

(2021) 05 CHH CK 0062
In the Chhattisgarh High Court
Case No : WPC No. 1286, 1305, 1325 Of 2021

M/s Ramraja Printers And Publishers And Ors	APPELLANT
Vs	
Chhattisgarh Textbook Corporation And Ors	RESPONDENT

Date of Decision : 21-05-2021

Acts Referred:

Citation : (2021) 05 CHH CK 0062

Hon'ble Judges : Goutam Bhaduri, J

Bench : Single Bench

Advocate : A.V. Sridhar, N.K. Shukla, Arjit Tiwari

Final Decision : Dismissed

Judgement

Goutam Bhaduri, J

1. Heard on I.A.no.2 & 4 for taking documents on record.
2. On due consideration, application is allowed. Documents are taken on record.
3. I.A.No. 1 & 3 have been filed seeking grant of interim relief. Relief claimed in I.A.No.1 is to stay the effect and operation of the order of blacklisting. I.A.No.4 has been filed seeking to allow the petitioner(s) to participate in the process of tenders issued by the respondents.
4. Heard on both the interim applications.
5. Learned counsel for the petitioner(s) would submit that the petitioner(s) have been black-listed unilaterally by the respondents though the black-listing was not contemplated in any clause of Agreement as has been relied upon by the respondent. He would submit that black-listing order dated 02.01.2021 (Annexure P-1) refers to Clauses No.16.1 & 13.3.1 of the Agreement. It is further contended that the terms of agreement on which the

black-listing proceeded is completely different. He referred to Clause 13.3 of the agreement and would submit that the respondent was obliged to provide the positives/CDs for printing wherein the printing material is contained. He submits that in this case though the time limit was framed but in order to carry out the printing work, the positives were necessary which were not supplied by the respondents. It is further submitted that though the work order was issued on 18.02.2020, the reference was given from the date of tender on 17.01.2020. He would submit that the work order en-grafts the clause that the CD would be used by different printers one-by-one. It is further submitted that if the CDs were not supplied within the time how the work order would be carried out and the supply of C.D., was depending on Yatha Sambhav (as far as practicable) and the above terminology was used meaning thereby no time frame was virtually fixed and it would be unreasonable to say that if the CDs have been given a few days before then the huge bulk printing naturally cannot be carried out by the printer who received the CD at a later point of time than the first one. It is further submitted that the lock-down of Covid-19 pandemic situation started on 23.03.2020 and as such, the petitioners could not carry out the printing task due to closure of factory inasmuch as it would amount to disobeying the direction issued under the Disaster Management Act by the District Magistrate. Further it is submitted that no show cause notice was given before the blacklisting was affected, therefore, the the petitioners were deprived to meet out under what circumstances, the black listing is ordered. He would further submit that when the specific show cause notice itself was not given, then in such a case the black-listing which has a result of civil consequence could not be ordered as it would deprive the petitioner(s) from participating the subsequent tender process. The reliance is placed in Gorkha Security Services Versus Government (NCT of Delhi) 2014 9 SCC 105 and Badri Narain Prasad Choudhary Vs. Nil Ratan Sarkar 1978 3 SCC 30 . It is further submitted that in absence of proper show cause notice, the order of blacklisting itself would be void ab-initio. It is further submitted that in case the task of printing syllabus books is not carried out within time, the consequences are enumerated in Clause 16.2 of the agreement which provides for cancellation of the contract with the levy of penalty on defaulting printer and the consequences are not of the black- listing. He would submit that the M.D., is further given power to condone the delay,

therefore, the black-listing as has been ordered is wholly illegal and the impugned order be stayed till the case is finally heard.

6. Contending contrary, learned counsel for the respondents submitted that the petitioners failed to perform their work at the initial given point of time,

as such, the prayer for extension of time was made and by letter dated 21.4.2020 Annexure R-4 (filed in WPC No.1286/2021), time was extended

from 17th April 2020 to 17th May, 2020. It is submitted that the extension of time was given at the request of the petitioners itself. Subsequently after

lapse of time, the petitioners themselves refused to perform the contract and informed the respondent by a letter which was received on 13.04.2020

that the remaining job may be handed over to another Printer. He would further submit that thereafter a specific show cause was given to the

petitioner(s) on 13.04.2020 (vide Annexure R-5 filed in WPC No.1286/2021) wherein they were asked to reply if the petitioners are enable to perform

the contract and the respondents would be free to proceed as per Clause 16.3, 16.9, 19.1 & 19.3 of the Contract. It is further submitted that the clause

in agreement contained the fact of black-listing. Therefore, the petitioner(s) were given ample opportunity to give reply to show cause and the

contention of the petitioners that they were not given show cause is not correct. Therefore, the petitions are liable to be dismissed. It is further

submitted that the grant of interim relief at this stage would almost amount to grant of final relief, as such, the petitioners are not entitled to interim

relief as prayed for.

7. Heard learned counsel for the parties. Prima facie in the order of black listing, Clauses 13.1 & 16.1 of the Agreement have been referred. Further

the letter dated 17.3.2020 & 13.04.2020 have also been referred. The letter dt. 13.04.2020 shows that from 22.3.2020 the press was closed due to

lock-down and the letter dt.13.04.2020 Annexure R-5 is said to be the show cause issued to the petitioner(s). The letter 13.04.2020 further purports

that in case they refused to print out the syllabus material then the respondents would be ready to take measures as per Clauses 16.3, 16.9, 19.1 &

19.3 of the Agreement. No particulars have been shown.

8. The Supreme Court in Gorkha Security Services (supra) has laid down that the fundamental purpose behind the serving of show cause notice is to

make the noticee to understand the precise case set up against him which he has

to meet. This would require the statement of imputations detailing out of the alleged breaches and defaults he has committed so that he gets an opportunity to rebut the same. Another requirement according to the Supreme Court is the nature of action which is proposed to be taken for the breach. Therefore, the show cause must enclose two fold ingredients. It further contemplates that the noticee would also be free to point out that the proposed action is not warranted in the given case even if the defaults are complained or not satisfactorily explained. It further contemplates that when it comes to black-listing, this requirement becomes all the more imperative, having regard to the fact that it is harshest possible action.

9. Prima facie, the contents of clause 16.2 of the agreement envisage that in case of delay in printing, a penalty can be imposed other than black-listing. The Supreme Court in Gorkha Security Services (supra) has laid down two particular requirements in para 22 to issue a show cause notice, which reads thus :

(i) The material/grounds to be stated which according to the department necessitates an action;

(ii) Particular penalty/action which is proposed to be taken.

10. In the alleged show cause notice, the specific averments for black-listing is not specifically projected. The reference to clause(s) of agreement

which contemplates for blacklisting whether will stand the test of requirement of notice further requires adjudication.

11. The show cause on which the respondents have relied upon is a letter dated 13.04.2020 which prima facie do not fulfill the requirement and the

same would be subject to the final adjudication of interpretation. A copy of the order dated 29.4.2021 passed by Hon'ble the Supreme Court in case of

Sharda Off-set Private printers Ltd. passed in SLP No.6589, 6590/2021 is also placed for perusal.

12. In case of Sharda Off-set Printers wherein the black-listing order was passed by the respondent, having initially challenged and dismissed by this

Court, the Hon'ble Supreme Court has stayed the order of black-listing. This fact is not in dispute. Therefore, following the principle and protection

granted by Hon'ble Supreme Court in SLP and on the premises of facts stated here-in-before, there shall be stay on operation and implementation of

the black-listing order dated 02.01.2021 (Annexure P-1).

Cc as per rules.