

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 32994 of 2014

ORDER:

1) The present writ petition came to be filed seeking issuance of writ of mandamus declaring the action of the respondent in forfeiting the earnest money deposit of the petitioner and debarring him from participating in Tender Enquiry for five years from 21.02.2014 vide Lr.No.S&C 13 (7)/ 2013-14/ BSC PENNADA/ CONTS-II, dated 24.02.2014, as illegal, arbitrary and violative of Articles 14, 16 and 19 of the Constitution of India.

2) By an order dated 11.11.2014, this Court while admitting the writ petition, granted interim suspension of the impugned proceedings, to the extent of debarment of the petitioner from participating in future tenders.

3) When the matter is taken up for hearing, learned counsel for the petitioner mainly contended that he is challenging only that portion of the impugned order, pursuant to which, the petitioner is debarred from participating in future tenders for a period of five years.

4) Relying upon the judgment of the Apex Court in *Kulja Industries Limited v. Chief General Manager, W.T. Proj. BSNL and others*¹, learned counsel for the petitioner would submit that blacklisting the petitioner by way of issuing the impugned

¹ (2013) 6 ALD 142 (SC)

proceedings without giving any notice is improper and illegal. He took me through the judgment of the Apex Court to show that any action taken by the authorities in blacklisting the petitioner, without issuing any notice is violative of basic principles of natural justice.

5) On the other hand, learned counsel for the respondent would submit that question of giving a notice would not arise since the petitioner made the following declaration in Appendix I.

“8. I hereby declare that no contract entered into by me, my firm/ company with the Food Corporation of India, or any department of Central or State Government or any other Public Sector Undertaking or any other client, has been terminated before the expiry of the contract period at any point of time during the last five years.

9. I hereby declare that the Earnest Money Deposit and/ or Security Deposit has not been forfeited or adjusted against any compensation payable, in the case of any Contract entered into by me/ my firm/ company/ us with the Food Corporation of India, or any department of Central or State Government or any other Public Sector Undertaking during the last five years.

10. I hereby declare that I have not been convicted at any time by a Court of law of an offence and sentenced to imprisonment for a period of three years or more.”

6) The Standing counsel for the Corporation would submit that the petitioner herein was blacklisted by the Central Ware Housing Corporation and his Earnest Money Deposit was also forfeited before filing this tender, which fact was not disclosed by him in his tender application. It is urged that when the petitioner

himself has made a false declaration knowing that he was blacklisted earlier and the earnest money deposit was forfeited, the question of giving further notice asking him to explain the circumstances as to why he was blacklisted would not arise.

7) Learned counsel for the petitioner would submit that the petitioner has not entered into any contract with Ware Housing Corporation. According to him, entering into contract would arise only on receipt of the work order or execution of contract agreement. Having regard to the above, it is urged that clause (6) of tender form is not applicable to him. He also submits that the action of State Ware Housing Corporation was challenged before this Court vide W.P.No.5509 of 2014, which is still pending. Since no finality has attained with regard to his blacklisting/ cancellation of his tender by the State Ware Housing Corporation, it is pleaded that there is no suppression of any fact.

8) It is true that the petitioner has filed W.P.No.5509 of 2014 before this Court challenging the action of the State Ware Housing Corporation, but there is no interim order or any direction in his favour. In view of the said circumstances, can it be said that the authorities were right in blacklisting the petitioner without giving any notice.

9) In [Raghunath Thakur v. State of Bihar and Ors.](#)² the Apex held as under:

² (1989) 1 SCC 229

“4. Indisputably, no notice had been given to the appellant of the proposal of blacklisting the appellant. It was contended on behalf of the State Government that there was no requirement in the rule of giving any prior notice before blacklisting any person. Insofar as the contention that there is no requirement specifically of giving any notice is concerned, the respondent is right. But it is an implied principle of the rule of law that any order having civil consequence should be passed only after following the principles of natural justice. It has to be realised that blacklisting any person in respect of business ventures has civil consequence for the future business of the person concerned in any event. Even if the rules do not express so, it is an elementary principle of natural justice that parties affected by any order should have right of being heard and making representations against the order. In that view of the matter, the last portion of the order insofar as it directs blacklisting of the appellant in respect of future contracts, cannot be sustained in law. In the premises, that portion of the order directing that the appellant be placed in the blacklist in respect of future contracts under the Collector is set aside.”

10) In *Gorkha Security Services v. Government of NCT of Delhi and others*³, the Apex Court held as under:

“The impugned order dated 11.9.2013 passed by the respondents blacklisting the appellant without giving the appellant notice thereto, is contrary to the principles of natural justice as it was not specifically proposed and, therefore, there was no show cause notice given to this effect before taking action of blacklisting against the appellant. We, therefore, set aside and quash the impugned action of blacklisting the appellant. The appeals are allowed to this extent. However, we make it clear that it would be open to the respondents to take any

³ (2014) 1 Decisions Today (SC) 307

action in this behalf after complying with the necessary procedural formalities delineated above.”

11) In *A.Ramalingeswara Reddy Vs. Vice-Chairman and Managing Director, A.P. State Civil Supplies Corporation Limited and others*⁴, the issue of maintainability of writ petition in matters concerning award of contract and blacklisting of the contractor was considered by this Court. In the said case the State Civil Supplies Corporation Limited terminated the contract of transportation, forfeited the pending bills, security deposit and bank guarantee and blacklisted the petitioner from participating in any future tenders of the respondent Corporation. It was noticed that the petitioner was not put on notice and relevant material was not supplied to the petitioner before taking the extreme decision of blacklisting. The Managing Director, who is the competent authority did not apply his mind independently in blacklisting the petitioner. Following the decision of the Supreme Court in *ABL International Limited and another Vs. Export Credit Guarantee Corporation of India Ltd. and others*⁵ and the decision in *M/s. Kulja Industries Ltd. Vs. Chief General W.T.Proj. BSNL & Others* (1 supra), the order of blacklisting the petitioner therein, canceling the bank guarantee and security deposit were held to be illegal, as the petitioner was denied with a reasonable opportunity, thereby vitiating the decision making process.

12) In the instant case also, no notice was given to the petitioner before blacklisting him. It may be true that the

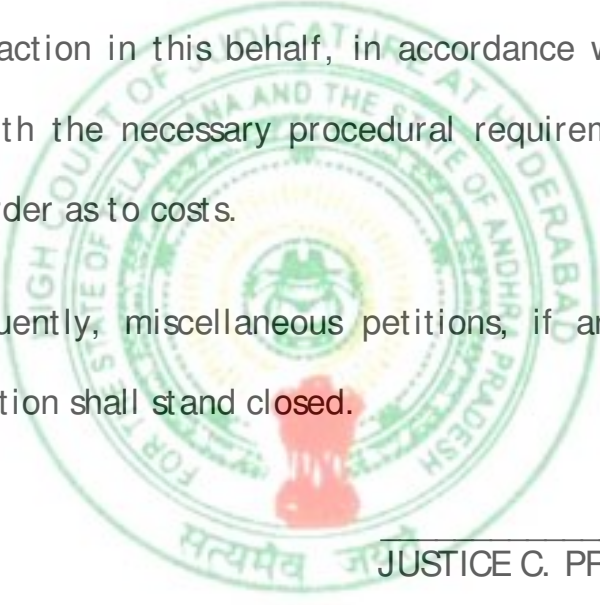
⁴ (2014) 1 ALT 299

⁵ (2004) 3 SCC 553

petitioner was blacklisted by Central Ware Housing Corporation earlier, but the same is under challenge before this Court. In view of the judgments referred to above and having regards to the facts in issue, the impugned order passed by the respondent blacklisting the petitioner without giving any notice is held to be contrary to the principles of natural justice.

13) Hence, the writ petition is allowed setting aside the impugned action of blacklisting the petitioner as well as forfeiture of earnest money deposit. However, it is open to the respondent to take any action in this behalf, in accordance with law, after complying with the necessary procedural requirements. There shall be no order as to costs.

14) Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.



JUSTICE C. PRAVEEN KUMAR

25.07.2017
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