

ORISSA HIGH COURT : C U T T A C K

W.P.(C) NO.1472 OF 2022

*In the matter of an application under Articles 226 & 227
of the Constitution of India.*

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: *Petitioners*

-Versus-

State of Odisha &anr.

: *Opp.Parties*

For Petitioner : M/s.D.Panda, S.Panda
& J.P.Behera

For O.Ps. : Mr.S.Mishra, ASC

**CORAM :
JUSTICE BISWANATH RATH**

Date of Hearing & Judgment : 14.10.2022

1. The Writ Petition involves the following prayer :-

“Under the circumstances, the Petitioner firm therefore prays that this Hon’ble Court to be graciously pleased to issue notice of Rule-Nisi calling upon the Opposite Parties and more especially the Opposite Party No.2 above to show-cause as to why the order at Annexure-1 above to the writ petition blacklisting the Petitioner firm shall not be quashed as being both illegal and arbitrary and having been passed in violation of the well-settled principles of natural justice that no adverse order against a party be passed without having heard the party;

And upon the Opposite Parties not showing cause or, showing insufficient cause, the Rule be made absolute against them and a writ of Mandamus be issued to the Opposite Party No.2 quashing the order vide Annexure-1 above;

And to grant any other relief/reliefs as deemed fit and proper..”

2. Background involved here is undisputedly there is complain by the Data Entry Operators before the Competent Authority alleging non-payment of monthly remuneration by the Petitioner as well as excess deduction from their salary towards Service Tax, GST etc.

3. Reading through Annexure-1, the impugned order, learned counsel for the Petitioner alleged, first of all involving such a serious issue, the Petitioner has not been involved in any such representation disposal and secondly, there is also no finality of any complaint to the law and order authority if at all submitted by the Data Entry Operators against the Service Provider, the Petitioner. It is on both the counts, learned counsel for the Petitioner while alleging the impugned order not only suffers on account of non-compliance of natural justice but also based on no lawful finding involving complaint aspect. Mr.Panda accordingly sought for interference in the impugned order at Annexure-1.

4. Mr.Mishra, learned Additional Standing Counsel for the State taking this Court to the counter averments, particularly the document at Page-7 of Annexure-A/2 and also in reference to the document at Page-6 submitted, undisputedly there is receipt of complain from the Data Entry Operators working in Jajpur district involving objections indicated herein

above. Through Pages-6 & 7, Mr. Mishra contended, in the correspondence dated 24.12.2020, the Proprietor of the Petitioner has been asked to submit its response by 31.12.2020 clearly indicating therein, failing which criminal proceeding was directed to be initiated against it. It is in the circumstance, it is alleged, the Petitioner did not respond to either of the correspondences giving no scope to the Competent Authority considering the case of the Petitioner. Mr.Mishra contended, in presence of serious allegations and in the circumstance, the Collector had no other option than to close the proceeding involving the complain of the Data Entry Operators only on the basis of materials available on Record, further on obtaining the report from the Tahasildar. So far as the F.I.R./complain aspect is concerned, Mr.Mishra further referring to the document at Annexure-B/2 at Page-14 contended, though it may not be construed to be an F.I.R. but it is a plain paper complain pending consideration of the I.I.C., Jajpur Police Station though there is no further progress. It is in the circumstance, Mr.Mishra, learned Additional Standing Counsel requested this Court for rejecting the Writ Petition as the outcome involved herein is in non-cooperation of the Petitioner and based on complain raised by the Data Entry Operators in the locality as well as based on the report of the Tahasildar.

5. Considering the rival contentions of the Parties, this Court finds, the core issue involved herein involving the impugned order involving the Petitioner has been blacklisted from providing manpower in respect of the Jajpur District if suffers on account of natural justice and further if based on justified ground ? Keeping in view the contentions and the objections of the respective Parties, this Court finds, the only foundation available to be a complain of the Data Entry Operators before the District Administration as well as Law and Order Authority alleging non-payment of monthly remuneration in time and excess deduction from their salary towards Service Tax, GST etc. Undisputedly, in spite of issuing of several requests, the Petitioner did not cooperate nor submitted its response. Further foundation available, as recorded by the Collector, to be pendency of an F.I.R./complain against the Petitioner. Looking to the nature of complain contained and as recorded in the A.D.M.'s request to the Petitioner, vide Annexure-A/2, this Court finds, there has been a plain complain on accounts aspect, no submission of Final Report and undisputedly, looking to the stage of complain, no inference could have been drawn against the Petitioner. Thus only foundation in the issuing of impugned order appears to be the complaint at the instance of the Data Entry Operators. Since the outcome was aiming to blacklist the Petitioner, the response of the Petitioner ought to have been involved before

blacklisting such a Party. Fact remains, the Petitioner has no reason not to cooperate. For the opinion of this Court even assuming the Collector is in possession of the report from the Tahasildar, there is no material enclosing the copy of the report to the Petitioner asking its response to such report. In any case since the decision for blacklisting of the Petitioner has been taken by the Collector without involvement of the Petitioner and further in view of all the above glaring defects, the final outcome resulting in blacklisting the Petitioner remains completely defective. Even though this Court finds, there have been certain correspondences already made to the Petitioner asking its response, this Court finds, there is unjust decision and the decision involved taken in haste, as there is no harm on the part of the Competent Authority in waiting for response of the Petitioner, besides there is wrong appreciation on the issue of police complaint.

6. Looking to the nature of punishment imposed on the Petitioner and the manner of disposal, this Court is compelled to interfere with the impugned order and in the process sets aside the order at Annexure-1. Since the complain of the Data Entry Operators requires lawful disposal, let the Collector of the district accepts the response of the Petitioner on its appearance before the Collector on 9th November, 2022, on which date the Petitioner will be intimated the date of hearing of such proceeding.

The Petitioner is also directed to cooperate with the Collector in finalizing the issue. In the meantime, this Court hopes and expects, there will be no exploitation of the Data Entry Operators either in the matter of getting monthly remuneration as well as deduction of Service Tax and G.S.T.

7. The Writ Petition succeeds. No costs.

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(Biswanath Rath, J.)

Orissa High Court, Cuttack.
The 14th October, 2022/M.K.Rout, A.R.-cum-Sr.Secy.

