

(1986) 01 MAD CK 0007

In the Madras High Court

Case No : Writ Appeals No's. 495 and 496 of 1980

Preetam Pipes Syndicate

APPELLANT

Vs

Tamil Nadu Slum Clearance Board, Madras

RESPONDENT

Date of Decision : 07-01-1986

Acts Referred:

Constitution of India, 1950 — Article 226, 299

Citation : AIR 1986 Mad 310

Hon'ble Judges : Natarajan, J;Nainar Sundaram, J

Bench : Division Bench

Advocate : V.S. Subrahmanyam, for the Appellant; M.S. Sampathkumar, for the Respondent

Judgement

Nainar Sundaram, J.—The petitioner in W. P. Nos. 3252 and 3253 of 1980 is the appellant in these two writ appeals and the respondent in

the writ petitions is the respondent in these two writ appeals. The appellant was in the list of registered and approved suppliers of the respondent

and it had the benefit of an award of two contracts from the respondent. On 7-5-1980, the Superintending Engineer of the respondent addressed a

communication to the petitioner as follows : -

Necessary work orders were issued to you in the reference first cited above and in the reference second cited you were requested by the C.E. to

execute the agreement within 3 days on receipt of this letter. Apart from this in this office letter 3rd cited above also you were requested to execute

the agreement with the Executive Engineer concerned. In spite of this you have not either deposited the additional security deposits or executed the

agreement. Therefore you are hereby informed that as per clause 9 of the tender the E.M.D. paid by you for the above works are hereby forfeited,

for the noncompliance in execution of the agreement. Further you have also not satisfactorily supplied the C.I. pipes and specials and G. 1. Pipes

and specials for M.G.R. Nagar scheme as per the agreement No.CR/48/78-79 and CR/42/7879, respectively. This has caused much

inconvenience to the department in the execution of the project. Under these circumstances you may substantiate with reasons if any as to why

your firm should not be blacklisted for failure in effecting the supply of G.I. and C.I. pipes specials to M.G.R. Nagar and in the execution of

agreement for the supply of C.I. pipes and specials for Ammani Ammal Thotam, Annai Sivagami Nagar and Sivagami Ammaiagar Nagar. Your

reply in this matter should reach this office within 15 days from the date of this letter.

As we could see from the above, the time given for offering the explanation was 15 days from the date of receipt of the communication. However,

before the lapse of the 15 days reserved under the said communication, on 12-5-1980 the appellant was visited, with an order from the Chief

Engineer of the respondent the contents of which run as follows:

With reference to the above tender you are informed that you had " tendered for the above work and the same was accepted. The work order

has been issued to you vide reference third cited within the validity period of your tender (i.e.) before 26-3-79. The agreement between you and

the Department has also been executed on 29-3-79.

As per agreement you had to complete the supply of entire quantity of pipes and specials stipulated in the agreement before 21-4-79. You have

not supplied the full stipulated quantity in the agreement even within the extended period of supply sought by you. Further you have not given any

reply or completed supply in response to the Board's reference fourth cited. Long after tendering and executing the agreement you have informed

of your inability to complete supplies as your principals have not indicated any specific date to resume the operation of supplying the pipes and

specials. This is not acceptable as tender conditions and agreement do not stipulate supply of any particular brand or make of pipes. It shows your

inability to supply the pipes and specials at agreed rates.

As you have failed to supply the full quantity stipulated in the agreement within the agreement period, your contract is determined with forfeiture of

EMD of Rs. 7500 and additional security of Rs. 8100/-. This is in addition to the fine of Rs. 51,984/- under condition No. 2 of the "Conditions of Contract".

As you have failed to complete supply of materials as per tender and agreement conditions for most of the schemes viz. M. G.R. Nagar (C.I. &

G.I. Pipes and specials) Annai Sivagamiammaiyyar Nagar, Sivagamiammaiyyar Nagar and Ammaniammal Thottam it is to be construed that you are

not a reliable supplier. Hence you are blacklisted and your name removed from the list of registered and approved suppliers of this Board

restraining you from taking up any work or supplies in Slum Clearance Board".

Again on 17-5-1980, the appellant was visited with another order from the Chief Engineer of the respondent in respect of the other contract, the

body of which runs as follows:

With reference to the above tender, you" are informed that you had tendered for the above work and the same was accepted. The work order

was issued to you vide reference, fourth cited, within the validity period of your tender i.e. before 17-1-79. The agreement between you and the

department has also been executed on 9-3-79.

As per agreement, you should have completed. the supply of the entire quantity of, pipes and specials stipulated in the agreement before 15-2-79

You have not supplied the full stipulated quantity in the agreement. Further you have neither furnished any reply nor completed the supply in

response to the Board reference first cited.

Long after tendering and executing the agreement, you have not at all informed about your inability to complete the Supply. As the tender condition

and agreement do not stipulate the supply of any particular brand or make of pipes and specials you should have completed the supply from any

other sources.

As you have failed to supply the full quantity stipulated in the agreement within the agreement period. your contract is determined with forfeiture of

EMD of Rs. 2300/- and additional security of Rs. 7250/-. This is in addition to the fine of Rs. 31,828/- under condition No. 2 of the conditions of

contract.

As you have failed to complete the supply of materials as per tender and

agreement conditions for most of the schemes viz. M. G.R. Nagar (GI & CI pipes and specials) and Ammaniammal Thottam, Annai Sivagami~ ammaiyyar Nagar, Sivagamiammaiyyar Nagar, it is to be construed that you are not a reliable supplier. Hence you are blacklisted and you are not a reliable supplier and your name removed from the list of registered and approved suppliers of this Board restraining you from taking up any works or supplies in Slum Clearance Board.

Complaining that the blacklisting violated the principles of natural justice, the appellant came to this Court by way of two Writ Petitions referred to above.

2. Mohan, J. who heard the Writ Petitions, opined that in each and every case, irrespective of the facts and circumstances, notice cannot be held to be a must whenever blacklisting of contractors is resorted to. Before the learned Judge the decision of the Supreme Court in *Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and Another*, was relied on. The learned Judge referred to the factum of the determination of the contracts and forfeiture of the earnest money deposits and held that no useful purpose would be served by the issue of notice to the appellant unless it be a mere ritual. The reasoning of the learned Judge stands expressed as follows :

It is not denied before me that the contract of the petitioners was determined with forfeiture of EMD of Rs. 7500 and additional security of Rs.

8100/-. Likewise, in the other case also, EMD of 2300/- and additional" security of Rs. 7250/- have been forfeited and the contract was

determined in SCB/JAI/S 1.305/79 dt. 17-5-1980. The factum of forfeiture is not denied before me. But what the petitioner says is there are other

contractual remedies open to him concerning which the petitioner reserve his right. This reservation is beside the point in issue to be decided here.

So long as the forfeiture of EMD and additional security are not denied, in my considered view such forfeitures as referred to above would be

enough to blacklist a person. What useful purpose then will be served by issue of notice to the petitioners, unless it be, as I said, a mere ritual.

Since I do not understand the judgment of the Supreme Court in that way, Isee absolutely no justification for any complaint on behalf of the petitioners.

In this view, the learned Judge found no warrant for interference in Writ Jurisdiction and dismissed the Writ Petitions. These Writ appeals are

directed against the common order of the learned Judge in the two Writ Petitions.

3. In view of the positive pronouncements of the highest court in the land, we are unable to subscribe our support to the view of the learned Judge

when he dismissed the Writ Petitions. In *Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and Another*, it was observed as

follows: -

Under Art. 298 of the Constitution the executive power of the Union and the State" shall extend to the carrying on of any trade and to the

acquisition, holding and disposal of property and the making of contracts for any purpose. The State can carry on executive function by making a

law or without. making a law. The exercise of such powers and functions in trade by the State is subjected to Part III of the Constitution. Article.

14 speaks of equality before the law and equal protection of the laws. Equality of opportunity should apply to matters of public contracts. The

State has the right to trade. The State has there the duty to observe equality. An ordinary individual can choose not to deal with any person. The

Government cannot choose to exclude persons by discrimination. The order of blacklisting has the effect of depriving a person of equality of

opportunity in the matter of public contract. A person who is on the approved list is unable to enter into advantageous relations with the

Government because of the order of blacklisting. A person who has been dealing with the Government in the matter of sale and purchase of

materials has a legitimate interest or expectation. When the State acts to the prejudice of a person it has to be supported by legality.

But for the order of blacklisting, the petitioner would have been entitled to participate in the purchase of cinchona, Similarly the respondent in the

appeal would also have been entitled but for the order of blacklisting to tender competitive rates.

The State can enter into contract with any person it chooses. No person has a ,fundamental right to insist that" the Government must enter into a

contract with him. A citizen has a right to earn livelihood and to pursue any trade. A citizen has a right to claim equal treatment "to enter into a

contract which may be proper, necessary and essential to his lawful calling.

The blacklisting order does not pertain to any particular contract. The blacklisting order involves civil consequences. It casts slur. It creates a

barrier between the persons blacklisted and the Government in the matter of transactions. The blacklists are instruments of coercion".

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

blacklist.

The very same question came up subsequently before the Supreme Court in Joseph Vilangandan Vs. The Executive Engineer, (PwD), Ernakulam

and Others, and the learned Judges of the Supreme Court referred to the earlier pronouncement in Erusian Equipment and Chemicals Ltd. Vs.

State of West Bengal and Another, and reiterated the proposition that affording an adequate opportunity to represent against impugned action of

blacklisting is necessary and the failure to give such an opportunity will warrant an interference with the order of blacklisting.

4. Blacklisting has got a particular factual and legal potency. But for the blacklisting a person would have the right, privilege and advantage of

entering into contractual relationship with the authorities. By blacklisting he is disabled from doing so. There is a curb on his freedom to enter into

contractual relationship with the authorities. It has nothing to do with a particular contract over which a controversy may arise and which may lead

to the determination of the contract and forfeiture of the monies deposited thereunder. Grievances arising therefrom will have to be vented through

by different processes. It is- not possible to mix up determination of the contract with the blacklisting. Blacklisting, as pointed out by the Supreme

Court, does not relate to any particular contract and it involves civil consequences and it creates a barrier between the person blacklisted and the

authorities in the matter of contractual transactions. The power to determine questions affecting the rights of citizens will certainly impose a

limitation that the said determination should be exercised only in conformity with the principles of natural justice and fair play. Those principles do

envisage that the person to be affected should be afforded an opportunity to represent his case before his rights are affected. There is no dispute

that in the present case the appellant was not afforded an opportunity to make his say on the question of blacklisting and the matter stopped with

the issuance of a show cause notice and before the appellant could respond, the orders of blacklisting had come to be passed.

5. The above being the well accepted ratio as countenanced by the pronouncements of the highest court in the land, we are bound to follow the

same and we feel obliged to interfere in the writ appeals. Accordingly, the writ appeals are allowed and the common order of the learned single

Judge in the two writ petitions is set aside and the orders impugned in the writ petitions will stand quashed and the writ petitions will stand allowed.

We- make no order as to costs both in the writ petitions and in the writ appeals. We make it clear that this judgment of ours shall not stand in the

way of the respondent to initiate fresh action for blacklisting, if there is warrant for it, keeping in mind the principles of natural justice and fair play

while prosecuting such process.

6. Appeals allowed.