

(2012) 02 CHH CK 0078
In the Chhattisgarh High Court
Case No : Writ Petition (C) No. 7795 of 2011

B. Himmatlal Agrawal

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 07-02-2012

Acts Referred:

Citation : (2012) 3 BC 827 : (2012) 2 CGBCLJ 101

Hon'ble Judges : Sunil Kumar Sinha, J; R.S. Sharma, J

Bench : Full Bench

Advocate : Renu Kochar, for the Appellant; A.S. Kachhawaha, Dy. Advocate General, for the Respondent

Final Decision : Allowed

Judgement

1. The petitioner was registered as Clause A-5 contractor. It was awarded contract for construction and maintenance of certain roads under Pradhan Mantri Gramin Sadak Yojna (PMGSY) and an agreement for package CG 15-50 bearing No. 3/PIU-3/2007-08 was entered into on 5.3.2008. On account of non-completion of work in time, many notices were issued and after the last notice dated 20.5.2011, the contract was terminated under Clause 52.2 of the agreement on 9.9.2011 and Bank guarantee was invoked. The petitioner was then served with the impugned order dated 9.12.2011 (Annexure-P-1) and registration of the petitioner was cancelled under Clause 4.2 of the special conditions of the Contract and security deposit of the petitioner was forfeited.

2. Mrs. Renu Kochar, learned Counsel for the petitioner, argued that the impugned order, relating to cancellation of the registration, was passed in utmost violation of principles of natural justice as before passing the impugned order no opportunity of hearing was granted to the petitioner.

3. On the other hand, Mr. A.S. Kachhawaha, learned Dy. Advocate General appearing on behalf of the State, opposed these arguments and contended that since the contract awarded to the petitioner was cancelled as per Clause 52.2 of

the agreement, therefore, the registration was cancelled as per Clause 4.2 of the special conditions of contract and as such no opportunity of hearing was required.

4. We have heard learned Counsel for the parties at length and have also perused the records of the writ petition.

5. Clause 52.2 of the agreement deals with fundamental breaches of contract. Clause 4.2 of special conditions of contract provides that if a contractor commits fundamental breach (reference Sub-clauses 52.1 and 52.2 of Clause 52 (termination of General Conditions of contract), the contract shall not only be terminated but the contractor's registration shall also be cancelled permanently and such information shall also be circulated to all the departments of the State of Chhattisgarh and to all the States of the country. Mr. Kachhawaha has argued that since the word "shall" is used in Clause 4.2, therefore, the cancellation of registration is an essential consequence of the termination of contract and no show cause or opportunity of hearing was required before termination. Clause 4.2 is an enabling clause. It gives jurisdiction to the employer to cancel the registration on termination of the contract, on account of fundamental breach referred to in Sub-clauses 52.1 and 52.2 of Clause 52 of General Conditions of Contract. But it does not mean that before passing such an order, the authorities would not observe the fundamental principles of natural justice. This clause provides for circulation of the information of cancellation to all departments of State of Chhattisgarh and to all the States in the country. This shows that the termination has the effect of suffering civil consequences and the fair play in action requires that no such order which has the effect of suffering civil consequences should be passed without awarding an opportunity of hearing to the person concerned.

6. In *Raghunath Thakur Vs. State of Bihar and Others*, the Supreme Court held that the order of blacklisting has the civil consequence for future business of person concerned and the person affected by order has right of being heard and making representations against order even though rules do not provide so expressly.

7. In *Swadeshi Cotton Mills Vs. Union of India (UOI)*, the Supreme Court discussed at length the meaning of natural justice and observed that:

The phrase is not capable of static and precise definition. It cannot be imprisoned in the straitjacket of a cast iron formula. Historically "natural justice" has been used in a way which implies the existence of moral principles of self-evident and unarguable truth. "Natural Justice" by Paul Jackson, 2nd ED., page 1. In Course of time Judges nurtured in the traditions of British Jurisprudence, often invoked it in conjunction with a reference to "equality and good conscience". Legal experts of earlier generation did not draw any distinction between "natural justice" and "natural law". "Natural Justice" was considered as "that part on natural law which relates to the administration of justice."

8. It is, therefore, clear that before passing any order against the interest of a

person, the fundamental principle is that he should be given a proper opportunity of hearing and to show cause as to why such order should not be passed. In the instant case, no opportunity of hearing was given to the petitioner before passing the impugned order of cancellation of registration and forfeiture of security deposit. Therefore, the order was passed without complying the principles of natural justice, and thus, the same cannot be sustained.

9. In the result, the writ petition is allowed and the impugned order dated 9.12.2011 (Annexure P-1) is quashed accordingly. No order as to cost.