(1996) 04 P&H CK 0075

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 16676 of 1994

M/s. Pritam Singh and Sons and others APPELLANT

Vs

State of Punjab and others RESPONDENT

Date of Decision : 10-04-1996

Acts Referred:
Constitution of India, 1950 — Article 14, 19(1)

Citation : AIR 1996 P&H 260 : (1996) 114 PLR 791 : (1996) 3 RCR(Civil) 1

Hon'ble Judges : Ashok Bhan, J

Bench : Single Bench

Advocate : O.P. Goyal and Parmod Goyal, for the Appellant; S.S. Saron, Addl. and A.G. Punjab, for the Respondent

Judgement

1. Prayer made in this petition is for quashing order Annexure P-11 whereby petitioners have been banned/blacklisted from doing business with the government for a period of two years from the date of issue of the orders; further prayer made in the petition is for issuance of a writ of mandamus directing the respondents to award the contracts to the petitioners for which they had already submitted their tenders.

2. Both the petitioners are registered partnership firms with the Registrar of Firms and also under the Punjab General Sales Tax Act. M/s. Pritam Singh and Sons, Gandhi Chowk, Batala (hereinafter referred to as petitioner No. 1) is constituted by Shri Sukhdev Singh, Amarjit Singh, Jaspal Singh sons of late Shri Pritam Singh and Smt. Surjit Kaur wife of late Shri Pritam Singh as partners. M/s. Jaspreet Foundry, Gurdaspur Road, village Kutbi Nangal Batala (hereinafter referred to as petitioner No. 2) is constituted by Sukhdev Singh, Amarjit Singh and Jaspal Singh.

3. Petitioner No. 1 is a manufacturer of cast iron fittings and is in the business from 1957. It is also a contract supplier to the States of Punjab, Haryana and Himachal Pradesh since 1967. Petitioner No. 2 is also a manufacturer of cast iron fittings and is in the business since 1988-89 and is a contract supplier to three

States of Punjab, Haryana and Himachal Pradesh.

4. As per averments made in the petition, respondent No. 3 invited tenders for the supply of cast iron plain-ended fittings vide order dated 6-1-1993. Petitioner No. 1 submitted its tender by the due date and quoted rates from Rs. 15/- per kg. to Rs. 16/- per kg Petitioner No. 2 did not submit any tenders due to be opened on 6-1-1993. Petitioner No. 2 vide its letter dated 16-1-1993 requested respondent No. 1 to re-tender the items because it was ready to supply the material at the rate of Rs. 11.50 per kg. and the supply could be up to Rs. 10.00 lacs per month. The department of Controller of Stores invited fresh tenders and the last date for opening of the tenders was 6-4-1993 but nobody came forward to submit the tender including the petitioners. Reason for not submitting tender by petitioner No. 2 as given in the petition is that the jeep in which they were travelling broke down on the way and as such they could not reach in time for submission of tender. Respondent No. 3 re-advertised the tender for the same items. Petitioner No. 1 submitted its tender by due date and scheduled time and quoted rate from Rs. 11.35 to Rs. 12.50 per kg. Petitioner No. 2 also submitted its tender by due date and scheduled time and quoted rate from, Rs. 11.80 to Rs. 12.70 per kg. Tenders submitted by the petitioners were not accepted and the same were re-invited. Petitioners submitted their tenders quoting rates varying between Rs.15.70 to Rs. 19.00 per kg. Notice Annexure P6 was issued to petitioner No. 2 by respondent No. 3 seeking its explanation for not giving tender at the rate of Rs. 11.50 per kg. as per its undertaking; it was stated in the notice that later on petitioner and its sister concern on the re-invitation of tenders increased the rates from Rs. 15.70 to Rs. 19/- per kg. which were too high as compared to the rates earlier offered by petitioner No. 2; that the action of petitioner No. 2 was misleading, tantamounts to un-business like behaviour which resulted in re-tendering six times costing the government additional advertisement charges and delay in finalisation of rates contract. Petitioner No. 2 filed its reply (copy Annexure P 7) refuting the facts stated in Annexure P 6. It was stated that petitioner No. 2 in fact quoted rate as per its agreement but the same was not accepted and tenders were re-invited because of extraneous reasons. Thereafter, the impugned order Annexure P11 was passed by respondent No. 3 banning business with petitioner No. 2 to whom the notice has been issued as well as its sister concern petitioner No. 1 for a period of two years from the date of issue. The order Annexure P11 was passed in the following terms :--

"The State Govt. has decided to ban business with M/s. Jaspreet Foundry, Gurdaspur Road, village Kutbi Nangal, Batala-143505 and its sister concern M/s. Pritam Singh and Sons, Gandhi Chowk, Batala-143505 for doing business with Govt. Departments for a period of 2 years from the date of issue of these orders and in future no dealing of any kind be made with these firms.

2. Sh. Sukhdev Singh, Amarjit Singh and Sh. Jaspal Singh are the sons of Shri Pritam Singh and also are the partners of both the above said concerns.

3. This may also be brought to the notice of your all subordinate officers for compliance."

5. Order Annexure P11 has been challenged on the ground that the same is a non-speaking order inasmuch as no reasons have been given in the order banning business with the petitioners; that petitioner No. 1 has been batcklisted without issuing any notice to it. On merits it has been stated that order has been passed mala fide at the instance of respondent No. 3 on extraneous considerations; that petitioner No. 1 had submitted the tenders quoting rates between Rs. 11.35 to Rs. 12.50 per kg. as per its undertaking but the same were not accepted by respondent No. 3 on extraneous considerations and the tenders were re-invited.

6. In the written statement filed, stand taken by the respondents is that petitioner No. 2 did not submit the tender as per its undertaking and as such banning/doing business with it was justified; that no notice was required to be issued to petitioner No. 1 as it was sister concern of petitioner No. 2 and business with it could also be banned. Respondent No. 3 has filed its separate written statement denying the allegations of mala fide made against him.

7. The effect of black-listing a firm from doing business with the government is to take away the privilege of entering into lawful relationship for the purpose of gain. Exclusion of a member of the public from dealing with a State in sales transaction has the effect of preventing him from purchasing and doing a lawful trade in the goods. It does not pertain to any particular contract. The black-listing order involves civil consequences. It creates a barrier between the persons black-listed and the government in the matter of transactions. It affects the reputation of a firm which in turn affects its business with other State Govt. and authorities. Principles of fair play require that person concerned should be given an opportunity to represent his case before he is put on black-list. Such as order is further required to be supported by reasons.

8. So far as petitioner No. 1 is concerned, admittedly no notice was issued to it before the same was black-listed. Respondent No. 3 black-listed petitioner No. 1 because some of the parties in both the concerns were common. No doubt, some of the partners in both the firms are common but these are two different legal entities with their own rights and obligations. Learned counsel appearing for the respondents failed to show any rules or requlations that an order of black-listing can be passed against a sister concern while dealing with the case of other firm. In the present case one of the partners i.e. petitioner No. 1 is different and its rights have been affected without issuing any show cause notice to it. The impugned order Annexure P1, under the circumstances, could not be passed against petitioner No. 1 without issuing show cause notice and as such the same is liable to be quashed on this ground.

9. A perusal of order Annexure P 11 shows that the same has been passed without recording any reasons. It has been held by the apex Court in S.N.

Mukherjee Vs. Union of India, that reasons must be recorded for taking administrative action except in cases where such requirement is dispensed with expressly or by necessary implication. It was held as under (at page 1996 of AIR) :--

"In view of the expanding horizon of the principles of natural justice, the requirement to record reason can be regarded as one of the principles of natural justice which govern exercise of power by administrative authorities. The rules of natural justice are not embodied rules. The extent of their application depends upon the particular statutory framework whereunder jurisdiction has been conferred on the administrative authority. With regard to the exercise of a particular power by an administrative authority including exercise of judicial or quasi-judicial functions the legislature, while conferring the said power, may feel that it would not be in the larger public interest that the reasons for the order passed by the administrative authority be recorded in the order and be communicated to the aggrieved party and it may dispense with such a requirement. It may do so by making an express provision to that effect. Such an exclusion can also arise by necessary implication from the nature of the subject-matter, the scheme and the provisions of the enactment. The public interest under- lying such a provision would outweigh the salutary purpose served by the requirement to record the reasons. The said requirement cannot, therefore, be insisted upon in such a case. Therefore, except in cases where the requirement has been dispensed with expressly or by necessary implication, an administrative authority exercising judicial or quasi-judicial functions is required to record the reasons for its decision.

The recording of reasons by an administrative authority serves a salutary purpose, namely, it excludes chances of arbitrariness and assures a degree of fairness in the process of decision-making. The said purpose would apply equally to all decisions and its application cannot be confined to decisions which are subject to appeal-revision or judicial review. Therefore, the requirement that reasons be recorded should govern the decision of an administrative authority exercising quasi-judicial functions irrespective of the fact whether the decision is subject to appeal-revision or judicial review. It is however not required that the reasons should be as elaborate as in the decision of a Court of law. The extent and nature of the reasons would depend on particular facts and circumstances. What is necessary is that the reasons are clear and explicit so as to indicate that the authority has given due consideration to the points in controversy. The need for recording of reasons is greater in a case where the order is passed at the original stage The appellate or revision authority, if it affirms such an order, need not give separate reasons if the appellate or revisional authority agrees with the reasons contained in the order under challenge."

10. Order Annexure P1 shows that the same has been passed without recording any reasons. The reply sent by petitioner No. 2 Annexure P 7 to the show cause notice has not even been referred to; and does not seem to have been

considered. An order black-listing a firm has to be supported by reasons. Since the order Annexure P11 is not supported by reasons, the same is liable to be quashed on this ground as well.

11. It has repeatedly been held by the Supreme Court of India as well as other High Courts that principles of natural justice of showing cause or passing reasoned order in quasi-judicial order affecting civil rights must be adhered to. It is unfortunate that administrative authorities are passing orders without issuing notice or non-speaking orders in violation of principles of natural justice. Executive dispensation of justice is decreasing thereby compelling the public/ litigant to file cases in Courts to seek justice. Executive authorities should adhere in observing the principles of natural justice and pass orders after affording due opportunity to the concerned party and giving reason in support of its order in order to avoid multiplicity in Court proceedings and unnecessary burden on the exchequer in deciding such cases.

12. For the reasons recorded above, this writ petition is accepted and the order Annexure P11 is quashed with costs which are assessed at Rs. 5,000/-.

13. Petition allowed.