
(2013) 10 MP CK 0114

In the Madhya Pradesh High Court

Case No : Writ Petition No's. 6260 and 6258 of 2012

Sanjay Yadav

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 21-10-2013

Acts Referred:

Citation : (2013) 10 MP CK 0114

Hon'ble Judges : Rajendra Menon, J

Bench : Single Bench

Advocate : A.K. Pathak, for the Appellant; N.S. Ruprah, Learned Counsel, for the Respondent

Final Decision : Allowed

Judgement

Rajendra Menon, J.—As common questions of law and fact are involved in the matter, both these petitions are being decided by this common order. For the sake of convenience, documents, pleadings and material available in W.P. No. 6260/2012 is being referred to in this order.

2. Petitioner was given a contract for the purpose of establishing, running and maintaining the cycle and scooter stand in the Katni Railway station down side. The agreement was entered into between the parties and the contract was granted to the petitioner in pursuance to the said agreement Annexure P/4. However, as the contract has been terminated and thereafter petitioner is black listed and the security amount deposited by the petitioner is also forfeited, both these petitions are filed by the petitioner.

3. In W.P. No. 6260/2012 challenge is made to the order Annexure P/1 dated 30th May, 2011 by which the contract of the petitioner is terminated and a direction is issued, black listing the petitioner. Similarly in W.P. No. 6258/2012 challenge is made to order dated 27.3.2012 Annexure P/1 by which the security amount deposited by the petitioner to the tune of about Rs. 3,71,000/- is forfeited. As challenge to both these orders are made on common grounds, both

these petitions are being decided by this common order.

4. Shri Ashish Pathak, learned counsel for the petitioner took me through the contract agreement, the requirement of clause 13 of the agreement and argued that for terminating the contract and for taking action opportunity of hearing, show cause notice and submission of defence should be given. In the present case, it is stated that without issuing any show cause notice, without hearing the petitioner in an arbitrary and illegal manner, impugned action is taken. That apart, it was pointed out that for the purpose of forfeiture of security amount, no notice and hearing is granted and therefore, the entire action is unsustainable.

5. Shri A.K. Pathak, learned counsel submitted that the impugned action against the petitioner is taken on the basis of certain complaints received against the petitioner and as the penal action is taken against the petitioner without hearing the petitioner and without granting him any opportunity, he submits that the entire action stands vitiated as the principle of natural justice is violated in the action taken. In support of his contention he invites my attention to a judgment rendered by the Supreme Court in the case of Jagdish Mandal Vs. State of Orissa and Others, and a Single Bench of this Court in the case of Bhupendra Singh Kushwah Vs. The State of M.P., to say that the action taken in violation to the principles of natural justice is unsustainable.

6. Refuting the aforesaid, Shri N.S. Ruprah, learned counsel appearing for the respondents invites my attention to clause 13 of the agreement in question and submits that notice of three months and opportunity of hearing has been granted to the petitioner and therefore, the action is approved. That apart, he invites my attention to the complaints received against the petitioner, detailed in the impugned order and mentioned in para 11 of the return filed by the respondents and points out that more than 10 complaints were received against the petitioner on various dates which pertains to over charging of tariff, misbehavior with the public, theft of motor cycle and petrol and various other allegations. It is said that for these complaints received action was taken by imposing penalty, warning in some cases, but still the petitioner did not improve, therefore, it is said that impugned action is taken. That apart, inviting my attention to clause 26 of the agreement, Shri Ruprah raises a preliminary objection with regard to maintainability of this petition on the ground that termination of agreement and forfeiture of security amount is a dispute which is covered by an arbitration agreement entered into between the parties and therefore, this writ petition is not maintainable. He submits that petitioner has been granted adequate opportunity to improve his conduct on various occasion and as he did not improve, the impugned action is taken. Accordingly, Shri Ruprah tried to justify the action of the department.

7. I have heard learned counsel for the parties and perused the record. The dispute in question arises because of termination of the agreement entered into between the parties, forfeiture of the security amount and black listing of the petitioner.

8. Agreement between the parties Annexure P/4 contemplates various provisions including procedure to be followed for taking action and clause 26 of the said agreement constitutes an arbitration agreement between the parties. Parties have agreed for adjudication of the dispute by way of arbitration and an arbitration clause for resolution of dispute between the parties is available.

9. It is the case of the petitioner that termination of contract and forfeiture of security amount is contrary to the terms and conditions of the agreement. Once there is an arbitration agreement between the parties and parties have agreed to resolve all their dispute through arbitration, then a writ petition for breach of the agreement or termination of the agreement or any dispute arising out of execution of the agreement is not maintainable. If the petitioner feels that termination of contract was in breach of the terms and conditions of the agreement or that forfeiture of the security amount was in violation to the terms and conditions of the agreement then in the light of the arbitration agreement between the parties, the procedure contemplated for arbitration should have been resorted to. Once there is an arbitration agreement between the parties and when the dispute pertains to execution of contract and its breach thereof, in the light of arbitration agreement between the parties, it is not appropriate for a writ Court to interfere and exercise jurisdiction in a petition under Article 226 of the Constitution, accordingly, I am not inclined to interfere into the matter as far as these two relief are concerned. For the same petitioner should take recourse to the remedy available as per the arbitration agreement, so far as it challenges the termination of the contract and forfeiture of the security amount is concerned. Accordingly, the petition challenging the termination and forfeiture of security amount is dismissed with liberty to the petitioner to take recourse to the remedy of arbitration with regard to these two grievance.

10. As far as blacklisting of the petitioner is concerned, blacklisting of the petitioner has serious penal consequence and record do indicate that petitioner has been black listed and is debarred without hearing him and without giving him any show cause notice as to why his name should be kept in the black list category. Before doing so, as no opportunity of hearing is granted to the petitioner and as the principles of natural justice is violated, in this regard in the light of law laid down in the case of Jagdish Mandal (supra) black listing order passed behind the back of the petitioner is unsustainable. As no notice intimating the petitioner about the proposed black listing is issued, nor is the petitioner given any opportunity to give his say with regard to back listing, to that extent petitioner is entitled to the relief.

11. Accordingly, this petition is allowed so far as it orders for black listing of the petitioner. Black listing of the petitioner is quashed and liberty is granted to the respondents to proceed in this regard afresh in accordance with law. With the aforesaid, this petition stands allowed and disposed of to the extent indicated herein above.