

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-17475-2017

Date of Decision: 20.11.2017

M/s Orion Safety and Security Services Pvt. Ltd., Chandigarh

...Petitioner

Versus

Government Medical College & Hospital, Chandigarh and another

...Respondents

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE AMIT RAWAL.**

PRESENT: Mr. Sudhanshu Makkar, Advocate for the petitioner.

Mr. Aman Bansal, Advocate and
Mr. Arjun Lakhanpal, Advocate for the respondents.

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 setting aside the order dated 11.7.2017 (Annexure P-14) passed by respondent No.1 whereby the earnest money of ₹ 11.50 lacs deposited by the petitioner at the time of submission of the tender had been forfeited and further, the petitioner has been blacklisted for participating in future tenders in GMCH/Chandigarh Administration Region for a period of five years.

2. A few facts necessary for adjudication of the instant writ petition as narrated therein may be noticed. The petitioner is engaged in the business of providing 'round-the-clock security' for the Government and

private building establishments. Further, the petitioner is in regular process of recruiting and training the security guards and supervisors under the license No.43 dated 8.10.2013 (Annexure P-2) valid upto 7.10.2018. Respondent No.1 issued advertisement dated 18.4.2016 (Annexure P-3) through e-procurement system of UT, Administration, Chandigarh to provide 'Round-the-clock Security and Fire Prevention Services' for a period of 365 days under the product category of 'Manpower Supply'. The EMD amounting to ₹ 11.50 lacs was required to be deposited with respondent No.2 at the time of submission of tender application. The bid validity was 180 days. In response thereto, the petitioner applied for the tender under Annexure 'F' on 24.4.2016 (Annexure P-4) through online by giving the price bid of 3.50% towards administrative and service charges and monthly amount at ₹ 4679792.90. Vide e-mail dated 1.8.2016 (Annexure P-5), the petitioner was informed that its technical bid was accepted and vide letter dated 1.8.2016 (Annexure P-6) was invited for opening of financial bid on 3.8.2016 at 11 AM. The petitioner attended the meeting held on 3.8.2016 and being the lowest bidder (L-1) was awaiting the award of contracts. Vide letter dated 26.9.2016 (Annexure P-7), the petitioner requested the Establishment Officer of respondent No.1 to issue the work order. Instead of awarding contract/work order, respondent No.2 vide letter dated 2.11.2016 (Annexure P-8) directed the petitioner to provide manpower (476 persons) for general services as a stopgap arrangement. The petitioner refused to accept the said order vide reply dated 3.11.2016 (Annexure P-9). Respondent No.1 issued Letter of Intent (LOI) dated 13.2.2017 (Annexure P-10) to the petitioner on 24.4.2016 qua its tender.

The said LOI was issued beyond the bid validity of 180 days which expired

on 16.10.2016. The petitioner was asked to supply manpower and enter into the contract on 13.2.2017 after four months of the expiry of the bid validity. Further, the annual value of the contract for the period of one year mentioned in the LOI was ₹ 5,48,55,420/- (as the 5% of the total annual value of the contract period was specified at ₹ 27,42,771/-). The monthly value of the contract was ₹ 45,71,285/- which was less by ₹ 108507.90, as compared to the price quoted by the petitioner in the Bid of Quotation at ₹ 4679792.90. As the petitioner was unable to enter into contract on the revised conditions specified in the LOI, the petitioner vide letter dated 16.2.2017 (Annexure P-11) requested respondent No.1 to refund EMD amount of ₹ 11.50 lacs. Vide letter dated 10.3.2017 (Annexure P-12), the petitioner was asked to appear before respondent No.2 on 15.3.2017. The petitioner appeared before respondent No.2 and vide reply dated 15.3.2017 (Annexure P-12/A) requested respondent No.1 to refund the earnest money of ₹ 11.50 lacs. The petitioner vide letter dated 31.5.2017 (Annexure P-13) requested the Home Secretary, UT, Chandigarh for refund of the security amount, but to no effect. However, respondent No.1 vide order dated 11.7.2017 (Annexure P-14) besides forfeiting the earnest money amounting to ₹ 11.50 lacs also blacklisted it for participating in future tenders in Chandigarh Administration Region for a period of five years. Hence, the present writ petition.

3. The said writ petition was contested by the respondents by filing reply by way of affidavit of Professor Ashok Kumar Janmeja, Director Principal, Government Medical College & Hospital, Sector-32, Chandigarh.

It was pleaded therein that E-tenders from the registered firms for outsourcing of manpower for 'Round the Clock Security and Fire Prevention

Services' were floated on 22.3.2016 and the last date and time for deposit of e-tender document online was 18.4.2016 by 1.00 PM which was subsequently extended upto 25.4.2016 by issuing a corrigendum. After completing the process of e-tender, the Administrative Department had accorded their approval for awarding the fresh contract in favour of the petitioner being L-1 vide letter dated 23.1.2017 (Annexure R-1). Thereafter, LOI was issued to the petitioner to furnish the requisite documents within 15 days for the award of contract who vide letter dated 16.2.2017 (Annexure R-3) refused to accept the said offer. It was further pleaded that before imposing any penalty, the petitioner was given opportunity of hearing by respondent No.1 vide letter dated 10.3.2017 (Annexure R-4). The representative of the petitioner appeared and submitted reply dated 15.3.2017 (Annexure R-5). After considering the reply, the impugned order dated 11.7.2017 (Annexure P-14) was passed forfeiting the earnest money of the petitioner and blacklisting it for a period of five years for participating in future tenders in Chandigarh Administration Region. The other averments made in the writ petition were denied and a prayer for dismissal of the writ petition was made.

4. The petitioner filed rejoinder to the reply filed by the respondents reiterating the averments made in the writ petition and those of the averments made in the reply were denied.

5. Learned counsel for the petitioner submitted that respondent No.1 vide order dated 11.7.2017 (Annexure P-14) had blacklisted the petitioner from participating in future tenders in GMCH/Chandigarh Administration Region for the period of five years and forfeited the EMD-security amounting to ₹ 11.50 lacs without affording proper opportunity of

hearing. It was also urged that the impugned order does not satisfy the test of being a reasoned and speaking one and was, thus, liable to be quashed. It was, thus, submitted that the impugned order has been passed in violation of the principles of natural justice.

6. On the other hand, learned counsel for the respondents while supporting the order, Annexure P-10, passed by respondent No.1 has prayed for dismissal of the writ petition.

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

8. The relevant portion of order dated 11.7.2017 (Annexure P-14) reads thus:-

“XX XX XX

AND WHEREAS, the said firm shown its inability to enter into the contract on the rates offered by this Institute, vide their letter No.OSSS/GMC&H/2016-17/01 dated 15.03.2017. Resultant, the exercise undertaken by this office have gone futile and this office remain sufferer.

Now, therefore, the undersigned being the competent authority hereby order to impose the penalties as follows:-

1. To forfeit the EMD amounting to ₹ 11.50 lacs submitted by M/s Orion Safety & Security Services (P) Ltd., Chandigarh, 181/4, Industrial Area, Phase-I, Chandigarh in shape of Demand Draft No.860550 dated 20.04.2016 issued by Bank of

Baroda, Raipur Khurd.

2. To blacklist M/s Orion Safety & Security Services (P) Ltd., Chandigarh, 181/4, Industrial Area, Phase-I, Chandigarh for participating in future tenders in GMCH/Chandigarh Administration Region for the period of 05 years from the date of issue of these orders.”

9. A perusal of the impugned order shows that it is not a speaking order passed after affording proper opportunity of hearing to the petitioner. Further, it was noticed that the petitioner had shown its inability to enter into the contract on the rates offered by the respondents vide letter dated 15.3.2017 and, therefore, the exercise undertaken by the respondents had gone futile and they remained sufferer. Once the respondents were blacklisting the petitioner from participating in future tenders in GMCH/Chandigarh Administration Region for a period of five years, the same was required to be specifically dealt with by respondent No.1 by passing a speaking order and after affording proper opportunity of hearing to the petitioner.

10. 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'.

19 to 50 XX XX XX

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 'rubberstamp 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".

11. 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."

12. In view of the above, the order dated 11.7.2017 (Annexure P-14) passed by respondent No.1 blacklisting the petitioner from participating in future tenders in GMCH/Chandigarh Administration Region for a period of five years 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.

13. As regards the forfeiture of earnest money amounting to

₹ 11.50 lacs deposited by the petitioner, is concerned, it involves disputed questions of fact.

14. Examining the scope of writ jurisdiction under Article 226 of the Constitution of India where disputed questions of fact are involved, A Division Bench of this Court in **N.C. Mahendra vs. Haryana State Electricity Board and others, AIR 1984 Punjab 26** had laid down that ordinarily a writ would not issue in favour of a person where disputed questions of fact are raised. The relevant portion reads thus:-

“12. An identical legal position ensures within this country and High Courts have repeatedly held that the exercise of jurisdiction under article 226 of the constitution is discretionary and not obligatory. without being exhaustive, it is settled law that the Court would not ordinarily issue a Writ in favour of a person, who has (i) an adequate alternative remedy, (ii) who is guilty of delay Which is unexplained, (iii) who is guilty of conduct disentitling him to relief, (iv) where the interests of justice do not require that relief should be granted, (v) where the petitioner raises a disputed question of fact, (vi) where the grant of writ. would be futile, and, (vii) where the impugned law has not come into force. it would follow from the above that the grant or refusal of a writ is within the judicial discretion of the Court and that indeed is the line which divides the extraordinary remedy from the ordinary one by way of a civil suit.” (emphasis supplied).

15. The Supreme Court in **State Cadre Authority and another vs. K.S. Bajpal and others, (1990) (Suppl.) SCC 713, Bhagubhai Dhanabhai Khalasi and another vs. The State of Gujarat and others, (2007) 4 SCC 241 and Mukesh Kumar Agrawal vs. State of UP and others, (2009) 13 SCC 693** has held that wherever disputed questions of fact is raised in writ proceedings, the writ petition was not an appropriate remedy. Reference may also be made to the judgment of the Apex Court in **Dwarka Prasad Agarwal (D) by Lrs and another vs. B.D. Agarwal and others, AIR 2003 SC 2686**, wherein, it was observed as under:-

“We may, however, hasten to add that as at present advised we do not intend to enter into the contention of the petitioners that their fundamental right under Article 19 of the Constitution of India had been infringed. This court would have entered into the question, if the facts were undisputed or admitted. The question as regard infringement of fundamental right and that too under Article 19 of the Constitution of India cannot be gone into when the facts are disputed. Whether Dwarka Prasad Agarwal and consequently the substituted petitioners are owners of the newspapers and if so to what extent being disputed, it cannot be said, that by reason of the impugned order dated 3.9.1992 passed by the first respondent herein alone, the fundamental right of the petitioners under Article 19 had been infringed.”

16. In view of dispute on facts regarding refund of earnest money amounting to ₹ 11.50 lacs deposited by the petitioner, we do not find any

ground to interfere in writ jurisdiction. However, it shall be open to the petitioner to seek its remedy either by filing civil suit or approaching any other appropriate forum in accordance with law.

17. Accordingly, the writ petition is partly allowed. The order dated 11.7.2017 (Annexure P-14) passed by respondent No.1 qua blacklisting the petitioner from participating in future tenders in GMCH/Chandigarh Administration Region for a period of five years is quashed and the matter is remitted to respondent No.1 to pass a fresh speaking order after affording proper 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

November 20, 2017
gbs

(AMIT RAWAL)
JUDGE

Whether Speaking/Reasoned **Yes**

Whether Reportable **Yes**