
(2014) 09 MEG CK 0019
In the Meghalaya High Court
Case No : WP (C) No. 309 of 2014

Chaitanya Projects Consultancy Pvt. Ltd.	APPELLANT
Vs	
State of Meghalaya	RESPONDENT

Date of Decision : 04-09-2014

Acts Referred:

Citation : AIR 2015 MG 3 : (2015) 3 BC 44

Hon'ble Judges : Uma Nath Singh, Acting C.J.

Bench : Single Bench

Judgement

Uma Nath Singh, Actg. C.J.

1. Heard learned counsel for the parties and perused the pleadings on record. Learned counsel for the State respondents prays for 2(two) weeks" time to file counter affidavit. However, learned Sr. counsel, Mr. S.P. Mahanta, assisted by Mr. R.R. Raj, learned counsel, appearing for the petitioner prays for interim protection during the pendency of this writ petition.

2. Mr. S.P. Mahanta, learned Sr. counsel, submitted that without providing adequate opportunity, by way of show cause, the petitioner company has been blacklisted and stopped from participating in tenders to be floated by the State Govt. Besides, the State Govt. has also recommended to the Union of India, Ministry of Road Transport & Highways, to pass similar order for blacklisting the petitioner in respect of its tenders all over the country. As per averments made in the writ petition, letters dated 24th July, 2013 (Reference No. PW/CE/NH/5/2006/117), 23rd August, 2013 (Reference No. PW/CE/NH/5/2006/117A), and 2nd December, 2013 (Reference No. PW/CE/NH/5/2006/118) reveal that the letter dated 23.08.2013 was surreptitiously sent to the petitioner in the 3rd week of August, 2014 after a year to hide the mistake and misconduct on the part of department without considering the reply to the show cause notice and also without application of mind. Besides, office memo (Annexure-16) regarding blacklisting of the petitioner company is of date 03.12.2013 whereas it has been shown to have been communicated on 23.08.2013, four months prior to the said

date, namely, 03.12.2013. Thus, the letter dated 23.08.2013 for blacklisting is arbitrary and unreasonable. It appears that the petitioner company is a reputed Consultancy Firm and after passing of the impugned order of blacklisting, it has suffered irreparable loss and damage to its reputation.

3. The area of consultancy of the petitioner company as provided in para 2 of the writ petition is reproduced as under:

2. That the petitioner states that the petitioner's company is incorporated under the provisions of Company Act, 1956 and is a premier Consulting Engineering Company in India precisely for providing Civil Engineering Consultancy to Government and specialized construction services to Semi Government and Private Organizations. Petitioner is an ISO-9001:2008 Certified Company, is a leading international Consulting Organisation specializing in Highways & Bridges, Structures, Urban and Regional Infrastructure Development, Water Supply, Water Resources Development and Management, Traffic and Transportation, Institutional Strengthening and Capacity Building, and, Socio-Economic and Environmental Impact Assessment.

4. Learned Sr. counsel for the petitioner Mr. S.P. Mahanta, submitted that apart from consultancy services being offered and rendered on payment, the company used to provide free consultancy to the State Govt. Learned Sr. counsel, referred to a letter dated 15-2-2010 (Annexure-5) to show that on assessment of performance of the company in respect of its consultancy services, it has been rated as "Better" as under:

5. It is also a contention of learned Sr. counsel that the company was blacklisted by the order dated 17th June, 2013 (Annexure-11) which was withdrawn later by the order dated 24th July, 2013 (Annexure-13). The letter dated 17th June, 2013 reads as:

"GOVERNMENT OF MEGHALAYA OFFICE OF THE CHIEF ENGINEER, PWD (ROADS)
NATIONAL HIGHWAY, MEGHALAYA, SHILLONG

NO. PW/CE/NH/5/2006/114

Dated 17th June, 2013

To,

M/s. Chaitanya Project Consultancy Pvt. Ltd. C-5, 2nd Floor, RK Tower, Plot No. 21-22, Sector-4 Vaishali, Ghaziabad (UP)-201012

Sub Blacklisting of your firm etc.

Ref This Office's Letter No. PW/CE/NH/5/2006/113 Dated Shillong 23rd May, 2013

Sir,

With reference to the above subject and letter under reference, this is to inform

you that as you have not responded to the letter your firm M/s Chaitanya Project Consultancy Pvt. Ltd. is blacklisted in the State of Meghalaya for poor performance and is debarred from future participation in any tender for a period of 5(five) years.

Yours faithfully, Sd/- Chief Engineer NH PWD (Roads) Meghalaya, Shillong."

6. The withdrawal letter dated 24th July, 2013 is also reproduced herein below:

"GOVERNMENT OF MEGHALAYA OFFICE OF THE CHIEF ENGINEER, PWD (ROADS)
NATIONAL HIGHWAY, MEGHALAYA, SHILLONG

NO. PW/CE/NH/5/2006/117

Dated 24th July, 2013

To

M/s. Chaitanya Project Consultancy Pvt. Ltd. C-5, 2nd Floor, RK Tower, Plot No. 21-22, Sector-4 Vaishali, Ghaziabad (UP)-201012

Sub Consultancy works awarded by State PWD thereof.

Ref No. CPC/Gen/213/32 Dt. 17.07.2013

Sir,

With reference to the subject mentioned above, I am to state that through some clerical error the show cause notice and the impugned order was dispatched on the same date and the same envelop the error is regretted. However, your request for reply to the show cause notice is hereby accepted and your early reply is awaited.

Moreover, in addition to the above, you are requested to attend to all the observations raised for various consultancy projects undertaking by your Firm as shown below:-

1. 2-laning of Nongstoin-Domiasiat road via Wahkaji = Vide letter No. PW/CE/NH/SARDP/18/2009/67 Dt. 8th March, 2013 (copy enclosed).
2. 2-laning of Mawthabah-Wahkaji-Phlangdillion-Ranikor Road Phase-A(Tentative length = 35.00 KM) = vide letter No. No. PW/CE/NH/SARDP/11/2010/44 Dt. 8th March, 2013 (copy enclosed).
3. 2-laning of mawshynrut-Athiabari (Harim) road Phase-B (Tentative length = 38.00 Km) =vide letter No. PW/CE/NH/SARDP/19/2009/48 Dt. 29th November, 2013 (copy enclosed).

This is for your information and necessary action. Enclo: as above.

Yours faithfully, Sd/- Chief Engineer NH PWD (Roads) Meghalaya, Shillong."

7. Mr. S.P. Mahanta, learned Sr. counsel, submits that after withdrawal of the

blacklisting order, the company submitted its detailed response but without giving proper consideration to that, by a similar order like the one dated 17th June, 2013, the company vide the letter dated 23rd August, 2013 has been again blacklisted. For ready reference, the letter is also given below.

"GOVERNMENT OF MEGHALAYA OFFICE OF THE CHIEF ENGINEER, PWD (ROADS)
NATIONAL HIGHWAY, MEGHALAYA, SHILLONG

NO. PW/CE/NH/5/2006/117A

Dated 23rd August, 2013

To

M/s. Chaitanya Project Consultancy Pvt. Ltd. C-5, 2nd Floor, RK Tower, Plot No. 21-22, Sector-4 Vaishali, Ghaziabad (UP)-201012

Sub Blacklisting of your firm etc.

Ref No. PW/CE/NH/5/2006/117 Dt. 24.07.2013.

Sir,

With reference to the subject mentioned above, kindly refer to this office letter No. under reference regarding the reply to the show cause notice. In this connection, I am to inform you that as you have not been response to the letter, therefore your Firm M.S. Chaitanya Projects Consultancy Pvt. Ltd. Is blacklisted in the State of Meghalaya for poor performance and is debarred from future participation in any tender for a period of 5(five) years.

Yours faithfully, Sd/- Chief Engineer NH PWD (Roads) Meghalaya, Shillong."

8. Mr. S.P. Mahanta, learned Sr. counsel, also pointed out that even thereafter vide the letter dated 2nd December, 2013, payment of the company has been cleared.

9. On the other hand, Mr. K. Khan, Addl. Sr, GA, while opposing the contentions of Mr. S.P. Mahanta, argued that since the company failed to perform and discharge its obligation it has been blacklisted. According to him, that is also clearly evident from the letter dated 23rd May, 2013 (Annexure-10) which reads as under:

"GOVERNMENT OF MEGHALAYA OFFICE OF THE CHIEF ENGINEER, PWD (ROADS)
NATIONAL HIGHWAY, MEGHALAYA, SHILLONG

NO. PW/CE/NH/5/2006/113

Dated 23rd May, 2013

To

M/s. Chaitanya Project Consultancy Pvt. Ltd. C-5, 2nd Floor, RK Tower, Plot No. 21-22, Sector-4 Vaishali, Ghaziabad (UP)-201012

Sub Consultancy works awarded by State PWD thereof.

Sir,

With reference to the subject mentioned above, it is seen that your Firm is defaulting in submission of all the DPF (Draft/Final) even extending beyond 18 (eighteen) months from the target date of completion. Out of 4(four) Consultant works, Final DPR for only 2 (two) projects have been received and only Draft DPR for remaining two is received much after the lapse of the target date of completion. The observation/comments of the PWD on the Draft DPR though sent to your firm for your response is awaited. One of the Projects for which the Final DPR submitted is "2-lane of Nongstoin-Ronjeng-Tura section and during execution of this project a lot of discrepancies in the DPR have surfaced leading to increase in BOQ and addition financial implication which implies that their survey & investigation work is not based on any Engineering and that the Firm have no technical expertise.

With regard to the other Consultancy work for which Final DPR is submitted, the State PWD had sought certain modification but your Firm is declining to make further modifications. The State PWD had further directed your Firm but there was no response till date.

In this regards, show cause notice is hereby given as to why your firm should not be blacklisted and debarred from future participation in tenders. Your reply should reach within 15 days.

Please treat this as URGENT and final.

Encl: Statement of Consultancy work.

Yours faithfully, Sd/- Chief Engineer NH PWD (Roads) Meghalaya, Shillong."

10. It is also the submission that in the reply dated 29th July, 2013, (Annexure-14) submitted by the petitioner firm there is no reference to the points of objection raised by the State Government regarding the quality of Consultancy Services provided by the company.

11. On a careful and anxious consideration given to the rival submissions, I am of the view that, prima facie, the petitioner company is able to make out a case for grant of indulgence by this Court in so far as the prayer for interim relief/protection is concerned. The Hon"ble Apex Court in various judgments has enunciated and settled the legal position regarding blacklisting of company in order to debar from participating in Govt. contracts and tenders. In a three Judge Bench judgment of the Hon"ble Court in the matter of Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and Another, , it has been held that a party which is blacklisted is entitled to get a notice to be heard before its name is put on blacklist. The Government is a Government of laws and not of men. The democratic form of Government demands equality and absence of arbitrariness and discrimination in terms of Government transactions. The activities of

Government have a public element, and therefore, there should be fairness and equality. The State need not enter into any contract with anyone but if it does so, it must do so fairly, without discrimination, and without unfair procedure. Reputation is a part of a person's character and personality. Blacklisting tarnishes one's reputation.

12. In para 20 of the judgment, the Hon'ble Court has observed 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."

13. In another judgment, namely Raghunath Thakur Vs. State of Bihar and Others, , it has been held as under:

" Indisputably, no notice had been given to the appellant of the proposal of blacklisting the appellant. It was contended on behalf of the State Government that there was no requirement in the rule of giving any prior notice before black-listing any person. In so far as the contention that there is no requirement specifically of giving any notice is concerned, the respondent is right. But it is an implied principle of the rule of law that any order having civil consequence should be passed only after following the PG NO 869 principles of natural justice. It has to be realised that black-listing any person in respect of business ventures has civil consequence for the future business of the person concerned in any event. Even if the rules do not express so, it is an elementary principle of natural justice that parties affected by any order should have right of being heard and making representations against the order. In that view of the matter, the last portion of the order in so far as it directs black-listing of the appellant in respect of future contracts, cannot be sustained in law. In the premises, that portion of the order directing that the appellant be placed in the black-list in respect of future contracts under the Collector is set aside. So far as the cancellation of the bid of the appellant is concerned, that is not affected. This order will, however, not prevent the State Government or the appropriate authorities from taking any future steps for blacklisting the appellant if the Government is so entitled to do so in accordance with law, i.e. giving the appellant due notice and an opportunity of making representation. After hearing the appellant, the State Government will be at liberty to pass any order in accordance with law indicating the reasons therefor. We, however, make it quite clear that we are not expressing any opinion on the correctness or otherwise of the allegations made against the appellant. The appeal is thus disposed of.

14. Thus, it has been clarified that as per implied Principle of Rule of Law, any order having civil consequences should be passed only after following the principle of natural justice because it is bound to affect future business of the

party.

15. In a later judgment in case of Patel Engineering Limited Vs. Union of India (UOI) and Another, , it has been held that the only legal limitation upon exercise of power of blacklisting is to act fairly and rationally, without being arbitrary. In the instant case as per averments made in the petition and also from the contents of annexures thereto, it is noticeable that the order of blacklisting was passed, first, on 17-6-2013 in a hasty manner which was withdrawn soon thereafter on 24-7-2013. Again, without properly considering the reply given by the petitioner company, a similar order of blacklisting the company was passed on 23-8-2013. Besides, that order was communicated to the petitioner after about one year in the third week of August, 2014. Not only that, the State Govt. also recommended to the Union of India to pass a similar order blacklisting the petitioner company and prohibiting its participation in any of its tenders throughout the country. In view of all the aforesaid discussions, I stay the operation of impugned order dated 23-8-2013 and also the recommendation of the State Government to the Union of India to pass a similar order in respect of participation of the petitioner in its tenders throughout the country. However, since this writ petition is still to be heard on merit, participation of petitioner company in government tenders shall be subject to the outcome of this writ petition. List this matter after 2(two) weeks for filing counter affidavit as prayed for by learned counsel for respondents.