

(1996) 05 DEL CK 0098

In the Delhi High Court

Case No : Civil Writ Appeal No"s. 1749, 1750, 1752, 1753, 1754, 1755, 1756, 1757, 1758, 1759, 1760, 1761 and 1762 of 1996

Madan Lal and Others

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 14-05-1996

Acts Referred:

Citation : (1996) 63 DLT 154 : (1996) 114 PLR 3

Hon'ble Judges : M.S.A. Siddiqui, J

Bench : Single Bench

Advocate : Sarabjeet Sharma, Bhupinder Singh and A.K. Nigam, for the Appellant;

Judgement

M.S.A. Siddiqui, J.

(1) The petitioners seek quashing of the impugned order dated 29th March, 1996 of the respondent No. 3 debarring the petitioners from submitting tenders for the period of three months with effect from 29th March, 1996. This order shall also govern the disposal of the Writ Petition Nos. 1749 to 1762 of 1996 as the petitions raise common questions of facts and law.

(2) Brief facts leading to filing of these petitions are that the petitioners were enlisted as Contractors in the Irrigation and Flood Control Deptt. of the Government of National Capital Territory of Delhi and became eligible to submit tenders in any of the division of I & F. The respondent No. 3 arbitrarily and wrongfully desisted the petitioners from submitting tenders for a period of three months with effect from 29.3.96 vide Memorandum dated 29th March, 1996 (at page 16 of the paper book) and that too without giving of an opportunity to be heard. It is contended that the impugned order is vocative of the principles of natural justice and as such the same is liable to be quashed.

(3) Learned Counsel for the respondent Nos. 2 and 3 filed the counter affidavit, which is taken on the record. It is stated in the counter filed on behalf of the

respondent No. 3 that the respondent/Deptt. invited tenders for work of excavation of supplementary drain from Rd 12740 M to Rd 13500 M (below SSWN) and up to a level of 207 M. The estimated cost of the work was in the region of about Rs. 18.73 lakhs. In all 31 contractors tendered for the work and tenders were opened by the Executive Engineer on 25.5.1995. The opening of the tenders revealed that the tenderers had formed a cartel amongst themselves and had quoted higher rates with a view to defraud the Government exchequer. Complaints were received by the Government with respect to the certification resorted to by the tenderers. A preliminary inquiry was made which confirmed the said fact and accordingly tenders were rejected by the Superintending Engineer, Supplementary Drainage, Circle I on 11.10.1995. It is further stated in the counter that on account of the certification resorted to there has been consequent inordinate delays in the implementation of the works that were required to be done by excavating the drain, solely as a result of the action of the contractors. Consequently, the petitioners were de-listed for three months vide impugned order. According to the respondent the suspension being an interim measure pending full investigation and final decision it was not necessary at that stage to comply with the principles of natural justice by resort to issuance of a show cause notice and/or for calling an Explanation .

(4) It has to be borne in mind that when the State is dealing with individuals in a trade, the two important factors are that an individual is entitled to trade with the Govt. and an individual is entitled to a fair and equal treatment with others. The activities of the Govt. has a public element and, Therefore, every action of the State must be informed by reason. A duty to act fairly can be interpreted as meaning a duty to observe certain aspects of rules of natural justice. The order of de-listing a contractor has the effect of depriving him of equal opportunity in the matter of public contract. A contractor who has been dealing with the Govt. in the matter of contracts has a legitimate interest or expectation. When the Govt acts to the prejudice of such a contractor it has to be supported by legality. It is too late now to contend that principles of natural justice need not apply to administrative orders. There can be no doubt that the impugned order had to be made in a manner consonant with the rules of natural justice when it affected the petitioners' right to trade. Reference may, in this connection, be made to the decision in *State of Orissa Vs. Dr. (Miss) Binapani Dei and Others*, . The Supreme Court held in dealing with an administrative order that "the rule that a party to whose prejudice the order is intended to be passed is entitled to a hearing applied a like to judicial Tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. It is one of the fundamental rules of one constitutional set up that every citizen is protected against exercise of arbitrary authority by the State or its officers".

(5) DE-LISTING of a contractor has the effect of preventing him from the privilege and advantage of entering into lawful relationship with the Govt. for purposes of gain. Moreover, reputation is a part of person's character and personality. Desisting or blacklisting tarnishes one's reputation. The fact that a

disability is created by the impugned order of de-listing indicates that the prescribed authority is to have an objective satisfaction. Rules of natural justice require that the petitioners should have been given an opportunity to represent their case before passing the impugned order. Strangely enough, no such opportunity was given to the petitioner before making the impugned order. Consequently, the impugned order is liable to be quashed on the simple ground that it was passed contrary to the basic rules of natural justice.

(6) For the foregoing reasons, the writ petitions are allowed and the impugned order dated 29th March, 1996 is hereby quashed. No order as to costs.