

(2001) 06 SHI CK 0013

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 199 of 2001

Hony. Captain (Retd.) Onkar Singh

APPELLANT

Vs

H.P. Ex-Servicemen Co. and Others

RESPONDENT

Date of Decision : 19-06-2001

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 19, 21, 226

Citation : (2001) 3 ShimLC 95

Hon'ble Judges : C.K. Thakker, C.J.; Arun Kumar Goel, J

Bench : Division Bench

Advocate : Rajiv Sharma, for the Appellant; C.B. Barowalia, for the Respondent

Final Decision : Allowed

Judgement

C.K. Thakker, C.J.—Admitted. Mr. C.B. Barowalia, Advocate, appears and waives service of notice of admission on behalf of Respondents. In the facts and circumstances of the case, the matter is taken up for final hearing today.

2. This petition is filed by the Petitioner for quashing and setting aside the order at Annexure PA, dated March 12, 2001 by which the Petitioner was de-listed and was prevented from getting any load. By another order Annexure PB, dated March 13, 2001 the Petitioner was put in black list.

3. The case of the Petitioner was that he retired as an Honorary Captain from the Indian Army on July 30, 1990 and purchased a truck bearing registration No. HPN-949. According to him, he got his truck registered with H.P. Ex-Servicemen Corporation (Respondent No. 1 herein) vide Serial No. 000336 on June 16, 1998. The Petitioner also got his aforesaid truck registered with H.P. Ex-servicemen Truck Union, Barmana at Serial No., 000081 on July 3, 1999. In that capacity, he used to get load from the Respondents.

4. On March 12, 2001, an order (Annexure PA) was passed de-listing the truck No. HPN-949 of the Petitioner. It was stated by the Manager, H.P. Ex-Servicemen Corporation, Camp Office, Barmana that it had been reported by the guarantor of

truck No. HPN-949 that the truck had been sold. It was then stated that "in view of the above please stop giving load to above mentioned truck forthwith." It appears that on the next day, i.e. March 13, 2001, on the truck acknowledgment slip, an endorsement was made to the following effect: "Black List". The said action has been challenged by the present Petitioner. It has been submitted that before approaching this Court, a legal notice had been issued to guarantors as well as Respondents No.2 and 3. Since nothing was done by any of the authorities, he was constrained to approach this Court by invoking its jurisdiction under Article 226 of the Constitution.

5. We have heard the learned Counsel for the parties. It was contended by Mr. Rajiv Sharma, learned Counsel for the Petitioner that before de-listing the truck of the Petitioner, and before making an endorsement "black list", no show-cause notice was issued, no explanation was sought and no opportunity of hearing was afforded to him. The action was, therefore, in violation of principles of natural justice and fair play and deserves to be quashed and set aside. It was also submitted that Respondent No.1 can be said as "State" within the meaning of Article 12 of the Constitution and as such; it was expected to act fairly, justly and in accordance with law. It was submitted that the action taken, was violative of Articles 14, 19 and 21 of the Constitution. It was also urged that the action is mala fide and in colourable exercise of power inasmuch as the same has been taken at the instance of Respondent No. 3. It was also stated that before making an endorsement "Black List", an opportunity ought to have been afforded and the impugned order ought to have been passed after following principles of natural justice and by recording reasons and the order ought to have been intimated to the Petitioner.

6. On all these grounds, the learned Counsel submitted that the Petition deserves to be allowed by quashing and setting aside the impugned orders and by issuing appropriate directions to the Respondent-authorities.

7. Mr. Barowalia, for the Respondents, on the other hand, supported the orders passed and the action taken by the Respondent-authorities. It was submitted that so far as endorsement "Black List" is concerned it was made by a subordinate officer, who was not authorised to do so and it cannot be said to be lawful and it has no basis in so far as black listing is concerned. It was submitted that in the reply-affidavit, it was specifically stated that if the Petitioner is ready and willing to produce two guarantors, load supply will be given to him. It was, therefore, submitted that no illegality can be said to have been committed. He also submitted that the matter relates to contractual rights and obligations and the Petitioner ought not to have invoked the jurisdiction of this Court under Article 226 of the Constitution. He, therefore, submitted that the petition deserves to be dismissed.

8. Having heard the learned Counsel for the parties, in our opinion, the petition deserves to be allowed. Looking to both orders Annexures PA and PB, it is clear that the action has already been taken and the Petitioner was informed about

black listing. So far as the order dated March 12, 2001 (Annexure PA) goes, it is clear from reading of the order that on the basis of report by the guarantor of the truck bearing No. HPN-949, the Petitioner had been de-listed. Mr. Sharma is also right in contending that copy thereof ought to have been supplied to the Petitioner so as to enable him to take appropriate proceedings in accordance with law but no such copy was supplied to him.

9. The next order was virtually in consequence of the order Annexure PA dated March 12, 2001. Mr. Barowalia may be right in contending that such endorsement has not been made by a responsible officer of the Corporation. The fact, however, remains that the truck belonged to the Petitioner had already been de-listed on March 12, 2001 and hence the subsequent endorsement came to be made. In our opinion, before taking action in pursuance of Annexure PA, opportunity of hearing ought to have been afforded to the Petitioner.

10. In this connection, our attention was rightly invited to the following decisions:

1. Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and Another,
2. Joseph Vilangandan Vs. The Executive Engineer, (Pwd), Ernakulam and Others,
3. Raghunath Thakur Vs. State of Bihar and Others,

11. In all the above three cases, it has been held that in contractual matters, the jurisdiction of a Court under Article 226 of the Constitution is limited and it cannot compel any authority including the Government to enter into a contract with a particular person. The State has a right to enter into contract with any person. At the same time, however, it has to act fairly and it is not open to State to discriminate or take arbitrary action. In the above cases, an order of black listing was passed without affording the opportunity of hearing and the action was held to be illegal, unauthorised and violative of the principles of natural justice and fair play. In *Southern Painters v. Fertilizers and Chemicals Travancore Ltd. and Anr.* (1994) 2 SCC 694, it was held that before taking and action of de-listing, an opportunity of hearing ought to have been afforded to the Petitioner.

12. In *Liberty Oil Mills and Others Vs. Union of India (UOI) and Others*, it was also indicated by the Supreme Court that when an order was passed against a party, normally he must be intimated the reasons thereof so as to enable him to take appropriate proceedings in accordance with law. In the instant case, nothing has been done.

13. Even otherwise, looking to the petition, serious allegations have been levelled against Respondent No. 3, and though represented by a counsel, he has not filed any affidavit. It is also brought to our notice that the reply affidavit, which has been filed by the Respondents, cannot be said to be proper inasmuch as it has been filed by Lt. Col (Retd.) C.R. Chauhan, Chairman-cum-Managing Director, Ex-Service-men Corporation. The affidavit states that what was stated in paras 1 to 4 of the preliminary objections as well as paras 1 to 26 of the reply on merits are

true to the best of his personal knowledge. It is not stated as to how he has personal knowledge about what was stated in the reply.

14. Be that as it may, the action of the Respondent-authorities cannot be said to be in consonance with law and is violative of principles of natural justice and the orders Annexures PA & PB are liable to be quashed and set aside. The petition is accordingly allowed. It is, however, open to the Respondents to take any action in accordance with law. It goes without saying that Respondent No. 1 is State within the meaning of Article 12 and it will act in accordance with law without being influenced by the fact that for the ventilation of his grievances, the Petitioner has approached this Court.

15. In the facts and circumstances of the case, there will be no order as to costs.