

(2011) 01 DEL CK 0164

In the Delhi High Court

Case No : Writ Petition (C) 5547 of 2007 and CM Appl 10273 of 2007

Shoghi Communications Ltd.

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 20-01-2011

Acts Referred:

Citation : (2011) 180 DLT 414 : (2011) 8 RCR(Civil) 1542

Hon'ble Judges : Dr. S. Muralidhar, J

Bench : Single Bench

Advocate : H.L. Tiku, Ravi Kumar Aggarwal and Bindu Monga, for the Appellant;
Jatan Singh, for the Respondent

Final Decision : Dismissed

Judgement

S. Muralidhar, J.—This is the second round of litigation concerning the blacklisting of the Petitioner by an order dated 9th July 2005 issued by the Directorate General of Military Intelligence ("DGMI?") and the consequential order dated 19th September 2005 issued by the Ministry of Defence ("MOD?") stating that on advice from the National Security Council Secretariat "it would be desirable to avoid any contact with M/s Shogi Communications Ltd ("SCL?") and Mr. Harish Gupta.

2. Information was received from the Central Bureau of Investigation ("CBI?") on 11th May 2005 about Mr. Harish Gupta, Director (R&D) of the Petitioner SCL having been charge sheeted in CBI case No. RC 9(S)/96-DLI for offences u/s 420 read with Section 511 IPC and Section 469 and 471 IPC in 1996. The said communication pointed out that the allegation against Mr. Harish Gupta was that "he forged/used an End User Certificate purported to have been issued by Communication Directorate of NSG for importing two systems T-1285 Customs Act including Key Generation Programme OPG-2002 and crypts fill Device CFD-2001 during the year 1995-96. The offence came to light when the said End User Certificate was referred back by authorities to NSG for some changes." This led to an order dated 4th July 2005 being issued by the office of the IFA (Army/

M) addressed to the DGMI that SCL and its two sister companies, Secure Telecom Pvt. Ltd. (STPL) and Sidhi Tech Services Ltd. (STSL) should be deleted from the vendor list and all transactions with the three companies should be stopped forthwith.

3. The Petitioner challenged the validity of the CBI's communication dated 11th May 2005, the order dated 4th July 2005 of the IFA, the order dated 9th July 2005 of the DGMI and the consequential order dated 19th September 2005 of the MOD blacklisting the Petitioner, by filing Writ Petition (Civil) No. 1815 of 2007 in this Court. In that writ petition the principal grounds of challenge were that the orders were passed without issuing any notice to the Petitioner and, therefore, were violative of principles of natural justice and that the blacklisting was for an indefinite period.

4. The aforementioned Writ Petition (C) No. 1815 of 2007 was disposed of by an order dated 9th March 2007 passed by the learned Single Judge of this Court. The operative portion of the said order reads as under:

The Petitioner is aggrieved by these orders/communications on the ground that these orders amount to virtual blacklisting without any fixed duration. Secondly, the blacklisting has been done without following the principles of natural justice i.e., without issuing any notice to the Petitioner.

The learned Counsel appearing on behalf of the Respondents submitted that he is not admitting the fact that no notice was issued to the Petitioner. However, the Respondents would be willing to give a hearing to the Petitioner so that all the aspects which the Petitioner seeks to agitate before this Court with regard to its blacklisting can be raised before the appropriate authority.

This writ petition is disposed of with the direction that the Petitioner shall make a representation within a week to the Ministry of Defence through Respondent No. 2 and, thereafter, the Respondents shall nominate the appropriate authority before whom the Petitioner may appear for a personal hearing. This would be done within 2 weeks thereafter. An appropriate order would be passed within 14 days after the date of hearing. It is made clear that this Court has not expressed any opinion on the merits of the case. The order shall clearly indicate as to whether it concurs with the impugned orders/communications or not.

5. Consequent upon the above orders, SCL made a detailed representation and was also given a hearing on 4th April 2007. Thereafter, by the impugned order dated 19th April 2007 the Special Secretary in the MOD passed a detailed order affirming the blacklisting of the Petitioner.

6. Mr. H.L. Tiku, learned Senior counsel for the Petitioner first submitted that SCL was incorporated only in November 1998 whereas the criminal case against Mr. Harish Gupta was filed much earlier. The chargesheet was filed in 1996 itself. SCL was therefore nowhere involved in the said criminal case. Secondly, it is submitted that there could be no indefinite blacklisting of the Petitioner from

2005 onwards and this rendered the impugned order wholly arbitrary. Reliance is placed on the decisions of this Court in *Kavery Infrastructure Pvt. Ltd. v. Delhi Jal Board* (decision dated 14th September 2007 in W.P. (C) No. 5398 of 2007), *Saraswati Dynamics (P.) Ltd. v. Union of India* 2003 IV AD (Delhi) 225, and the decision of the Madras High Court in *A. Rajendran v. The General Manager, Thermal Power Station I, Nayveli Lignite Corporation Ltd.* (decision dated 16th October 2003 in W.P. (C) No. 17517 of 2002). Thirdly, it is submitted that no cogent reasons have been given in the impugned order. Reliance is placed on the decisions of this Court in *Indian Oil Corporation Ltd. Vs. SPS Engineering Ltd.*, and *Mekaster Trading Corporation v. Union of India* 103 (2003) DLT 573. It is submitted that mere pendency of a criminal case cannot be a justification for indefinite blacklisting of the Petitioner. Reliance is placed on the decision in *R.K. Machine Tools Ltd. v. Union of India* 2010 III AD (Delhi) 191 and the decision dated 26th May 2010 in W.P. (C) No. 1346 of 2010 (*TSL Defence Technology P. Ltd. v. Union of India*). Referring to Clause 3.5 of Chapter III of the Defence Procurement Manual-2006 issued by the MOD, Government of India, Mr. Tiku submits that the blacklisting had to be for a specified period of time and further that the decision has to be taken by the appropriate authority "after due consideration of all the facts and circumstances of the case." It is submitted that no action was taken for about nine years after filing of the charge sheet and the CBI suddenly issued a directive in 2005 which led to the impugned order of blacklisting. It is submitted that the circumstances under which the blacklisting order was passed rendered it arbitrary and unreasonable. It is submitted that the communication dated 19th September 2005 wrongly stated that SCL and another sister company are under trial for forgery/use of end user certificate. In fact the accused was Mr. Harish Gupta and not SCL. Moreover, SCL was incorporated only in 1998, two years after the chargesheet was filed against Mr. Harish Gupta.

7. Mr. Jatan Singh, learned Counsel appearing for the Respondents points out that earlier to the communication from the CBI the MOD was not aware of the fact that Mr. Harish Gupta was facing criminal charges. The trial in the said criminal case is in progress. It is at the stage of prosecution evidence. It is submitted that at the time the said criminal case was registered Mr. Harish Gupta was carrying on business in a different name. He submits that as far as the requirement of compliance of rules of natural justice is concerned, a full fledged hearing was given to the Petitioner in terms of the order dated 9th March 2007 passed by this Court in W. P. (C) No. 1815 of 2007, and, therefore, this ground is no longer available to the Petitioner. He further submits that the three companies, i.e., SCL, STPL and STSL were closely held companies and were promoted by Mr. Harish Gupta and his wife, son and daughter-in-law. He submitted that in matter of defence projects national security was of paramount importance. In view of the doubtful credentials of the owners of SCL and the overall situation of national security it was decided not to have any business dealing with SCL, STPL or STSL. He submits that a decision to review the blacklisting order can be taken only after the criminal case against Mr. Harish

Gupta is concluded.

8. The above submissions have been considered. After the order dated 9th March 2007 was passed by this Court in earlier W.P. (C) No. 1815 of 2007 filed by SCL, it has been given a full-fledged hearing. The impugned order dated 19th April 2007 has been passed thereafter. The Petitioner can therefore no longer contend that the principles of natural justice have been violated.

9. The impugned order dated 19th April 2007 is a very detailed one. This Court is unable to accept the contention of learned Counsel for the Petitioner that it does not contain reasons. The impugned order notes the fact that the three companies i.e. SCL, STPL and STCL are closely held companies. Although SCL was incorporated in 1998, Mr. Harish Gupta was its Director (R&D), his wife looked after the finance division and his son and daughter-in-law were the Directors. SCL was working with IB, RAW, Air Force and Signal Intelligence providing them with solutions for monitoring communication equipment. In paras 14 and 15 of the impugned order, the following reasons have been stated:

14. As the charges against Mr. Harish Gupta, Director and owner of the above firms were forgery of End User Certificate, purportedly to have been issued by NSG, are extremely serious in nature, the facts could not have been overlooked in the interest of national security. In matters of defence projects and procurements, national security is of paramount importance. Therefore, the Government advised to cease all dealing because of doubtful credentials of the owner/ companies.

15. Keeping in view the facts brought before the Government and the doubtful credential of the owner and firms, and in the overall national security interest as well as the project being of a highly sensitive nature, the Government advisory appears to be in order.

10. Unlike the facts in *Mekaster Trading Corporation v. Union of India* and *Indian Oil Corporation Ltd. v. SPS Engineering Ltd.*, it cannot be said that no reasons have been given in the instant case for blacklisting the Petitioner. The charge that forgery was committed of the End User Certificate, purportedly issued by the NSG, is a serious matter and could not have been overlooked in the interests of national security. Also, unlike the facts in *R. K. Machine Tools and TSL Defence Technology*, the FIR registered in the instant case has progressed to a criminal trial which is at the stage of prosecution evidence. Consequently, the reason cited for the MOD for deciding to stop dealing with SCL cannot be said to be unjustified or arbitrary in the facts and circumstances of the case.

11. This Court is unable to accept the submission made by Mr. Tiku that the order dated 9th March 2007 passed by this Court in W. P. (C) No. 1815 of 2007 was not complied with since the Special Secretary failed to clearly indicate whether she was concurring with the decision to blacklist the Petitioner. The last sentence of the impugned order clearly states that "the Government advisory appears to be in order".

12. There also appears to be no substance in the submission that the blacklisting order is for an indefinite period. The impugned order and the blacklisting order refer to the fact of the pendency of the criminal case against Mr. Harish Gupta. In the counter affidavit filed by the Respondents it is stated in para 3(d) that "the review of whether to have further dealings with the firms or not can only be taken up after disposal of pending court case against Shri Harish Gupta." Clearly, therefore, the blacklisting is not meant to be indefinite. The position is to be reviewed after the disposal of the pending criminal case against Mr. Harish Gupta. Consequently, the decisions of this Court in R.K. Machine Tools Ltd. and TSL Defence Technology P. Ltd. are of no assistance to the Petitioner.

13. No ground is made out for interference. The writ petition is dismissed. The pending application is also dismissed.