
(2017) 10 MAN CK 0006
In the Manipur High Court
Case No : 444 of 2017

M/s Md. Abdul Gani Khan

APPELLANT

Vs

The State of Manipur represented by Additional Chief
Secretary, Home Department Manipur, Imphal, & Ors.

RESPONDENT

Date of Decision : 31-10-2017

Acts Referred:

Citation : (2017) 10 MAN CK 0006

Hon'ble Judges : Kh. Nobin Singh

Bench : Single Bench

Advocate : Md. Jalaluddin, S. Niranjana

Final Decision : Allowed

Judgement

Heard Md. Jalaluddin, learned Senior Advocate appearing for the petitioner and Shri S. Niranjana, learned Addl. Government Advocate appearing for the respondents.

1. By the instant writ petition, the petitioner has prayed for issuing an appropriate writ or direction for setting aside the order dated 9/6/2017 issued by the Under Secretary (Home), Government of Manipur.

2. 1. According to the petitioner, he is the proprietor and owner of the Registered Firm called "M/s Abdul Gani Khan", Government order supplier. A notice dated 16/9/2013 was issued by the Director General of Police, Manipur inviting open tender with sealed cover consisting of 2 (two) bids system from amongst the intending, reputed and registered manufacturers/fabricators/firms for supply of uniform and web equipment items for centralized procurement and in response thereto, the petitioner submitted his tender. After the tender being opened and on the recommendation of the Higher Tender Committee, the Deputy Secretary (Home), Government of Manipur vide his letter dated 28/3/2014 conveyed the approval of the Government to the recommendation of the Higher Tender Committee for supply of the said items. Thereafter, a contract agreement dated

5/4/2014 was entered into between the petitioner and the Director General of Police, Manipur and after the said agreement having been signed between the parties, the petitioner was directed to deposit necessary 10% security deposit in favour of the Inspector General of Police (Adm.), Manipur which the petitioner did on 12/4/2014 and thereafter, the petitioner was issued a road permit to transport Leather Belts (Black) - 20,000 numbers and other items by the Inspector General of Police (Adm.), Manipur. An order dated 30/4/2014 was issued by the Director General of Police, Manipur constituting a Line Committee consisting of 3 (three) officers which has to check the specification, quality and quantity of the items and submit its report to the Director General of Police, Manipur. A letter dated 5/6/2014 was addressed to the Inspector General of Police (AP/Ops), Chairman of the Line Committee by the Commandant, 1st Battalion Manipur Rifles, Imphal stating that he had received leather belt (black) 4 bags from the petitioner and on receipt of the said bags, the Line Committee checked and inspected the items and reported that the said items were as per the specification of the sample furnished at the time of tender and thereafter, the petitioner started supplying the items to the satisfaction of the Director General of Police, Manipur. 2.2. A press release came to be issued on 7/6/2017 by the Additional Chief Secretary, Home Department, Government of Manipur stating that Hon'ble Chief Minister took a serious note of the quality of belts being supplied by the petitioner and on the basis of the press report, a case under FIR No. 174(6)2017 IPS u/s 406/409/420 IPC was registered on 9/6/2017 and accordingly, the petitioner was arrested though he was released on bail. Thereafter, without any show cause notice being issued to the petitioner, the State Government issued the impugned order dated 9/6/2017 by which the firm called M/s Abdul Gani Khan, Masjid Road, Imphal West was blacklisted for supply of any items to all the Departments of the State Government with immediate effect until further orders.

2.3. Being aggrieved by the said Government order, the instant writ petition has been filed by the petitioners mainly on 2 (two) grounds - (i) the State Government has failed to give a notice to the petitioner before passing the said order and that (ii) as per clause 5 of the agreement entered into between the petitioner and the Director General of Police, Manipur, the only action could have been taken by the State Government was to direct the petitioner to replace the materials which were found to be of manufacturing defects or otherwise. A counter affidavit has been filed on behalf of Respondent No. 3 wherein it is stated that the petitioner has committed the offence of cheating and breach of criminal trust in supplying the belts because of which a criminal case has been registered against him. It has further been stated that on interrogation, the petitioner has confessed that he has supplied belt (black) but not of leather belt. An affidavit on behalf of Respondent Nos. 1 & 2 also has been filed taking a similar stand and in addition thereto, an additional affidavit on behalf of Respondent Nos. 1 & 2 has been filed wherein it is stated that the impugned order has been issued by the State Government in exercise of powers conferred upon it u/s 20 CPWD Manual Vol-II, 1977.

3. On perusal of the agreement dated 5/4/2014, it is seen that clause 5 provides as under :-

"5. That the FIRST PARTY agrees that in the event of rejection by the SECOND PARTY on the ground of any manufacturing defects or otherwise, the FIRST PARTY will replace the items by new one as per specification at its own cost."

But admittedly the State Government has not invoked the provisions of this clause 5, rather it has issued the impugned order by which the petitioner was blacklisted from the supply of any items. It is also not in dispute that prior to the issuance of the impugned order dated 9/6/2017, no notice was given to the petitioner to show cause as to why his firm not be blacklisted. The only contention on behalf of the State Government is that the petitioner has been blacklisted in exercise of powers conferred under section 20 of CPWD Manual Volume II 1997, the relevant portion of which is given as under:-

"The punishment of "Black-listing", "Banning" and "Suspension of Business: is more severe than removal as the firm so dealt with will not be eligible to do business with Government as explained below:-

(1) Black-Listing - When firms are found guilty of malpractices likely bribery, corruption etc. or their proprietors or employees, partners or representatives are convicted for offences involving moral turpitude, in relation to business dealings, or security considerations, including loyalty to the State, or the firm continuously refuses to return government dues without showing adequate cause and the Govt. are satisfied that this is not due to reasonable dispute which would attract proceedings in arbitration or Court of Law, they are placed on the Black-list. This may either be for a limited period or for an indefinite period and involves an immediate cessation of business with the DGS&D and other offices under the Ministry of Works, Housing and Supply and possibly also with other Departments of the Government of India and States."

On perusal of the said provision, it is seen that the power of blacklisting can be exercised only when the firm is found guilty of malpractices likely bribery, corruption etc. or his proprietors or employees, partners or representatives are convicted for offences involving moral turpitude, in relation to business dealings, or security considerations. In the present case, there is no any finding given by any authority or an appropriate Court to the effect that the petitioner is found guilty of malpractices or any of his proprietors or employees, partners or representatives is convicted for offences in relation to business dealings, or security considerations.

4. Relying upon the decision of the Hon"ble Supreme Court in Gorkha Security Services vs Government (NCT of Delhi) & ors, (2014) 9 SCC 105, it has been contended by Shri Md. Jalaluddin, learned Senior Advocate appearing for the petitioner that the impugned order, issued without giving notice to the petitioner, is contrary to the principles of natural justice. His contention has some force. In the said Gorkha Security Services case (supra), the Hon"ble Supreme Court held:

"21. The central issue, however, pertains to the requirement of stating the action which is proposed to be taken. The fundamental purpose behind the serving of show-cause notice is to make the noticee understand the precise case set up against him which he has to meet. This would require the statement of imputations detailing out the alleged breaches and defaults he has committed, so that he gets an opportunity to rebut the same. Another requirement, according to us, is the nature of action which is proposed to be taken for such a breach. That should also be stated so that the noticee is able to point out that proposed action is not warranted in the given case, even if the defaults/breaches complained of are not satisfactorily explained. When it comes to blacklisting, this requirement becomes all the more imperative, having regard to the fact that it is harshest possible action.

* * *

29. No doubt, rules of natural justice are not embodied rules nor can they be lifted to the position of fundamental rights. However, their aim is to secure justice and to prevent miscarriage of justice. It is now well established proposition of law that unless a statutory provision either specifically or by necessary implication excludes the application of any rules of natural justice, in exercise of power prejudicially affecting another must be in conformity with the rules of natural justice."

5. As regards the other ground, it may be noted that the issue has arisen out of a commercial transaction based on the agreement and therefore an action can be taken against the petitioner under the provisions of any law relating to commercial transaction. Be that as it may the fact remains that no notice is given to the petitioner before issuing the impugned order. Having heard the learned counsels appearing for the parties, this Court is of the view that since the impugned order dated 9/6/2017 has been issued in violation of the natural justice, the same is bad in law. Therefore, the instant petition can be disposed of in terms of the aforesaid decision of the Hon"ble Supreme Court.

In view of the above, the writ petition is allowed and accordingly, the impugned order dated 9/6/2017 is quashed and set aside. Since the impugned order has been quashed on the ground of violation of the principles of natural justice, it is open to the State respondents to proceed in accordance with law.