
(2002) 04 P&H CK 0118
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 11938 of 2000

Manjit Sales Corporation

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 04-04-2002

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2002) 3 RCR(Civil) 174

Hon'ble Judges : J.S. Khehar, J

Bench : Single Bench

Advocate : P.S. Patwalia, for the Appellant; Anil Sharma, D.A.G., for the Respondent

Final Decision : Allowed

Judgement

J.S. Khehar, J.—M/s Manjit Sales Corporation (hereinafter referred to as the Corporation) is admittedly a sole proprietorship firm owned by Manjit Singh. The Corporation claims to have been supplying high class furniture to schools, hospitals, etc. from 1975. It claims a turn-over of more than rupees one crore for the financial year ending on 31.3.2000.

2. The present grievance of the Corporation commences from the issues of an advertisement dated 15.7.1998 by the Controller of Stores, Punjab inviting tenders for supply of steel file racks and steel side racks. As per the aforesaid advertisement, the Corporation submitted its quotations within the stipulated time. Along with the quotations, it also sent a sample, besides, earnest money of Rs. 500/-.

3. In response to the quotations submitted by the Corporation, the Controller of Stores, Punjab addressed a letter dated 02.06.1999 to the Corporation requiring it to confirm the rates expressed in the said letter (dated 02.06.1999) within a period of ten days. The Corporation complied with the requirement of the aforesaid communication vide its letter dated 09.06.1999. The Corporation

received two more letters dated 19.7.1999 and 6.10.1999 vide which it was called upon to submit the rate contract duly signed within a period of ten days, failing which, penal action would be taken against it. In fact, the aforesaid two communications referred to condition No. 7 of the rate contract and condition No. 7(ii) of Schedule B attached thereto for taking penal action against the petitioner. The aforesaid conditions are extracted hereunder :-

"Condition No. 7.- Failure to execute agreements, deposit prescribed security and to effect supplies within the stipulated period or repeatedly offering supply liable for rejection or making supply without prior inspection by this department, unsatisfactory performance of the contract or breach of any terms and conditions of the rate contract may render your earnest money/Security liable to forfeiture and cancellation of this acceptance letter and also debarring blacklisting your firm. Besides other penal actions as permissible under the terms of contract will also be taken. XXX

Condition No. 17(ii).- In the event of the contractor failing duly and properly to fulfil or committing breach of any of the terms and conditions of this contract or repeatedly supplying goods liable to rejection hereunder or failing, declining, neglecting/or delaying to comply with any demand or requisition or otherwise not executing the same in accordance with the terms of this contract, or if the contractor or his agents or servants being guilty of fraud in respect of the contract or any other contract entered into by the Contractor or any or his partners or representatives thereof; with Government directing, giving, promising or offering any bribes, gratuity, gift, loan, perquisite reward, or advantage pecuniary or otherwise to any person in the employment of government in any way relating to such officers or person or persons office or employment or if the contractor or any of his partners become insolvent or apply for relief as insolvent debtor or commence any insolvency proceedings or make any composition with his their creditors or attempts to do so then without prejudice to Government's rights and remedies this contract forthwith and to blacklist the contractor and purchase or procure or arrange from Government's stocks, Punjab as fegards the manner, place or time of such, purchases such supplies have not been supplied or have been rejected under this agreement or are required subsequently by Government thereunder and in cases where issues in replacement are made from Government's stocks or supplies, the cost of value of such stocks or supplies together with all incidental charges or expenses, shall be recoverable from the contractor on demand and the contractor shall not be entitled to benefit from any profit which may thus acquire to Government."

4. The grievance of the Corporation throughout has been that it could not submit signed rate contract as sought by the Controller of Stores, Punjab on account of the fact that the prescribed rate contract had never been furnished to it. Eventually, when the authorities sent the stipulated rate contract to the Corporation, it duly forwarded the same to respondent No. 2 through registered acknowledgement due post after signing the same as required through the

communications, referred to above.

5. The Corporation received yet another letter dated 17.11.1999 through which it was informed that the rate contract forwarded by the Corporation had not been witnessed by two persons as required under condition No. 2. The Corporation was, therefore, afforded yet another opportunity to submit a duly signed rate contract complete in all respects. It is the case of the Manjit Singh i.e., the sole proprietor of the Corporation that he visited the office of the Assistant Controller, Department of Industries i.e. respondent No. 3 along with two witnesses to make up the deficiencies in the rate contract submitted by him earlier, but he was deliberately not permitted to do so, despite all his efforts. Another letter dated 24.12.1999 was sent to the petitioner Corporation requiring him to complete the formalities within ten days failing which action would be taken against him under condition No. 7 of the rate contract and condition No. 1 (ii) of Schedule B attached thereto. Despite the fact that Manjit Singh, the sole proprietor of the Corporation again approached the authorities to comply with the requirements stipulated in the letters, referred to above, it is his case that he was not deliberately permitted to do so. A letter similar to the one issued to the corporation was again issued to the petitioner Corporation on 2.3.2000. This time the Corporation was required to make up the deficiencies in the rate contract within fifteen days of the issue of the said letter. It is alleged Manjit Singh, the sole proprietor of the Corporation again made efforts to fulfil the conditions stipulated in the said letter dated 2.3.2000, but the respondents did not permit him to do so. Eventually, through a communication dated 25.3.2000, so as to over-come the requirement of producing witnesses, the petitioner sent fixed deposit receipt No. 118941 dated 25.3.2000 for a sum of Rs. 10,000/-, drawn on the Bank of Baroda, G.T.Road, Jalandhar as security for the above contract. Despite all the earnest efforts of the Corporation, the Controller of Stores, Punjab through a letter dated 20.4.2000 debarred the petitioner-Corporation from transacting any business dealings with all officers and organisations of the State Government. The aforesaid communication was accordingly addressed to all heads of departments, all Deputy commissioners in the State of Punjab, besides, all Direct Demanding Officers in the said State.

6. The order dated 20.04.2000 has been impugned in the instant petition. It is the case of the petitioner Corporation that the aforesaid order amounts to black-listing the Corporation for the purpose of transacting business with offices and organisations of the State Government for a period of three years. It is, therefore, submitted that the aforesaid order has adverse civil consequences against the Corporation, yet the same has been issued without notice to the Corporation and also without affording any opportunity to it to show cause. As such, it is contended that the order dated 20.04.2000 which has grave civil consequences against the interest of the petitioner Corporation and which has been passed without following the rules of natural justice, must be declared as arbitrary and violative of Article 14 of the Constitution of India, Additionally, it is contended that the provisions relied upon for issuing the order dated 20.04.2000

have been mis-applied, inasmuch as the action taken against the petitioner in the facts and circumstances narrated above cannot flow from the conditions relied upon i.e. condition No. 7 of the rate contract and condition No. 17(ii) of Schedule B attached thereto.

7. In the joint written statement filed on behalf of the respondents, it is the expressed case of the respondents that action has been taken against the Corporation under condition No. 7 of the rate contract and condition No. 17(ii) of Schedule B attached thereto. Additionally, it is pointed out that the Corporation filed an incomplete rate contract on 18.10.1999. Despite the fact that the deficiencies had earlier been brought to the notice of the Corporation, it did not comply with the stipulations relating to witnesses and security deposit, although, the Corporation submitted security on 25.03.2000, yet the agreement remained incomplete. It is pointed out that the Corporation was served with notices dated 19.07.1999, 06.10.1999, 17.11.1999 and a show cause notice dated 24.12.1999 and finally a notice dated 02.03.2000, yet the Corporation failed to complete the rate contract as per the specified terms. On account of the aforesaid non-execution of the rate contract in the prescribed form, the respondents alleged in the written statement filed collectively on their behalf that the Corporation was debarred for a period of three years from transacting business with offices and organisations of the State Government.

8. Learned counsel for the petitioner to substantiate his claim that an order of blacklisting has adverse civil consequences, relied on the judgment of this Court in *M/s. Pritam Singh and Sons and others Vs. State of Punjab and others*, . A perusal of the conclusions drawn by this court in the aforesaid judgment reveals that black-listing has the effect of taking away the liberty of entering into business transaction with the State Government and as such has the effect of preventing the black-listed firm from carrying on lawful trade in goods with the State Government. Accordingly, it has been concluded that a black-listing order involves civil consequences as it creates a barrier between the person black listed and the Government in the matter of the business transactions, besides, affecting its reputation, Accordingly, it is concluded that principles of fair play require that the affected person must be given an opportunity of hearing to represent his case before the issuance of a black listing order. The aforesaid legal position, namely, that a black listing order has adverse civil consequences is not disputed by the learned counsel for the respondents. It is, however, submitted that the large number of communications (referred to above), were addressed to the Corporation requiring it to fulfil certain conditions stipulated in the rate contract. All the above communications must be deemed to be notices to show cause. It is further contended that the corporation was expressly informed that the action would be taken against it, if it fails to comply with the said conditions in terms of condition No. 7 of the rate contract and condition No. 17(ii) of Schedule-B attached thereto, in the said communications, and since the petitioner failed to comply with the aforesaid conditions, it was imperative to pass an order of black listing the Corporation from transacting business with

offices and organisations of the State Government.

9. There can be no doubt about the fact that the Corporation was addressed a large number of communications informing it that action as contemplated under the conditions, referred to above, would be taken on account of the non-fulfilment of the deficiencies pointed out in the rate contract, submitted by the petitioner Corporation. Since the petitioner Corporation, according to the averments made in the written statement, failed to comply with the said conditions, cannot now complain of non-issuance of a show cause notice or an opportunity of hearing as contemplated under the rules of natural justice. While examining the plea based on the rules of natural justice advanced by the learned counsel for the petitioner, this Court must necessarily take into consideration all the communications addressed by the Controller of Stores, Punjab to it from time to time requiring the corporation to make the deficiencies in the rate contract, but it failed to do so. Most of such communications were, indeed, in the nature of show cause notices since all the said communications expressly informed the Corporation that action under condition No. 7 of the rate contract and condition No. 17(ii) of Schedule B attached thereto, would be taken against the petitioner if it failed to make up the deficiencies pointed out. Since the Corporation did not make up the said deficiencies, it was inevitable for the respondents to take action.

10. It is not possible for this Court to evaluate disputed question of fact. The fact that the Corporation made various efforts to fulfil the deficiencies made in the rate contract submitted by it cannot be gone into, specially, when the aforesaid factual position has been disputed at the behest of the respondents.

11. In the aforesaid view of the matter, it is not possible for this court to conclude that the impugned order dated 20.04.2000 black listing the Corporation for a period of three years was passed arbitrarily i.e. without issuing a show cause notice to the petitioner or affording it an opportunity to make up the deficiencies pointed out. Thus viewed, it is not possible to set aside the impugned order dated 20.04.2000 on the premises that the same was passed without following the rules of natural justice.

12. Learned counsel for the petitioner has made yet another submission i.e. that the parties, namely, the petitioner and the respondents never finally executed the rate contract and as such the terms and conditions stipulated in the rate contract had no binding effect between the parties. Additionally, it is submitted that neither under condition No. 7 of the rate contract nor under condition No. 17(ii) of Schedule B attached thereto, it was open to the Controller of Stores, Punjab to pass a black listing order against the petitioner Corporation on account of the fact that the Corporation did not execute the rate contract as stipulated by the terms and conditions of the rate contract. Learned counsel for the respondents has controverted the instant submission made on behalf of the petitioner Corporation by submitting that the action taken against the petitioner Corporation clearly flows from condition No. 7 of the rate contract read with condition No. 17(ii) of Schedule B appended to the rate contract.

13. In my view, the second contention of the learned counsel for the petitioner Corporation merits acceptance. Condition No. 7 of the rate contract and condition No. 17(ii) of Schedule B appended to the rate of contract have been extracted hereinabove. Till due execution of the rate contract, there is no relationship binding the parties. The condition stipulated in the rate contract are not enforceable till a binding contract is executed between the parties. It is only after due execution of the rate contract, the parties are bound by the terms and conditions stipulated therein. It is evident from the pleadings that the tender advanced by the Corporation never came to be accepted by the respondents as the Corporation never duly executed the rate contract in the terms/manner desired by the respondents. Thus viewed, it is clear that there was no contractual relationship binding the parties which could be enforced by one against the other. It is, therefore, obvious that black listing order dated 20.04.2000 debarring the Corporation from transacting business with offices and organisations of the State Government on the basis of stipulations contained in the rate of contract was wholly mis-conceived and beyond the scope of the authority vested in the respondents.

14. Additionally, the conditions for taking action against defaulting parties as stipulated under condition No. 7 of the rate contract and condition No. 17(ii) of the Schedule B attached thereto, must only be deemed to be in respect of failure to honour commitments emerging out of the rate contract, be it for supply of materials, failure to execute orders, within the stipulated time, making supply without inspection, supply of defective good or goods liable to rejection, etc. The occasion for none of the aforesaid deficiencies ever arose since the parties did not bind themselves, through an effective offer and acceptance, which are the two pre-requisites for a binding contract. It is, therefore, evident that in the present case, there was really no occasion to invoke the provisions of condition No. 7 and condition No. 17(ii) of schedule-B attached thereto since none of the eventualities specified therein had been violated by the petitioner-Corporation.

15. In view of the factual and legal position noticed above, the impugned order dated 20.04.2000 is set aside. It will, thus be open to the petitioner Corporation to bid for future contracts with offices and organisations of the State Government and in case the petitioner Corporation submits tenders or makes bids for the execution of supply orders and/or other contracts to be offered by the offices and organisations of the State Government, the same will be liable to be considered with accordance with law.