
(1989) 04 MP CK 0004
In the Madhya Pradesh High Court
Case No : M.P. No. 204 of 1989

Kailash Chandra Agrawal

APPELLANT

Vs

National Textile Corporation and Others

RESPONDENT

Date of Decision : 11-04-1989

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 19(1), 226

Citation : (1991) 36 MPLJ 290 : (1991) MPLJ 290

Hon'ble Judges : S.K. Dubey, J;A.G. Qureshi, J

Bench : Division Bench

Advocate : R.G. Waghmare and U. Wadnerkar, for the Appellant; S.C. Consul, for the Respondent

Final Decision : Allowed

Judgement

S.K. Dubey, J.

The petitioner Kailashchandra, who carries on business of purchasing coal ash in the name and style of M/s. Kaithshchand Dwarkadas Agrawal, has preferred this petition under Article 226 of the Constitution of India, against the order of non-consideration of his higher tender, which was submitted by him for lifting the stock of coal ash for a period of 18 months. The petitioner has also challenged the action of the respondents Nos. 1, 2 and 3, whereby the petitioner has been excluded from further business with the National Textile Corporation Limited (hereinafter referred to as "the Corporation") and the textile mills under the Corporation, and has prayed for quashing of the order of blacklisting and for issuance of a writ of mandamus directing respondents Nos. 1, 2 and 3 to accept his higher tender for purchasing the coal ash and to allow him to purchase the coal ash for the period mentioned in the tender notice Annexure A-3 (R- 2).

The material facts leading to this petition are that the respondent No. 1, the Corporation, is a Central Government Undertaking and is an "authority" under Article 12 of the Constitution of India, which controls and manages sick textile

units. One of them is the Indore Malwa United Mills, Indore. The petitioner was carrying on business of purchase of coal ash since 1984. The Indore Malwa United Mills, Indore (hereinafter referred to as "the Mills") invited tenders for lifting the coal commencing from 1-1-1988 to 31-12-1988. The tender of one Gajanan Coal Ash was accepted but due to some circumstances, M/s. Gajanan Coal Ash could not lift the Coal ash from 1-6-1988. Hence, his contract was cancelled and fresh tenders were invited for lifting the coal ash for the remaining period of the year, vide tender notices dated 25-8-1988 and 17-12-1988. Ultimately, a fresh tender notice (Annexure A-3) dated 25-1-1989 was published in local newspapers for lifting the accumulated coal ash and thereafter continuing to lift the coal ash till 31-12-1989. Six persons submitted their tenders, which were opened by the Committee of the Mills on 27-1-1989. On opening the tenders, it was found that the rate of Rs. 83.50 P. per metric ton offered by the petitioner for lifting the coal ash was the highest and the next rate was at the rate of Rs. 83.25 P of respondent No. 4. The respondents Nos. 1 and 2 accepted the tender of respondent No. 4 and did not consider the tender of the petitioner arbitrary. The petitioner came to know that his tender was not accepted because he was blacklisted by the respondents Nos. 1, 2 and 3. On 28-1-1989, the petitioner served a notice for demand of justice (Annexure B) but as nothing resulted out of the notice for demand of justice, and the respondents Nos. 1 and 2 entered into contract (Annexure R- 3) of lifting of coal ash on 30-1-1989 with respondent No. 4 and started allowing lifting of the coal ash by respondent No. 4, the petitioner filed this writ petition on 31-1-1989 before this Court challenging the action of the respondent Corporation and quashing of the contract entered into between the Corporation and respondent No. 4 and for a direction for acceptance of the tender of the petitioner and allowing the petitioner to lift the coal ash from the Mills.

The respondents Nos. 1, 2 and 3 appeared after notice and filed their return while respondent No. 4, in whose favour the contract was entered into, had chosen to remain absent even after notice. In the return, the case of the respondents Nos. 1, 2 and 3 is that the contract was concluded on 30-1-1989. Therefore, the petition has become infructuous and the petitioner is not entitled for any relief. The remedy, if any available to the petitioner, is by way of a suit for damages, in these circumstances, no relief can be granted to the petitioner. The other stand of the Corporation is that the petitioner has not been blacklisted but the business relations have been dissociated with the petitioner according to the instructions and mandate of the two-day Vigilance Meeting held on 19th and 20th January 1981. This mandate vide office memo dated 15-12-1986 of the Government of India, was circulated to all the subsidiaries of the Corporation by letter dated 13-5-1982. It was also made a ground in the return that such dissociation of business of the petitioner does not amount to blacklisting. Moreover, the petitioner and his HUF consisting of family members, under the name and style of Dwarkadas Ghasiram, carry on the business, the members and the coparceners are carrying business in various names and they are signing the

documents for each other. Kailashchandra is one of the coparceners. A meeting was held on 26-12-1988 of the Purchase Committee of the Burhanpur Tapti Mills, Burhanpur, which is one of the subsidiaries or undertakings of the Corporation, wherein the irregularities and unfair dealings of the petitioner were considered, the petitioner was heard and it was decided to dissociate the petitioner and his firms, which are being run by the petitioner. The names of the firms have also been given in the minutes of the meeting. These minutes of the Purchase Committee were sent by the General Manager of the Burhanpur Tapti Mills to respondent No. 3, the Manager (Vigilance) of the Corporation. It was due to this communication that the petitioner's tender was not considered and the tender of respondent No. 4 was accepted. The respondents, in their return, contended that as it was a discontinuance of the business with the petitioner in the future years, it does not amount to blacklisting. Hence, it was not necessary to afford the petitioner an opportunity of hearing. Moreover, when the meeting of the Purchase Committee of the Burhanpur Tapti Mills was held, the petitioner was called and he was heard in relation to the irregularities and unfair practices and thereafter, decision was taken of blacklisting and dissociating with the business. It was also contended in the return that the policy of inviting tenders keeps on changing to safeguard public money, and it is the discretion of the Corporation to accept or reject the tender, even the higher tender, without assigning any reason. Such an action cannot be said to be arbitrary and cannot be called in question. A number of documents, including the communication received from the Income Tax Department, have been filed with the return. After the return, a rejoinder was filed by the petitioner on 13-2-1989, wherein the petitioner explained and filed a number of documents showing that the petitioner firm is a different entity and has no concern with M/s. Dwarkadas Ghasiram Agrawal. In the rejoinder it was also alleged that in this particular case, just to deprive the petitioner from his right of carrying on business and to deny the claim of the petitioner being the higher bidder, had already sent a notice for demand of justice, which was received by the respondents on 28-1-1989 itself, the respondents entered into contract on 30-1-1989, while in the past, after the acceptance of the tender, contracts were never entered into so immediately or in such a hurried way. The petitioner made a clear cut allegation of collusion between the Corporation and respondent No. 4. Several documents were filed with the rejoinder to show that after acceptance of tender, the agreements were entered into after a long lapse of time. Respondents Nos. 1, 2 and 3 did not file any reply to this rejoinder nor any additional return was filed to controvert the averments made in the rejoinder.

Shri R. G. Waghmare, learned counsel for the petitioner, strenuously contended that as the petitioner was blacklisted by the Purchase Committee of the Burhanpur Tapti Mills and the communication addressed by the Manager of the Burhanpur Tapti Mills to respondent No. 3, the Manager (Vigilance) of the Corporation about the discontinuation of business with all the sister concerns of the Corporation was received by respondents 1, 2 and 3, the tender of

respondent No. 4, though lower than that of the petitioner, was accepted and given the contract which would be evident from the proceedings dated 27-1-1989 annexed with the petition as Annexure 2. This amounted to blacklisting of the petitioner respondents Nos. 1, 2 and 3 without affording him any opportunity of hearing. Hence, the tender of the petitioner, which was not considered, could not have been rejected on this ground. A direction is, therefore, needed of this Court for accepting the tender and for allowing the petitioner to carry on the business of coal ash. Learned counsel contended that it is settled law that action for blacklisting cannot be taken or order for blacklisting cannot be passed without affording a citizen an opportunity of hearing. Learned counsel placed reliance on the decisions of the Apex Court in *Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and Another*, *Joseph Vilangandan Vs. The Executive Engineer, (PwD), Ernakulam and Others*, and *Raghunath Thakur Vs. State of Bihar and Others*, and a Division Bench decision of this Court in *Mrs. Sharada Sawani Vs. State of Madhya Pradesh and Others*. Learned counsel also contended that the action of blacklisting the petitioner was arbitrary one and was against the principles of natural justice. Hence the petitioner was deprived of carrying on the business of coal ash in violation of Articles 14 and 19(1)(g) of the Constitution of India. Reliance was placed on a decision of the Apex Court in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*. Hence, the petitioner is entitled for a direction against the respondents Nos. 1, 2 and 3 for accepting the tender of the petitioner, allowing the petitioner to purchase and lift the coal ash from the Corporation for the remaining period. In support of his contention, learned counsel placed reliance on the decisions of the Apex Court in *Pratresh India Corporation v. U. P. Electricity Board and Ors.* 1988 (Suppl.) SCC 716 which placed reliance on an earlier decision in *Harinder Singh Arora Vs. Union of India (UOI) and Others*.

Shri S. C. Consal, learned counsel for respondents Nos. 1, 2 and 3, in support of the contentions raised in the return, made assiduous arguments and contended that in view of the fact that the contract has been concluded, now no relief can be granted to the petitioner. The remedy, if any, available to the petitioner is to file a civil suit for damages as the contract has already come into existence before" filing of the petition and this petition has become infructuous. Learned counsel placed reliance on a decision of the Apex Court in *C.K. Achuthan Vs. The State of Kerala and Others*. Learned counsel also contended that the Corporation is a Government of India undertaking and all its subsidiaries are bound by the instructions issued from time to time; that after hearing the petitioner in relation to his irregularities and unfair trade practices, it was decided not to continue business dealing with the petitioner. A communication to this effect was received by the respondents, hence the petitioner was dissociated with the business, which cannot be said to be "blacklisting". Moreover, even if it is considered to be blacklisting, the petitioner was afforded an opportunity of hearing in the meeting of the Purchase Committee of the Burhanpur Tapti Mills. Whenever tenders are invited, it is not incumbent upon the authority, who invites

the tenders, to accept the highest tender and the authority, in its discretion, has got right to reject or accept a tender. Unless any arbitrariness is shown, it cannot be said to violative of Articles 14 and 19(1)(g) of the Constitution of India. Learned counsel placed reliance on the decisions in *Trilochan Mishra, etc. Vs. State of Orissa and Others*, ; *State of Orissa and Others Vs. Harinarayan Jaiswal and Others*, ; *Purxotoma Ramanata Quenim Vs. Makan Kalyan Tandel and Others*, ; *State of Uttar Pradesh and Others Vs. Vijay Bahadur Singh and Others*, ; *Smt. Prakash Mehta v. State of M. P.*, 1984 MPLJ 318 : 1984 JLJ 251; *Mohanlal Heeralal v. Union of India* 1986 MPLJ 324 and *State of M. P. v. Nandlal Jaiswal and Ors.* 1987 MPU (S.C) 250 : 1987 mpLJ 53. Learned counsel also contended that in the relief clause, no relief has been sought for quashing the blacklisting, hence blacklisting or the action of the discontinuance of the business of respondents Nos. 1, 2 and 3 with the petitioner cannot be quashed in this petition, and the petitioner is not entitled to any relief. Lastly, the learned counsel contended that in case the petition is allowed, it will create complications and multiplicity of proceedings, which will not be in the interest of justice.

After hearing the counsel, we are of the opinion that in the facts and circumstances of the case, the petitioner has made out a case for issuance of a writ and direction as indicated hereinafter. First of all, we will deal with the action of the respondents in the so-called dissociation of the business dealings with the petitioner. Admittedly, the Corporation is an "authority" under Article 12 of the Constitution and as such is amenable to writ jurisdiction. The Corporation owns various sick units in the State of Madhya Pradesh. The Indore Malva United Mills and the Burhanpur Tapti Mills are two different entities owned and controlled by the Corporation. It is also not disputed that the petitioner was carrying on the business in the name and style of M/s. Kailashchandra Dwarkadas Agrawal with the Mills since the year 1984. We do not wish to involve in the controversy that the petitioner is a coparcener of H. U. F. M/s. Dwarkadas Ghasiram and this H. U. F. firm is carrying on the business in various names and the petitioner or other coparceners are signing the documents and correspondence for each other. But it is evident that the petitioner's tender was not considered by the Mills because the Purchase Committee of the Burhanpur Tapti Mills in its meeting held on 26-12-1988, decided to discontinue business dealing with the petitioner. A communication to that effect was sent to the Manager (Vigilance) of the Corporation. The respondents Nos. 1, 2 and 3 acted on this correspondence and the petitioner's tender, which was higher, was not accepted or considered. Though the stand of the respondent Corporation is that the petitioner was not blacklisted, but he was dissociated with the business dealings with the Corporation because of the guidelines and instructions issued by the Central Government in this behalf, which were followed in the case of the petitioner. It is also an admitted fact that the tenders were invited for lifting the coal ash, for a period of 18 months, till the 31st of December, 1989. The petitioner submitted his tender. Till the submission of tender, there was no decision or order of the Corporation not to allow the petitioner to submit the tender. It is on the

communication of the Manager of the Burhanpur Tapti Mills sent to the respondent Corporation that the tender of the petitioner, which was already with the respondents, was not considered. Before not considering the tender of the petitioner, the petitioner was not noticed or communicated. Even no show cause notice was issued to the petitioner for not allowing him to carry on the business with the Corporation. No material has been placed by the Corporation to show when the meeting of the Purchase Committee of Burhanpur Tapti Mills was held in respect of the irregularities and unfair trade practices adopted by the petitioner, the petitioner was afforded an opportunity of hearing after issuance of a show cause notice to him. The proceedings of the Purchase Committee of the Burhanpur Tapti Mills clearly show that the conduct of the petitioner was suspicious, who was carrying on business in various trade names since years together (vide page 49 of the paper-book). The Purchase Committee recommended blacklisting of the petitioner. This decision of the Purchase Committee was sent to the Head Office of the Corporation for blacklisting the petitioner and his four firms, by the Manager of the Burhanpur Tapti Mills, the decision of the Purchase Committee was also sent to the Manager of the Indore Malwa United Mills, Indore. On this, the Manager of the Mills acted upon and did not consider the tender of the petitioner and discontinued the business dealings with the petitioner and all sister concerns/associates. Indisputably, no notice was given to the petitioner of the proposal of blacklisting the petitioner or his firms. Blacklisting has the effect of preventing a person from the advantage of entering into a lawful relationship with the Government or governmental authority for the purpose of gains in respect of public contracts, which has to be created by the order of blacklisting of person indicating that the relevant authority should have an objective satisfaction.

In the case of Raghunath Thakur (*supra*), the Apex Court has recently observed that even if there is no requirement in the rules of giving prior notice before blacklisting any person, but it is an established principle of the rule of law that any order having civil consequences should be passed only after following the principles of natural justice. It has to be realised that blacklisting any person in respect of business ventures has civil consequences for the future business of the person concerned in any event. Hence, it is an elementary principle of natural justice that the parties affected by an order should have the right of being heard and making representation against the order. (See also *Brusian Equipment and Chemicals Limited v. State of West Bengal* AIR 1987 SC 266 ; *Joseph Vilangandan Vs. The Executive Engineer, (PwD), Ernakulam and Others*, and *Mrs. Sharada Sawani Vs. State of Madhya Pradesh and Others*, .

The contention of Shri S. C. Consal, learned counsel for the respondents Nos. 1, 2 and 3, that the petitioner was not blacklisted but the Corporation disassociated with the business dealings, which does not amount to blacklisting. Hence opportunity of hearing or representing the case was not necessary, has no merit as in the proceedings of the Purchase Committee of the Burhanpur Tapti Mills, there is a clear cut recommendation for blacklisting the petitioner. Moreover,

blacklisting a person means a person has to be excluded from further business relations, which is the case here as the business relationship was discontinued by the Corporation. Therefore, in the facts of the case, disassociation of the business dealings would amount to blacklisting not to have business relationship in future.

The contention of Shri Consal that the Corporation was having the right to accept or reject the tender of the petitioner even it was higher and no arbitrariness can be attributed to the Corporation, has also no merit in the circumstances of the case, firstly because the terms of the tender notice did not lay down any such condition. Secondly, according to the respondents themselves, the tender of the petitioner was not considered at all for transacting the business for the reason that the Corporation decided to disassociate with the petitioner in business dealings. Therefore the cases relied upon by the respondents have no application in the present case.

Now coming to the other contention of Shri Consal, learned counsel for the respondents Nos. 1, 2 and 3, that as the contract was concluded on 31-1-1989,. the petition of the petitioner has become infructuous. In our opinion, it has also no merit. From the facts alluded above, it is evident that the petitioner was allowed to submit his tender but his tender was not considered. The petitioner having come to know that he is being treated arbitrarily and differently, immediately served a notice on 28-1-1989 for demand of justice, which was received by the respondent. The respondents were not able to place any material on record nor averred in the return that this notice was not received by them or it was received after the conclusion of the contract,. Moreover, it would be evident from the rejoinder filed by the petitioner, which was not controverted, that after the acceptance of the tender, in ordinary course, the execution of contract used to take time, but in the present case, the contract was entered into hurriedly with the respondent No. 4 so that the petitioner may not become successful in getting the relief. After the knowledge that a party is making a demand of justice and that if the demand is not meted out, would approach the Court for seeking the relief, such claim of the petitioner cannot be defeated only because before filing of the petition, the contract was concluded and because the petitioner expressly cautioned the respondents that he is going to the Court and is moving for an interim relief. But the respondents instead of desisting from proceeding with the action of concluding the contract, even without caring to reply the notice, went ahead and concluded the contract with respondent No. 4 to face the petitioner and the Court with a "fait accompli". Not to grant relief in such circumstances, in our opinion, would defeat the ends of justice and would defeat the rightful claim, which has been illegally nullified by the action of respondents Nos. 1, 2 and 3.

Further, the case of the petitioner is that the petitioner was not negligent in any manner, when after the notice for demand of justice, his tender was not considered, he immediately approached the Court and filed a writ petition on

31-1-1989 and prayed for issuance of ad interim writ and this Court, vide order dated 1-2-1989, stopped the delivery of coal ash to respondent No. 4, until further orders and on the application of respondents Nos. 1, 2 and 3, after notice to the other side, to avoid accumulation of coal ash and complications, ordered, vide order dated 16-2-1989, that looking to the accumulation of coal ash, which is hazardous to the safety purposes and looking to the fact that some coal has been lifted from the Mills premises, it was directed that respondent No. 4 would be entitled to lift coal ash from the Mills premises on the condition that a record of such lifting of coal ash would be maintained by respondent No. 4. Therefore, in such a situation, it cannot be said that no relief can be granted to the petitioner as the contract was concluded. The contention of Mr. Consal cannot be accepted as it is not the case where the contract was entered into between the petitioner and the Corporation and thereafter violation of the contract was committed. Hence, the decision of the Supreme Court in C.K. Achuthan Vs. The State of Kerala and Others, is not applicable to the facts of the present case.

Now coming to the question of grant of relief, Shri Consal contended that the petitioner has not claimed the relief that his blacklisting be quashed. As such, the petitioner is not entitled to for any relief. Suffice it to say that the petitioner has made clear averments in the facts as well as in the grounds challenging the action of blacklisting "of the petitioner as illegal and against the principles of natural justice and then the petitioner has prayed that a writ of mandamus be issued to the respondents to accept the petitioner's tender and the respondent No. 3 be refrained from delivering the stock of coal ash to the respondent No. 4, and such other reliefs be granted, as may be deemed fit and proper. In our opinion, though in the relief clause, it is not written in so many words that the action of blacklisting be quashed, but the action of blacklisting has been challenged, which has entitled this Court to do justice and this Court would not be debarred on technicality in not granting the relief to the petitioner for quashing the action of blacklisting the petitioner, which is against the principles of natural justice.

Hence, our conclusion is that the action of the respondents in not considering the tender of the petitioner and discontinuing the business dealings or blacklisting of the petitioner was against the principles of natural justice and was violative of Articles 14 and 19(1)(g) of the Constitution of India which deserves to be quashed and is hereby quashed. As a consequence of that, the contract entered into with respondent No. 4 is also quashed.

The question, that remains for consideration, is whether in the facts of the case, the Corporation be directed by a writ of mandamus so accept the tender of the petitioner and to enter into a contract with the petitioner for the remaining period. Shri Waghmare, learned counsel for the petitioner, has placed reliance on two decisions of the Apex Court in 1988 (Suppl.) SCC 716 (supra) and Harinder Singh Arora Vs. Union of India (UOI) and Others, . But in the facts of the instant case, we do not feel it proper to issue a direction by a writ of mandamus to

accept the tender of the petitioner and to enter into a contract for the remaining period. In the circumstances of the case, it would be fair and in the interest of all concerned that fresh tenders are invited by the Corporation within 15 days of the date of this order, for the remaining period in which the petitioner and respondent No. 4 and others may take part and the respondent Corporation would be free to accept or reject the tenders of the participants but it is made clear that the petitioner's tender will not be rejected on the ground of discontinuance of business or blacklisting, which has been struck down by us for non-observance of the principles of natural justice. It is also made clear that this order will, however, not prevent the Corporation or the appropriate authorities from taking any future steps for blacklisting the petitioner if the Corporation is so entitled to do in accordance with law, i.e. after giving the appellant due notice and an opportunity of representation. After hearing the petitioner, the Corporation will be at liberty to pass any order in accordance with law, indicating reasons therefor. But that will not apply to the present transaction. We also make it quite clear that we have not expressed any opinion on the correctness or otherwise of the allegation made against the petitioner.

In the result, this petition is allowed. In the circumstances of the case, parties shall bear their own costs of this petition. The amount of security deposit, if any, be refunded to the petitioner, after verification.