

(2023) 04 TEL CK 0014
In the Telangana High Court
Case No : Writ Petition No. 17910 Of 2022

M/S Agile Security Forces Pvt.Lt And Others

APPELLANT

Vs

State Of Telangana And Others

RESPONDENT

Date of Decision : 11-04-2023

Acts Referred:

Constitution Of India, 1950 — Article 14, 21

Citation : (2023) 04 TEL CK 0014

Hon'ble Judges : Surepalli Nanda, J

Bench : Single Bench

Advocate : C.V.Mohan Reddy

Final Decision : Allowed

Judgement

1. Heard learned senior counsel Sri C.V. Mohan Reddy for the Petitioner and learned Government Pleader for Medical & Health on behalf of the Respondents No.1 & 2.

2. This petition is filed by the petitioner to issue an appropriate writ, order or direction more particularly in the nature of Mandamus to declare the impugned Memo Rc.No.G204/Peshi/2022, dated 02.04.2022 whereby blacklisting the petitioner without giving opportunity, notice and following due procedure as illegal, arbitrary, unconstitutional, violative of principles of natural justice and violative of Articles 14 and 21 of the Constitution of India and consequently set aside the impugned Memo. No.G204/Peshi/2022, dated 02.04.2022.

3. The case of the petitioners, in brief, is as follows:

a) The 1st petitioner company is in the business of providing industrial security and also providing men on outsourcing basis for housekeeping and sanitation services to various governmental agencies and private entities. The 2nd petitioner is a shareholder in the 1st petitioner company.

b) The 1st respondent entered into an agreement with the 1st petitioner

company for provision of the IHFM Services at MGM Hospital, Warangal, which includes sanitation and pest control Services, Security Services and patient care services.

c) The 1st petitioner stood L1 in Tender No.2-1/IHFMS/SUPDT/WGL/2016-2017 Dated April, 17, 2017 (Tender) and entered into agreement on 18.04.2017 for a period of three years from the date of agreement.

d) MGM Hospital, Warangal is a 1000 bedded hospital with a built up area of 7,56,574 sq. ft and open area of 32,327 sq. yards. As per the tender and agreement manpower of 393 has to be provided i.e. Security 100, Housekeeping and Pest Control 193 and Patient Care 100.

e) The 1st petitioner has been providing the IHFM services to the complete satisfaction of the respondents, which can be seen from the satisfactory performance Certificates issued by the 1st respondent.

f) The 1st respondent issued notice vide Rc.No.119/Peshi/2022, dated 15.03.2022 directing the petitioner No.1 company to control rodents, mosquitoes and cockroaches etc in RICU, SNCY Wards, Intensive Care Units, Kitchen Complex, administrative building including the Superintendent Chamber. Apart from already implemented services under the tender/agreement, the 1st petitioner additionally too all necessary steps to curtail the rodent's movement and the same was informed to respondent on daily basis.

g) The initial tenure concluded on 14.08.2020 and the Secretary, Medical Health issued extension orders from time to time, till the new tender process is completed.

h) A patient was admitted to the respiratory ICU at MGM Hospital, Warangal having a history of chronic alcoholism, with his liver, pancreas and kidneys badly affected and on ventilator and was bitten by a rodent on the mid night of 30.03.2022. The said patient was shifted to NIMS, Hyderabad and expired on 01.04.2022 due to complications from the existing illness and not due to rat bite.

i) The 1st respondent issued show cause notice on 02.04.2022 to the petitioner to submit explanation for the lapses within three days or the higher authorities will black list the petitioner company. The actions of respondents in issuing the blacklisting notice on 02.04.2022 even before any response was given by the 1st petitioner to the memo and even before the completion of three days time to respond to the memo is a complete violative of natural justice principles and is also violative of the Fundamental Right guaranteed under the Constitution of India. Hence, this writ petition.

4. The case of the respondents, in brief, is as follows:

a) The contention of the petitioner raised in para 9 that the petitioner is successful in providing the IHFMS services in MGM Hospital Warangal is not true as during the petitioner's contract period a penal punishment of Rs.3,48,327/-

(Rupees three lakhs forty eight thousand three hundred and twenty seven only) was also imposed on the petitioner for not providing satisfactory services in the month of March, 2022 with deduction in the invoice of the service bill.

b) Every month satisfactory performance certificate was issued to the petitioner, but every month there was no 100% satisfactory performance obtained by the petitioner and also in the month of March, 2022 only 93% of satisfactory performance was recorded by the petitioner and a penal punishment was also imposed by the Superintendent, MGM Hospital, Warangal for unsatisfactory performance. The drain and sewer network are very good, as the Executive Engineer TSMIDC Warangal always monitors and conducts repairs and renovations work regularly and there is no incident of the petitioner submitting complaint of the bad sewer and drain system.

c) Notice dated 15.03.2022 was issued to the petitioner company that there is bad maintenance to control the rodents and pest control system. In spite of the said notice, the petitioner had not taken any measures. A memo was also issued on 02.04.2022 with regard to bad maintenance.

d) The petitioner submitted letter of intention not to continue in providing service due to his lapse on controlling workers supplied by him due to frequent agitations and dharnas demanding to solve their problems. The petitioner accepted that there was a rat bite on the patient in RICU which the petitioner's manpower has not controlled the rodent population in MGM Hospital, Warangal and RICU is a critical area where extra measures have to be taken by deploying additional workers.

e) The Superintendent MGM Hospital Warangal was instructed by his superior Director of Medical Education, Hyderabad to immediately issue notice of blacklisting the firm as there were previous notices were issued to rectify and the petitioner was given ample time to rectify.

f) After issue of blacklisting of the agency of the petitioner continued the service as the fresh IHFMS tenders were flouted by the Director of Medical Education and the selection of the new bidder was under process and since there was no alternate measures to be taken due to emergency hospital services the petitioner was permitted to continue until finalization of tenders and was terminated immediately on finalization of fresh tender. The petitioner was issued blacklist notice because of gross mistake lapse and improper service in spite of giving ample time to improve the services. Therefore, the writ petition is liable to be dismissed.

5. PERUSED THE RECORD :

A) The Memo dt. 02.04.2022 vide RC.No. 0204/Peshi/2022 of the Superintendent MGM Hospital, Warangal reads as under :

"It is noticed that there are many lapses regarding sanitation pertain to all the premises of MGM Hospital, Warangal, including major departments that are like

RICU, SNCU, ICCU and other departments, instead of giving you many instructions regarding sanitation still not rectified.

Hence, hereby informed to Agile management give the your explanation regarding the above mentioned lapses within three days otherwise it will be informed to higher authorities to keep you Agile Management in Block List as per the rules."

B. The Memo dt. 02.04.2022 vide RC No. 0204/Peshi/2022 of the Superintendent MGM Hospital, Warangal forwarded to the petitioner by whatsapp reads as under :

"It is bring to the notice of Agile Security Forces Pvt Ltd who are the Contractors for the Santation Security, Patient care and Pest Control for MGM Hospital that you have totally failed in maintaining proper sanitation in the MGM Hospital premises.

You were issued notices earlier and on 2.2.2022 and 15.03.2022 to rectify the problem, but in spite of that to steps are taken by your agency. This shows a very casual approach by the agency.

Hence, we are blacklisting the agency for not fulfilling the MOU clause of tender, 6.2.1 (Pest control, Rodent Control and termite treatment works).

6. 6.2.1 of the Tender Conditions read as under:

"6.2.1 Area of operation :

Area of operation for Pest Control, Rodent Control & Anti termite Treatment works are as follows:

- a) The building and 3 meters surrounding area is to be protected.
- b) The treatment for protection to control the following in each of the buildings and 3 meters surrounding area of such buildings:
 1. Rat and rodents.
 2. Snakes/Scorpions.
 3. White/red/black ants/wood borers
 4. Anti fungal
 5. Anti termite
 6. Mosquito/flies control
 7. General disinfection
 8. Bedbugs
 9. Honey bees
 10. Any other related treatment as and when required as per need to maintain

the standards in laboratories/hospital and Campus.

7. Counter Affidavit filed by Respondents, in particular, paras 4 and 12 read as under :

"4. In reply to point 9, it is respectfully submitted that the contention of the petitioner raised in para 9 that he is successful in providing the IHFMS services in MGM Hospital Warangal is not true as during his contract period a penal punishment of Rs.3,48,327/- (Rupees three lakhs forty eight thousand three hundred and twenty seven only) was also imposed on the petitioner for not providing satisfactory services in the month of March, 2022 with deduction in the invoice of the service bill.

12. In reply to para 17, it is respectfully submitted that the petitioner was given ample time under principles of natural justice. The first notice was issued on 2.2.2022 and for this notice the petitioner submitted explanation stating that he was unaware of it and for the second notice on 15.03.2022 the petitioner has not taken any corrective measures to improve the services due to which the rat bite incident occurred damaging the hospital reputation and death of the patient. After giving ample time only the Superintendent, MGM, Hospital, Warangal has issued memo dated 02.04.2022 blacklisting the petitioner firm."

8. This Court vide its orders dt. 08.04.2022 in WP No.17910 of 2022 passed interim orders in favour of the Petitioner observing as follows and the same are in force as on date:

"A perusal of the impugned memo dated 02.04.2022 shows that the petitioner agency has been blacklisted.

Admittedly, in this case, the respondent NO.1 - Superintendent, MGM Hospital, Warangal, has also issued the impugned memo dated 02.04.2022 asking the petitioner society to give an explanation within three days but even before the expiry of the said three days, the respondent has issued the impugned memo on the very same day blacklisting the petitioner agency.

This Court as well as the Hon'ble Supreme Court in number of cases has held that blacklisting a company/agency is a major punishment and has deprecated the practice of blacklisting the companies or agencies at the drop of a hat without giving an opportunity of hearing.

Therefore, the impugned memo dated 02.04.2022 is suspended. However, it is made clear that the petitioner shall see that the terms and conditions of the Memorandum of Understanding shall be fulfilled and also necessary sanitation and hygiene is maintained at the hospital concerned as per the terms and conditions of the Memorandum of Understanding.

Post on 21.04.202

DISCUSSION AND CONCLUSION :

9. A bare perusal of the contents of the Memo 02.04.2022 vide RC.No. 0204/Peshi/2022 of the Superintendent MGM Hospital, Warangal (extracted to above), calling upon the Petitioner to submit Petitioner's explanation within 3 days failing which it will be informed to the higher authorities to keep the Petitioner in black list as per the rules, stating further in the said Memo, that it was noticed that there were many lapses regarding sanitation pertaining to all the premises of MGM Hospital, Warangal including major departments that are like RICU, SNCU, ICCU and other Departments clearly indicates that the Show Cause Notice issued to the Petitioner is not only vague but also does not provide reasonable period to the Petitioner to respond since it very clearly stipulates 3 days period which is not reasonable period and the same amounts to denial of reasonable opportunity to the Petitioner to represent Petitioner's case before it is put on black list and admittedly is not only in clear violation of Principles of Natural Justice but also irrational.

10. A bare perusal of the contents of the black list Memo vide RC No.0204/Peshi/2022, dated 02.04.2022 which was received by the Petitioner by Whatsapp at around 9.30 p.m. clearly indicates that even before any response could be issued by Petitioner No.1 Company to the Respondent No.1, the Petitioner was black listed without any application of mind in clear violation of principles of natural justice, hastily, unilaterally, without assigning any reasons on the ground that the Petitioner totally failed to fulfil the MOU Clause of tender 6.2.1 and failed to maintain proper sanitation in the MGM Hospitals. But however, a bare perusal of the material documents filed by the Petitioner at pages 20 to 79 of the Rejoinder filed by the Petitioner, relate to Performance Certificates issued by the 1st Respondent and a bare perusal of the same clearly indicates the Petitioner having scored more than 90% in all the satisfactory performance certificates issued by the 1st Respondent in favour of the Petitioner for the period from August 2017 till July 2022. A bare perusal of the material document at page 80 filed along with the rejoinder dt. 14.09.2022 i.e., Work Completion/ Experience Certificate for the services provided during the contract period i.e., from 15.08.2017 to 29.07.2022, issued by the 1st Respondent herein also certifies the Petitioner's performance as satisfactory as on the date of completion of the contract i.e., 29.07.2022 and the petitioner having completed contract value worth Rs.2565 lakhs. This Court therefore opines that the Petitioner was not provided with reasonable opportunity to even respond to the Show Cause Notice dt. 02.04.2022 and even before the Petitioner could produce all the material evidence in support of his case and place it before the Respondent Authority for consideration, the order impugned was passed on 02.04.2022 itself by way of a whatsapp message at around 9.30 p.m., hastily, erroneously, irrationally, in clear violation of Principles of Natural Justice.

11(i) The Apex Court in its judgment reported in (1975) 1 SCC page 70 in M/s. Erusian Equipment & Chemicals Ltd., vs. State of West Bengal and Another at para 20 observed as under :

Para 20. 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.

ii) In the case of "Gorkha Security Services Vs. Government (NCT of Delhi) & Ors." reported in (2014) 9 SCC 105, the Hon'ble Supreme Court has held that the necessity of compliance with the principles of natural justice by giving an opportunity to the person against whom action of blacklisting is sought to be taken has a valid and solid rationale behind it. Many civil and/or evil consequences are involved with the order of blacklisting. It is described as "civil death" of a person who is foisted with the order of blacklisting. Such an order is stigmatic in nature and debars such a person from participating in government tenders which means precluding him from the award of government contracts.

iii) In the case of "Kulja Industries Limited Vs. Chief General Manager, Western Telecom Project Bharat Sanchar Nigam Limited & Others" reported in (2014) 14 SCC 731, the Hon'ble Supreme Court has held that blacklisting simply signifies a business decision by which the party affected by the breach decides not to enter into any contractual relationship with the party committing the breach. The freedom to contract or not to contract is unqualified in the case of private parties. However, any such decision is subject to judicial review if the same is taken by the State or any of its instrumentalities. This implies that any such decision is open to scrutiny not only on the touchstone of the principles of natural justice but also on the doctrine of proportionality. A fair hearing to the party being blacklisted thus becomes an essential precondition for a proper exercise of the power and a valid order of blacklisting made pursuant thereto. Whether the order itself is reasonable, fair and proportionate to the gravity of the offence, is also examinable by a writ court.

iv) The Apex Court in the Judgment dated 16.08.2022 in Civil Appeal No. /2022 (@ Petition for Special Leave to Appeal (C) No.32840/2018) in M/S CHAUHAN BUILDERS RAIBARELI versus THE STATE OF UTTAR PRADESH & ORS., reported in (2022) Live Law (SC) 694 observed that Contractor cannot be blacklisted for life. The order of blacklisting to the extent that it has not specified the period cannot be sustained. In the present case the impugned Memo dt. 02.04.2022 issued by the 1st Respondent blacklisting the Petitioner does not specify any period and simply says that the Petitioner's Agency has been blacklisted for not fulfilling the MOU Clause of the Tender 6.2.1.

v) The Apex Court in its judgment in Rastriya Ispact Nigam Ltd., Vs. Verma Transport Company reported in (2006) 7 SCC 275 very clearly held that before proposing to pass a black listing or debarring orders the parties had to be given hearing followed by an appropriate reasoned order.

vi) The Apex Court in its judgment (2020) 18 SCC 550 in Deffodills Pharmaceuticals Limited and Another vs. State of Uttar Pradesh and Another in its head note observed as under :

A. Government Contracts and Tenders Blacklisting - Effect of Hearing concerned person prior to blacklisting Essentially of Passing of adverse order based on assumption, that too without complying with principles of natural Justice-Impermissibility of

- Unilaterally passing adverse order against appellant for certain actions of its erstwhile Director who had left company long back-On facts held, order preventing procurement from appellant was of indefinite duration and disproportionate as it was passed on basis of assumption without hearing appellant - Considering long duration of operation of adverse order. Supreme Court itself decided matter without remanding matter to original authorities, and quashed the adverse order

- Held, blacklisting has the effect of preventing a person from privilege and advantage of entering into lawful relationship with 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 person concerned should be given an opportunity to represent his case before he is put on the blacklist.

vii). The Apex Court in the aforesaid Judgment, in particular, at Para 14 observed as under :

14. The decisions in Erusian Equipment & Chemicals Ltd. v. State of WB and Raghunath Thakur v. State of Bihar as well as later decisions have now clarified that before any executive decision-maker proposes a drastic adverse action, such as a debarring or blacklisting order, it is necessary that opportunity of hearing and representation against the proposed action is given to the party likely to be affected. This has been stated in unequivocal terms in Raghunath Thakur as follows: (Erusian Equipment & Chemicals case. SCC p. 75. para 20)

"20. 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."

12. This court opines that fundamentals of fair play requires the person concerned should be given an opportunity to represent his case before he is put on the black list. In the present case admittedly as borne on record the Petitioner has been denied a reasonable opportunity to put-forth his case against the proposed black listing of the Petitioner in clear violation of principles of natural justice since the Show Cause Notice and also the order of blacklisting the

Petitioner are issued on the same date i.e., 02.04.2022.

13. Taking into consideration the interim order of this Court dated 08.04.2022 passed in W.P.No.17190 of 2022 and also the above referred facts and circumstances and the law laid down by the Apex Court in the judgments reported in (i) (1975) 1 SCC page 70 in M/s. Erusian Equipment & Chemicals Ltd., vs. State of West Bengal and Another, (ii) "Gorkha Security Services Vs. Government (NCT of Delhi) & Ors." reported in (2014) 9 SCC 105, (iii) "Kulja Industries Limited Vs. Chief General Manager, Western Telecom Project Bharat Sanchar Nigam Limited & Others" reported in (2014) 14 SCC 731, (iv) M/S Chauhan Builders Raibareli versus The State Of Uttar Pradesh & Ors., reported in (2022) Live Law (SC) 694, (v) Rastriya Ispact Nigam Ltd., Vs. Verma Transport Company reported in (2006) 7 SCC 275, (vi) (2020) 18 SCC 550 in Deffodills Pharmaceuticals Limited and Another vs. State of Uttar Pradesh and Another, the writ petition is allowed as prayed for and the impugned Memo in RC No.G204/Peshi/2022, dt. 02.04.2022 of the 1st Respondent blacklisting the Petitioner is set aside. It is however observed that it is open for the Respondents to take appropriate action in accordance to law if the Respondents intend to do so.

Miscellaneous petitions, if any, pending shall stand dismissed.