
(2002) 08 DEL CK 0167
In the Delhi High Court
Case No : C.W.P. No. 5890 of 2001

K.B. Contractors	Vs	APPELLANT
Engineer-in-Chief and Another		RESPONDENT

Date of Decision : 02-08-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 1 ARBLR 198 : (2002) 100 DLT 1 : (2002) 64 DRJ 323

Hon'ble Judges : S.B. Sinha, C.J.;A.K. Sikri, J

Bench : Division Bench

Advocate : Rajesh Banati and H.S. Nanda, for the Appellant; Rajinder Nischal, for the Respondent

Final Decision : Allowed

Judgement

S.B. Sinha, C.J.—The petitioner, in this writ petition, has inter alias prayed for the following relief:

(1) Issue a writ, order or direction in the nature of mandamus or any other appropriate writ, order or direction directing the respondents to renew the enlistment of the petitioner for the cyclic period ending 31st December, 2005.

2. In view of the order proposed to be passed by us, it is not necessary to delve into the factual matrix of the matter in great detail.

3. The petitioner was enrolled as Class "A" contractor with the respondents w.e.f. 11th July, 1989. Its tender limit was enhanced to Rs. 1 crore in the year 1992. The enlistment of the petitioner was renewed up to 31st December, 2000 whereafter, by way of a letter dated 26th November, 1998 it applied for renewal of enlistment but no order was passed for a long time. The petitioner sent reminders on various occasions. By reasons of the impugned order dated 15th May, 2001 it was communicated :

"(1) Reference your letter No. KBC/A-61/04-2001 dated 4th May, 2001.

(2) Re-classification of your firm for the revised monetary limit and renewal of enlistment for the cyclic period ending Dec., 2005 could not be done due to CBI case in respect of work pertaining to "CA No. CE DZ/4/95-96-Provn of Mechanical laundry plant to RR Hospital, Delhi Cantt." executed by you. The file in respect of above work are with CBI as per intimation received from CE, Delhi Zone.

(3) The decision of E-in-C's Branch was requested for re-classification/ renewal of your firm. Further action shall be taken on receipt of above.

(4) This is for your info please.

Sd/-

(Kewal Krishan) Major

SW For Chief Engineer"

4. It is not in dispute that prior to passing of the said order, the petitioner had not been given an opportunity of being heard. It is further not in dispute that the said purported order has been passed in terms of Clause 7(f) of the guideline dated 24th March, 1999. The aforementioned guideline which is contained in the Annexure P/10 to the writ petition provides for the mode and manner in which renewal of enlistment for the cyclic period ending 31st December, 2005 would be done. Clause 7(f) reads thus:

"7 Criteria for renewal:

All contractors who have applied for renewal will be re-enlisted except those falling under the following categories :

(a)

(b)

(c)

(d)

(e)

(f) Contractors not found fit for renewal for reasons other than (a) to (e) above, i.e. unethical conduct."

5. A bare perusal of the aforementioned provision would clearly show that normally the renewal is to be granted and refusal thereof is an exception.

6. Clause 7(f) aforementioned is an omnibus clause. Any contractor for any misconduct which in the opinion of the respondents amounts to unethical conduct, may not be favored with a renewal of enlistment.

7. There is nothing on record to show and particularly in view of the impugned order that any opinion had been formed by the concerned respondents that the petitioner is not fit for renewal of its enlistment on the ground of unethical

conduct. Furthermore, Sub-para (c) of Clause 8 of the said guideline stated that the Registering Authority before forming such opinion, would intimate specific reasons to the next higher Engineer Along with the contractors" Explanation and his views thereupon. According to the respondents only an investigation by the CBI is pending against the petitioner. Only because some enquiry or investigation is pending against the petitioner, same by no means, in our opinion, could be a ground for the respondents for forming the opinion that the petitioner is guilty of unethical conduct. In any event as no opportunity of hearing had been granted to the petitioner in terms of the norms laid down by the respondents themselves, the impugned order cannot be sustained.

8. It is now well established principles of law that the respondents are bound by the norms laid down by themselves.

9. In *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, , the Apex Court referred to the decisions of US Supreme Court in *Vitarelli v. Seaton* (1959) 359 US 535, in the following terms:

"Para 10 : Now, there can be no doubt that what para (1) of the notice prescribed was a condition of eligibility which was required to be satisfied by every person submitting a tender. The condition of eligibility was that the person submitting a tender must be conducting or running a registered IInd Class hotel or restaurant and he must have at least 5 years" experience as such and if he did not satisfy this condition of eligibility, his tender would not be eligible for consideration. This was the standard or norm of eligibility laid down by the 1st respondent and since the 4th respondent did not satisfy this standard or norm, it was not competent to the 1st respondent to entertain the tender of the 4th respondent. It is a well settled rule of administrative law that an Executive Authority must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe those standards on pain of invalidation of an act in violation of them. This rule was enunciated by Mr. Justice Frankfurter in *Vitarelli v. Seaton* (1959) 359 US 535 : 3 L ED 1012 where the learned Judge said :

"An executive agency must be rigorously held to the standards by which it professes its action to be judged.... Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed..... This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with the sword."

This Court accepted the rule as valid and applicable in *Dr. Amarjit Singh Ahluwalia Vs. The State of Punjab and Others*, and in subsequent decision given in *Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation, ,*

Mathew, J., quoted the above-referred observations of Mr. Justice Frankfurter with approval. It may be noted that this rule, though supportable also as emanating from Article 14, does not rest merely on that Article. It has an independent existence apart from Article 14. It is a rule of administrative law which has been judicially evolved as a check against exercise of arbitrary power by the Executive Authority, if we turn to the judgment of Mr. Justice Frankfurter and examine it, we find that he has not sought to draw support for the rule from the equality clause of the United States Constitution but evolved it purely as a rule of administrative law. Even in England, the recent trend in administrative law is in that direction as is evident from what is stated at pages 540-541 in Prof. Wade's Administrative Law 4th Edition. There is no reason why we should hesitate to adopt this rule as a part of our continually expanding administrative law. Today with tremendous expansion of welfare and social service functions increasing control of material and economic resources and large scale assumption of industrial and commercial activities by the State, the power or the executive Government to affect the lives of the people is steadily growing. The attainment of socio-economic justice being a conscious and of State policy, there is a vast and inevitable increase in the frequency with which ordinary citizens come into relationship of direct encounter with State power-holders. This renders it necessary to structure and restrict the power of the executive Government so as to prevent its arbitrary application or exercise. Whatever be the concept of the rule of law, whether it be the meaning given by Dicey in his "The Law of the Constitution" or the definition given by Hayek in his "Road to Serfdom" and "Constitution of Liberty" or the exposition set forth by Herry Jones in his "The Rule of Law and the Welfare State", there is, as pointed out by Mathew, J., in his Article on "The Welfare State, Rule of Law and Natural Justice" in Democracy. Equality and Freedom "substantial agreement in juristic thought, that the great purpose of the rule of law notion is the protection of the individual against arbitrary exercise of power, wherever it is found". It is indeed unthinkable that in a democracy governed by the rule of law the executive Government or any of its officers should possess arbitrary power over the interests of the individual. Every action of the executive Government must be informed with reason and should be free from arbitrariness. That is the very essence of the rule of law and its bare minimal requirement. And to the application of this principle it makes no difference whether the exercise of the power involves affectation of some right or denial of some privilege."

10. The Apex Court further referred its earlier decision in *Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and Another*, wherein it has been categorically held that without complying with the principles of natural justice, a person cannot be blacklisted. It was observed :

"Para 21: This rule also flows directly from the doctrine of equality embodied in Art. 14. It is now well settled as a result of the decisions of this Court in *E.P. Royappa Vs. State of Tamil Nadu and Another*, and *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, that Article 14 strikes of arbitrariness in State action

and ensured fairness and equality of treatment. It requires that State action must not be arbitrary but must be based on some rational and relevant principle which is non-discriminatory; it must not be guided by an extraneous or irrelevant consideration, because that would be denial of equality. The principle of reasonableness and rationality which is legally as well as philosophically an essential element of equality or non-arbitrariness is projected by Article 14 and it must characterise every State action, whether it be under authority of law or in exercise of executive power without making of law. The State cannot, Therefore, act arbitrarily in entering into relationship, contractual or otherwise with a third party, but its action must conform to some standard or norm which is rational and non-discriminatory, his principle was recognised and applied by a Bench of this Court presided over by Ray, C.J., in *Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and Another*, where the learned Chief Justice pointed out that "the State can carry on executive function by making a law or without making a law. The exercise of such powers and function in trade by the State is subject to Part III of the Constitution. Article 14 speaks of equality before the law and equal protection of the laws. Equality of opportunity should apply to matters or public contracts. The State has the right to trade. The State has there the duty to observe equality. An ordinary individual can choose not to deal with any person. The Government cannot choose to exclude persons by discrimination. The order of black-listing has the effect of depriving a person of equality of opportunity in the matter of public contract. A person who is on the approved list is unable to enter into advantageous relations with the Government because of the order of black-listing a citizen has a right to claim equal treatment to enter into a contract which may be proper, necessary and essential to his lawful calling--it is true that neither the petitioner nor the respondent has any right to enter into a contract but they are entitled to equal treatment with others who offer tender or quotations for the purpose of the goods". It must Therefore, follow as a necessary corollary from the principle of equality enshrined in Article 14 that though the State is entitled to refuse to enter into relationship with any one, yet if it does so, it cannot arbitrarily choose any person it likes for entering into such relationship and discriminate between persons similarly circumstanced, but it must act in conformity with some standard or principle which meets the test of reasonableness and non-discrimination and any departure from such standard or principle would be invalid unless it can be supported or justified on some rational and non-discriminatory ground."

11. For the reasons aforementioned, the impugned order cannot be sustained which is set aside accordingly. The writ petition is allowed.

No costs.