
(2013) 09 AHC CK 0078

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 5166 of 2000

Shafiq Khan

APPELLANT

Vs

District Magistrate

RESPONDENT

Date of Decision : 13-09-2013

Acts Referred:

Citation : (2013) 8 ADJ 317 : (2014) 1 BC 541

Hon'ble Judges : Vishnu Chandra Gupta, J; Rakesh Tiwari, J

Bench : Division Bench

Advocate : M.A. Khan, for the Appellant; D.C. Mukherjee, for the Respondent

Final Decision : Allowed

Judgement

1. This case has been taken in the revised list. Shri D.C. Mukherjee, learned counsel for opposite parties is not present. Heard Shri Mohd. Arif Khan, learned counsel for the petitioner.

2. Perused the record.

3. The petitioner claims himself to be a registered contractor of Nagar Panchayat, Sidhauli, District Sitapur. In pursuance of tender notice dated 4.4.2000 published in news paper, the petitioner submitted his tender to the opposite party No. 2 (Nagar Panchayat Sidhauli, District Sitapur) offering his rate i.e. 5% higher than the scheduled rates. The Opposite party No. 3 (Executive Officer, Nagar Panchayat, Sidhauli, District Sitapur) vide its letter dated 10.5.2000 called upon the petitioner to give his written consent for performing the work of construction of Nali, for which tenders were invited on the scheduled rates, failing which his tender shall stand automatically cancelled. The petitioner had neither given his written consent nor appeared before the opposite party No. 3 for performing the construction work of Nali. A reminder was issued on 29.5.2000 to the petitioner seeking his consent to perform the construction work of Nali on the scheduled rates. The petitioner appears to have been informed to the Executive Officer, Nagar Panchayat Sidhauli, Sitapur as well as Sub Divisional Magistrate, Sidhauli,

Sitapur and shown his inability to perform the work on the scheduled rates due to price escalation in the building material. The tender submitted by the petitioner was not accepted by the opposite parties on rates given by the petitioners rather he was called upon to perform the work at the scheduled rates. Subsequently by notice dated 13.7.2000 published in news paper "Swatantra Bharat" on 15.7.2000 the petitioner was again called upon to submit his written consent, failing which he would be intimated by the District Magistrate, Sitapur for cancellation of his Theka. However, even without issuing notice to the petitioner prior to passing the order impugned dated 21.9.2000 the petitioner was black listed on the ground that despite letter/ notice the petitioner has neither given his written consent to perform the work of construction of a Nali on the scheduled rates nor has turned up before opposite party No. 3.

4. The order impugned dated 21.9.2000 passed by opposite party No. 1 (Annexure 4) read as under:

5. The contention of the learned counsel for the petitioner is that order impugned is illegal and arbitrary as the petitioner could not have been blacklisted without giving him opportunity of hearing and in any case if the petitioner did not want to perform the work on the scheduled rates less than rates given could not be compelled to do and also by blacking listing not in Nagar Parishad but in other local bodies like Nagar Panchayat and other Government departments.

6. In support of his contentions, the learned counsel for the petitioner has relied upon the judgement of the Division Bench of this Court in Anil Kumar Jain v. Hindustan Petroleum Corporation Ltd. and others, 2011 (29) LCD 2179. Relevant paras 50 and 51 are reproduced hereinbelow:

50. In support of his submission, learned counsel for the Corporation has placed reliance upon the judgment of the Apex Court in the case of Rashtriya Ispat Nigam Limited and Another Vs. Verma Transport Company, , where the High Court interfered with order of blacklisting of the firm on the ground that no notice was issued prior to the passing of the order of blacklisting, whereas in fact, no order of blacklisting was passed but only show-cause notice was issued and the final decision was yet to be taken. The Apex Court found that such a dispute could have been raised in the arbitration proceedings also.

51. The aforesaid was a case where the High Court interfered with the order of blacklisting on the ground that no notice was issued before passing the order of blacklisting though, in fact, no order of blacklisting was passed, I whereas in the instant case, there is no notice of blacklisting nor any order of of blacklisting has been passed, so as to raise the dispute before the Arbitrator but even in the absence of any order of blacklisting, the firm has been shown blacklisted on the website on industry basis apparently on misconstruing the provisions of the agreement and T.D.S., therefore, the present petition would be maintainable.

7. The learned counsel for the petitioner has further relied upon the judgment of the Hon'ble Supreme Court in Raghunath Thakur Vs. State of Bihar and Others, ,

wherein the Apex Court has opined that it is an implied principles of the rules 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 insofar as it directs blacklisting of the appellant in respect of future contracts, cannot be sustained in law.

8. From perusal of the record of the petition we find that no notice was issued before blacklisting the petitioner and even otherwise Nagar Panchayat, Sidhauli, District Sitapur could have black listed the petitioner only for works to be carried out in its area but it could not have black listed him for business in other department. For the reasons stated above, we quash the order impugned dated 21.9.2000 passed by the opposite party No. 1. The writ petition is accordingly allowed.