

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 3758 of 2021

- M/s ShriKishan and Co. Pvt. Ltd. having its registered office At 4/12, 2nd Floor, Shree Tower, Shanti Nagar, Raipur (Chhattisgarh) through its Director Sharad Agrawal, S/o Shri Sushil Agrawal, Aged About 31 Years., District : Raipur, Chhattisgarh

---- Petitioner

Versus

1. Chhattisgarh Rural Road Development Agency (CGRRDA), through its Chief Executive Officer, Vikas Bhawan, Civil Lines Raipur Chhattisgarh., District : Raipur, Chhattisgarh
2. Executive Engineer Member Secretary, Project Implementation Unit, Chhattisgarh Rural Road Development Agency (CGRRDA) District Raipur , Chhattisgarh.
3. State Of Chhattisgarh, through the Secretary, Panchayat and Rural Development Department, Government of Chhattisgarh, Mahanadi Bhawan, Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh

---- Respondents

For Petitioner – Shri Kshitij Sharma and Shri Akash Kumar Kundu, Advocates.
For State-respondents – Shri Chandresh Shrivastava, Deputy Advocate General.

Hon'ble Shri Justice Rajendra Chandra Singh Samant
Order on Board

29-11-2021

1. This petition has been brought seeking relief against the impugned order dated 19-08-2021 of debarment of the petitioner firm for taking participation in the tender process for a period of six months starting from 19-08-2021.
2. It is submitted that the petitioner is a private limited company engaged in the work of construction. The respondents invited tenders for 'Construction and maintenance of Rural Roads under PMGSY-II, Batch-I, ADB" for district Baloda-Bazar Bhatapara. After submission of bids the petitioner was issued a letter of intent on 27-02-2018 (Annexure-P/2) and the work order on 08-03-2018. It is submitted that the work under the contract was executed within the time limit and the respondents also issued completion certificate dated 22-05-2019. There was no dispute present regarding the quality of the work or the completion of the work within time limit. Some private companies have drilled

holes for cable work on the road and the same were left open. It was during rainy season the National Quality Manager made survey of the road which was constructed by the petitioner and graded the same as 'U'. It is submitted that without giving any opportunity of hearing to the petitioner the impugned order (Annexure-P/1) has been passed by debarring the petitioner from participating in tenders for a period of six months.

Reliance has been placed on the judgments of Hon'ble the Supreme Court in the matter of **Erusian Equipment & Chemicals Ltd. and Ors. Vs. State of West Bengal and Ors.**, (1975) 1 SCC 70, in the case of **Dafodills Pharmaceuticals Ltd. and Ors. Vs. State of U.P. and Ors.**, 2019 (17) SCALE 758 and in the case of **Southern Painters Vs. Fertilizers & Chemicals Travancore Ltd. and Ors.**, AIR 1994 SC 1277.

It is submitted that according to the General Conditions of Contract, the Defects Liability Period is to extent of five years from the date of completion of the work. Clause 32.1.1 provides that the Engineer shall give notice to the Contractor of any Defects during the period of the Defects Liability, and according to clause 32.1.2 the Contractor shall remove the defects within the time specified. Clause 32.1.3 provides for routine maintenance. It is submitted that the defects, if any, were found then the petitioner should have been offered an opportunity by issuance of notice to cure the defects as per the Defects Liability clause.

It is also submitted that it is stated in reply of the respondents that in quality check by SQM and NQM, if any 'unsatisfactory' work is found, it is duty of the Contractor to replace the material or rectify the same. No such opportunity was given to the petitioner for removing the defect or rectifying the same. The Programme Guidelines (PMGSY-II) mentions in clause 15.6 about the same that the contractor shall be given opportunity to cure or rectify the defect, but this opportunity was never granted to the petitioner. Hence, the

issuance of Annexure-P/1 is not in consonance with the guidelines. Therefore, it is prayed that the impugned order be quashed.

3. Learned counsel for the respondents opposes the submission and submits that the Annexure-P/1 is based on the report of the NQM. There is no order of blacklisting, it is only the temporary debarment order and almost four months time has already passed. It is submitted that clause 24.1 of the agreement provides for Dispute Redressal and the dispute raised by the petitioner is covered by the same. The petitioner has not made any such claim that the defect was not present. Clearly, the quality of the construction made by the petitioner was unsatisfactory which has been graded 'U'. There is clear direction in the letter dated 01-07-2019 (Annexure-R/2) by the Panchayat Avam Grameen Vikas Vibhag, that in case of unsatisfactory execution of work concerned officials shall be held responsible and the contractor shall be prevented from participating in future tender processes. This direction has been complied by the impugned order. Similar order has been passed by the then Chief Executive Officer, Chhattisgarh Rural Road Development Agency by a memo dated 22-02-2020 (Annexure-R/3), which empowers the respondent authorities to debar the erring contractor. Therefore, there is no error committed by the respondent authorities in passing the impugned order (Annexure-P/1). Therefore, the petition may be dismissed.

4. It is further submitted in rebuttal by learned counsel for the petitioner that the petitioner has remedied the defect as pointed out by the respondent authorities in the construction work completed by him. Hence, appropriate order may be passed.

5. Heard learned counsel for the parties and perused the documents.

6. Considered on the submissions. There is no such averment from the respondent side or any submission in reply that the petitioner was ever granted any opportunity of hearing before the impugned order was passed. Further,

there is no such averment or statement in reply regarding grant of opportunity to the petitioner for curing the defects as per the Defects Liability clause present in the General Conditions of Contract. Also the PMGSY guidelines clause 15.6 provides that in case of finding by State Quality Monitors (SQM) or National Quality Monitors (NQM) of any unsatisfactory work, the contractor has to be given opportunity to rectify the workmanship, but this opportunity has never granted to the petitioner. Therefore, there is total lack of communication with the petitioner from the respondent side and despite there being provision under the contract and the Guidelines (PMGSY-II) the petitioner was never afforded opportunity to make rectification.

7. In the case of **Erusian Equipment & Chemicals Ltd. and Ors. Vs. State of West Bengal and Ors.** (supra) Hon'ble the Supreme Court has held in paragraph No.20 as follows:-

“20. Blacklisting has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for purposes of gains. The fact that a disability is created by the order of blacklisting indicates that the relevant authority is to have an objective satisfaction. Fundamentals of fair play require that the person concerned should be given an opportunity to represent his case before he is put on the blacklist.”

This judgment has been referred in the case of **Gorkha Security Services Vs. Government (NCT of Delhi) and others**, (2014) 9 SCC 105 Hon'ble the Supreme Court has held in paragraph No.30 that :-

“30 We are conscious of the following words of wisdom expressed by this Court through the pen of Krishna Iyer, J. in Board of Mining Examination v. Ramjee, (1977) 2 SCC 256 : (SCC pp. 258 & 262, paras 1, 13 & 14)

“1. If the jurisprudence of remedies were understood

and applied from the perspective of social efficaciousness, the problem raised in this appeal would not have ended the erroneous way it did in the High Court. Judges must never forget that every law has a social purpose and engineering process without appreciating which justice to the law cannot be done. Here, the socio-legal situation we are faced with is a colliery, an explosive, an accident, luckily not lethal, caused by violation of a regulation and consequential cancellation of the certificate of the delinquent shot-firer, eventually quashed by the High Court, for processual solecisms, by a writ of certiorari.

* * *

13. Natural justice is no unruly horse, no lurking landmine, nor a judicial cure-all. If fairness is shown by the decision-maker to the man proceeded against, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice, without reference to the administrative realities and other factors of a given case, can be exasperating. We can neither be finical nor fanatical but should be flexible yet firm in this jurisdiction. No man shall be hit below the belt – that is the conscience of the matter.

14.we cannot look at law in the abstract or natural justice as a mere artefact. Nor can we fit into a rigid mould the concept of reasonable opportunity.”

8. Clearly the impugned order (Annexure-P/1) is the order equivalent to blacklisting for a temporary phase of time, however, this brings a disreputation to the petitioner company and has impact on its future prospects. Therefore,

the impugned order has been passed without following the principle of natural justice, hence, not sustainable at all. On the basis of this conclusion drawn, this petition is allowed at motion stage and the impugned order is quashed.

Sd/-

(Rajendra Chandra Singh Samant)
Judge