
(2015) 01 JH CK 0141
In the Jharkhand High Court
Case No : WP(C) No. 3897 of 2013

A.K. Travels

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 06-01-2015

Acts Referred:

Citation : AIR 2015 Jhar 100 : (2015) 3 AJR 673 : (2016) 2 BC 219 : (2015) 2 JLJR 488

Hon'ble Judges : S. Chandrashekhar, J

Bench : Single Bench

Advocate : Amit Kumar Das, for the Appellant; Rajesh Shankar, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

S. Chandrashekhar, J—Seeking quashing of order contained in letter dated 27.5.2013 with a further prayer for quashing tender notice dated 22.6.2013 for supply of commercial cars, the present writ petition has been filed. At the outset, the learned counsel appearing for the petitioner submits that in so far as, the prayer seeking quashing of tender notice dated 22.6.2013 is concerned, it does not survive because the tender has been finalised and supplies have already been made however, in so far as, the order of blacklisting is concerned, the issue is still alive. It is stated that pursuant to advertisement dated 29.7.2009, the petitioner's offer was found lowest and accordingly, accepted vide letter dated 31.8.2012. The respondents used to issue work order from time to time for supply of vehicles and the petitioner had been successfully supplying vehicles to the department and there was no complaint against the petitioner in the past. It appears that vide letter dated 28.12.2012, the petitioner was directed by the respondent-Additional Project Director, Jharkhand State Aids Control Society to show-cause why appropriate action be not taken against it for not providing vehicle. On 7.1.2013 the proprietor of the petitioner-company submitted its reply specifically denying that no work order was issued to him for supply of vehicle.

Moreover, on 11.12.2012, his father died and as such he informed the department that he would not be able to provide vehicle for the period between 11.12.2012 and 23.12.2012 however, vide letter dated 27.5.2013, the petitioner was informed that his agreement was cancelled and the firm has been blacklisted.

2. A counter-affidavit has been filed raising a preliminary objection that the case involves factual dispute which cannot be adjudicated in the writ petition and appropriate remedy is before the competent civil court. It is stated that several complaints were received against the petitioner's firm which caused difficulty in completion of work in time and several warnings were issued to the petitioner however, the petitioner did not improve its service. Accordingly, a show-cause notice for cancellation of the agreement was issued to the petitioner for breach of terms and conditions of the agreement. The agreement provides an arbitration clause and therefore, the writ petition is not maintainable on the ground of availability of the alternative remedy.

3. I have carefully considered the submissions of the learned counsel appearing for the parties and perused the documents on record.

4. A perusal of the show-cause notice dated 28.12.2012 indicates that it is confined to non-supply of vehicles pursuant to office order dated 19.12.2012. The proprietor of the petitioner-company submitted his reply on 7.1.2013 stating that he never received any instructions, least the office order dated 19.12.2012. Due to death of his father on 11.12.2012, he was at his residence between 11.12.2012 and 23.12.2012 and during this period he has neither received any oral order nor office order dated 19.12.2012. Thereafter also, the respondents continued issuing work order to the petitioner and in compliance thereof the petitioner provided vehicles to the respondents. In paragraph No. 9 of the writ petition, the petitioner has asserted that no work order was given to him and he cannot be forced to provide vehicle without any work order. In reply, the respondents have merely denied the allegations in paragraph No. 9 of the writ petition and asserted that the factual dispute between the parties cannot be decided in the writ petition. The respondents have not produced any evidence that letter dated 19.12.2012 was in fact served upon the petitioner. Moreover, before putting the petitioner namely, M/s. A.K. Travels in the "blacklist" category, no separate notice was issued to the petitioner. The learned counsel appearing for the petitioner has submitted that the period of agreement has already expired and thus, the prayer in so far as, seeking quashing of order, terminating the agreement is concerned, it has become infructuous.

5. In so far as, the order of "blacklist" as contained in letter dated 27.5.2013 is concerned, I am of the opinion that since show-cause notice dated 28.12.2012 is confined to non-supply of vehicle pursuant to office order dated 19.12.2012 only and no separate notice for blacklisting petitioner's firm has been issued by the respondents, the said part of the order is liable to be quashed. It is well settled that any action taken beyond the show-cause notice is not sustainable in law. Without seeking explanation from the petitioner why it should not be put under

"blacklist" category, a decision could not have been taken by the respondent-authority. In view of the aforesaid facts and circumstances of the case, this writ petition is partly allowed and the order of blacklisting contained in order dated 27.5.2013 is hereby quashed.