the year 2016-2017.
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> 3) Mr. Y.C. Sharma, learned counsel for the petitioner, would submit that the impugned order was passed on 02.08.2016, however, thereafter, the tax assessment order has been passed against M/s. Kokila Printers on

04.08.2016, wherein, M/s. Kokila Printers has been made liable to pay VAT on the machinery sold to the petitioner and to the best of petitioner's knowledge, M/s. Kokila Printers has complied with the said order.

4) Learned counsel for the petitioner would further submit that in view of the subsequent developments, the petitioner may be permitted to make a fresh representation before respondent No.2/respondent No.3 and the same may be directed to be considered in accordance with law.

5) Mr. K. Shakeel, learned counsel for respondents 2 & 3 appearing on advance copy, would submit that if the petitioner submits fresh representation, the same shall be considered in accordance with law, however, liberty may be reserved in favour of the respondents to consider the entire facts and grounds without limiting the same to the order passed by the Taxation Authority against M/s. Kokila Printers.

6) Mr. Y.C. Sharma, learned counsel for the petitioner, would submit that he has no objection if the representation is considered afresh on its own merits.

7) In view of the aforesaid, the writ petition is disposed of with a direction that in the event, the petitioner prefers a fresh representation before respondent No.2/ respondent No.3 within a period of 03 days from today, the respondent authorities shall decide the same

objectively within a period of 10 days from the date of receipt of representation.

7. Pursuant to the above order passed in WPC No.2087 of 2016 the petitioner preferred the representation, which has been dismissed by the second impugned order dated 3-9-2016 (Annexure – P/1).

8. Assailing the impugned orders, learned counsel appearing for the petitioner would submit that the impugned orders have been passed with *mala fide* intention only to create monopoly in favour of Shesh Narayan Sharma who had filed a PIL against the petitioner and having failed therein he lodged a complaint, which has been entertained without any basis. Learned counsel would further submit that the issue concerning payment of tax to the State Government on purchase of printing machine from Kokila Printers has already been settled by the Commercial Tax Department vide the assessment order dated 4-8-2016 (Annexure – P/32), therefore, the very basis of the impugned orders has been wiped off.

9. Per contra, learned counsel appearing for the respondents would support the impugned orders on submission that there being discrepancy in the documents annexed by the petitioner with the application for press registration, the petitioner has rightly been declared ineligible.

10. The documents available on record would prove that after the first writ petition (WPC No.80 of 2015) was allowed by the Division Bench of this Court on 19-1-2015, the Corporation passed the order clearly recording a finding in sub-para (2) of the concluding paragraph of the order dated 11-2-2015 that the petitioner is in possession of the printing machines as required under clause 14 of the terms & conditions of the registration, therefore, the same issue concerning lack of proper papers in the guise of non-payment of tax by Kokila Printers could not have been raised again by the Corporation. Even if that technical issue was open for consideration on the ground that the documents submitted by the petitioner were discrepant in so far as validity of the transaction for the purpose of taxation, the same would only saddle the Kokila Printers with payment of deficit tax or the penalty with or without interest, but the change of ownership of a movable property would not be invalidated to agitate that the petitioner does not own the machines. Even that issue has since been settled by the Commercial Tax Department by passing the assessment order dated 4-8-2016 imposing tax of Rs.26,231=00 on Kokila Printers. Thus, the issue concerning discrepant document has already been set at rest by the Commercial Tax Department, therefore, the impugned order dated 3-9-2016 (Annexure – P/1) rejecting petitioner’s representation having been passed despite there being an assessment order on 4-8-2016 deserves to

be and is hereby set aside. Consequently, the order dated 2-8-2016 (Annexure – P/2) is also set aside.

11. Since the period of registration is over, no effective order could be passed in favour of the petitioner, however, it is directed that the petitioner shall not be declared disqualified or ineligible on the above issue when the petitioner submits application for press registration for the ensuing year.

12. As a sequel, the writ petition is allowed to the extent indicated above. No order as to costs.

Sd/-

Judge
(Prashant Kumar Mishra)

Gowri