

(2010) 10 MP CK 0073
In the Madhya Pradesh High Court
Case No : Writ Petition No. 5311 of 2009

Industrial Security Association

APPELLANT

Vs

State of M.P. and Another

RESPONDENT

Date of Decision : 04-10-2010

Acts Referred:

Constitution of India, 1950 — Article 12, 21

Citation : (2011) ILR (MP) 392 : (2011) 1 MPHT 89 : (2011) 1 MPJR 112 :
(2011) 1 MPLJ 359

Hon'ble Judges : Brij Kishore Dubey, J; A.K. Shrivastava, J

Bench : Division Bench

Final Decision : Allowed

Judgement

A.K. Shrivastava, J.

Heard finally.

Learned Counsel for the Petitioner confines his argument to relief No. 1 only, which reads thus:

1. Order of the Respondent to declare the Petitioner as a blacklisted may kindly be quashed.

The only contention, which has been put forth by Shri Vivek Mishra, learned Counsel for the Petitioner, is that the action of the Respondent No. 2 runs de hors to the maxim audi alteram Partem and the University (Respondent No. 2) has blacklisted the writ Petitioner without affording any opportunity of hearing.

In this context, he has invited our attention to the copy of the Newspaper "Dainik Bhaskar" dated 8-11-2009 (Annexure P/14), in which a news has been published that the Petitioner has been blacklisted.

Learned Counsel further submits that no order has been served or even if it is sent, it has not been received by the Petitioner.

Learned Counsel further argued that before casting stigma of blacklisting, it was incumbent upon the Respondent No. 2, who is a "State" and would come within the provision of the definition of "State" enshrined under Article 12 of the Constitution of India, to provide proper opportunity of hearing to the Petitioner. Hence, the relief prayed be allowed.

On the other hand, Shri Choubey, learned Counsel for Respondent No. 2 has supported the action of Respondent No. 2 blacklisting the Petitioner,

Having heard the Learned Counsel for the parties, we are of the view that this petition deserves to be allowed in part and the Petitioner is entitled for the relief number 1.

On bare perusal of the grounds raised in the memorandum of writ petition, we find that there is pleading of writ Petitioner that without giving any notice to him, he has been blacklisted by the Respondent No. 2. We think it apposite to quote ground "B", which reads thus:

B. That, the Petitioner was performing his duty unblemished in the office of the Respondent No. 2 and no any allegation has been made by the Respondent No. 2 in the contract period and in respect of the work of the Petitioner, no complaint has been made by the Respondent No. 2. In spite of this, without giving any opportunity of hearing and without giving any intimation the Petitioner agency has been declared as a blacklisted. The aforesaid illegal and arbitrary action has been made by the Respondent No. 2, which is not permissible in the eyes of law.

In the return, the Respondent No. 2-Jiwaji University, Gwalior, while replying ground No. B although has pleaded that several opportunities were provided to the Petitioner, but not even a single document has been filed along with the return in this regard. We have also gone through letter (Annexure R/1) of Dr. Keshav Singh Gurjar, Security In-charge, addressed to Registrar of the Jiwaji University, Gwalior complaining about the Petitioner and there is an endorsement in the said letter Annexure R/1 that a copy of which has also been sent to the Petitioner. But this complaint (Annexure R/1) is of In-charge Security only and no notice has been sent by the Registrar in pursuance to the said report to the Petitioner. We do not know whether the In-charge Security had ever sent a copy of Annexure R/1 to the Writ Petitioner or not because no acknowledgment has been filed along with the return.

It would be relevant to quote Para 5.8 of the Return, which reads thus;

5.8. That, the contents of this para the tender application submitted by the Petitioner was as per rules and procedure the contract for security services were followed. That in spite of regular warnings and opportunities given to the Petitioner to improve the services as per the conditions there was no action taken by the Petitioner therefore the action for blacklisting the Petitioner was taken since the security of the university was at risk.

Although, it has been pleaded on behalf of University (Respondent No. 2) that

several opportunities were provided to the Petitioner to improve his services, but no action was taken by him to improve his services, therefore, he has been blacklisted. But, no document has been filed in support of the pleadings made in Para 5.8 of the return by the University (Respondent No. 2). There is nothing on record in order to indicate that the writ Petitioner was ever noticed by any warning and, therefore according to us, mere bald statement in the return would not suffice in absence of any material on record. According to us, (blacklisting a Contractor, is a serious action because after blacklisting him, he would not be able to take part in submitting tenders in future etc. and the consequences are very serious in nature, which directly hits his right to life which includes right of meaningful livelihood enshrined under Article 21 of the Constitution of India. Hence, before taking a drastic and harsh action of blacklisting the Petitioner, an opportunity of hearing should have been provided, and having not done so, according to us, the writ Petitioner is entitled to Relief No. 1, which we have quoted hereinabove.

Resultantly, this writ petition succeeds and is hereby allowed with costs. The action of University (Respondent No. 2) blacklisting the writ Petitioner is hereby set aside. Counsel's fee Rs. 2,000/-, if pre-certified.