

(1980) 09 DEL CK 0032

In the Delhi High Court

Case No : Civil Writ Appeal No. 1743 of 1979

Bhim Sain

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 26-09-1980

Acts Referred:

Citation : AIR 1981 Delhi 260 : (1981) RLR 52

Hon'ble Judges : B.N. Kirpal, J

Bench : Single Bench

Advocate : P.N. Kumar and M. Chandra Sekharan, for the Appellant;

Judgement

B.N. Kirpal, J.

(1) Petitioner was a contractor who submitted a tender for a certain contruction. It was to remain open for 60 days from 19.9.78. His tender was lowest but was not accepted. Instead he was asked to extend validity till 19.12.78 which he agreed. But then on 30.11.78, he found steep rise of cost of materials and withdrew the offer. On 2.12.78, Govt. informed the Xen in charge that petitioner"s offer was accepted. Petitioner had deposited earnest money from which Govt. could deduct 10% for any default of petitioner. This 10% was deducted and the rest was refunded. After 6 months on 20.6.79, a memo. was issued to the petitioner that by his withdrawal he had acted in a un-business like manner and he should show-cause why his name should not be removed from the approved list. He gave a detailed reply adding that the fact of acceptance of his tender was never communicated to him The Govt. then passed an order of black-listing him for 2 years. He challenged this order by petition U/Art. 226. Judgment para 11, on words is :

(2) It is now settled law that before a person can be black-listed he is entitled to be heard. The leading authority on this point is the case of Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and Another, . It was, inter alia, observed by the Supreme Court in that case as under : "Blacklisting has the

effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for purposes of gains. The fact that a disability is created by the order of blacklisting indicates that the relevant authority is to have an objective satisfaction. Fundamentals of fair play require that the person concerned should be given an opportunity to represent his case before he is put on the blacklist."

(3) It follows from the reading of the aforesaid passage that the satisfaction of the relevant authority has to be objective and not subjective. In that very case it has also been observed that "the order of black-listing has the effect of depriving a person of equality of opportunity in the matter of public contract. A person who is on the approved list is unable to enter into advantageous relations with the Government because of the order of blacklisting. A person who has been dealing with the Government in the matter of sale and purchase of materials has a legitimate interest or expectation. When the State acts to the prejudice of a person it has to be supported by legality". It has no doubt been held that the State is free to choose any person with whom it wishes to enter into contract. No person has a fundamental right for insisting that the State must enter into a contract with him. Never the less a person has a right to claim equal treatment to enter into a contract.

(4) The aforesaid right of equal treatment cannot be taken away by the State acting in an arbitrary manner. By arbitrarily blacklisting a contractor, the effect would be that he is deprived of an equal opportunity of being able to compete with other tenderers. It is true that the order of black-listing has been passed after giving an opportunity to show cause to the petitioner. A mere formal compliance with the requirement of law of giving an opportunity cannot offer real justice to the petitioner if the order which is passed is arbitrary. It has been held by the Supreme Court in the case of *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, that the action of the Executive Government must be informed with reason and should be free from arbitrariness. It was observed by the Supreme Court as under :

"IT is indeed unthinkable that in a democracy governed by a rule of law the executive Government or any of its officers should possess arbitrary power over the interests of the individual. Every action of the executive Government must be by informed reason and should be free from arbitrariness. That is the very essence of the rule of law and its bare minimal requirement. And to the application of this principle it makes no difference whether the exercise of the power involves affection of some right or denial of some privilege".

It must follow, Therefore, that if the decision which is arrived at by the Government is arbitrary, and the decision not being objective then as held by the Supreme Court in *M/s Eursian Equipment case (Supra)*, the Court under Article 226 of the constitution would have the jurisdiction to strike down such an arbitrary order.

(5) The next question which would arise for consideration is as to whether in the present case the order which was passed was arbitrary or not. I have no manner of doubt that the impugned order was completely arbitrary. In the conditions contained in the invitation of tender it was specifically stated that in the event of default by the tenderers, they would be liable to forfeit 10 per cent of the security amount. No other liability could be fastened on the tenderers as per terms and conditions thereof. The petitioner was not obliged to have extended the validity of his tender after 18.11.1978. Had the petitioner been informed that in case he withdrew the offer he was liable to be black-listed, the petitioner would not have extended the validity of the tender. He was not obliged to extend the validity. He extended the validity of the tender on a specific request having been made to him by the respondents. By withdrawing the tender the petitioner had not committed breach of any contract. A contractor being black-listed on the ground of committing a breach of the contract is understandable, where, however, no concluded contract had come into existence, like in the present case, a tenderer cannot be black-listed if he is not informed previously that such a penalty can be imposed if the offer made by him is withdrawn. In other words a new condition, not previously known to tenderer, cannot be inserted, in effect, with retrospective effect in the invitation of tender. The new condition being that if the tender is withdrawn it would result in the tenderer being black-listed. The action of the respondents, Therefore, in removing the petitioner's name from the entitled Class Iii Contractors with the respondents is clearly arbitrary and unsupportable in law. Petition allowed.