
(2016) 05 JH CK 0093
In the Jharkhand High Court
Case No : L.P.A. No. 621 of 2015

M/s Sanjay Kumar Choubey & Company	APPELLANT
Vs	
The State of Jharkhand	RESPONDENT

Date of Decision : 10-05-2016

Acts Referred:

Citation : (2016) 4 AIRJharR 457 : (2016) 4 JCR 264 : (2016) 3 JCR 328

Hon'ble Judges : Mr. Virender Singh, C.J. and Mr. Shree Chandrashekhar, J.

Bench : Division Bench

Advocate : Mr. Manoj Tandon, Ms. Kumari Rashmi and Mr. Naveen Kumar Singh, Advocates, for the Appellant; Mr. Rajesh Kumar, G.A, for the Respondent

Final Decision : Allowed

Judgement

1. Dismissal of the writ petition being W.P.(C) No. 2544 of 2011 whereby, the order of blacklisting and cancellation of registration of M/s Sanjay Kumar Choubey & Company has been affirmed by the Writ Court, has given a cause to the appellant-writ petitioner (hereinafter referred to as petitioner) to file the present Letters Patent Appeal.

2. Heard.

3. Mr. Manoj Tandon, the learned counsel for the petitioner submits that the cancellation of registration of a company and an order of blacklisting of the company are two distinct actions which entail different consequences. Though, without registration a company cannot be enlisted as an approved contractor, mere cancellation of the registration would not permit the respondent authority to pass an order of blacklisting for indefinite period. It is further submitted that the allegation of receiving an amount of Rs. 1,74,00,044.00 in excess of the work executed by the petitioner on the ground that the petitioner did not sign on the measurement book on the face of it, is frivolous and on this count alone the writ petition deserves to be allowed.

4. Per contra, Mr. Rajesh Kumar, the learned counsel appearing for the

respondents submits that the petitioner was issued a show-cause notice dated 29.10.2010 which records specific allegation against the petitioner and after considering the response of the petitioner to the aforesaid show cause notice, which was found unsatisfactory, the impugned order dated 23.03.2011 was passed by the Engineer-in-Chief-cum-Registering Authority, Road Construction Department. Reiterating the stand taken before the Writ Court, the learned counsel submits that once the registration of the petitioner-company was cancelled, the question of order of blacklisting being an order for an indefinite period pales into insignificant.

5. Before adverting to the rival contentions, the brief facts of the case are summarised thus ;

The petitioner claims itself a registered Class-I contractor under the Road Construction Department, Government of Jharkhand since 30.04.2003 and it further claims that it has executed a number of projects under the Department without any complain. For the work for widening and strengthening of Chouparan to Chatra road from KM 10 to 27, an agreement was executed on 15.01.2010 and the work order was issued. The estimated cost of the work under the contract was Rs. 16,36,41,027.00 and it was to be completed within 12 months and 15 days. The petitioner pleaded that the extreme Naxal problem in the area and killing of its supervisor namely, Binod Singh on 22.06.2010 by the Naxals seriously affected the progress in execution of work. The respondent-Executive Engineer however, took measurement unilaterally on 30.08.2010, according to which the total work executed by the petitioner was for Rs. 4,74,00,985.00. On the basis of the unilateral measurement taken by the respondent no.5, to which the petitioner raised serious objections, the Department alleged that the petitioner has received payment of Rs. 1,73,99,942.00 in excess of the work executed by it. As noticed above, a show-cause notice dated 29.10.2010 was issued to the petitioner, to which the petitioner submitted its reply and thereafter, the impugned order dated 23.03.2011 was passed by the respondent no.2. Aggrieved thereof, the petitioner approached the Writ Court in W.P.(C) No. 2544 of 2011 which stands dismissed vide, impugned order dated 25.06.2015.

6. At the outset, it needs to be mentioned that the show-cause notice dated 29.10.2010 was issued to the petitioner on the allegation that the measurement book was not signed by the contractor whereas, the impugned order dated 23.03.2011 has been passed on the allegation of collusion of the petitioner with the engineers in receiving excess payment of Rs. 1,74,00,044.00. The learned Single Judge noticed paragraph no. 21 in *Gorkha Security Services v. Government (NCT of Delhi) and Others* reported in (2014) 9 SCC 105 which is reproduced hereunder :-

"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 notice understand the precise case set up against him which he has to met. This would require the statement of

imputations detailing out the alleged breaches and defaults he has committed, so that he get 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 notice 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."

7. What strikes the impugned order dated 25.06.2015, on the issue of law laid down by the Hon"ble Supreme Court, is the fact that the learned Single Judge overlooked the fact that the allegation on the basis of which the impugned order dated 23.03.2011 was passed, was not the subject matter under the show-cause notice dated 29.10.2010. The order passed by the respondent no.2 cancelling the registration of the company and its black-listing is seriously flawed in law for the reason that the said order has been passed on an altogether different ground which was never put to the petitioner. The petitioner has though, averred that the subsequent measurement taken on 06.10.2010 indicates that the work executed by the petitioner would be to the tune of Rs. 6,58,04,667.00, without entering into the factual arena, we are of the opinion that the impugned order dated 25.06.2015 suffers from serious infirmity in law and accordingly, it is set-aside. Resultantly, order dated 23.03.2011 is quashed on the ground of violation of the rules of natural justice and consequently, the matter is remitted back to the respondent no.2 for proceeding in the matter, in accordance with law, after issuing a fresh show-cause notice to the petitioner.

8. The Letters Patent Appeal stands allowed, in the aforesaid terms.