
(2014) 03 AHC CK 0095

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 53139 of 2013

Pramod Kumar Singh

APPELLANT

Vs

M.D., U.P. Rajya Bhandaran Nigam Ltd. and Others

RESPONDENT

Date of Decision : 27-03-2014

Acts Referred:

Citation : (2014) 3 ADJ 532 : (2014) 5 ALJ 92 : (2014) 104 ALR 351 : (2014) 6 AWC 5612

Hon'ble Judges : Vivek Kumar Birla, J;Amreshwar Pratap Sahi, J

Bench : Division Bench

Advocate : R.S. Chauhan, Advocate for the Appellant; Shiv Nath Singh, Dr. Neeraj Rai, Chandan Sharma, Jitendra Kumar, Rakesh Pandey, S.C. and Satish Mandhyan, Advocate for the Respondent

Judgement

1. The petitioner has assailed the order dated 3rd of September, 2013 passed by the Managing Director -Respondent No. 1 of the U.P. Warehousing Corporation whereby the petitioner's representation has been rejected blacklisting him and also deregistering him from the list of contractors of the respondent corporation. Sri Shiv Nath Singh has filed a counter-affidavit and Sri Umesh Narain Sharma, learned Senior Counsel has appeared for the respondent No. 2. Sri Satish Mandhyan and Sri Rakesh Pandey Advocates have filed impleadment applications opposing the writ petition on the ground that they were also applicants and that an agreement of handling agent has also been entered into with them as such their rights are also being affected.

2. Learned counsel for the petitioner Sri R.S. Chauhan has urged that the litigation has a chequered history and in the aforesaid circumstances the background of the earlier litigation would indicate that the impugned order is a mala fide order which has been passed with a view to somehow the other eliminate the petitioner from the list of registered contractors and as a consequence whereof the petitioner has been erroneously and unlawfully blacklisted.

3. Having heard learned counsel for the parties, we find that quotations were invited for transportation by handling agents in order to load and unload foodgrains at Mirzapur. The petitioner's quotation being lowest was accepted and a work order was issued on 1st of December, 2012. A copy of the said order is Annexure 2 to the writ petition.

4. After a couple of weeks, an order was passed on 15th December, 2012, cancelling the agreement and the contract awarded to the petitioner, on the ground that the petitioner did not have the requisite experience of handling transportation work for a period of five years. This order was assailed by the petitioner in Writ Petition No. 9096 of 2013 and the same was allowed on 21.2.2013 setting aside the cancellation order and directing the respondent to permit the petitioner to continue his work in terms of the agreement.

5. The petitioner resumed his work on 6th of March, 2013 whereafter on 3rd of June, 2013, a show-cause notice was issued to the petitioner calling upon him to explain as to why for the reasons mentioned in the said notice, registration of the petitioner be not cancelled and he be not blacklisted. The petitioner submitted his reply on 21st of June, 2013 and on 24th of June, 2013, his registration was cancelled and the petitioner was also blacklisted. A consequential order was also passed on 27.6.2013 whereafter the petitioner came up before this Court in Writ Petition No. 35482 of 2013 assailing the aforesaid orders.

6. This Court came to the conclusion that the petitioner's cancellation was an outcome of an order that was in violation of principles of natural justice, inasmuch as, the reply submitted by the petitioner on 21.6.2013 had not been considered. Consequently, the impugned orders were set aside and the writ petition was allowed with a direction to pass fresh orders.

7. It is also to be noted that during the pendency of the said writ petition, steps for inviting fresh tenders had also taken place and a notice was issued on 9.6.2013. The petitioner had also applied but on account of the blacklisting order passed against him his tender documents were not opened. Consequently, it was also directed in the judgment dated 4.7.2013 that till the case of the petitioner is not decided, no regular contractor would be appointed.

8. The respondent Corporation thereafter proceeded with the matter in the light of the judgment dated 7th July, 2013 and has passed the impugned order on 3rd of September, 2013 holding that the reply submitted by the petitioner was not satisfactory and that since the petitioner's work and conduct had even otherwise resulted in lowering the image of the corporation, the petitioner did not deserve to be continued as a contractor.

9. The explanation was also rejected on the presumption that there was some collusion with the officials of the respondent corporation and in such circumstances it is not desirable to continue him as a contractor.

10. Another reason given in the impugned order is that a television news channel

had displayed the scattering of several bags of wheat at the Railway Platform in the Mirzapur Goods Shed and cattle were found feeding themselves, which complaint was made upto the headquarters at Delhi that also resulted in the diminishing of the image of the corporation, hence the petitioner's work and conduct has resulted not only in the loss of image, but also pecuniary loss as the corporation had to pay wharfage to the tune of Rs. 3,22,648/- to the Railways.

11. The challenge raised in the present writ petition is to the said impugned order on the ground that no fault had occurred on the part of the petitioner so as to deregister him or blacklist him and even otherwise the second reason given with regard to the display in the television news channel was not even part of the show-cause notice as such the impugned order is vitiated.

12. Learned counsel has further contended that the judgment dated 21.2.2013 forecloses any issue relating to the experience certificate of the petitioner and not only this in his reply dated 25.3.2013 to the notice dated 14.3.2013 copy whereof is Annexure 8 to the writ petition, it had been categorically stated that a similar enquiry with regard to a similar certificate produced by the petitioner had already been made in 2011 and the report was available with the respondents indicating that the petitioner had handled similar work with M/s. India Foods and Harsh Agro Chandauli and accordingly the petitioner was awarded the contract.

13. Learned counsel submits that there is a total non-consideration of this reply and the stand taken by the petitioner in the impugned order. The writ petition was entertained by a division bench of this Court and an interim order was passed on 27.9.2013 staying the operation of the impugned order.

14. Thereafter affidavits have been exchanged and Sri U.N. Sharma and Sri Shiv Nath Singh have urged that the petitioner has absolutely no right to claim any continuance of the contract, inasmuch as, the very nature of the contract under the order dated 1.12.2012 is temporary and the petitioner has no indefeasible right so as to maintain this petition.

15. They further contend that it is after the judgment of this Court dated 21.2.2013 that the corporation issued notices and made enquiries about the genuineness of the experience certificate of the petitioner as the decision had to be taken in terms of Clause 5 read with Clause 12 of the terms and conditions of the contract vis-?-vis the experience certificate of the petitioner or any suppression of fact in relation thereto.

16. They therefore submit that the judgment 21.2.2013 does not cause any impediment in making further enquiry, and it is for this reason that vide judgment dated 4th of July, 2013 while allowing the writ petition, the answering respondents were required to pass fresh orders pursuant to the notice dated 3.6.2013 and the reply of the petitioner dated 21.6.2013.

17. Sri Shiv Nath Singh has pointed out that the information with regard to the correct status of the certificate relied upon by the petitioner was obtained from

the Uttar Pradesh, Upphokta Sahkari Sangh Limited wide letter dated 2.3.2013 and then the corporation came to know that the contents of the certificate clearly make the petitioner ineligible for award of any such contract.

18. They urged that the experience which has been obtained by the petitioner is not as a contractor of any such institution as provided under the rules, but having only supplied his trucks to some other contractor by the name of Vinod Kumar Pandey. Since the petitioner is neither a registered contractor nor did have experience of five years, therefore, the impugned order rightly proceeds to reject the claim of the petitioner, and since he had provided an incorrect information in order to gain a contract, the same amounted to an act which not only obliges the corporation to deregister him but also to blacklist the petitioner.

19. Learned counsel further submits that the petitioner having no right or claim whatsoever as urged hereinabove, the writ petition deserves to be dismissed and the interim order deserves to be discharged. They have further invited the attention of the Court to the following paras 11 to 13 of the judgment in Writ Petition No. 24218 of 2012 Virendra Pratap Singh v. The State of U.P. and others, to urge that the petitioner is a goon of undesirable character:

11. The petitioner's registration with U.P. Warehousing Corporation was cancelled vide order dated 24.8.2011, after giving opportunity of show-cause to the petitioner on the ground that Sri Pramod Kumar Singh - a representative of the petitioner was engaged in collecting "rangdhari tax" (Goonda Tax) from the contractors appointed at the godown at Pahariya Mandi. The petitioner has nowhere stated in the writ petition or produced any material to show that he has removed Sri Pramod Kumar Singh - his authorized representative, working for him.

12. The petitioner has not denied that Sri Pramod Kumar Singh, the representative of the petitioner is not associated with him. Sri Pramod Kumar Singh, was found forcibly realising protection money from the contractors and on which the petitioner's registration was cancelled by the Managing Director of U.P. Warehousing Corporation on 24.8.2011.

13. We do not find that the petitioner has made out any case, nor there is any good ground to interfere in the matter, as the petitioner's registration with U.P. Warehousing Corporation was cancelled on 24.8.2011, and he has not yet removed or disassociated with Sri Pramod Kumar Singh who was found indulging in criminal activities on behalf of the petitioner in the transport and handling work.

20. While proceeding to give a reply to the aforesaid submissions, learned counsel for the petitioner has again reiterated and urged that if the petitioner was not eligible then he ought not to have been awarded the contract but to the contrary not only his experience certificate was accepted but he was also awarded the contract. For this learned counsel for the petitioner again invited the attention of the Court to the reply given by the petitioner on 25th of March, 2013

to urge that this enquiry and report about a similar certificate had also been earlier processed and it is thereafter that the petitioner was awarded a contract in 2011. The contention therefore is that this relevant material has been completely ignored by the respondent while passing the impugned order.

21. Having considered the submissions so raised, we find that the warehousing corporation itself has proceeded to act in a manner which is not in accordance with their own rules. The contract awarded to the petitioner on 1.12.2012 is purely a temporary arrangement until further orders on ad hoc basis as a handling transportation contractor. This is evident from Annexure 2 to the writ petition itself.

22. In our considered opinion such an order does not give any right to the petitioner to claim continuance of the contract as a handling agent, inasmuch as, the same itself is clearly for a temporary arrangement on ad hoc basis and till any further orders are passed by the respondent corporation. Consequently, a fresh engagement by way of tender can be made by the respondent corporation and it has proceeded to do so.

23. The dispute that remains to be answered by us is only with regard to the deregistration of the petitioner and his blacklisting by the respondents. From the impugned order we find that it has proceeded on some material which was not subject-matter of the show-cause notice namely the allegation of a television news channel displaying scattering of the bags on the Railway Platform. Learned counsel for the respondent No. 2, Sri Shiv Nath Singh has not been able to refute this fact on record that this reason was not even reflected in the show-cause notice. In our opinion, an issue which was not raised even in the show-cause notice, therefore, could not be made the basis for deregistering or blacklisting the petitioner.

24. So far as the issue relating to the certificate of experience tendered by the petitioner is concerned, we find that the impugned order does not in any way indicate the impact of the judgment dated 21.2.2013. It is true that while passing the subsequent orders on 24.6.2013 and 27.6.2013, the orders had indicated certain reasons but the said orders were quashed by the judgment of this Court dated 4th July, 2013 leaving it open to the respondents to pass a fresh order in accordance with law. In our opinion, while doing so the respondents were obliged to take notice of the judgment dated 21.2.2013 as well and to consider its impact while proceeding to eliminate the petitioner as a contractor on the ground of the said experience certificate.

25. Apart from this, we also find force in the argument of the learned counsel for the petitioner that in his reply dated 25.3.2013, he had categorically mentioned about the enquiry already made in 2011 with regard to a similar nature of certificate which was tendered by him on the basis whereof he was awarded contract by the respondent corporation itself.

26. Apart from this, it is true that the petitioner does not appear to have been

given any fresh show-cause notice before passing the order dated 3.9.2013 as one of the reasons given therein was absolutely foreign to the controversy in the show-cause notice issued by the respondent. Consequently, the impugned order dated 3.9.2013 to that extent cannot be sustained. It is hereby quashed.

27. It shall be open to the respondents to pass fresh orders in accordance with law in the light of the observations made hereinabove after providing an opportunity to the petitioner to explain the status of the experience certificate within the parameters of the terms and conditions of award of contract and the contentions raised herein.

28. It is made clear that the petitioner however will have no right to claim continuance of the contract on the basis of the letter dated 1.12.2012 itself which has already been indicated above as of a purely temporary arrangement on ad hoc basis.

29. In the event the respondents proceeded to issue any fresh tenders or notice or make any fresh settlement they shall do so only after deciding the claim of the petitioner within a period of six weeks from today. The writ petition is partly allowed. This order is confined only to the issue of registration and blacklisting as involved in the present writ petition and is not a declaration that the petitioner is otherwise eligible to award of contract.