

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

217

CWP-10837-2022 (O&M)
Date of order: 24.01.2024

Vee Kay Electricals

.....Petitioner(s)

Vs.

Punjab State Power Corp. Ltd. & Others

.....Respondent(s)

CORAM: HON'BLE MS. JUSTICE RITU BAHRI, ACTING CHIEF JUSTICE
HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Puneet Kansal, Advocate
for the petitioner.

Mr. Shiv Kumar Sharma, Advocate
for the respondents.

Nidhi Gupta, J.

Prayer in the present Writ Petition is for issuance of a writ in the nature of mandamus, certiorari or any other appropriate writ quashing order dated 03.02.2021 (Annexure P3) whereby the petitioner-firm has straightaway been blacklisted from participating in labour outsourcing works of respondent-Corporation without issuing show cause notice, in complete violation of principles of natural justice.

2. Learned counsel for the petitioner inter alia submits that Tender No.01/2019-20 was floated by respondent-Corporation in which the petitioner participated. As the bid of the petitioner was found to be technically compliant and the lowest, consequently work orders No.1, 4, 28 and 29 were issued in favour of the petitioner. Thereafter, the petitioner-

firm duly executed the assigned works as per the terms and conditions of the tender to the entire satisfaction of the respondent-authorities and no complaint whatsoever was received from them in this regard.

3. Learned counsel submits that however, on 14.10.2019, the petitioner was summoned to the office of Additional SE/Operations Jandiala Guru Division Amritsar, upon reaching where he was asked to sign the unsigned bills purportedly of the petitioner-firm relating to execution of works in respect of work orders No.24 and 26 dated 05.09.2019 relating to Jandiala Guru Division. As the said works had not been assigned to the petitioner, the petitioner blatantly refused to sign the said bills.

4. It is submitted that thereafter, the petitioner received letters dated 28.11.2019 (Annexure P1) and 04.12.2019 from the Additional Superintending Engineer/Operation, Jandiala Guru, Division, Amritsar calling upon the petitioner to explain his position regarding the unsigned bills of his firm as also regarding refusal on part of the petitioner to sign the aforesaid bills. It was further noted in the said letter (Annexure P1) that *“Now, the Additional Superintending Engineer/Technical Investigation, Jalandhar has disclosed to the undersigned that you have made the statement to him that the work under the bills having been produced, has not been got done by you and nor the bills have been produced by you.”* The petitioner responded to the said letters vide reply dated 05.12.2019 (Annexure P2) wherein he reiterated the stand taken by him on 14.10.2019, to the effect that the petitioner had not received any work order from the office of Additional Superintending Engineer/Operation, Jandiala Guru Division or the Superintending Engineer, Sub-urban Circle, Amritsar for

doing any work in Jandiala Guru Division and as he had not done any work in Tangra Sub-Division nor in any other sub-division in Jandiala Guru, therefore, he had not prepared or submitted any bills in respect of Tangra Sub-Division.

5. It is submitted that thereafter, the petitioner was shocked to receive the impugned Memo No.1605 dated 03.02.2021 (Annexure P3), whereby the petitioner-firm was straightway blacklisted from participating in labour outsourcing works of the respondent-Corporation. Learned counsel for the petitioner-firm submits that the impugned order has been passed without issuing any show cause notice and without any opportunity of hearing having been granted to the petitioner, which is violative of the principles of natural justice. Learned counsel also contends that the impugned order has been passed without jurisdiction.

6. Learned counsel for the respondents is unable to deny the above assertions made on behalf of the petitioner.

7. No other argument is made on behalf of either of the parties.

8. I have heard learned counsel for the parties.

9. Perusal of the impugned order (Annexure P3) reveals that it has been stated therein that “..Since you have issued the above said blank bills and prepared the bogus bills, the competent authority has taken the following decision to blacklist your firm...”. It has not been denied that the said order has been issued without granting an opportunity of hearing

to the petitioner and/or issuing any show cause notice to the petitioner. A perusal of the written statement filed on behalf of the respondent-Corporation also reveals that it has not been denied therein that the petitioner was not granted any opportunity of hearing or that any show cause notice was issued to the petitioner-firm prior to issuance of the impugned order.

10. The legal position in such like cases is very clear. Hon'ble Supreme Court in **"M/s Daffodills Pharmaceuticals Ltd. & Another Vs. State of UP & Another"** Law Finder Doc ID # 1643284 has held that *"..No one can be inflicted with adverse order, without being afforded a minimum opportunity of hearing, and prior intimation of such a move – Impugned order violation of principle of natural justice..."*.

11. Reference may also be made to **"UMC Technologies Pvt. Ltd. Vs. FCI & Another"** Civil Appeal No.3687 of 2020 (arising out of SLP (C) No.14228 of 2019, wherein the Hon'ble Apex Court has held as under:-

"13. At the outset, it must be noted that it is the first principle of civilised jurisprudence that a person against whom any action is sought to be taken or whose right or interests are being affected should be given a reasonable opportunity to defend himself. The basic principle of natural justice is that before adjudication starts, the authority concerned should give to the affected party a notice of the case against him so that he can defend himself. Such notice should be adequate and the grounds necessitating action and the penalty/action proposed should be mentioned specifically and unambiguously. An order travelling beyond the bounds of notice is impermissible and without jurisdiction to that extent. This Court in Nasir Ahmad

v. Assistant Custodian General, Evacuee Property, Lucknow and Anr., has held that it is essential for the notice to specify the particular grounds on the basis of which an action is proposed to be taken so as to enable the noticee to answer the case against him. If these conditions are not satisfied, the person cannot be said to have been granted any reasonable opportunity of being heard.

14. Specifically, in the context of blacklisting of a person or an entity by the state or a state corporation, the requirement of a valid, particularized and unambiguous show cause notice is particularly crucial due to the severe consequences of blacklisting and the stigmatization that accrues to the person/entity being blacklisted. Here, it may be gainful to describe the concept of blacklisting and the graveness of the consequences occasioned by it. Blacklisting has the effect of denying a person or an entity the privileged opportunity of entering into government contracts. This privilege arises because it is the State who is the counterparty in government contracts and as such, every eligible person is to be afforded an equal opportunity to participate in such contracts, without arbitrariness and discrimination. Not only does blacklisting takes away this privilege, it also tarnishes the blacklisted person's reputation and brings the person's character into question. Blacklisting also has long-lasting civil consequences for the future business prospects of the blacklisted person.

15. ...This domino effect, which can effectively lead to the civil death of a person, shows that the consequences of blacklisting travel far beyond the dealings of the blacklisted person with one particular government corporation and in view thereof, this Court has consistently prescribed strict adherence to principles of natural justice whenever an entity is sought to be blacklisted.

16. *The severity of the effects of blacklisting and the resultant need for strict observance of the principles of natural justice before passing an order of blacklisting were highlighted by this Court in **Erusian Equipment & Chemicals Ltd. v. State of West Bengal...***

17. *Similarly, this Court in **Raghunath Thakur v. State of Bihar**, struck down an order of blacklisting for future contracts on the ground of non-observance of the principles of natural justice...*

18. *This Court in **Gorkha Security Services v. Government (NCT of Delhi) and Ors.** has described blacklisting as being equivalent to the civil death of a person because blacklisting is stigmatic in nature and debars a person from participating in government tenders thereby precluding him from the award of government contracts...*

19. *In light of the above decisions, it is clear that a prior show cause notice granting a reasonable opportunity of being heard is an essential element of all administrative decision-making and particularly so in decisions pertaining to blacklisting which entail grave consequences for the entity being blacklisted. In these cases, furnishing of a valid show cause notice is critical and a failure to do so would be fatal to any order of blacklisting pursuant thereto.*

20. *...**Gorkha Security Services (supra)** is a case where this Court had to decide whether the action of blacklisting could have been taken without specifically proposing/contemplating such an action in the show-cause notice. For this purpose, this Court laid down the below guidelines as to the contents of a show cause notice pursuant to which adverse action such as blacklisting may be adopted...*

21. Thus, from the above discussion, a clear legal position emerges that for a show cause notice to constitute the valid basis of a blacklisting order, such notice must spell out clearly, or its contents be such that it can be clearly inferred therefrom, that there is intention on the part of the issuer of the notice to blacklist the noticee. Such a clear notice is essential for ensuring that the person against whom the penalty of blacklisting is intended to be imposed, has an adequate, informed and meaningful opportunity to show cause against his possible blacklisting.

26. In view of our conclusion that the blacklisting order dated 09.01.2019 passed by the Corporation is contrary to the principles of natural justice, it is unnecessary for us to consider the other contentions of the learned counsel for the appellant. Having regard to the peculiar facts and circumstances of the present case, we deem it appropriate not to remit the matter to the Corporation for fresh consideration.”(Emphasis supplied)

12. In view of the undisputed and unambiguous legal position as noted above, the present petition is **allowed** and the impugned order dated 03.02.2021 (Annexure P3), is set aside.

13. Pending application(s) if any also stand(s) disposed of.

(Ritu Bahri)
Acting Chief Justice

(Nidhi Gupta)
Judge

24.01.2024
Sunena

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No