

ORISSA HIGH COURT: CUTTACK

W.P.(C) NO. 21781 OF 2017

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

AFR

Biswajit Mishra Petitioner

-Versus-

The Collector and Chairman of
Odisha Adarsha Vidyalaya (OAV)
Model School, Keonjhar and another.

..... Opp. Parties

For Petitioner : M/s. T.K. Mohanty and
M.K. Naik, Advocates.

For Opp. Parties : Mr. S. Jena,
Standing Counsel for
S&ME Department.

P R E S E N T:

**THE HONOURABLE DR. JUSTICE B.R.SARANGI
AND
THE HON'BLE MISS JUSTICE SAVITRI RATHO**

Date of hearing and judgment:: 20.04.2022

DR. B.R. SARANGI, J. The petitioner, who is the Managing Partner of "Manpower Service Provider", having its office at Tamando, Bhubaneswar in the district of Khurda, has filed this writ petition seeking to quash the office order

dated 11.09.2017 in Annexure-6, by which he has been blacklisted and the security deposit as well as EMD amount placed in favour of District Education Officer, Keonjhar has been forfeited.

2. The factual matrix of the case, in brief, is that, pursuant to the tender invited by opposite party No.2 for supply of Class-IV staff, the tender application submitted by the petitioner was accepted. Thereafter, opposite party no.2, vide his letter dated 26.05.2016, directed the petitioner to execute an agreement. Accordingly, an agreement was executed between the petitioner and opposite party no.2. As per the said agreement, the petitioner provided 27 number of Class-IV staff for 09 number of Model Schools in the district of Keonjhar as per the requirement of opposite party no.1.

2.1 As per Clauses- 47 and 78 of the agreement, the petitioner was to prepare the bill in triplicate, along with the attendance sheet duly verified by the district or concerned Principal of Odisha Adarsha Vidyalaya (OAV) in respect of the persons deployed and to submit the same

to the prescribed authority in the 1st week of the succeeding month. In compliance to the said clauses of the agreement, the petitioner provided 27 number of Class-IV staff to the opposite parties on 26.07.2016 and duly submitted the bills for each month with effect from 26.07.2016 till 31.09.2017 before opposite party no.2. Even though such bills were submitted, no payment was made as per the agreement. As a result, the petitioner could not be able to make monthly payment to the persons deployed by him. Even though petitioner paid remuneration of the staff for 1st three months from his own source, but no payment was released by opposite party no.2 till date. As the staff deployed by the petitioner did not receive their remuneration regularly, they raised complaint before opposite party no.1, who, vide letter dated 26.04.2017, directed the petitioner to credit the remuneration of 27 number of staff in their respective accounts within fifteen days positively, otherwise the petitioner will be declared blacklisted.

2.2. On receipt of such letter dated 26.04.2017, the petitioner submitted his reply on 08.05.2017 requesting opposite party no.1 for release of the bills, as submitted by him, and also narrated the reasons for non-payment of remuneration to the staff engaged by him. However, opposite party no.1, without considering the grievance made by the petitioner for non-payment of the remuneration in time to its staff and without providing any opportunity of hearing, passed the order dated 11.09.2017 blacklisting the petitioner and forfeiting the security deposit as well as EMD amount placed by the petitioner before opposite party no.2. Hence this writ petition.

3. Mr. M.K. Naik, learned counsel for the petitioner contended that there is no laches and negligence on the part of the petitioner in making payment of remuneration to the staff provided by him pursuant to the agreement entered into between the petitioner and opposite party no.2, but opposite parties had not complied the terms and conditions of the

agreement by releasing the amount, even though the bills were placed for payment as per Clauses-47 and 78 of the agreement. Since opposite party no.2 failed to release the bills submitted by the petitioner, as a consequence thereof, payment could not be made to the staff. Thereby, due to inaction of the authority and non-compliance of the clauses contained in the agreement itself, since the payment was not made to the staff, the Collector, Keonjhar called for a show cause. In compliance thereof, though petitioner submitted his reply, but, without considering the grievance of the petitioner, the order impugned was passed, without affording any opportunity of hearing to the petitioner, on the plea that the staff were not paid by the petitioner in due time. Therefore, such action of the authority in blacklisting the petitioner and forfeiting his security deposit as well as EMD amount placed in favour of opposite party no.2, is arbitrary, unreasonable and contrary to the provisions of law and also violation of the principle of natural justice.

4. Mr. S. Jena, learned Standing Counsel for School & Mass Education Department appearing for the opposite parties, vehemently contended that the petitioner pursuant to the agreement executed vide Annexure-2 had provided 27 number of Class-IV staff to discharge their duties in Odisha Adarsha Vidyalayas of Keonjhar District, but he utterly failed to pay their remuneration in due time. Therefore, impugned action was taken by the authority, which is in conformity with the law and does not require interference at this stage.

5. This Court heard Mr. M.K. Naik, learned counsel appearing for the petitioner; and Mr. S. Jena, learned Standing Counsel for School & Mass Education Department appearing for opposite parties by hybrid mode, and perused the record. Pleadings having been exchanged between the parties, with the consent of learned counsel for the parties this writ petition is being disposed of finally at the stage of admission.

6. The undisputed fact is that an agreement was entered into between the petitioner and opposite party

no.2 under Annexure-2 for supply of manpower and, as such, in compliance of the same, the petitioner provided 27 Class-IV staff to discharge their duties in various Odisha Adarsha Vidyalayas of Keonjhar district. They were entitled to get remuneration from the petitioner in terms of such agreement. As per Clause-47 read with Clause-48 of the agreement, the manpower service provider was to raise the bill, in triplicate, along with attendance sheet duly verified by the district or concerned Principal OAV in respect of the persons deployed and submit the same to the prescribed authority in the 1st week of the succeeding month. The petitioner had complied the terms of the agreement and, as such, submitted the bill well within the time specified, but the same was not released in favour of the petitioner by opposite party no.2.

7. For a just and proper adjudication of the case, Clauses- 47, 51, 63 and 78 of the agreement are quoted herein below:-

“47. The manpower Service Provider shall raised the bill, in triplicate, along with attendance sheet duly verified by the district or concerned Principal

OAV in respect of the persons deployed and submit the same to the prescribed authority in the first week of the succeeding month. As far as possible the payment will be released by the second week of the succeeding month.

- 51. In the event of any dispute arising in respect of the clauses of the agreement the same shall be resolved through negotiation. Alternatively the dispute shall be referred to the next higher Authority or controlling officer for his decision and the same shall be binding on all parties.*
- 63. The manpower service provider shall be solely responsible for the redressal of grievance or resolution of disputes relating to person deployed. The O/o of DEO, Keonjhar or concerned Principal Odisha Adarsha Vidyalaya, Keonjhar shall, in no way be responsible for settlement of such issues whatsoever. In case the Grievance of the deployed person are not attended to by the manpower service provider the deployed person can place their grievance before the joint Committee consisting of a representative of O/o the DEO, Keonjhar and authorize representative of the manpower service provider.*
- 78. The manpower service provider shall raised the bill in triplicate along with attendance sheet duly verified by the O/o DEO, Keonjhar in respect of the persons deployed and submit the same to the prescribed authority in the first week of the succeeding month. As far as possible the payment will be released by the second week of the succeeding month."*

8. Needless to say, in a contract which is created by choice, the parties to it should carry out their part of obligations in terms of the agreement itself. If any of the parties to the contract fails to carry out its contractual obligations in accordance with the contractual terms, usually the end result will be the breach of the contract.

It appears that in the case at hand, even though the agreement was executed between the petitioner and opposite party no.2, but the latter has failed to discharge his duty by not paying the billed amount that was raised by the petitioner, within the time specified. Since the manpower services supplied by the petitioner in the shape of 27 Class-IV staff were utilized by opposite party no.2, an obligation is cast on opposite party no.2 to release the remuneration of the deployed persons in favour of the petitioner for disbursement of the same to them. But the same having not been done, objections were raised by those persons, who were deployed by the petitioner, before the Collector. In turn, the Collector, without ascertaining the reason for non-payment of their remuneration, called upon the petitioner to show cause. The petitioner in response to the notice of show cause, replied that even though he has complied his part of the contract, opposite party no.2 has not discharged his obligation by releasing the bills. As a consequence thereof, the petitioner could not be able to pay the remuneration of those deployed

persons in due time as per the terms and conditions of the contract.

9. The Collector, by overlooking the genuine cause shown by the petitioner and without affording any opportunity of hearing to the petitioner, took a drastic step by passing the office order on 11.09.2017 in blacklisting the petitioner and forfeiting the security deposit as well as EMD amount placed by the petitioner before opposite party no.2. When a harsh punishment of blacklisting was taken against the petitioner, at least the same should have been done in compliance of the principle of natural justice. More so, the blacklisting order does not indicate the period for which the petitioner has been blacklisted. Thereby, the petitioner cannot continue for eternity to be blacklisted and his livelihood cannot be taken away by such arbitrary and unreasonable order, which violates Article 21 of the Constitution of India.

10. In ***Kulja Industries Limited v. Chief General Manager, Western Telecom Project Bharat Sanchar Nigam Limited and others***, (2014) 14 SCC 731, the

apex Court held, if State or its instrumentality takes decision on blacklisting then such decision is subject to judicial review on grounds of principles of natural justice, doctrine of proportionality, arbitrariness and discrimination under Article 14 of the Constitution of India.

11. Referring to the ratio laid down in **Kulja Industries** (supra), the apex Court, in the case of **State of Odisha v. M/s Panda Infraproject Limited** (Civil Appeal No. 1083 and 1084 of 2022 decided on 24.02.2022), limited the blacklisting period to 5 years.

12. In the above premises, in this particular case, since the impugned order dated 11.09.2017 blacklisting the petitioner has been passed without following due procedure, the same cannot sustain in the eye of law.

13. Above apart, as per Clause-63 of the agreement, the manpower service provider shall be solely responsible for the redressal of grievance or resolution of disputes relating to person deployed. The office of the DEO, Keonjhar or concerned Principal Odisha Adarsha

Vidyalaya, Keonjhar shall, in no way be responsible for settlement of such issues whatsoever. In case the grievances of the deployed persons are not attended to by the manpower service provider, the deployed persons can place their grievance before the Joint Committee consisting of a representative of office of the DEO, Keonjhar and authorized representative of the manpower service provider. At the same time, Clause-51 of the agreement as quoted above, provides that in the event of any dispute arising in respect of the clauses of the agreement, the same shall be resolved through negotiation. Alternatively, the dispute shall be referred to the next higher authority or controlling officer for his decision and the same shall be binding on all parties.

14. In this case, as per Clause-47 read with Clause-78, the manpower service provider had raised the bills but the same were not duly verified nor the amount was released. Thus, when the condition stipulated in Clauses-47 and 78 was complied with by the petitioner, it was obligatory on the part of opposite party no.2 to

discharge his part of the duty in terms of the agreement, but he evidently failed to do so and resultantly breached the contract. But the Collector, instead of examining that aspect of the matter and giving opportunity of hearing to the petitioner, imposed the petitioner with harshest punishment.

15. In view of such position, the order of blacklisting dated 11.09.2017 passed by opposite party no.1, without specifying the period of blacklisting, meaning thereby making it for eternity, cannot sustain in the eye of law and is liable to be quashed and is hereby quashed. The matter is remitted back to the authority concerned for resolving the dispute by resorting to Clause-51 of the agreement, which provides that in the event any dispute arose in respect of clauses of the agreement, the same shall be resolved either through negotiation or by referring to the next higher authority or controlling officer. This exercise shall be completed as expeditiously as possible, preferably within a period of

three months from the date of communication of the order.

16. The writ petition is accordingly allowed. There shall be no order as to costs.

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DR. B.R. SARANGI,
JUDGE

SAVITRI RATHO, J. I agree.

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SAVITRI RATHO,
JUDGE

Orissa High Court, Cuttack
The 20th April, 2022, Arun/GDS

