

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(C.) No.3921 of 2021

- Esteem Industries Inc. Through Its Partner Vipul Tandon, S/o Mahendra Tandon, Aged About 39 Years, Having Its Registered Office At 2EF, Epip, Phase-1 Jharmajri Baddi Himachal Pradesh Pin 174103

---- Petitioner

Versus

1. State Of Chhattisgarh Through Principal Secretary/ Secretary, Department Of Health And Family Welfare, Govt. Of Chhattisgarh, Mahanadi Bhawan, Mantralaya, Raipur Chhattisgarh
2. Chhattisgarh Medical Services Corporation Limited Through Managing Director, 1st And 2nd Floor, Commercial Complex, North West Corner Sector 27, Atal Nagar, Raipur Chhattisgarh
3. General Manager (Incharge) (Upkaran), Chhattisgarh Medical Services Corporation Limited, 1st And 2nd Floor, Commercial Complex, North West Corner Sector 27, Atal Nagar Raipur Chhattisgarh

---- Respondents

For Petitioner	:	Dr. N.K. Shukla, Sr. Advocate with Mr. Anumesh Shrivastava and Mr. Arijit Tiwari, Advocates.
For State/Respondent No.1	:	Mr. S.C. Verma, A.G. with Mr. Chandresh Shrivastava, Dy. A.G.
For Respondent No.2 & 3	:	Mr. Animesh Tiwari, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

16/11/2021

1. Heard.

2. It is submitted that the petitioner is a partnership firm in Micro, Small & Medium Enterprises Unit, which deals with the manufacturing of hospital and medical equipment. The petitioner firm had some work orders from the respondent authorities for supply of hospital and medical equipments. Respondent No.3 has vide order dated 15.09.2021 (Annexure-P/1) ordered black listing of the petitioner firm on the ground that the petitioner was given 32 orders and the petitioner firm had failed to supply on any of the orders. It is submitted that the order of black listing cannot be passed without issuance of show cause notice.
3. Reliance has been placed on the judgment of supreme Court in the case of M/s. Erusian Equipment and Chemicals Ltd. Vs. State of W.B. and Anr. reported in A.I.R. 1975 Supreme Court 266, in which it was held that before placing the name of a person in black list, such person is entitled to be heard. No show cause notice was issued to the petitioner mentioning the details.
4. The petitioner was served with memo dated 31.07.2020, informing that the equipment were not supplied, despite the issue of purchase orders and, in case, the supply is not made that would be deemed as non-supply and action shall be taken in accordance with the terms of contract. The petitioner submitted reply dated 29.08.2020 (Annexure-P/4) mentioning that regarding the material previously supplied the payment was outstanding. A Similar letter was received by the petitioner dated 11.12.2020 (Annexure-P/3), in which again the petitioner was reprimanded for not supplying the equipment as ordered and was requested to make the supply immediately otherwise face consequences.
5. It is submitted that the petitioner has filed an application against the respondent authorities before Himachal Pradesh Micro & Small

Enterprises Facilitation Council on the ground of non-payment, for which the respondent authorities are required to respond. As there is an outstanding dues of Rs.5.31 crore against the respondent authorities, therefore, the order of black listing passed against the petitioner is arbitrary and illegal.

6. Reliance has been placed on the judgment of Supreme Court in the case of Gorkha Security Services Vs. Government (NCT of Delhi) And Others reported in (2014) 9 SCC 105 and on the judgment of M.P. High Court in the case of Eco Pro Environmental Services Vs. Municipal Corporation And Another reported in A.I.R. OnLine 2021 M.P. 471. It has been held that the fundamental purpose behind serving the show cause notice is to make the noticee understand the precise case set up against him and that would require the statement of imputations elaborating, the lapse and defaults, he has committed, so that he gets an opportunity to rebut the same. Hence, on the basis of this principle laid down by the Supreme Court, impugned order dated 15.09.2021 is not sustainable, which is liable to be quashed.
7. Learned State counsel representing the respondent authorities opposes the submissions and submits that no error has been committed in passing of the impugned order, hence, the order is sustainable.
8. Considered on the submissions and perused the documents present in the record of the petition. The impugned order dated 15.09.2021 vide Annexure-P/1 mentions that the petitioner was given 32 purchase orders for supply of equipment, which were not supplied by him. The explanation was sought from the petitioner by a letter dated 11.12.2020 on which the explanation given was not satisfactory, hence, on this basis, the order for black listing of the petitioner was passed with direction to forfeit the security deposit.

9. The letter dated 11.12.2020 is relevant, which is filed as Annexure-P/3.

The contents of this order in brief are these, that the equipment as ordered have not been supplied. Therefore, the non-supplied equipment be supplied at the earliest, otherwise the petitioner will have to face consequences. There are no other details and also the language of this order is not in the form of a show cause notice, asking the petitioner to submit reply or explanation. There is no need to mention that the letter dated 11.12.2020 does not have any content of imputations of alleged breaches and defaults.

10. Therefore, the letter dated 11.12.2020 can certainly not be regarded as a show cause notice.

11. In the case of Gorkha Security Services (Supra), the Supreme Court has observed in paragraph 21:-

“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.”

12. In the case of Ecopro Environmental Services (Supra) and the case of Gorkha Security Services (Supra) has been discussed and followed.

13. The notice dated 11.12.2020 vide Annexure-P/3 even does not mention that the proposed action against the petitioner shall be for the black listing of the petitioner's company. Therefore, the action taken by

respondent No.3 is totally against the principles of law and justice. The petitioner never had an opportunity to show cause or explain as to why the order of black listing should not be passed against him, therefore, I am of this view that the impugned order is totally arbitrary, without following the principles of natural justice. Hence, not sustainable.

14. With these observations, this petition is allowed and disposed off at the motion stage. The impugned order dated 15.09.2021 passed by respondent No.3 is hereby quashed regarding the other prayer for payment of dues to the petitioner by the respondent authorities, it is observed that the petitioner can pursue the same before the appropriate forum under the appropriate law. Hence, there is no requirement to pass any order for the same.

15. Accordingly, this petition is disposed off.

Sd/-

(Rajendra Chandra Singh Samant)

Judge