

(2007) 06 J&K CK 0003
In the Jammu And Kashmir High Court

Pran Nath Gupta	Vs	APPELLANT
Union of India (UOI)		RESPONDENT

Date of Decision : 06-06-2007

Acts Referred:

Citation : (2007) 2 JKJ 524

Hon'ble Judges : H. Imtiyaz Hussain, J

Bench : Single Bench

Final Decision : Allowed

Judgement

H. Imtiyaz Hussain, J.—These writ petitioners have been filed by M/s Pran Nath Gupta and Naresh Kumar Gupta Engineers and

Contractors. These arise out of the same cause and involve common issues for determination as such are being disposed of by this common judgment.

2. Petitioners are S. Class Contractors of the MES with Index No. S-8/NC. On 29.07.2002, Respondents have decided to suspend their

business with the petitioners which constrained the petitioners to file OWP No. 357/02 and 358/02. Petitioner prayed for the following reliefs in the two writ petitions.

i. By issuance of a writ of Certiorari, or any other appropriate writ, order or direction, the impugned show cause notice issued under No.

42590/S-35 (AD)/303/EB dated 20.10.2000 as also telegram bearing No. 42558/RC-6/69/EB dated 29.07.2002 issued by respondent No. 2

be quashed; and

ii. By issuance of a writ of Mandamus or any other appropriate writ, order or direction, respondents be directed not to suspend any business

dealings with the petitioner-Firm in any manner but to allot him the works/ contracts in the manner in which these works/contracts were allotted in

his favour in the past, without taking into consideration the telegram dated 29.07.2002.

3. The matter was considered by the Court and on 03.08.2002 the respondent were not to act upon order impugned dated 29.07.2002 till the

matter is on board next. The petitioners were admitted to hearing on 05.11.2003. Later when the matter was considered by the Court it was

pointed out that the impugned order dated 19.07.2002 had outlived its life as such there was no need to pass orders seeking extension of interim

direction dated 05.11.2003. The respondents thereafter did not resume the business dealings and informed the petitioners on 20.10.2005 that

since the Chief Engineer Northern Command has imposed ban against the petitioners in view of a CBI case, till the ban is not lifted by the Chief

Engineer no further action on the renewal can be taken.

4. Petitioners are aggrieved of it and have through the medium of the petition No. 598/05 prayed for the following reliefs:

(i) By issuance of a writ of certiorari or any other appropriate writ, order or direction the impugned communication bearing No. 37900/S-

08/168/E8 dated 20.10.2005 be quashed; and

(ii) By issuance of a writ of mandamus or any other appropriate writ, order or direction, respondents be directed:

(a) To treat the letter dated 29.07.2002 suspending the business dealings with the petitioners for a period of three years viz upto 28.07.2005 to

have out-lived its life, and to renew the enlistment of the petitioners and reclassify them in the revised tendering limits;

(b) Not to suspend their business dealings with the petitioners but to continue to issue the tender documents etc. and consider them for allotment of

any work as and when they offer their tender(s) for such allotment;

(c) The Hon'ble Court may also initiate contempt proceedings against the respondents for violating the orders of the Hon'ble Court dated

04.10.2005 in not renewing the enlistment of the petitioners and reclassifying them in the revised tendering limits as solicited by them through their

communications.

5. The main ground taken by the petitioners in these petitions, therefore is that

the respondents have vide communication dated 29.07.2002

informed the petitioner that the respondents have decided to suspend the business dealings with the petitioner's-firm and allied concerned for a

period of three years i.e. upto and including 28.07.2005. Thereafter when this date expired the respondent did not stop here but by means of

communication dated. 20.10.05 informed the petitioners that the Chief Engineer Northern Command has imposed ban against firms for some CBI

case and that till the ban is lifted by Chief Engineer Northern Command no further action on the renewal and re-classification can be taken. The

petitioners have therefore, challenged all the communications relating to the ban imposed by the Chief Engineer Northern Command. The main

ground taken by the petitioner to assail the order regarding imposition of ban on the petitioners is that no opportunity of being heard was given to

the petitioners before the ban was imposed by the respondents.

6. The respondents have resisted these petitions and have stated that due compliance was made to the rules and a show cause notice No.

42590/S-35 (Ad)/303/E8 dated 20.10.2000 was issued to the petitioners informing him that the CBI had returned a finding against him and also

informing the petitioner to show cause within 30 days as to why action should not be taken against the firm for the offence as found established by

the CBI..

7. Heard. I have considered the matter.

The show cause notice No. 42590/S-35(Ad)/303/E8 dated 20.10.2000 relied upon by the respondents reads as under:

Whereas contract Agreement bearing NO: CWE/5242/L-17/ 86-87 and CWE/5242/L-18/86-87 for ""Construction of bathrooms with toilets for

Single officers and JCO's in Zone-'A' & B at Nimu"" were awarded to your firm on 30 Sep 86 for an amount of Rs. 8,42,125.19 and Rs. 8,36,

220/- respectively. As per agreed terms and conditions of the contract, the date of commencement of aforesaid two contracts was 01 Oct 86 and

stipulated date of completion was 14 Dec. 86.

2. Whereas the above mentioned two works were required to be completed by you on 14 Dec. 86 but you failed to complete these works by the

stipulated date and accordingly GE 865 EWs issued you compensation notices vide his letter NOs: 8190/CEW-5242//L-17/86-87/30/E8 dated

15 Dec. 86 and 8190/CWE-5242/L-18/86-87/431/E8 dated 15 Dec. 86 stating that"" you having failed to perform your obligations by the time

agreed upon, notice is hereby given to you that in deciding to accept the performance after the said time. i.e. 14 Dec. 86, Govt. shall claim from

you the compensation for delay in completion of work in terms of condition-50 of IAFW-2249 (General Conditions of Contracts) on account of

your non performance of your contractual obligations by the time agreed upon."" You also made request vide your letter dt. 15 Dec. 86 for an

extension of time of 40 days for completion of said two works.

3. the case was investigated by CBI wherein your statement as proprietor of the firm was also recorded. CBI investigation has revealed that you

had entered into a criminal conspiracy with certain officials and had secured back dated completion, thereby a voiding the payment of

compensation as per agreed terms and conditions of the contract. Thus causing a loss amounting to Rs. 1,67,835.00 to the State.

In the interest of natural justice, the undersigned in the capacity of registering authority of your firm affords you an opportunity to show cause as to

why action should not be taken against your firm for the above offence. Your reply to this notice should reach this office within 30 days from the

date of issue of this letter. In case no reply is received by due date, it will be presumed that you have nothing to say in this regard and action will be

taken against you without any further notice/communication.

8. The petitioners admit that a show cause notice was sent to them for which a reply has also submitted by them, but they state that the

respondents have not informed the petitioners about the proposed action. The learned Counsel appearing for the petitioners would vehemently

submit that since the petitioners have been black listed on the basis of a vigilance report, deletion of a persons name from the list of qualified

contractors cannot be done unless concerned authority has been given notice and an opportunity of being heard in this behalf. Learned Counsel has

relied on Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and Another, , Raghunath Thakur Vs. State of Bihar and Others, &

M/s. Southern Painters Vs. Fertilizers and Chemicals Travancore Ltd. and another, .

9. The Apex Court in the above cited authorities has laid down that before a

contractor is black listed a notice should be given to him about the proposed action and an opportunity of being heard should be provided to the contractor as black listing a contractor amounts to the violation of his personal rights.

In M/s Erusian Equipment and Chemicals Ltd. (Supra) the Court held:

Blacklisting has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for purposes of gains. The fact that a disability is created by the order of blacklisting indicates that the relevant authority is to have an objective satisfaction. Fundamentals of fair play require that the person concerned should be given an opportunity to represent his case before he is put on the blacklist.

10. In Raghunath's case it was observed:

Indisputably, no notice had been given to the appellant of the proposal of blacklisting the appellant. It was contended on behalf of the State

Government that there was no requirement in the rule of giving any prior notice before blacklisting any person. In so far as the contention that there

is no requirement specifically of giving any notice is concerned, the respondent is right. But it is an implied principle of the rule of law that any order

having civil consequence should be passed only after following the principles of natural justice. It has to be realised that blacklisting any person in

respect of business ventures has civil consequence for the future business of the person concerned in any event. Even if the rules do not express so,

it is an elementary principle of natural justice that parties affected by any order should have right of being heard and making representations

against the order. In that view of the matter, the last portion of the order in so far as it directs blacklisting of the appellant in respect of future

contracts, cannot be sustained in law. In the premises, that portion of the order directing that the appellant be placed in the blacklist in respect of

future contracts under the Collector is set aside. So far as the cancellation of the bid of the appellant is concerned, that is not affected. This order

will, however, not prevent the State Government or the appropriate authorities from taking any future steps for blacklisting the appellant if the

Government is entitled to do so in accordance with law, i.e. giving the appellant due notice and an opportunity of making representation. After

hearing the appellant, the State Government will be at liberty to pass any order in accordance with law indicating the reasons therefor. We,

however, make it quite clear that we are not expressing any opinion on the correctness or otherwise of the allegations made against the appellant.

The appeal is thus disposed of.

11. In *M/s Southern Painters (Supra)* it was held by the Court that:

The deletion of the appellant's name from the list of approved contractors on the ground that there were some vigilance report against it, could only

be done consistent with and after the compliance of the principles of natural justice. That not having been done, it requires to be held that

withholding of the tender from the appellant was not justified. In our opinion, the High Court was not justified in dismissing the writ petition.

12. In view of this legal position there appears due force in the submissions of learned Counsel for the petitioners.

The annexures placed on file show that no notice about the proposed action of blacklisting the petitioners has been given to the petitioners. Only a

show cause notice to explain the alleged offence as found established against the petitioners prior to taking a decision has been given which will not

amount to sufficient compliance with the rules of natural justice. The scope of this notice is entirely different. The petitioner has been asked to show

cause regarding the offence committed, it does not disclose the mind of the respondents to black list the petitioners with a view to provide an

opportunity to the person likely to suffer by such black listing, the concerned person must be informed about the proposed action SO that he is in a

position to put forth his defence and defend his case on those lines.

13. The respondents have considered the reply of the petitioners and have arrived at the conclusion that the petitioners should be black listed but

before taking the said action they should have at least provided an opportunity to the petitioners to explain as to why they should not be black

listed. Admittedly no such notice has been given to the petitioners.

14. In view of the law laid down by the Apex Court in aforementioned authorities, I find the order/communication impugned cannot stand. The

respondents cannot impose the penalty of black listing the petitioners without a notice to the petitioners in this behalf and without giving them a due

opportunity of being heard.

15. Order/communication impugned in the present petition are in gross-violation of the rules of natural justice as laid down by the Apex Court.

16. In the circumstances these petitions are allowed and the order/communications imposing/informing the petitioners about the black listing of the petitioners firm is hereby set aside. Order accordingly.