

(2018) 02 AHC CK 0005
In the Allahabad High Court
Case No : 62314 of 2017

M/S Aims International And Another	Vs	APPELLANT
State Of U.P. And 2 Others		RESPONDENT

Date of Decision : 01-02-2018

Acts Referred:

Citation : (2018) 02 AHC CK 0005

Hon'ble Judges : Tarun Agarwala, Saumitra Dayal Singh

Bench : Division Bench

Advocate : Tarun Agrawal, Prashant Kumar Tripathi

Final Decision : Allowed

Judgement

1. This writ petition has been filed against the order dated 31.05.2017 passed by the Director, Disease Control and Animal Husbandry U.P. Lucknow by which the petitioner has been restrained from participating in any tender invited by the Animal Husbandry Department, Government of U.P. Also, the earnest money deposited by the petitioner has been forfeited. The petitioner is engaged in the manufacture of mineral mixture that constitute cattle feed supplement.

2. Certain tenders were floated by the Department of Animal Husbandry, U.P. In response to the same, the petitioner had submitted it's bid. Some litigation arose between the parties in respect of the tenders floated by the respondents. It appears some complaints had also been made against the petitioner in respect of the bid made by it. Occasioned by such complaints the impugned order dated 31.05.2017 has been passed whereby the petitioner has been effectively black listed from participating in the tenders floated by the Animal Husbandry Department.

3. We have heard Sri Ravi Kant, learned Senior Counsel assisted by Sri Tarun Agrawal, learned counsel for the petitioners and Ms. Subhash Rathi, learned Additional Chief Standing Counsel for the State.

4. The sole submission made by the learned Senior Counsel is that the order of black listing passed against the petitioner has serious civil consequences. Therefore, the same could not have been passed without prior show cause notice and without affording opportunity of hearing to the petitioner. In this regard, reference has been made to paragraphs 46 and 51 of the writ petition wherein it has been specifically stated that no notice or opportunity of hearing was given to the petitioner before the impugned order dated 31.05.2017 came to be passed.

5. Learned Additional Chief Standing Counsel for the State has relied on the notices dated 25.01.2017 & 08.03.2017 to assert that the petitioner had due notice of action taken.

6. In the counter affidavit filed by the State respondents the contents of paragraphs 46 and 51 of the writ petition have been denied and in paragraph 19 of the counter affidavit, reference has been made to notices dated 25.01.2017 and 08.03.2017 (annexed with the counter affidavit) issued to the petitioners before the order dated 31.05.2017 came to be passed.

7. A bare perusal of the those notices reveals that the petitioners had been called upon to explain with regard to certain discrepancies viz-a-viz the "No dues" certificate issued by the Income Tax Officer, Ambala, to the petitioner. However, the said notices did not contain any recital proposing to blacklist the petitioner. The petitioner was only called upon to give its reply, failing which action was proposed to be initiated against the petitioner, in accordance with law.

8. Only if the show cause notice clearly indicates that it was proposed to blacklist the petitioner, that the consequential action of blacklisting could be justified on the basis such notice and use of words such as "action as deemed fit" being proposed used in a notice cannot be relied upon to justify the consequential order to black list the noticee, *Gorkha Security Services Vs. Government (NCT of Delhi) and Others*, (2014) 9 SCC 105

9. In the facts of the present case, no specific notice was ever issued to the petitioner by the respondents requiring it to show cause why the petitioner may not be blacklisted by the respondents and be thus debarred from participating in any future tender process. Mere recital in the notice whereby the petitioner had been required to show cause why action may not be initiated against it in accordance with law, cannot be relied upon to justify the extreme action of blacklisting adopted by the respondents.

10. The notices relied upon by the respondents only suggest that at that stage the state respondents were conducting a preliminary inquiry to ascertain the facts but that no specific action, less so one of blacklist the petitioner was initiated.

11. Thus, the impugned order dated 31.05.2017 appears to have been passed without issuance of prior show cause notice. It is clear, the same has been passed in complete violation of rules of natural justice as applicable to the facts

of the present case.

12. For the reasons stated above, the writ petition is allowed. The order dated 31.05.2017 passed by the Director, Disease Control and Farm Animal Husbandry, U.P. Lucknow - respondent no.2, insofar it relates to blacklisting the petitioner, is quashed.