
(1999) 09 PAT CK 0014
In the Patna High Court
Case No : C.W.J.C. No. 869 of 1998 (R)

Bombay Motor Stores

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 09-09-1999

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (1999) 3 PLJR 657

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : K.P. Sinha and S.K. Sinha, for the Appellant; A.K. Trivedi, for the Respondent

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—In this application the petitioner has prayed for issuance of appropriate writ for quashing the order dated 5th November, 97 passed by the respondent No. 3, communicated through General Officer Commanding, Ranchi, whereby the petitioner has been informed that the dealings by the Army Command with the petitioner-Firm has been stopped pursuant to the order passed by the Headquarter by letter dated 21.10.97. Petitioner's case, inter alia, is that the petitioner firm was registered by Army Command for supply of motor parts and equipments to the various units under the Army Command since 1960 and petitioner shifted his business from civil supply to army supply and the petitioner-firm thereafter has been dealing with the army supply since 1960 and onwards and the petitioner happens to be a registered contractor of the Army since then. It is stated that in course of time besides the petitioner other firms have also been registered as army contractors and all the firms used to get various types of orders including the petitioner because of the fact that during the period of last 30 years the Army Command has not put a Division at Ranchi and has a number of units under it and accordingly, all the army contractors are being provided with orders including the petitioner. It is stated by the petitioner

that all of a sudden from October, 97 the respondents stopped placing orders on the petitioner-firm and on an enquiry it transpired to the petitioner that the Army Command has directed the various units, which used to take supply from the petitioner-firm, to stop placing orders of their supply on the petitioner-firm. The petitioner, thereafter, made several representations and also wrote a letter dated 31st October, 97 to the respondent No. 2, General Officer Commanding, Infantry Division, in reply whereof the respondent No. 2, by impugned letter dated 5th November, 97, informed the petitioner that dealing of the petitioner-firm has been stopped in consequence with an order from the Headquarter. The petitioner therefore made a grievance that its only source of livelihood is based on supplying motor parts and equipments to the Army and the act of the respondents in blacklisting the petitioner amounts to prevent the petitioner from privilege and advantage of entering into a lawful relationship with the army command and this was done without any prior information and without giving any opportunity of hearing to the petitioner. It is further contended that the impugned order passed by the respondents debarring the petitioner from dealing with the business and allowing other registered firm to continue their business with the respondents amounts to total discrimination and violative of Articles 14 and 16 of the Constitution of India.

2. A counter affidavit has been filed in this case by the respondents stating, inter alia, that the respondents have taken no arbitrary action to delist the petitioner and the impugned order does not cast a stigma on the petitioner's career. It is stated that the order would not deprive the petitioner of its source of livelihood as the said order relates only to the army units within the jurisdiction of respondent No. 2. The petitioner is a businessman and the order of the respondents in no way debarring it from doing business with the public at large and other organisation including the army units not within the jurisdiction of the respondent No. 2. The respondents contended that the petitioner cannot as a matter of right demand to do business with the army authority, if it does not fulfil the criteria for doing the business. It is further stated in the counter affidavit that any order delisting the supply is based on factual and definable parameter in the interest of natural justice and fair play. The performance of the petitioner was very poor and the petitioner was not able to stock a single supply order during the period of 9 months.

3. I have heard Mr. Kameshwar Prasad, learned Sr. counsel appearing for the petitioner and Mr. A.K. Trivedi, learned SCCG.

4. Mr. Kameshwar Prasad, learned Sr. Counsel assailed the impugned order only on the sole ground that before stopping and depriving the petitioner-firm in dealing with the business with the respondents at least an opportunity ought to have been given to the petitioner to submit his explanation on the reasons for which the respondents decided to delist the petitioner. Learned Counsel put heavy reliance on the decision of the Supreme Court in the case of Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and Another, .

5. Before appreciating the contentions made by the Learned Counsels, it would be useful to quote hereinbelow the impugned order by which the petitioner is aggrieved :

M/s Bombay Motor Stores, Main Road Ranchi. FWD of Tender Enquiry

1. Ref your letter No. Nil dt. 31 Oct. 97

2. Dealing with your Firm has been stopped in consonance with HQ 26 Inf Div letter No. 2011/6/Q2 dt 21 Oct 97 please.

Yours faithfully, Sd/ H.C. Chawla Col Commanding Officer

6. From the affidavits filed by the parties, the admitted facts are that the petitioner has been dealing with the army since 1960 and the petitioner happens to be a registered contractor of the Army since then. It is also admitted fact that besides the petitioner other firms have also been registered as Army contractors and all the firms used to get various types of orders including the petitioner because of the fact that during the period of last 30 years the Army Command has become a Division at Ranchi and has a number of units under it and accordingly all the army contractors are being provided with the orders including the petitioner. The petitioner's case is that in the month of October, 97 all of a sudden the respondents stopped placing orders on the petitioner-firm. The petitioner then wrote a letter dated 31st October, 97 requesting the respondent No. 2 to at least disclose the reasons as to why the respondents have stopped dealing with the petitioner. In response to that letter the respondents issued the impugned letter informing the petitioner that dealings with the petitioner-firm has been stopped. The letter dated 21st October, 1997, on the basis of which the impugned letter was issued, has neither been supplied to the petitioner nor has been produced by the respondents in this Court alongwith the counter affidavit. The respondents have stated in the counter affidavit that the impugned order depriving the petitioner from doing business relates to only the army unit within the jurisdiction of respondent No. 2 and the petitioner has not been deprived of from doing business with the public.

7. From perusal of the entire counter affidavit, it transpires that it has not been disputed by the respondents that before delisting the petitioner any explanation was called for or the petitioner was called upon by a notice to show cause or to give explanation as to why it should not be delisted and that transaction should not be stopped with the respondents. As a matter of fact, by the impugned letter the petitioner has been deprived of or blacklisted from dealing with any transaction of sale and purchase with the respondents.

8. It is well settled that exercise of executive power by the State is subject to Part III of the Constitution. Article 14 speaks equality before law and equal protection of laws. Equality of opportunity should apply to matter of public contracts. The State has the right to trade but it has also duty to observe equality. The Government cannot choose to exclude person by discrimination.

The order of blacklisting 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 black-listing. A person who has been dealing with the Government in the matter of sale and purchase of materials has a legitimate interest or expectation.

9. Mr. Kameshwar Prasad, learned Sr. counsel, put heavy reliance on the decision of the Apex Court in the case of E.E. & C. Ltd. (supra). In that case the tender of the petitioner for purchase of cinchona from the State Govt. was accepted and the petitioner entered into a contract with the State Government between the years 1966 and 1971. However, in the year 1973 the petitioner submitted tender and although his offer was highest, the State Government rejected the tender and the petitioner subsequently learnt that the respondents black-listed the petitioner. The respondent-State alleged that the petitioner is guilty of mis-declaration of goods in his export transaction and the Sales Committee of the State learnt from a separate letter from the Collector of Custom, Calcutta that the firm of the petitioner was involved in malpractices and his case was under investigation. The petitioner challenged the order by which it was blacklisted and the matter ultimately came to the Supreme Court. The Apex Court held that the blacklisting order does not pertain to any particular contract. The blacklisting orders involved civil consequences. It casts a slur. It creates a barrier between the persons blacklisted and the Government in the matter of transaction. The blacklists are "instrument of coercion". Their Lordship further observed :?

19. Where the State is dealing with individuals in transaction of sales and purchase of goods, the two important factors are that an individual is entitled to trade with the Government and individual is entitled to a fair and equal treatment with others. A duty to act fairly can be interpreted as meaning a duty to observe certain aspects of rules of natural justice. A body may be under a duty to give fair consideration to the facts and to consider the representations but not to disclose to those persons details of information in its possession. Some times duty to act fairly can also be sustained without providing opportunity for an oral hearing. It will depend upon the nature of the interest to be affected, the circumstances in which a power is exercised and the nature of sanctions involved therein.

20. 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.

10. In the case of Joseph Vilangandan Vs. The Executive Engineer, (PwD), Ernakulam and Others, , the Apex Court considered a similar question. In that case the appellant was a government contractor from 16 years. He was

executing major building contract. When a particular contract was not executed within time the Executive Engineer gave a notice to the contractor of depriving him as a defaulter from doing any contract. Their Lordships approved the earlier decision quoted above and held that fundamentals of fair play requires that the person concerned should be given an opportunity to represent his case before he is put on the blacklist.

11. Controversy in the instant case, therefore, narrows down into the issue whether such opportunity was given to the petitioner before issuing the impugned letter stopping all the dealings with the petitioner and thereby debarring him from doing business with the respondents. The answer to this question would be negative. As noticed above, admittedly, before issuing the impugned letter no notice was given nor any explanation was called for from the petitioner as to why he should not be debarred from doing any transaction with the respondents. From the impugned letter itself, it transpires that when the petitioner, by letter dated 31st October, 97 requested the respondents to disclose the reason why dealing with the petitioner was stopped, the respondents issued the impugned letter informing the petitioner that the dealing with the petitioner-firm has been stopped in consonance with the headquarter letter dated 21st October, 97. It is not the case of the respondents that the Headquarter took the decision and issued the letter dated 21st October, 97 after giving opportunity to the petitioner. In that view of the matter, I have no hesitation in holding that the decision of the respondents communicating to the petitioner by impugned letter is illegal, arbitrary and violative of principle of natural Justice. For the reasons aforesaid, this writ application is allowed and the impugned letter as contained in Annexure 1 is quashed. However, it is made clear that this order will not debar the respondents from taking a fresh decision and passing a fresh order after giving opportunity of hearing to the petitioner.