
(2009) 07 DEL CK 0063

In the Delhi High Court

Case No : Writ Petition (Civil) No. 8558 of 2009

Rama Pandey

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 22-07-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 420, 468, 472, 511

Citation : (2009) 162 DLT 202 : (2009) 6 ILR Delhi 752

Hon'ble Judges : Sanjiv Khanna, J

Bench : Single Bench

Advocate : Neeraj Chaudhari and Shruti Verma, for the Appellant; Rajeev Sharma and Abhishek Birthray, for the Respondent

Judgement

Sanjiv Khanna, J.—The petitioner, Ms. Rama Pandey, sole proprietor of Montage Films has challenged the blacklisting order dated 15th April, 2009 passed by Director General, Doordarshan, Prasar Bharti in the present writ petition.

2. Prasar Bharti in the year 2006 had invited proposals from television producers for short term acquisition of programs in different categories as specified. A television producer desirous of submitting a proposal was required to furnish details with documents along with non-refundable process fee of Rs. 10,000/-. The note to the said advertisement reads as under:

Note:

Since this is a requirement for ready programmes any/all tapes may be required at any stage of processing at short notice. Failure to submit tapes within specified time will lead to disqualification/rejection of the proposal without any further correspondence.

Proposals incomplete in any respect, or submitted with any incorrect information will be liable for disqualification.

Only proposals finally approved for acquisition, will be notified on Doordarshan's

website in due course.

DD reserves the right to reject any proposal based on changing requirements of channels without assigning any reason.

3. The petitioner submitted a proposal for program Faisle in Urdu along with a pilot tape. By letter dated 24th February, 2007, Prasar Bharti requested the petitioner to submit 26 number of episodes/tapes in DVC Pro 50 format only within 15 days for preview purposes only. It was further stated in this letter as under:

...You are requested to submit 26 number of episodes/tapes (DVC Pro-50 only, meeting technical specifications as in Acquisition Guidelines of Doordarshan) within 15 (fifteen) days of the date of issue of this letter for preview purpose only. Kindly note that any extension of date may not be possible. Non-submission of tapes by the stipulated date may result in rejection of the proposal.

4. The petitioner vide letter dated 11th March, 2007, which was received by Prasar Bharti on 12th March, 2007 submitted 26 tapes of episode serial Faisle stating that these were in DVC Pro 50 format.

5. By letter dated 27th June, 2007, Prasar Bharti informed the petitioner that 26 tapes submitted on 12th March, 2007 to the Directorate for preview contained repeat episodes. This, it was stated, was contrary not only to the acquisition advertisement but also against ethics and code. The petitioner was asked to explain and respond why she had submitted repeat episodes. By letter dated 25th July, 2007, the petitioner informed that she was out of country in USA and it was possible that by mistake repeat episodes might have been sent as it was a normal practice to make additional copies. It was stated that the mistake was not intentional and, if required, new episodes would be submitted as soon as she came back to India.

6. The petitioner had also submitted a proposal for another program Jane Apna Desh, which was telecast but payments were not made. By letter dated 31st August, 2007, the petitioner requested for payment and while making reference to the tapes of the program Faisle she had submitted:

I.m also aware of the problems, which have come up in the Urdu acquisition tape. I have already replied to your official letter in this regard. I.m sure that I must have clarified my stand. If there is any confusion I.m ready to withdraw all the tapes of Urdu titled Faisale. without any hesitations to prove my point.

7. Prasar Bharti issued show cause notice dated 11th September, 2007 why the petitioner should not be blacklisted for submitting repeat tapes of the program Faisle. Relevant and material part of the letter reads:

The explanation furnished by you has been considered. However, prima-facie the explanation has not found to be satisfactory.

In the circumstances, you are hereby called upon to show cause why an order of

blacklisting be not passed against you.

8. The petitioner in her reply dated 24th September, 2007 stated that duplicate copies or repeat tapes were sent by mistake or human error and she had been working for 30 years with Doordarshan and others and her integrity and excellence were never in doubt and challenged. It was stated that blacklisting would be harsh as it would nullify her 30 years of outstanding work and image in the media circles. Petitioner wrote letter dated 10th March, 2008 and another undated letter requesting for return of the false tapes and payment of money in respect of the program Jane Apna Desh.

9. As stated above, by order dated 15th April, 2009, the petitioner has been blacklisted for a period of two years from the date of the said order/letter. The said order/letter reads as under:

Whereas you were supposed to submit programmes in DVC Pro format as per the provisions mentioned in the guidelines for Acquisition of software by Doordarshan.

Whereas you were required to submit the software of programmes by submitting tapes. It was shocking to see that you chose to submit the repeat tapes for the reason best known to you. This shows your clear intention to cheat the Doordarshan authorities. By the said act you have invited the criminal proceedings u/s 420, 468, 472/511 IPC against yourself.

However, taking a lenient view, Doordarshan has no intention to initiate the criminal proceedings against you at the moment. In exercise of powers vested with DG : Doordarshan for appropriate action required to be taken in such cases of indiscipline and fraud/cheating, it has been decided to ban your company namely M/s. Montage Films, Gurgaon, its proprietor/partner/Director under the same name and title or under any other name for a period of two years from the date of issue of this letter and ban it from any further dealing with Doordarshan for the said period.

10. The impugned order dated 15th April, 2009 is cryptic and does not deal with the contentions and the pleas raised by the petitioner. It is the case of the petitioner that repeat episodes might have been submitted because of human error or mistake. The said contention has not been specifically taken into consideration and discussed. The impugned order quoted above only records the final conclusion without any discussion or reasons and assumedly rejects the pleas of the petitioner. The respondents were entitled to reject the contentions and the pleas of the petitioner but only after recording reasons for rejecting the same. The final decision or operative portion giving the final verdict is not a substitute for reasoning. A penal order should contain reason, albeit brief reasons may suffice. To this extent, therefore, the impugned order cannot be sustained and is arbitrary and contrary to law.

11. The Supreme Court in Chairman, Disciplinary Authority, Chairman,

Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank Vs. Jagdish Sharan Varshney and Others, has observed:

8. In our opinion, an order of affirmation need not contain as elaborate reasons as an order of reversal, but that does not mean that the order of affirmation need not contain any reasons whatsoever. In fact, the said decision in Prabhu Dayal Grover's case(supra) has itself stated that the appellate order should disclose application of mind. Whether there was an application of mind or not can only be disclosed by some reasons, at least in brief, mentioned in the order of the appellate authority. Hence, we cannot accept the proposition that an order of affirmation need not contain any reasons at all. That order must contain some reasons, at least in brief, so that one can know whether the appellate authority has applied its mind while affirming the order of the disciplinary authority. The view we are taking was also taken by this Court in Divisional Forest Officer v. Madhusudan Rao and in Madhya Pradesh Industries Ltd. v. Union of India, Siemens Engineering & Manufacturing Co. Ltd. v. Union of India etc.

9. In the present case, since the appellate authority's order does not contain any reasons, it does not show any application of mind.

10. The purpose of disclosure of reasons, as held by a Constitution Bench of this Court in the case of S.N. Mukherjee Vs. Union of India, is that people must have confidence in the judicial or quasi-judicial authorities. Unless reasons are disclosed, how can a person know whether the authority has applied its mind or not? Also, giving of reasons minimizes chances of arbitrariness. Hence, it is an essential requirement of the rule of law that some reasons, at least in brief, must be disclosed in a judicial or quasi-judicial order, even if it is an order of affirmation.

12. The impugned order records that the petitioner had intention to cheat Doordarshan authorities and had invited criminal proceedings under Sections 420, 468, 472/511 of the Indian Penal Code and in the last paragraph states that Doordarshan had decided not to initiate criminal proceedings for fraud and cheating but decided to blacklist the petitioner for a period of two years. Substantial portion of the order quoted above deals with fraud and cheating. No such allegation has been specifically made in the show cause notice dated 11th September, 2007. A perusal of the original office files reveal that the allegations of fraud and cheating can be traced back to note dated 25th April, 2007 and subsequent notes including the report submitted by the Central Bureau of Investigation in respect of ten parties, who had submitted proposals pursuant to the said advertisement but in seven cases, tapes were found to be blank and in three cases tapes were found to be repeat. In the note dated 25th April, 2007 it is mentioned that the producers might have submitted blank tapes as they could not complete the requisite episodes in time and to avoid the rejection, this could have been done with the intention of replacing the blank tapes at a later stage before the final preview with the help and collusion of concerned officers/staff in Urdu Section. In fact, in the counter affidavit filed by the respondent-

Doordarshan it is stated as under:

This was done to give the false impression to respondent No. 2 that the petitioner had submitted the requisite tapes in the prescribed format by the due date and to substitute the repeat tapes by correct tapes at a later stage. Thus the submission of blank tapes was deliberate. In the circumstances, it cannot be said that the view taken by respondent No. 2 is not a possible view or that the same is unreasonable.

13. Thus, in the counter affidavit it is reiterated that the blacklisting order has been passed because at a later stage, the petitioner had the intention to substitute the repeat tapes by corrected tapes with collusion and convenience of the staff. This also explains the statements in the impugned order that the petitioner had indulged in fraud or cheating.

14. However, the respondents in the show cause notice dated 11th September, 2007 or even otherwise before passing the impugned order had never made such allegation or asked the petitioner to respond to the same. The impugned order blacklisting the petitioner for two years has, therefore, been passed accepting and relying upon allegations, which the petitioner was never asked to explain and respond to. They go beyond what was alleged in the show cause notice. The order of blacklisting for two years, therefore, proceeds and holds the petitioner guilty of cheating and fraud without the petitioner being confronted and asked to meet the said allegation that there was an intention and desire on the part of the petitioner to replace the repeat tapes with new tapes at a subsequent date with connivance and help of officers of Doordarshan. The show cause notice does not mention or state that the petitioner intended to replace the repeat tapes with corrected tapes in connivance with the officers of Doordarshan.

15. The Supreme Court in *B.S.N. Joshi and Sons Ltd. Vs. Nair Coal Services Ltd. and Others*, observed:

43. In *Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and Another*, this Court stated the law thus:

20. 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.

44. Yet again in *Raghunath Thakur Vs. State of Bihar and Others*, it was opined:

4. Indisputably, no notice had been given to Appellant of the proposal of blacklisting 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. Insofar 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.

16. However it is not possible to accept the contention of the petitioner that in view of the note to the invitation inviting proposals no blacklisting order can be passed. The note refers to conditions and consequences of not complying with the same. The note does not bar or prohibit passing of a blacklisting order when justified. All consequences need not be specified in the note. If conduct of a party justifies blacklisting, the same can be passed after following due process of law.

17. In view of the aforesaid position, the impugned order dated 15th April, 2009 cannot be sustained and is therefore set aside. However, keeping in view the seriousness of the allegations, I feel it will be appropriate to give liberty to the respondents to issue an amended show cause notice confronting the petitioner with the allegations against her along with relevant materials and documents. The petitioner will be entitled to respond. The respondents, after considering the facts, will pass a speaking order dealing with the contents raised by the petitioner. In the facts and circumstances of the case, there will be no order as to costs.