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HIGH COURT OF CHHATTISGARH BILASPUR**Order reserved on 29/08/2019****Order delivered on 13/09/2019****Writ Petition (C) No. 2560 of 2019**

M/s Ramsharan Singh, through-the Partner Ramsharan Singh Bhadoriya S/o Late Shri Raj Bahadur Singh, 64 Years R/o House No. 56, Shanti Nagar, Sukma District Sukma Chhattisgarh.

---- Petitioner**Versus**

1. State of Chhattisgarh, through-the Secretary, Public Works Department, Mantraya, Atal Nagar, Raipur, Chhattisgarh.
2. The Engineer-in-Chief, Public Works Department, North Block Sector 19, Atal Nagar, District Raipur Chhattisgarh.
3. Chief Engineer (Planning), Office of Chief Engineer Public Works Department, Atal Nagar, Raipur.
4. The Executive Engineer, Project Implementation Unit No. II, Chhattisgarh Gramin Sadak Vikas Abhikaran Sukma, 1st Floor No. 9, 10, 17 Collectorate Premises Sukma District Sukma Chhattisgarh.
5. Chief Executive Officer, Chhattisgarh Gramin Sadak Vikas Abhikaran, Civil Lines, Raipur District Raipur.

---- Respondents

For Petitioner	:	Mr. Prafull N. Bharat and and Mr. Vivek Shrivastava, Advocates
For Respondent/State	:	Mr. Gagan Tiwari, Dy. Govt. Advocate

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice**Hon'ble Shri Parth Prateem Sahu, Judge****C A V Order****Per Parth Prateem Sahu, Judge**

1. Petitioner who is a contractor has filed this petition challenging the orders dated 08/06/2018 (Annexure P/1), 15/06/2018 (Annexure P/2) and 10/10/2018 (Annexure P/3)

whereby he has challenged the suspension of his registration with immediate effect, debarring from participating in the tender process issued by the Chhattisgarh Rural Road Development Tribunal and degradation from 'A' class Contractor to 'B' class Contractor for a period of one year.

2. The relevant facts for disposal of this case are that the petitioner is 'A' class contractor having its registration I.D. No. CGeR01894. Respondent No.2 issued four tenders bearing Nos.32013, 33208, 33386 and 33404, which are for construction, repairing and maintenance of different roads of Kondagaon, Bastar and Dantewada Districts. The petitioner participated in all the tender proceedings and submitted his offer along with documents. The FDRs/TDRs were enclosed towards security amount by way of FDRs Nos.37694519851, 37694518881, 37657884705 and 37694517945 amounting to Rs.66,91,000/-, Rs.39,25,000/-, Rs.75,84,000/- and Rs.56,95,000/- respectively. Subsequently, on 30/05/2018, the contractor/petitioner submitted a letter/application stating that along with tender documents submitted by him, due to mistake of employee of his firm/office, wrong FDRs/TDRs have been enclosed, which he came to know subsequently and therefore, his tender documents should not be considered. On the same day, the office of Public Works Department has sent all four FDRs/TDRs submitted by the petitioner along with tender document to the Branch Manager of State Bank of India,

Jagdalpur through E-mail for their verification. Bank informed on 31/05/2018 that all the four FDRs/TDRs were not issued from their Bank. After revealing the fact of submission of four forged FDRs/TDRs, respondent No.2 suspended the registration of petitioner as 'A' class Contractor vide order dated 08/06/2018 (Annexure P/1).

3. Respondent No.4 issued a letter dated 15/06/2018 mentioning therein that petitioner was debarred from participating in all the tender proceedings invited by the Chhattisgarh Rural Road Development Tribunal on the ground that FDRs/TDRs submitted by the petitioner for tender Nos.33748, 33750 and 33751 amounting to Rs.40,56,000/- Rs.25,13,000/- and Rs.48,61,000/- respectively have been found to be forged and fabricated on getting the same FDRs/TDRs verified from the concerned Bank. Respondent No.2 vide its letter dated 10/10/2018 (Annexure P/3) degraded the registration of petitioner from 'A' class Contributor to 'B' class Contractor for a period of one year on account of submission of forged FDRs/TDRs amounting to Rs.66,91,000/-, Rs.39,25,000/-, Rs.75,84,000/- and Rs.56,95,000/- respectively.

4. The petitioner has challenged all the orders dated 08/06/2018 (Annexure P/1), 15/06/2018 (Annexure P/2) and 10/10/2018 (Annexure P/3) by filing this petition under Article 226 of the Constitution of India with following relief(s) :-

“10.1 To call for the records of the case for the kind perusal of this Hon'ble Court.

10.2 To issue an appropriate writ or order and declare that the order dated 08/06/2018 (Annexure P-1), order dated 15/06/2018 (Annexure P-2) and order dated 10/10/2018 (Annexure P-3) is illegal, arbitrary, bad in law and without jurisdiction.

10.3 To issue an appropriate writ or order and quash the order dated 08/06/2018 (Annexure P-1), 15/06/2018 (Annexure P-2) and order dated 10/10/2018 (Annexure P-3).

10.4 Any other relief deemed fit in the facts and circumstances of the case may also be granted.”

5. Learned counsel appearing for the petitioner submitted that submission of wrong FDRs/TDRs along with tender documents are due to mistake of official staff engaged by him and he intimated the said fact to the authorities vide letter dated 23/05/2018 after coming to his knowledge of submissions of false and fabricated FDRs/TDRs along with tender documents. He further submitted that before issuance of orders dated 08/06/2018 (Annexure P/1), 15/06/2018 (Annexure P/2) and 10/10/2018 (Annexure P/3), respondents have not issued any show cause notice to him and straightway issued orders adversely affecting the status and rights of the petitioner. He also submitted that the aforementioned action of respondents is violative to the principles of natural justice, therefore, all the three orders dated 08/06/2018 (Annexure P/1), 15/06/2018 (Annexure P/2) and 10/10/2018 (Annexure P/3) are liable to be set aside. He lastly submitted that Clause-32 of the tender

document provides for action to be taken against contractor engaged in Corrupt and Fraudulent Practices wherein it has been mentioned that the period of one year will include the period of suspension and not to be taken into account from the date of passing of order and further that under Clause-32, there is no provision for blacklisting, debarring or degrading the class of registration of the petitioner.

6. Per contra, learned counsel appearing for the State submitted that the act of petitioner is a very serious one. He further submitted that the petitioner has submitted false security through FDRs/TDRs for procuring tender in his favor and all the FDRs/TDRs were of heavy amount. He further submitted that on verification from concerned Bank as many as seven FDRs/TDRs are found to be forged and fabricated, the petitioner vide his reply to letter issued by the Department has admitted that the FDRs/TDRs submitted by him were wrongly enclosed and not correct. He further contended that the respondents have issued show cause notice to the petitioner as to why action be not taken against him under Clause-32 of the tender document and that the petitioner earlier filed writ petition, in which, orders dated 08/06/2018 and 15/06/2018 were challenged, therefore, the petitioner is estopped from challenging the same in second writ petition. He also submitted that earlier writ petition bearing Writ Petition (C) No.1708/2019 has been disposed off by this Court vide order dated

13/05/2018 (Annexure P/13). He also submitted that in view of aforementioned facts and circumstances of the case, the petition is liable to be dismissed being devoid of merit. He lastly submitted that Clause-32 of the tender document provides that what are the illegal acts, which come within the purview of corrupt and fraudulent practices and the consequences thereof. Apart from it, the State Government has also formulated 'Centralized Procedure' for suspension, degradation, non-renewal and de-registration of Contractors/Firms and this is applicable to all the Works Department.

7. We have heard learned counsel appearing for the parties and perused the record carefully.

8. Perusal of Annexure P/1 dated 08/06/2018 shows that four FDRs/TDRs were submitted by the petitioner for participating in different tender proceedings for construction, maintenance and repairing of different roads, which on verification from the concerned Bank, were found to be forged and fabricated as they were not issued by the concerned Bank.

9. Annexure P/2 dated 15/06/2018 is with respect to the three different FDRs/TDRs of other three different tender proceedings. These FDRs/TDRs were also found to be forged and fabricated document on verification from the concerned Bank. The act of the petitioner in submitting the seven forged and fabricated FDRs/TDRs in seven different tender

proceedings is very serious act, which cannot be ignored.

10. It is not in dispute that respondent authorities have issued 'Centralized Procedure' for Suspension, Demotion, Non-renewal and De-registration of Contractors/Firms, 2014 vide notification dated 29/10/2014 and it had been made applicable to all the Works Department. No doubt, the act of petitioner is of very serious in nature, but the fact remains that whether proper show cause notice before passing any adverse order against status and rights of the petitioner has been issued to him or not?

11. Learned counsel for the State submitted that prior to passing of orders dated 08/06/2018 (Annexure P/1) and 10/10/2018 (Annexure P/3), notice dated 31/05/2018 (Annexure R/2) has been issued. Perusal of Annexure R/2, it would reveal that in the said letter, it has been mentioned that petitioner has been disqualified from participating in three tender proceedings as mentioned in Annexure P/2 and it has been mentioned that further proceedings under Clause-32 of the tender document are in process. Perusal of Annexure R/3 dated 06/06/2018, it would show that reply has been sought from the petitioner within three days as to why no action to be taken against him under Clause-32 with respect to deposit of forged and fabricated FDRs/TDRs. The Annexure P/3 mentions that notice was given to show cause asking the petitioner to submit reply within 7 days which was not responded and therefore, action of degradation was taken as per Clause 7.2 of tender document

dated 29/10/2014. But the State has not placed on record the Condition No.7.2 of tender document dated 29/10/2014.

12. The document Annexure R/3, relied upon by the State to show that notice was issued on 06/06/2018, only mentions about Clause-32 i.e. 'Corrupt or Fraudulent Practices' and action to be taken under that Clause and it does not speak about the 'Centralized Procedure'.

13. Clause 32 provides for Corrupt and Fraudulent Practices and in Clause 32.7(a) and (b), it provides for the action to be taken against the contractor involved in Corrupt and Fraudulent Practice which do not provide for debarring of contractor from participating in tender proceedings and degrading his class of registration as 'Contractor'. The notice has been issued only for action to be taken under Clause 32. Clause 32.7 provides for the proceedings provided under this clause is without prejudice to the rights available to the Employer under law or the contractor, is established policies and laid down procedures, but the Employer had not issued any action to be taken against the petitioner specifically mentioning the policy or procedure to be adopted for inflicting any proposed action.

14. It is a well settled law that prior to taking any action against any person, Firm or Company adversely affecting their rights and interest, they should be provided opportunity of hearing before passing any order against him/it. If no

opportunity of hearing was given prior to passing any order against person, Firm or Company etc., it will be violative to the principles of natural justice.

15. The Hon'ble Supreme Court in the matter of *Gorkha Security Services v. Government (NCT of Delhi) and Others*¹

held thus :

“21. The Central issue, however, pertains to the requirement of stating the action which is proposed to be taken. The fundamental purpose behind the serving of Show Cause Notice is to make the noticee understand the precise case set up against him which he has to meet. This would require the statement of imputations detailing out the alleged breaches and defaults he has committed, so that he gets an opportunity to rebut the same. Another requirement, according to us, is the nature of action which is proposed to be taken for such a breach. That should also be stated so that the noticee is able to point out that proposed action is not warranted in the given case, even if the defaults/ breaches complained of are not satisfactorily explained. When it comes to black listing, this requirement becomes all the more imperative, having regard to the fact that it is harshest possible action.

27. We are, therefore, of the opinion that it was incumbent on the part of the Department to state in the show cause notice that the competent authority intended to impose such a penalty of blacklisting, so as to provide adequate and meaningful opportunity to the appellant to show cause against the same. However, we may also add that even if it is not mentioned specifically but from the reading of the show cause notice, it can be clearly inferred that such an action was proposed, that would fulfill this requirement. In the present case, however, reading of the show cause notice does not suggest that

¹ (2014) 9 SCC 105

noticee could find out that such an action could also be taken. We say so for the reasons that are recorded hereinafter.

29. No doubt, rules of natural justice are not embodied rules nor can they be lifted to the position of fundamental rights. However, their aim is to secure justice and to prevent miscarriage of justice. It is now well established proposition of law that unless a statutory provision either specifically or by necessary implication excludes the application of any rules of natural justice, in exercise of power pre-judicially affecting another must be in conformity with the rules of natural justice.”

16. In the instant case, earlier show cause notice was issued but only mentioning action to be taken under Clause 32 and no notice was served specifically mentioning the specific action to be taken as taken in Annexure P/2 and Annexure P/3. The action of the respondent in issuing order Annexure P/2 and Annexure P/3 are violative to principles of natural justice and is not sustainable.

17. So far as the other argument raised by the learned counsel for the State that the orders dated 08/06/2018 and 15/06/2018 were subject matter of earlier writ petition, therefore, the petitioner is estopped to challenge the same in second writ petition is concerned, we have perused the order dated 13/05/2019 (Annexure P/13).

18. True, it is that in relief clause along with Annexure P/1 therein, the orders dated 08/06/2018 and 15/06/2018 were challenged as Annexure P/2 and Annexure P/3 therein. Perusal

of Annexure P/13 would also show that the said order has not dealt with order dated 08/06/2018 (Annexure P/2) and order dated 15/06/2018 (Annexure P/3) therein, but this Court only considering the fact that while passing the order dated 15/03/2019 (Annexure P/1) therein, no opportunity was offered to the petitioner dealt with the order dated 15/03/2019 only. There was no order on merits with respect to the orders dated 08/06/2018 (Annexure P/2) and 15/06/2018 (Annexure P/3) therein.

19. In the order dated 13/05/2019 (Annexure P/13), this Court while holding the order dated 15/03/2019 to be not sustainable as it has been passed before completion of notice period and thereby denying the contractor's right of hearing, has granted liberty in favour of petitioner to submit explanation to the notice Annexure P/11 therein and directed the authorities to pass an appropriate order after submission of explanation expeditiously within a period of 15 days. In the considered opinion of this Court, by only mentioning in the writ petition showing it to be one of the order under challenge and seeking relief for it, will not operate as *resjudicata* in this petition because the order dated 13/05/2019 (Annexure P/13) is very clear that though aforementioned two orders dated 08/06/2018 and 15/06/2018 form the part of the order, but they were not discussed or decided on merits. In fact in the order Annexure P/13, Court has very specifically mentioned that the other issues are left open.

20. In view of above facts and figures of the case, orders dated 08/06/2018 (Annexure P/1), 15/06/2018 (Annexure P/2) and 10/10/2018 (Annexure P/3) being violative to the principles of natural justice are not sustainable in the eyes of law and are hereby set aside.

21. Respondents No.2 and 4 are directed to issue a detailed fresh show cause notice to the petitioner by mentioning the illegal act committed by him and also mentioning the proposed action required to be taken against him along with the provisions and procedures, under which, said proposed action is required to be taken. The said show cause notice be issued to the petitioner within a period of 15 days, granting 15 days' time for submission of reply by the petitioner and thereafter, the same may be decided within a further period of 15 days after submission of the reply by the petitioner by a speaking order. It is made clear that we have not expressed any opinion on merits of the case.

22. In view of above, writ petition stands disposed off.

Sd/-
(P. R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge