
(2017) 05 JH CK 0016
In the Jharkhand High Court
Case No : 1698 of 2015

Chakravarti Nath Sahu

APPELLANT

Vs

The State of Jharkhand & and another

RESPONDENT

Date of Decision : 08-05-2017

Acts Referred:

Constitution of India, Article 19(1)(g) -
Protection of certain rights regarding freedom of speech, etc

Citation : (2017) 05 JH CK 0016

Hon'ble Judges : Aparesh Kumar Singh

Bench : SINGLE BENCH

Advocate : Abhay Kumar Mishra, Bhola Nath Ojha, Bhardwaj, Ajit Kumar

Final Decision : Allowed

Judgement

1. Heard learned counsel for the petitioner and the Respondent State.
2. Petitioner has been blacklisted as per the communication bearing no. 709 dated 14.7.2014 (Annexure-23) in respect of the supplies to be made under the Jharkhand Construction Work Welfare Board. By the show cause at Annexure-15 dated 27.5.2014 bearing no.717 issued by the Deputy Labour Commissioner, Ranchi, petitioner was asked to explain as to why his bills be not withheld; remaining supplies be not stopped and he be prohibited from participating in any future tender under the Department on failure to supply good of quality specification in the Garhwa Range relating to the Welfare Board. Petitioner submitted his response on 9.6.2014 (Annexure-14) which did not satisfy the Respondents. The impugned order accordingly stated that supplies in Garhwa District were inquired through the Committee comprising the Labour Enforcement Officer and BOC Clerk. The committee compared the supplies made with the samples submitted earlier and Assistant Labour Commissioner reported that they were of inferior quality. Petitioner was informed earlier through letter dated 24.6.2014 to make supplies as per required specification regarding which he again failed to make any communication. It was therefore found that supplies

made in respect of the project for welfare of the labourers was completely in deviance with the quality specification. Accordingly, decision was taken to blacklist the petitioner in respect of any supply relating to future project under the Welfare Board.

3. Learned counsel for the petitioner besides laying challenge to the impugned decision on merits has taken a legal point that the impugned decision blacklisting / debarring the petitioner from all future tenders under the Welfare Board of the Department for indefinite length of time is in teeth of the ratio laid down by the Hon'ble Supreme Court in the case of *Gorkha Security Services Vrs. Government (NCT of Delhi) & others* reported in (2014) 9 SCC 105 (para 21 and 22 thereof). It is submitted that the impugned notice did not even specify the quantum of punishment proposed to be inflicted apart from giving details of the allegations and the inquiry report to enable the petitioner to adequately respond to the charge. The show cause notice also did not conform to the mandatory ingredients as laid down in the case of *Gorkha Security Services(supra)* at Para 21 and 22 of the report. Therefore, petitioner continues to suffer for almost 3 years on account of the order of blacklisting operating against him. This has entailed adverse civil consequences in the matter of carrying on his business in exercise of its Fundamental Right guaranteed under Article 19(1)(g) of the Constitution of India not only in respect of the Respondent Welfare Board but it acts as disqualification in other tenders also with other Instrumentality or agency for indefinite period of time. Petitioner has therefore sought interference under writ jurisdiction of this Court.

4. Learned counsel for the Respondent State has strongly defended the impugned order. She submits that conditions enumerated as per the work order dated 6.2.2013(Annexure-4) read with short term tender notice dated 20.10.2012(Annexure-1) enumerated at para 9 of the counter affidavit were breached by the petitioner. Time was essence of the contract and petitioner was required to ensure that articles were in running conditions. Not only delay was made in the supplies, petitioner did not even inform the Respondents in advance to enable them to make alternative arrangement because the articles were to be distributed in a pre-scheduled public programme, where all the beneficiaries were invited to receive their respective kits. In such circumstance, a warning letter vide letter no. 26.12.2013 was issued directing the petitioner to comply with the work order in time, failing which, he would be held ineligible to participate in future tender. Petitioner was again given chance. This time the material were supplied in time but found to be inferior in quality in comparison with the samples. In this regard, complaints were received from the beneficiaries where after petitioner was again asked to show cause vide Annexure-13 and Annexure-15 dated 27.5.2014. Letter dated 9.6.2014 submitted by the petitioner in response in fact accepted the charges. The order of blacklisting was passed accordingly based upon the inquiry report submitted by the Inquiry Committee on the inquiry conducted on the complaint lodged by the beneficiaries. Irregularities and deficiencies in service on the part of the petitioner has

maligned the image of the entire department and has created trouble and harassment to the beneficiaries also. Even on the date of filing of the counter affidavit damaged articles were not repaired / changed in Gumla District. Several opportunities were given to the petitioner to improve but he

failed to improve. Therefore, the impugned decision was taken. Learned counsel for the Respondent State has however not been able to countenance the legal submission made on behalf of petitioner about the purport of the impugned order which operates for indefinite length of time, in the light of ratio laid down by the Hon''ble Supreme Court in the case of Gorkha Security Services(supra).

5. Considered the submission of the parties and the relevant material facts pleaded on their behalf. I have also gone through the impugned order. Perusal of the show cause notice at Annexure-15 do not indicate the quantum of punishment to be imposed in case the defaults / breaches complained of are not satisfactorily explained. The Hon''ble Supreme Court in the case of Gorkha Security Services(supra) at para 21 and 22 of the report quoted herein under laid down the necessary ingredients of the show cause which should precede the order of blacklisting :-

Para 21:- The central issue, however, pertains to the requirement of stating the action which is proposed to be taken. The fundamental purpose behind the serving of show-cause notice is to make the noticee understand the precise case set up against him which he has to meet. This would require the statement of imputations detailing out the alleged breaches and defaults he has committed, so that he gets an opportunity to rebut the same. Another requirement, according to us, is the nature of action which is proposed to be taken for such a breach. That should also be stated so that the noticee is able to point out that proposed action is not warranted in the given case, even if the defaults/breaches complained of are not satisfactorily explained. When it comes to blacklisting, this requirement becomes all the more imperative, having regard to the fact that it is harshest possible action. Para 22:-The High Court has simply stated that the purpose of show-cause notice is primarily to enable the noticee to meet the grounds on which the action is proposed against him. No doubt, the High Court is justified to this extent. However, it is equally important to mention as to what would be the consequence if the noticee does not satisfactorily meet the grounds on which an action is proposed. To put it otherwise, we are of the opinion that in order to fulfil the requirements of principles of natural justice, a show- cause notice should meet the following two requirements viz: (i) The material/grounds to be stated which according to the department necessitates an action; (ii) Particular penalty/action which is proposed to be taken. It is this second requirement which the High Court has failed to omit. We may hasten to add that even if it is not specifically mentioned in the show-cause notice but it can clearly and safely be discerned from the reading thereof, that would be sufficient to meet this requirement."

6. A show cause notice should precede the order of blacklisting and should

satisfy the two requirement:-

(i) The material/grounds to be stated which according to the department necessitates an action; (ii) Particular penalty/action which is proposed to be taken. 7. The proportionality of the punishment imposed in a matter relating to blacklisting was also under consideration in the case of Kulja Industries Limited Vrs. Chief General Manager, Western Telecom Project Bharat Sanchar Nigam Limited and others reported in (2014) 14 SCC 731 , relied upon by the petitioner where their Lordship has been pleased to hold as under :-

"Para 17. That apart, the power to blacklist a contractor whether the contract be for supply of material or equipment or for the execution of any other work whatsoever is in our opinion inherent in the party allotting the contract. There is no need for any such power being specifically conferred by statute or reserved by contractor. That is because "blacklisting" simply signifies a business decision by which the party affected by the breach decides not to enter into any contractual relationship with the party committing the breach. Between two private parties the right to take any such decision is absolute and untrammelled by any constraints whatsoever. The freedom to contract or not contract is unqualified in the case of private parties. But any such decision is subject to judicial review when the same is taken by the State or any of its instrumentalities. This implies that any such decision will be open to scrutiny not only on the touchstone of the principles of natural justice but also on the doctrine of proportionality. A fair hearing to the party being blacklisted thus becomes an essential precondition for a proper exercise of the power and a valid order of blacklisting made pursuant thereto. The order itself being reasonable, fair and proportionate to the gravity of the offence is similarly examinable by a writ court".

8. The order of blacklisting definitely entails adverse consequences and affects the Fundamental Right to carry on business. It can be subject to restriction but after giving due opportunity to any such agency whose acts are under scrutiny in matters of supplies / execution of the work under contract. On the conspectus of background facts, it is therefore clear that the impugned order of blacklisting for indefinite period of time cannot be sustained in the eye of law. The order of blacklisting has remained in effect for almost little less than 3 years by now.

9. In view of the discussion made and the reasons recorded herein above, the impugned order of blacklisting at Annexure-23 bearing no. 709 dated 14.7.2014 is quashed. However, Respondents are at liberty to pass a fresh order in accordance with law after due opportunity to the petitioner by a proper show cause notice containing the necessary ingredient of the charges and the proposed punishment sought to be imposed. The writ petition is allowed in the manner and to the extent indicated herein above.