
(2014) 03 AHC CK 0096

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 15036 of 2012

M/s. Allahabad Traders

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 24-03-2014

Acts Referred:

Constitution of India, 1950 — Article 19(1)(g), 21

Citation : (2014) 3 ADJ 537 : (2014) 4 ALJ 499 : (2014) 104 ALR 290

Hon'ble Judges : Tarun Agarwala, J;Rajan Roy, J

Bench : Division Bench

Advocate : Ravi Kant and Tarun Agarwal, Advocate for the Appellant

Final Decision : Allowed

Judgement

Rajan Roy, J.—By means of this writ petition, the petitioner has challenged the order dated 16th March, 2012 passed by respondent No. 2 (Commissioner, food and Civil Supply] by which an earlier order dated 15.9.2010 passed by the Regional Food Controller, respondent No. 3 blacklisting the petitioner has been affirmed. The petitioner is engaged in the business of transportation. He was registered with the Regional Food Controller, Allahabad as "A Class Contractor/ Handling agent". It is said that the petitioner was required to transport 29600 quintal of custom paddy from purchase centre Manjhanpur, Kaushambi to Rakesh Mini Rice Mill, Manjhanpur. It is alleged by the petitioner that on satisfactory completion of work, the payment of the amount due to the petitioner, was recommended by the Marketing Inspector and the District Food Marketing Officer, Kaushambi vide letters dated 23.5.2009 and 28.5.2009 to the Regional Food Controller and after his approval on 20.6.2009, the payment was also made. The payment of the security money in respect of the aforesaid transaction was also recommended. It is stated that subsequently, a complaint was filed by the rice mill owner on 3.7.2009 in respect of the aforesaid transaction. It said that out of 29600 quintal of paddy allotted to him only 11659.05 quintal of paddy was received. An enquiry was instituted on 13.7.2009 in respect of the said

complaint. Consequent to the institution of inquiry, the Regional Food Controller issued an order dated 31.8.2009, restraining the concerned officer from making payment to the petitioner, and also stating that in the event the payment had already been made, the same could be adjusted from other dues of the petitioner. On 30.10.2009, an order was issued blacklisting the petitioner and cancelling his registration with the department. This order was passed on the basis of enquiry reports dated 3.9.2009 and 27.10.2009. An FIR is also said to have been lodged on 5.9.2009 itself. It is not out of place to mention here that the District Magistrate had also instituted an enquiry into the matter on the above mentioned complaint of the mill owner, appointing the Chief Development Officer of the district as the enquiry officer, who submitted his report on 30.7.2009, recording a finding that the mill owner had manufactured and fabricated the documents. In the said enquiry report, the mill owner and the officers of the department were held responsible. Writ Petition No. 60643 of 2009 was filed by the petitioner challenging the order of blacklisting dated 30.10.2009, which was allowed on 30.11.2009. The impugned order was quashed with liberty to the concerned opposite party to pass a fresh order.

2. Thereafter, a show-cause notice dated 4.12.2009 was issued to the petitioner to which reply was submitted by it on 14.12.2009. The petitioner was again blacklisted by the order dated 22.12.2009, and his registration with the department was also cancelled.

3. Thereafter, the Commissioner (Food & Civil Supply) instituted an enquiry in the matter through the Regional Food Marketing Officer, Kanpur who submitted his report on 6.1.2010, wherein also, it was the mill owner who was held responsible. According to the petitioner, the said report did not find it guilty in the matter.

4. The above mentioned order dated 22.12.2009 was challenged by the petitioner before this Court by means of Writ Petition No. 1148 of 2010, which was allowed on 19.7.2010, and the impugned order was quashed and again an opportunity was granted to the opposite party to pass a fresh order. In pursuance thereof, a show-cause notice was issued to the petitioner on 3.8.2010 to which he submitted his reply on 27.8.2010 and, thereafter, again an order dated 15.9.2010 was passed blacklisting the petitioner and cancelling his registration with the department.

5. In the meantime, the State Government took cognizance of the matter and instituted a departmental enquiry against the concerned officers. The departmental enquiry report was submitted on 23.12.2010, wherein it was stated that at least 26500 quintal of custom paddy had been delivered by the transporter to the rice mill owner and the dispute was only with regard to 3000 quintal of rice.

6. Thereafter, the order dated 15.9.2010 was challenged by the petitioner before this Court by means of Writ Petition No. 66219 of 2010, which was allowed by

judgment and order dated 25.1.2011 directing the Commissioner (Food & Civil Supply) to reconsider the matter in the light of the observations made therein after affording an opportunity of hearing to the parties concerned.

7. In pursuance of the aforesaid judgment, a notice was issued to the petitioner on 28.6.2011 to which an exhaustive reply was submitted by the petitioner. However, once again, by means of the impugned order dated 16.3.2012 the representation of the petitioner was rejected and the earlier order dated 15.9.2010, which had in fact already been quashed by this Court was affirmed resulting in the petitioner being again blacklisted as also cancellation of its registration with the department.

8. We have heard Shri Ravi Kant, learned senior counsel assisted by Shri Tarun Agrawal for the petitioner as well as the learned Standing Counsel for the opposite parties.

9. The contention of the petitioner is that this Court vide order dated 25.1.2011, passed in Writ Petition No. 66219 of 2010, had directed the Commissioner (Food & Civil Supply) to consider the matter at its own level and if necessary to take appropriate action and pass a fresh order in accordance with law. The consideration was to be done by the aforesaid officer in light of the observations and directions of this Court in the said judgment but this has not been done. The impugned order has been passed without adhering to the directions of this Court, as referred above. The exhaustive reply of the petitioner submitted in response to the notice dated 28.6.2011 has not been considered and a cryptic order has been passed which does not disclose appropriate application of mind by the concerned officer. The observation of this Court regarding the possibility of involvement of departmental officers has also been ignored. The two reports dated 30.7.2009 and 6.1.2010 which were required to be considered have also not been considered. It was also submitted by the learned counsel for the petitioner that the impugned order appears to have been passed in a manner so as to protect the guilty officers of the department. It was also submitted by him that on the basis of material on record, especially the aforesaid two enquiry reports, no prudent person could come to a conclusion that the petitioner was in any manner responsible. The petitioner has duly delivered the requisite quantity of custom paddy to the mill owner. It was the mill owner who was guilty of misappropriation in connivance with the officers of the department and the petitioner, i.e., the transporter was not in any manner involved. Therefore, the impugned order is an arbitrary order and violates the fundamental right of the petitioner as guaranteed under Articles 19(1)(g) and 21 of the Constitution of India. On account of the said order the petitioner has been precluded from participating in the tender process.

10. Learned Standing Counsel, on the other hand, invited the attention of this Court to various enquiry reports and other documents regarding the involvement of the petitioner/transporter in the misappropriation of the custom paddy/rice. It was also contended that apart from the mill owner and the officials, the

petitioner was also involved. The enquiry reports dated 30.7.2009 and 27.10.2009 clearly records the involvement of the petitioner and as such the impugned action was justified. Learned Standing Counsel also invited the attention of this Court to another enquiry report dated 6.1.2010 to show that the alleged admission of the mill owner which has relied upon by the petitioner is in fact an assertion made on the basis of certain documents produced by the concerned Marketing Officer who was himself involved in the illegality, therefore, the same did not have any evidentiary value. Learned Standing Counsel also invited the attention of the Court to the earlier order of blacklisting dated 30.10.2009 which according to him, clearly held the petitioner to be involved in the irregularity causing great financial loss to the State Exchequer.

11. On an overall consideration of the facts and the circumstances of the case, we are of the view that this Court vide judgment dated 25.1.2011 passed in Writ Petition No. 66219 of 2010 filed by the petitioner while quashing the earlier order dated 15.9.2010 had made certain observations and issued a direction to the Commissioner (Food & Civil Supply), for reconsideration of the matter in the light of such observations/directions. The judgment dated 25.1.2011 was not challenged by the opposite parties, therefore, it has become final.

12. In its judgment dated 25.1.2011, this Court has categorically held that the enquiry reports dated 30.7.2009 and 6.1.2010 were very material and relevant for the purpose of passing any order against the petitioner. It was also observed that the recitals made in the order of blacklisting relating to the involvement of the petitioner in the fictitious purchase of custom paddy in the year 2008-09 was not supported by any reason, except the enquiry report dated 3.9.2009. The aforesaid finding was held to be totally perverse and that the order dated 15.9.2010 was merely a repetition of the earlier order. The impugned order failed to deal with the two replies of the petitioner and only records the conclusion with regard to its involvement. In the aforesaid judgment this Court has further observed as under:

In view of the above legal position and the facts and circumstances of the case, we are of the opinion that the impugned order dated 15.9.2010 cannot be sustained in law for the reasons that

(i) even the enquiry report dated 3.9.2009 which forms the basis of passing the impugned order does not in its conclusion alleges the involvement of the petitioner;

(ii) the other enquiry reports dated 30.7.2009 and 6.1.2010 which were also material and relevant were not considered;

(iii) petitioner's reply dated 3.8.2010 to the show-cause notice was not dealt with;

(iv) petitioner has not been named in the first information report dated 5.9.2009 and no allegation of petitioner's involvement has been made therein; and

(v) no reasons in support of the finding that the petitioner is also involved have been recorded.

Accordingly, we are of the considered opinion that the impugned order dated 15.9.2010 is unsustainable and is liable to be quashed. We, therefore, issue a writ of certiorari quashing the order dated 15.9.2010 (Annexure-21 to the writ petition) keeping it open for the Food Commissioner (Food and Civil Supplies), Lucknow (respondent No. 3) to consider the matter at its own level and, if necessary, to take appropriate action and pass a fresh order, in accordance with law after affording proper opportunity of hearing to the parties and on consideration of the above referred material or any other material which may have come into existence in the meantime or is found to be necessary. We are giving this liberty to the respondent No. 3 only for the reason that all through the record reveals the possibility of involvement of the departmental officers up to a very high level and therefore action on any lower level would not serve any purpose.

The writ petition as such is allowed with the aforesaid observation.

No order as to costs.

The reconsideration was to be done by the Commissioner (Food & Civil Supply), keeping in mind the five points enumerated in the aforesaid judgment and observations/directions contained therein.

13. We have examined the impugned order in the light of the above mentioned judgment and we find that none of the conditions mentioned therein have been complied before passing the impugned order dated 16.3.2012 which has been passed in a very casual manner ignoring the observations made in the earlier judgment. It is based on the earlier enquiry reports dated 3.9.2009 and 27.10.2009, but it nowhere considers the enquiry report dated 30.7.2009 and 6.1.2010 as was obligatory under the judgment dated 25.1.2011. The same mistake had been committed by passing the earlier order which was specifically noted by this Court in its earlier judgment. The detailed reply submitted by the petitioner has also not been considered. In fact, the order in question is based entirely on the findings/reasonings contained in the enquiry report dated 3.9.2009 in respect of the plea of the petitioner that the truck driver was an illiterate person who has not properly ascertained the quantity of goods being loaded or unloaded from the truck. In the judgment dated 25.1.2011 this Court had clearly held that though the enquiry report dated 3.9.2009 records that 14612.55 quintal of custom paddy was not actually transported doubting the TCDCs in respect thereof and an observation had been made that without transportation of said quantity of custom paddy, payment was made to the petitioner in collusion with the miller and the officers of the department, however, in concluding part of the report no specific allegation of involvement of the petitioner was made, rather it was concluded that the petitioner on the request of the department had supplied the necessary trucks for transportation

of custom paddy from time to time and the payment was made after due verification and it was the proprietor of the mill who is actually guilty of manipulating documents. The enquiry officer nowhere stated that the petitioner was also involved. This Court also took note of the fact that the shortfall of the paddy/rice which was allegedly not supplied/received by the mill, was recovered by the department from the illegal custody of the mill. In this regard the enquiry report dated 30.7.2009 submitted by the Chief Development Officer to the District Magistrate, Kaushambi was referred.

14. In view of the above discussion, we are of the view that the impugned order does not comply with the requirements of the judgment dated 25.1.2011. It is also surprising to note that by means of the aforesaid order, the Commissioner (Food & Civil Supply) has confirmed the very order of Regional Food Controller which was subject-matter of Writ Petition No. 66219 of 2010 and was quashed by this Court vide judgment dated 25.1.2011. The Commissioner (Food and Civil Supply) who has passed the impugned order has completely disregarded the observations of this Court in its earlier judgment. As the decision has not been taken in accordance with the directions of this Court and this is the fourth round of litigation by the petitioner, who has been blacklisted for all times to come, in such circumstances, we are left with no other option but to quash the impugned order dated 16.3.2012 passed by the Commissioner (Food & Civil Supply), respondent No. 2 and allow the writ petition. The impugned order is, accordingly, quashed. The writ petition is, accordingly, allowed.