
(2010) 01 CHH CK 0046
In the Chhattisgarh High Court
Case No : Writ Petition (C) No. 606 of 2009

Kailash Sharma

APPELLANT

Vs

State of Chhattisgarh, Chhattisgarh Rural Road Development
and The Chief Executive Officer

RESPONDENT

Date of Decision : 14-01-2010

Acts Referred:

Citation : (2010) 01 CHH CK 0046

Hon'ble Judges : R.N. Chandrakar, J;Dhirendra Mishra, J

Bench : Full Bench

Judgement

Dhirendra Mishra, J.—The petitioner by the instant petition has impugned the order of Annexure P/5 passed by respondent No. 2 whereby he has been debarred for a period of two years from the date of issuance of order from participating in the tender process of Chhattisgarh Rural Road Development Authority (in short "CGRRDA").

2. The petitioner has impugned the above order solely on the ground that the aforesaid order has been passed without affording any opportunity of hearing, without following the principles of natural justice and the same has been passed malafidely with a purpose to help other contractors.

3. Shri A.K. Dubey, learned counsel for the petitioner submits, that the petitioner is a registered A-5 class contractor with the respondents, he participated in the open tender process and submitted his bid for the work for construction of roads under the scheme Pradhan Mantri Gram Sadak Yojna. The offer of the petitioner being the lowest was accepted and respondent No. 2 vide his memo dated 28.4.2008 (Annexure P/1) apprised the petitioner that the Letter of Acceptance could not be issued within the stipulated period and if the petitioner agrees, validity period of his offer may be extended by 31st May, 2008. The petitioner was served with a notice of Annexure P/2 alleging therein that in response to NIT for the group No. CG 13-46, the petitioner submitted his offer showing existing commitments "NIL" by enclosing completion certification against two works

under Pradhan Mantri Gram Sadak Yojana (in short "PMGSY") i.e. Work No. CG 13-22 and CG 13-24, which was signed by the Assistant Engineer, who was not competent to give such certificates as per Clause 4.6 of the Instruction to Bidder (in short "ITB") of the tender document. He was again served with a notice dated 4.6.2008 calling upon him to show cause as to why his name should not be entered in the blacklist for a period of one year as per Clause 4.2 of the "Special Condition of Contract" of the tender document and he be debarred from participating in the tender process of PMGSY for deliberately suppressing information regarding existing work. In response to the said notice, the petitioner requested for further information regarding details of information, which is alleged to have been suppressed by the petitioner. However, without furnishing the details, the petitioner was debarred for a period of two years vide impugned order of Annexure P/5, though by notice of Annexure P/3, a proposal for debarring him for a period of one year was contemplated.

4. Learned counsel for the petitioner submits that the completion certificate submitted by the petitioner was duly signed by the Assistant Engineer of the respondents and therefore, the same cannot be termed to be suppression of fact and it was only a technical lapse that the same was not signed by the competent authority authorized as per Clause 4.6 of ITB. From bare perusal of Annexure P/3, it is clear that the necessary particulars regarding suppression of facts are not mentioned in the said notice. The action of blacklisting the petitioner is likely to cause civil consequences and the same could not be resorted to without following the principles of natural justice.

5. Reliance is placed on judgment in the matter of B.S.N. Joshi and Anr. v. Nair Coal Services Ltd. and Ors.

6. On the other hand, Shri Vinay Harit, learned Dy. Advocate General with Shri S.K. Mishra, learned Panel Lawyer appearing for the State, submits that as per petitioner's own documents annexed with the petition, it is manifestly clear that the petitioner submitted his offer enclosing a certificate issued by the Assistant Engineer to the effect that two works awarded to him have been completed. The petitioner was afforded an opportunity by the respondent No. 2 vide Annexure P/2 to submit explanation by filing certificate of the competent authority as per Clause 4.6 of ITB that the earlier two works were completed. However, the petitioner did not reply to the said notice. In these circumstances, a final show cause notice on the same subject was issued to the petitioner with the proposed action. The petitioner instead of replying to the show cause notice, took a technical objection and asked for particulars of the work, which was not completed and evasively replied that all the works entrusted to him has been completed by him on the date of submission of offer. In these circumstances, the impugned order of Annexure P/5 was passed.

7. We have heard learned counsel for the parties and perused the documents filed by the petitioner.

8. Indisputably, the petitioner in response to NIT, issued by the respondents, submitted his offer annexing completion certificate of the Work No. CG 13- 22 and CG 13-24. Since the certificate was not issued by the competent authority, the petitioner was called upon to submit his explanation regarding completion of the aforesaid works on 12.3.2008 vide Annexure P/2. The petitioner did not reply to the said notice and in these circumstances, a notice of Annexure P/3 dated 4.6.2008 was issued. The petitioner did not specifically replied to the contents of the said notice and instead, sought certain information regarding details of work, which was allegedly not completed by him and only after receiving the aforesaid reply, by the impugned order, he was debarred for a period of two years w.e.f. passing of the order of Annexure P/5 i.e. 14.8.2008.

9. In B.S.N. Joshi & sons Ltd.¹, the appellant had made a counter claim raising bonafide dispute. He was not issued tender form by the State Electricity Board on the premise that he is a defaulter. The petitioner filed a writ petition, which was dismissed by the learned Single Judge by recording a finding that the petitioner was a defaulter in respect of the said demand, and refused to intervene in the decision making process. The appeal was further dismissed by the Division Bench of the High Court with an observation that the appellant, admittedly, being a defaulter, it cannot be said that the Board has committed any illegality in out standing the appellant from the tender process. In para 40 it was observed that when a person is placed in the category of declared defaulter, it must precede a decision.

In the cited judgment, para-20 of the judgment in the matter of Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and Another, and para 4 of Raghunath Thakur Vs. State of Bihar and Others, which read as under, have been reproduced with approval.

20. Blacklisting has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for purposes of gains. The fact that a disability is created by the order of blacklisting indicates that the relevant authority is to have an objective satisfaction. Fundamentals of fair play require that the person concerned should be given an opportunity to represent his case before his is put on the blacklist.

4. Indisputably, no notice had been given to appellant of the proposal of blacklisting the appellant. It was contended on behalf of State Government that there was no requirement in the rule of giving any prior notice before blacklisting any person. Insofar 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.

10. However, in the instant case, before passing the impugned order of Annexure P/5, the petitioner was served with a notice of Annexure P/2 on 12.3.2008 and again with a notice of Annexure P/3 dated 4.6.2008 proposing action contemplated against him and therefore, it cannot be said that the petitioner was not given any opportunity to represent his case before he was debarred from participating in the tender process in the work of the respondents.

11. On due consideration of the documents annexed by the petitioner, we are satisfied that the petitioner was throughout evasive with respect to actual completion of work No. CG 13-22 and 13-24. Even before this Court, he could not claim that the aforesaid works were completed in all respect and no any document by a competent authority under Clause 4.6 of ITB has been filed. In these circumstances, the action taken against the petitioner of debarring him from participating in tender process under PMGSY scheme cannot be faulted.

However, taking into consideration that by notice of Annexure P/3, respondent No. 2 had proposed action of debarring the petitioner only for one year and by the impugned order of Annexure P/5, he has been debarred for a period of two years, we deem it appropriate to dispose of this petition with an observation that the petitioner could not be debarred for a period of more than one year, as proposed in the notice of Annexure P/3.

With these observations, the petition stands disposed of.