

(2008) 07 UK CK 0030

In the Uttarakhand High Court

Case No : Writ Petition No. 2324 of 2007

Jagdamba Samiti Evam Sevi Sansthan and Another

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 23-07-2008

Acts Referred:

Citation : (2009) 1 UC 126

Hon'ble Judges : B.S. Verma, J

Bench : Single Bench

Advocate : R.K. Raizada, holding brief and Shailendra Singh Chauhan, for the Appellant; K.R Upadhyay, Addl. C.S.C. for Respondent Nos. 1-3, for the Respondent

Final Decision : Allowed

Judgement

B.S. Verma, J.—Heard Sri R.K. Raizada, holding brief of Sri S.S. Chauhan, learned Counsel for the Petitioners and Sri K.R Upadhyay, learned Additional Chief Standing Counsel for the State-Respondent No. 1 to 3 and perused the record.

2. Admit the writ petition.

3. This writ petition has been filed for issue a writ, order or direction in the nature of certiorari quashing the order dated 21-6-2007 passed the Respondent No. 1 and its consequential order dated 17-8-2007 passed by the Respondent No. 3 and order dated 12-10-2007 passed by Respondent No. 4.

4. According to the Petitioners, the Petitioner No. 1 is a society registered under Societies Registration Act and the Petitioner No. 2 is the president of the society. The registration of the society was lastly renewed on 16-5-2006 for five years. The Petitioners' society apart from serving the public in general is also engaged in providing services in implementation of various project sanctioned by the Government in various field under the sanctioned plan/proposal.

5. In execution of the agreement, some allegations of irregularities were alleged against the Petitioners' society and the same was blacklisted by the impugned order passed by the Respondent No. 1. The writ petition has been filed on the ground that no opportunity of hearing was given to the Petitioners before passing the impugned order dated 21-6-2007.

6. On behalf of the State, counter affidavit has been filed. By a perusal of the averments made in the counter affidavit, it reveals that the Respondent no, 1 had failed to establish that opportunity of hearing was given to the Petitioner before passing the impugned order.

7. Learned Counsel for the Petitioners has relied upon the Apex Court judgment in the case of Raghunath Thakur Vs. State of Bihar and Others, wherein it has been observed inter alia in paragraph No. 4 that "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 blacklisting 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 principles of natural justice. It has to be realized that blacklisting 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 blacklisting of the Appellant in respect of future contracts, cannot be sustained in law." In the case of M/s. Southern Painters Vs. Fertilizers and Chemicals Travancore Ltd. and another, the ratio of the case of Raghunath Thakur has been followed.

8. Without entering into the merits of the case, to my mind, no opportunity of hearing was given to the Petitioners before passing the order of blacklisting against it. The Apex Court in the case of Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and Another, had held that that 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.

9. For the reasons aforesaid, the writ petition deserves to be allowed and the impugned orders are liable to be set aside.

10. The writ petition is allowed. The impugned order dated 21-6-2007 passed by the Respondent No. 1 as well as its consequential orders are set aside. However, it is provided that the Respondent Nos. 1 and 2 may proceed to pass order afresh against the Petitioners in accordance with law after affording opportunity of hearing to the Petitioners if they choose so. Costs easy.

11. All pending applications stand disposed of.