
(2019) 09 JH CK 0083
In the Jharkhand High Court
Case No : Writ Petition(C) No. 3594 Of 2019

M/s Aggar Security Services (I) Private Limited APPELLANT
Vs
State Of Jharkhand And Ors RESPONDENT

Date of Decision : 28-09-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2019) 09 JH CK 0083

Hon'ble Judges : Sujit Narayan Prasad, J

Bench : Single Bench

Advocate : Anil Kumar Sinha, Parth Jalan, Vikash Kumar

Final Decision : Disposed Of

Judgement

1. This writ petition is under Article 226 of the Constitution of India whereby and whereunder the order dated 09.07.2019 bearing Memo No. 1022 by which the petitioner has been blacklisted as also the decision has been taken not to take any service in the department in future.

2. Mr. Anil Kumar Sinha, learned senior counsel assisted by Mr. Parth Jalan has submitted by taking the ground for assailing the impugned order that the petitioner has not been provided with an opportunity to know the reason about the blacklisting. Further, the blacklisting being a major punishment by which the petitioner, whose source of livelihood is by providing services of security to the department, but by virtue of the said decision that too without providing an opportunity of hearing, is not sustainable in the eye of law.

Further submission has been made by referring to the Annexure-2 dated 09.04.2019 whereby and whereunder certain information has been sought for along with the details of the workers engaged along with their Universal Account Numbers, bank account numbers as also the details about the statutory deposit made either under the EPF or ESIC but there is not reflection about any show cause as to why the petitioner be not blacklisted, therefore, the instant case is of

passing of an order of blacklisting and debarring the petitioner from participating in future works is without following the principle of natural justice but the same department has furnished the certificate pertaining to satisfactory service provided by the petitioner as would appear from Annexure-8 Series.

3. Mr. Vikash Kumar, learned A.C. to A.G. appearing for the State of Jharkhand has vehemently opposed the submissions/grounds agitated by learned senior counsel representing the petitioner by submitting that the petitioner has not filed complete details as has been asked for in terms of communication dated 09.04.2019 (Annexure-2).

4. This Court, after having heard the learned counsel for the parties and after going across the pleadings made in the writ petition as also the impugned order, has found that the petitioner establishment is furnishing service to the different departments of the State Government by providing security service, present case is of the Higher Technical Education & Skill Development Department wherein the petitioner has been provided to render its service by providing security service to the said Department.

The petitioner has been assigned to provide security service under the Government Polytechnic/Government Women's Polytechnic Institute and B.I.T. Sindri apart from that the outsourcing of the sweepers as also the other casual workers. The petitioner while rendering such services, has been served with a communication issued on 09.04.2019 as contained in Memo No. 573 issued under the signature of Additional Secretary to the Government, Higher Technical Education & Skill Development Department, Government of Jharkhand whereby and whereunder the petitioner has been asked to furnish show cause/report about the amount which has been received from the department during the period 01.02.2014 to 31.12.2018, the details of the workers including names, address, Universal Account Numbers, bank account numbers as also the details about the statutory deposit deducted and deposited in the respective accounts of the EPF/ESIC which according to the petitioner, has been furnished save and except about the details pertaining to statutory deposit deducted and deposited in the respective accounts of the worker pertaining to EPF/ESIC for which he has sought for time but instead of granting time, the impugned decision has been taken by taking decision to blacklist as also disallowing to provide service in future under the department.

5. The question of violation of principle of natural justice has been agitated.

6. It is not in dispute so far as the legal position is concerned as blacklisting or depriving from rendering service in the department amounts to major punishment and as such, while resorting to such punishment, the principle of natural justice is required to be followed.

The principle of natural justice is required to be reflected from the face of the order, merely by saying by the party orally that the principle of natural justice has been followed is not sufficient requirement about the observance of the

principle of natural justice that is because of the reason that if the principle of natural justice would be followed which will lead to issuance of show cause warranting the person concerned against whom any adverse decision is to be taken to furnish its reply and if reply would be furnished it would be for the purpose of its consideration and consideration means active application of mind by reflecting about satisfaction with the reply or dissatisfaction. In case of satisfaction with the reply, no decision would be taken adverse to the interest of the party but in case of dissatisfaction with the reply, admittedly the adverse decision would be taken and these facts are to be reflected from the face of the order.

7. This Court, after going across the impugned order as also the so called show cause notice as contained under Annexure-2 issued on 09.04.2019 is only to furnish certain details about the receipt of certain amount for certain period along with the details of the workers with further details about their names, address, Universal Account Number, bank account number as also the statutory deposit made in the respective EPF/ESIC but it does not transpire therefrom that any reflection about taking any adverse decision against the petitioner has been made. Therefore, the communication dated 09.04.2019 cannot be said to be show cause pertaining to penal action for blacklisting the petitioner.

8. Further, it is evident from the impugned order dated 09.07.2019 that there is no reference of any show cause and it is further evident that there is no consideration of any reply. Even accepting that it may be because of non-furnishing of reply but even then the same has to be reflected from the face of the order. However, it reflects from the impugned order that in some points the show cause notice has been issued but the question is when the decision for blacklisting has been taken coupled with the decision of debarring the petitioner from participating in future work, it would not be sufficient to say that the show cause notice has been asked on certain points, rather, the requirement of law would be to ask specific reply by making specific allegation asking the concerned, the petitioner herein, as to why for certain irregularities he be not blacklisted but that stipulation is not available in the impugned order. This suggests and being corroborated with the factual aspect that it is the case of taking adverse decision of blacklisting and debarring the petitioner from future work is without providing an opportunity of hearing. It is cardinal principle of law that any adverse decision taken without following the principle of natural justice it is said to be not sustainable in the eye of law.

9. Considering the aforesaid position of law, this Court is of the view that the order of blacklisting dated 09.07.2019 is not sustainable in the eye of law. Accordingly the same is quashed.

10. It is settled position of law that on technicalities no one can be allowed to take advantage, otherwise the illegality as has been alleged will be allowed to be perpetuated, therefore, the matter needs to be considered afresh for taking decision after following the principle of natural justice.

11. Keeping the aforesaid fact into consideration, the matter is remitted before the Additional Secretary, Department of Higher Technical Education & Skill Development, Government of Jharkhand, Ranchi to take fresh decision with respect to the issue involved therein.

The Additional Secretary is further directed to issue specific show cause notice to the petitioner, to be issued within two weeks from the date of receipt/production of a copy of this order specifying therein the specific date of submission of reply.

It is incumbent upon the petitioner to furnish the reply to the aforesaid show cause notice within the time stipulated and if the reply would be filed, the concerned respondent shall take decision afresh within a period of three weeks thereafter.

Needless to say that if no reply to show cause would be filed, the concerned respondent would be at liberty to take final decision.

The consequence for the future action would fall depending upon the final outcome of the decision to be taken by the concerned respondent.

12. This writ petition is accordingly disposed of, consequently, I.A. No. 6870 of 2019, filed for stay of the operation of impugned order dated 09.07.2019, also stands disposed of.