
(1999) 07 P&H CK 0088

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 16668 of 1998

Megh Nath Bansal

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 27-07-1999

Acts Referred:

Citation : (2000) 1 RCR(Civil) 415

Hon'ble Judges : G.S.Singhvi, J and Mehtab Singh Gill, J

Advocate : Mr. Deepak Thapar, Advocate, Mr. A.S. Brar, Advocate, Mr. D.S. Bali, Senior Advocate, Advocates for appearing Parties

Judgement

G.S. Singhvi, J.—This is a petition for quashing of Annexures P.10 and P.13 vide which the official respondents deleted the name of the petitioners from the approved list of contracts maintained by Ambala Division of Northern Railway for engineering works.

2. The facts necessary for deciding this petition are that the petitioners were registered as contractors on the approved list of "C" class on Ambala Division of Northern Railway. In the year 1996/97, Divisional Superintending Engineer (respondent No. 4) floated a tender for the work of improvement of staff quarters at Bhatinda in Block Nos. 363, 362, 355, E120, T259 and T77 (total 60 units). Petitioners Nos. 1 and 2 submitted tenders in their individual capacity as well as on behalf of petitioner No. 3. Vide letter dated 18.11.1996, respondent No. 4 informed petitioner No. 1 about the acceptance of tender and called upon him to deposit Rs. 20,000/ as earnest money. Finally, the contracts worth Rs. 28,39,700/ and Rs. 26,82,400/ were awarded to petitioners No. 1 and 2 respectively. After about two months, respondent No. 4 wrote letter Annexure P.10 to petitioner No. 1 conveying the decision of the administration to delete his name from the list of approved contractors. Vide Annexure P.11 dated 29.12.1997, the decision regarding removal of the name of petitioner No. 1 from the approved list was circulated among various authorities of the Northern Railway, Ambala Division. Simultaneously, the General Manager, Northern

Railway wrote confidential letter (Annexure P.12) to the Executive Director/Civil Engg. (G), Railway Board, New Delhi that all business dealings with the petitioners may be banned.

3. The petitioners have challenged the deletion of their names from the approved list mainly on the grounds of mala fides and violation of the principles of natural justice. They have averred that no action oriented notice or opportunity of hearing was given to them before the impugned decision was taken by respondent No. 4 and other authorities of the Ambala Division. In support of their pleas, the petitioners have made the following averments in paragraphs 4 to 8 of the writ petition :

"4. That the petitioners cannot remain silent in submitting to this Hon"ble Court that during the course of the submission of the tender up to its acceptance the petitioners came across one Shri M.G. Banga who was Divisional Superintending EngineerII, Northern Railway, office of D.R.M. Ambala Cantt. This officer started harassing the petitioners to grease his palm in case the petitioners wanted the work of improvement of staff quarters to be allotted to them. This officer who has been impleaded as respondent No. 6 created lot of hurdles in the way of petitioners by demanding huge illegal gratification and because of that harassment, the petitioner No. 1 was constrained to move a complaint against the said official Shri M.G. Banga, respondent No. 6 on 8.8.1996 addressed to the Director, C.B.I., New Delhi and Sh. Ram Bilas Paswan, the then Railway Minister, Govt. of India, New Delhi. The petitioners are appending herewith a true copy of the complaint dated 8.8.1996 at Annexure P.4.

5. That the Vigilance Department for General Manager, Northern Railway, eventually took the cognizance on the said complaint and vide memo No. Vig./CT/166/96/Engg/GO dated 13.5.1997 intimated the petitioner to clarify that whether petitioner No. 1 had made any complaint against Sh. M.G. Banga, respondent No. 76 and also to assign reasons for withdrawal in tender No. 118/DSE/II/UMB/9697 opened on 24.6.1996 for improvement of staff quarters at Bhatinda. The Vigilance Department again issued a letter No. 90/Engg./GO dated 17.6.1997 reiterating the same quarries. The petitioners are appending herewith a true copy of the letters issued by the Vigilance Department at Annexures P.5 and P.6 respectively.

6. That petitioner No. 1 vide Registered/AD letter dated 27.6.1997 duly acknowledged by the Vigilance Department informed the office of the General Manager (Vig.), respondent No. 3 confirmed the filing of the complaint to C.B.I. against Shri M.G. Banga, respondent No. 4. In this very letter it was clarified that how the pressure was created by Shri M.S. Banga for the withdrawal of the tender No. 118/DSE/II/UMB/9697 opened on 24.6.1996. The petitioner No. 1 highlighted that how Mr. Banga had threatened him to foist a false case against him and if the petitioner No. 1 did not oblige Shri Banga the work to be allotted to some other contractor and favourite of Mr. Banga. It is submitted for the pointed attention of this Hon"ble Court that during the pendency of these facts

the abovesaid work had been completed by the petitioners and final payment had not been released to them. In this very letter dated 27.6.1997, it was highlighted that how a conspiracy was being hatched to involve a false and fabricated bogus case. Also it was highlighted that the registration of the petitioners was not being renewed. Lastly, it was prayed in the letter that since Shri M.B. Banga was an high official so a senior official can be deputed to enquire against Shri Banga and thereafter the whole truth would come to surface. The petitioners are appending herewith a true copy of the letter dated 27.6.1997 made to the Vigilance Department at Annexure P.7 for kind perusal.

7. That since the petitioners had been working honestly and with zeal to give best performance, it did not suit to the vested interests whom were in hands and gloves with Shri M.G. Banga, respondent No. 4 against whom the petitioner No. 1 had lodged a complaint as said above and surprisingly enough, the petitioners were informed by a telephonic message from the Superintendent, office of Divisional Superintending EngineerII, Northern Railway, Ambala that the petitioners had made som cuttings and overwritings on some STDR worth Rs. 1,50,000/ which was in the name of Senior Divisional Accounts Officer, Ambala. On telephone the petitioner No. 1 informed that he had never sent any such STDR as security money/earnest money against the work was only Rs. 20,000/ and which was duly deposited vide receipt No. 3295112 dated 16.1.1997. It was also told to the Superintendent that it was a manipulation just to oust the petitioners from array of list of "C" Class contractors. Petitioner No. 1 thereafter vide a registered A.D. letter dated 6.5.1997 addressed to Divisional Superintending EngineerII, Northern Railway, respondent No. 4, clearly intimated that the petitioners had never sent any STDR amounting to Rs. 1,50,000/ wherein cuttings and overwritings were made. It was completely highlighted that there had been played a mischief by the enemies with a view to oust him from the list of the contractors. The petitioner No. 1 mentioned in that very letter that, however, he was enclosing an STDR worth Rs. 1,50,000/ issued by the State Bank of Bikaner and Jaipur in the name of Senior Divisional Accounts Officer, Northern Railway, Ambala on his account and further release previous STDR worth Rs. 20,000/ and security to be deducted in that regard from bills as promised. It was further intimated that immediately an enquiry should be instituted for the fraud concerning cuttings and overwritings on the STDR amounting to Rs. 1,50,000/. The petitioner reiterated that they had never got issued or deposited any STDR wherein cuttings and overwritings have allegedly been made. The petitioner suggested that as there has been committed some fraud the matter should be registered with the competent authority. The averments were also made regarding personal grudge of Shri M.G. Banga, respondent No. 4. The petitioners are appending herewith a true copy of the registered letter reference No. BII/97/3141 dated 6.5.1997 addressed to Divisional Superintending EngineerII, Northern Railway, Ambala at Annexure P.8 for kind perusal.

8. That the petitioner No. 1 vide reference No. BIT/973147 dated 26.7.1997

addressed to Senior Divisional Accounts Officer, Northern Railway, Ambala Division Ambala Cantt. intimated that Dena Bank officials had made an enquiry regarding forgery with STDR regarding overwriting and cuttings and it was revealed that no deposit voucher, accounts papers of account number of the FDR were available and no FDR had been opened by the petitioner No. 1 and the account No. 1271 shown against the forged FDR concerned to some other firm which clearly showed that the forged FDR had never been got made by the petitioners. In this very letter the petitioners reiterated that they never deposited the tampered FDR and the petitioners were not concerned with the said forged FDR and there had been committed a fraud by some vested interests. In this very letter the petitioners highlighted that in every respect contractual obligations were duly performed satisfactorily of all the concerned authorities of the railway. The petitioners specifically highlighted that before taking any action, whether punitive or otherwise, he should be afforded full opportunity to explain. The petitioners are appending herewith a true copy of the letter at Annexure P.9."

In the written statement filed on behalf of respondents No. 1 to 5 and 7, it has been averred that the FDRs worth Rs. 1,50,000/ submitted by the petitioners were found to be forged and, therefore, the order deleting the names of the petitioners from the approved list was passed. In paragraphs 4 to 8 of the written statement, the respondents have made the following statement :

"4. Para No. 4 of the petition is not admitted and is denied. It is pertinent to mention here that the allegations levelled against respondent No. 6, who was working as respondent No. 4, pertaining to harassment being caused by him even prior to the allotment of the work as would be relevant (evident ?) from the date mentioned on the complaint against respondent No. 6 which is 8.8.1996 whereas the work has been allotted to the petitioners vide letter dated 18.11.1996. However, it is submitted here that the tender was allotted to the petitioners being the successful tenderer being the lowest. The procedure of the tender committee consisting of three senior Officers of different departments of the Railways had been duly followed as per rules which was finalised with the approval of the competent authority. The complaint against Shri M.G. Banga, respondent No. 6, is therefore, made with a mischievous intention to pressurise the said officer to submit to the tunes of the petitioners in the performance of the said allotted work. Further, the contents of the complaint dated 8.8.1996 are not specific. It would be pertinent to mention here that till 8.8.1996 the work had not even commenced.

5. Para No. 5 of the petition is not denied. It is submitted here that on the complaint made by the petitioners vide Annexure P.4 dated 8.8.1996 the Vigilance Department of the Railways had probed into the matter and had sought the clarifications from the petitioners with regard to the said complaint against respondent No. 6, with regard to the allegations of withdrawal of tender opened on 24.6.1996 which had been withdrawn by the petitioners himself vide his letter dated 20.8.1996, as already explained above in para 3.

6. Para 6 of the petition is not denied that the petitioner vide registered letter dated 27.6.1997 had replied to the letter of the Vigilance Department of the Northern Railway dated 13.5.1997. The contents thereof are denied being incorrect. In fact, it is submitted here that no undue pressure was exerted on the petitioner for the withdrawal of the said tender by respondent No. 6 as the same had been withdrawn by the petitioner himself vide annexure R.1. In fact, the petitioners who from the very beginning had evil designs to play fraud with the Railway Department, had been deliberately making the complaint to pressurise the departmental officials to toe their line. In fact, the petitioners had been paid the due payment for the work done from time to time as per the contract agreement.

7. The contents of para 7 of the petition are not admitted and hence denied. It is submitted here that the petitioner was a registered contractor on the approved list of contractors of Northern Railway, Ambala Division, in "C" category. He was awarded the work of improvement of staff quarters at Bhatinda under AEB/BTI, Block No. 363, 3762, 355, E120, T259, T77 (60 units) for Rs. 28,39,700/ on 18.11.1996. Against security money, petitioner No. 1 submitted an FDR for Rs. 1.50 lacs bearing No. 3259172 dated 11.4.1997. There were cuttings on the FDR and the administration got a doubt and the same was sent for verification to the bank issuing the said FDR and it was verified by Dena Bank, Bhatinda that the said FDR was for Rs. 150/ only. However, the petitioners manipulated and fabricated the FDR for Rs. 1.50 lacs and, thus, tried to cheat the railway administration. Subsequently when he came to know about this fact he submitted another FDR No. 705399 dated 6.5.1997 for Rs. 1,50,000/ which was kept by the railway administration in order to avoid any loss. Petitioner No. 2, who was a registered contractor on the approved list of contractors of Northern Railway, Ambala Division in "C" category, had submitted an FDR bearing No. 3295174 dated 11.4.1997 for Rs. 1,50,000/ as security money. Since there were cuttings on the FDR, the railway authorities raised a doubt and the same was sent for verification to the bank and it was found on the verification by Dena Bank, Bhatinda that the said FDR was for S. 150/ and petitioner No. 2 had fabricated the said FDR for Rs. 1,50,000/ with an intention to cheat the railway administration. Subsequently, when he came to know about the fact, he submitted another FDR for Rs. 1,50,000/ bearing FDR No. 2274795 dated 22.8.1997 towards total earnest money/security deposit for Rs. 1,50,000/ which was kept by the railway administration to avoid any losses to the railway towards the security money. Petitioners No. 1 and 2 both are also partners of the firm M/s. Bansal Construction Co., petitioner No. 3. After going through the details of the matter a case of forgery was brought to the notice of the Accounts Department of the Railways who are the custodians of such records and who in turn took up the matter with the Manager, Dena Bank, Bhatinda and on verification it was confirmed that Megh Nath Bansal, petitioner No. 1, opened FDR No. 32951/72/1271 dated 11.4.1997 for Rs. 150/ for 24 months. Copy of the same is annexed herewith as Annexure Rs. 2 which was also the position

with regard to petitioner No. 2. Since the petitioners had submitted forged FDRs by way of security deposits which was quite a serious matter, an immediate action with the approval of the competent authority was taken and the name was deleted from the approved list of contractors and declared unsatisfactory for considering in future tenders as per the instructions and there is no manipulation on the part of the respondents to oust the petitioners from the list of "C" category contractors.

8. Para 8 of the petition is wrong and denied. It is submitted here that the report of the Bank Manager, Dena Bank, Bathinda, as per Annexure R.2, clearly indicates that the FDRs were for Rs. 150/ which have been tampered with as Rs. 1,50,000/. These had been deposited with the respondents on behalf of the petitioners and depositing of such forged documents was taken under the instructions as a very serious matter and the petitioners, who were responsible for the same, had been deleted from the approved list of Category "C" contractors of the Northern Railway for future."

In a separate written statement, respondent No. 6 has denied the allegations levelled against him.

The petitioners have filed replications reiterating their plea that the impugned decision is contrary to the principles of natural justice. They have also reiterated the allegations of mala fides levelled against respondent No. 6.

4. The following two questions arise for adjudication in this petition :

(i) whether deletion of the petitioners name from the approved list is liable to be invalidation on the ground of violation of the rule of audi alteram partem ? and

(ii) whether the rule of hearing has, in fact, been violated in this case ?

Shri D.S. Bali, Senior Advocate appearing for the petitioners argued that the decision taken by the respondents should be declared as void because no action-oriented notice or opportunity of hearing was given to the petitioners. Learned Counsel submitted that the deletion of the petitioners' names from the approved list amounted to their blacklisting and before taking such decision the respondents should have given show cause notice and opportunity of hearing to the petitioners. As against this, Shri Deepak Thapar argued that the principles of natural justice cannot be applied to the cases which fall in the realm of contract. He argued that if the petitioners feel aggrieved by the so-called adverse decision, then they are free to file suit for damages.

5. The most important factor which has to be kept in view while dealing with the question whether the principles of natural justice should be applied in cases like the present one is that the petitioners were not dealing with a private businessman but with an organisation of the government whose activities are regulated by legislative instruments enacted by the Parliament. Therefore, the respondents cannot invoke the doctrine of laissez-faire and claim that their actions are immune from judicial review. In *Kumari Shrilekha Vidyarthi etc. v.*

State of U.P., 1991(1) S.C.T. 575 : A.I.R. 1991 S.C. 537 the myth of such immunity has been exploded and in view of that decision it must be treated as a settled proposition of law that all the actions of the State, including those touching the field of contract, are not only subject to constitutional limitations but are also amenable to judicial review by the Courts. Another principle which can be culled out from the decision of Kumari Shrilekha Vidyarthi's case is that every public authority is bound to act fairly and in consonance with the basic norms of justice in its dealing with the citizens. If the decision of such authority is likely to affect any person, then the rules of natural justice are required to be complied with. In *State of Orissa v. Dr. (Miss) Binapani Dei*, A.I.R. 1967 S.C. 1269, *A.K. Kraipak v. Union of India*, A.I.R. 1970 S.C. 150 and *Kumari Shrilekha Vidyarthi etc. v. State of U.P. and others* (supra), their Lordships of the Supreme Court have held that the principles of natural justice are applicable to administrative actions as well. Some of the observations made in *Dr. (Miss) Binapani Dei*'s case (supra) are extracted below :

"It is true that the order is administrative in character, but even an administrative order which involves civil consequences, as already stated, must be made consistently with the rules of natural justice after informing the first respondent of the case of the State, the evidence in support thereof and after giving an opportunity to the first respondent of being heard and meeting or explaining the evidence. No such steps were admittedly taken, the High Court was, in our judgment, right in setting aside the order of the State."

Having noticed the proposition of law laid down by the Supreme Court, we may now advert to the case in hand. It cannot be disputed that the decision of the official respondents to delete the names of the petitioners from the approved list has disentitled them from claiming privilege and advantage of entering into lawful relationship with the government for purposes of gains. In other words, the order of deletion visits the petitioners with adverse civil consequences because they can no longer enter into contract with the government. In view of this, the applicability of the principles of natural justice must be held as inherent in the nature of power exercised by the official respondents.

6. A similar question was considered and answered in the affirmative by the Apex Court in *M/s. Erusian Equipment and Chemicals Pvt. Ltd. v. State of West Bengal* and another, A.I.R. 1975 S.C. 266. The facts of that case were that the petitioners were blacklisted by the State Government on the ground that they were guilty of misdeclaration of goods in their export transaction. One of the conditions urged on behalf of the petitioners was that the impugned decision is violative of Article 14 of the Constitution of India and the principles of natural justice. Their Lordships of the Supreme Court accepted this plea and held as under :

"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 he is put on the blacklist.

The State which has the right to trade has also the duty to observe equality. The Government cannot choose to exclude persons by discrimination. The order of blacklisting has the effect of depriving a person of equality of opportunity in the matter of public contract. A person who has been dealing with the Government in the matter of sale and purchase of materials has a legitimate interest or expectation. When the State acts to the prejudice of a person it has to be supported by legality. The State can enter into contract with any person it chooses. No person has a fundamental right to insist that the Government must enter into a contract with him. 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. Where the blacklisting order involves civil consequences it casts a slur. It creates a barrier between the persons blacklisted and the government in the matter of transactions. The blacklists are "instruments of coercion". Hence a person must be given an opportunity of hearing before his name is put on the blacklist."

Applying the ratio of the decision of the Apex Court, we hold that the principles of natural justice are applicable to the case of the petitioners.

7. On facts, there is no dispute between the parties that the petitioners were not given actionoriented notice and opportunity of hearing before the concerned authority decided to delete their names from the approved list of "C" class contractors. Therefore, we have no hesitation to hold that the petitioners have been condemned unheard and the impugned decision is liable to be declared as nullity on the grounds of violation of the rule of audi alteram partem.

8. In the result, the writ petition is allowed. Annexures P.10 to P.13 are declared illegal and quashed with a direction that the petitioners shall be allowed to submit their tenders in response to the notices which the official respondents may issue hereinafter. It is, however, made clear that this order of ours shall not preclude the official respondents from taking a fresh decision on the question of deleting the names of the petitioners from the approved list.