NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 1135 of 2017

M/s Sun Infrastructures, A Partnership Firm Having Its Registered Office At Flat No. 204, Sai Sharan Sai Mangalam, Vyapar Vihar, Bilaspur, Through Its Partner Namely Saurabha Agrawal, S/o Balmukund Jajodiya, Aged About 27 Years, R/o Flat No. 204, Sai Sharan, Sai Mangalam, Vyapar Vihar, Police Station Tarbahar, Bilaspur, District Bilaspur (Chhattisgarh).

---- Petitioner

Versus

1. State Of Chhattisgarh Through : Principal Secretary, Public Works Department, Mahanadi Bhawan, Mantralaya, Capital Complex, New Raipur, District Raipur (Chhattisgarh).
2. Engineer-In- Chief, Public Works Department, Raipur, Sirpur Bhawan, Behind Akashwani, Raipur, District Raipur (Chhattisgarh).
3. Special Duty Officer, Central Tender Cell, Office Of Engineer-In- Chief, Public Works Department, Raipur, Sirpur Bhawan, Behind Akashwani, Raipur, District Raipur (Chhattisgarh).
4. Rahul Chandrakar, Sub- Engineer (Tender Cell), Office Of The Engineer-In-Chief, Public Works Department, Raipur, Sirpur Bhawan, Behind Akashwani, Raipur, District Raipur (Chhattisgarh).

---- Respondents

For Petitioner	:	Shri Abhishek Vinod Deshmukh, Advocate
For State	:	Shri Dhiraj Wankhede, Govt. Advocate

S.B. Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

26/04/2017

Heard finally with the consent of the parties.

1. Amongst various grounds, one of the grounds raised by the petitioner is that the petitioner has been downgraded from Grade-B to Grade-C Contractor on the allegation of he having misbehaved with the Sub Engineer, without due application of mind by respondent No.2. It is submitted that a show cause notice was issued to the petitioner and when the petitioner submitted a reply, respondent No.2 called for a report from the Officer on Special Duty (OSD) and thereafter without recording any reason and any consideration whatsoever as to

why petitioner's version was to be disbelieved, respondent No.2 has passed order in mechanical fashion.

2. On this argument, learned counsel for the State responds by submitting that the authority has followed Centralised Procedures of the Government of Chhattisgarh for Suspension, Demotion, Non-Renewal and De-Registration of Contractor/Firms, 2014 (for short "*Procedures of 2014*"). He submits that the competent authority, before taking decision, had obtained report from Officer on Special Duty, who also recommended against the petitioner. Therefore, there is no defect in the decision making process as the petitioner was duly given an opportunity to file his reply. Lastly, it is submitted that under the Procedures of 2014, there is provision for appeal and, therefore, for that reason also, this petition is not maintainable.

3. After going through the impugned order, an irresistible conclusion has to be drawn that the authority has not applied its mind to the matter before passing an order against the petitioner which has civil consequences to flow.

4. A perusal of the impugned order dated 13.4.2017 would show that a notice was issued to the petitioner which was replied also and thereafter, the report/opinion of Officer on Special Duty was obtained. The concerned OSD appears to have made recommendation against the petitioner that he should be downgraded. The authority has proceeded to pass the impugned order without any discussion whatsoever. The order only shows that the authority has acted as a post office rather than applying its own mind to the material on record, to reach to the reasonable conclusion upon consideration of the petitioner's reply.

Even in administrative decision making, a public authority is enjoined with the duty to apply its mind to the relevant material on record and record its own conclusion stating at least some brief reason, speaking his mind and reflecting consideration of the reply against the proposed action. The impugned order reflects none. Why the petitioner's reply was not accepted and what were the reasons to prefer report of OSD than the explanation given by the petitioner are conspicuously absent from the impugned order. The order is apparently arbitrary and in violation of Article 14 of the Constitution of India and does not withstand the requirement thereof when a public authority is exercising power in public domain. True it is that while taking administrative decision of non-statutory nature, the administrative authority is not obliged to deal with the matter like the judicial authority. Nevertheless, requirement of Article 14 of the

Constitution could not be dispensed with. The order ought to have reflected due application of mind.

5. For that reason alone without going into any other aspect of the matter, I am inclined to set aside the impugned order and is accordingly done. The impugned order is set aside. The respondent No.2 shall reexamine the entire material on record applying its mind, record its own reason and then pass appropriate order as he considers just and proper on such considerations.

6. The petition is accordingly allowed.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Praveen