
(2015) 04 MP CK 0066
In the Madhya Pradesh High Court
Case No : Writ Petition No. 2278 of 2015

S.K. Jain

APPELLANT

Vs

Gas Authority of India Ltd. and Others

RESPONDENT

Date of Decision : 27-04-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 04 MP CK 0066

Hon'ble Judges : Sujoy Paul, J

Bench : Single Bench

Advocate : K.B. Chaturvedi, Senior Advocate and Yogesh Chaturvedi, for the Appellant; S.S. Bansal, Advocates for the Respondent

Final Decision : Allowed

Judgement

Sujoy Paul, J.—In this petition filed under Article 226 of the Constitution, the petitioner has challenged the legality, validity and propriety of the order dated 7.4.2015, whereby the petitioner is banned from participating in the bidding process for any of the GAIL's tender (s) in future for a period of three years.

2. Brief facts necessary for adjudication of this matter are that the petitioner is a contractor and doing business in the name of M/s S.K. Jain. The respondent No. 2 invited tender for the work of hiring of vehicle for GAIL, Vijaypur. Copy of invitation for bids (IFB) dated 20.3.2013 is Annexure P-2. The petitioner submitted his tender by e-tendering process. Admittedly, Annexure P-4, is the instructions of the bidding process and award of contract. The petitioner submitted his tender and also submitted Form F-6A. Thereafter, the respondents issued a show cause notice dated 17.6.2014 to the petitioner. On the strength of clause 40 of instruction to bidders (ITB), it is alleged that the petitioner has given false information deliberately. It is concealed/suppressed by him that the petitioner is already placed in the negative list of M/s Engineering India Ltd. (a Government of India Enterprises) w.e.f. 4.2.2013. In view of wrong disclosure/suppression, it is contended that the petitioner has violated clause 40 aforesaid

and, therefore, appropriate action can be taken against him. The petitioner, in turn, submitted his detailed reply dated 2.7.2014. Thereafter, respondents passed the impugned order dated 7.4.2015 (Annexure P-1).

3. Shri K.B. Chaturvedi, learned senior counsel assailed this order mainly on the ground that the action of the respondents is arbitrary and an example of non-application of mind. By taking this Court to the reply to show cause notice dated 2.7.2014, it is contended that the conclusion drawn by the respondents is not supported by any reasons. He relied on certain judgments. In addition, he submits that by no stretch of imagination the petitioner can be held to be ineligible. The respondents have nowhere defined the meaning of "negative list". The categorical objection taken by the petitioner is also not dealt with. Apart from this, Engineering India Ltd. has already removed the name of the petitioner from negative list by order dated 10.12.2013 (Annexure P/8).

4. Per Contra, Shri S.S. Bansal relied on the short reply filed in this matter. He contends that clauses 2.1, 2.2, 8, 10.2, 40, 40.1 and 40.5 give right to the employer to ban the petitioner because of furnishing false declaration. He supported the action taken by the respondents.

5. I have heard learned counsel for the parties at length and perused the record.

6. Clause 40 of ITB makes it obligatory upon the bidder to furnish complete and correct information/documents required for evaluation of his bid. If such information/document is found to be false/forged, it may become a reason for rejection of the bid and forfeiture of earnest money. It further provides that such bidder/contractor shall be put on black list/holiday list. This will debar him from further business with GAIL. Clause 2 of ITB prescribes "eligible bidders". Clause 2.2 provides that a bidder shall be eligible if he is not put on "holidays" by GAIL or "black list" by any other Government Department/Public Sector Enterprises.

7. The pivotal question raised by the petitioner is whether the action of respondents in banning the petitioner from participating in the bidding process is justified? Whether the petitioner was rightly banned for not disclosing that his name was in the "negative list" of M/s Engineering India Ltd.?

8. It is apt to quote the relevant paras from the reply of the petitioner (Annexure P/10), which read as under:-

"At the relevant time, i.e. on 11.04.2013 when the undersigned gave declaration under Form 6-A, the undersigned was not under any liquidation or any Court Receivership or similar proceeding and Bankruptcy. Further, the undersigned was not blacklisted or kept under Holiday by any Public Sector Undertaking/Organization/Gail at that time.

Even otherwise, the Order dated 04.02.2013 passed by EIL was communicated to GAIL on 22.02.2013 by EIL. After receipt of such Negative List Order and having knowledge of the undersigned being placed on Negative List by EIL, the GAIL did not block the Vender Code of the undersigned, which is required to

upload any bid on the e-portal of GAIL. Such action/omission clearly shows that the GAIL did not consider the placing of the undersigned on a Negative List as a violation of the Tender Condition or Declaration under Form 6-A. The undersigned further submits that when the undersigned uploaded his tender (bearing No. GAIL/VH/12/C128/HR/8000005230), the vender code of the undersigned was in operation through which the undersigned uploaded the said tender. In other words, if GAIL considered placement of the undersigned on a negative list as a violation of tender condition or disqualification of the undersigned to participate in the tender, then GAIL would have blocked/locked the vender code of the undersigned. A copy of CIL letter dated 22.02.2013 is enclosed herewith for you kind perusal.

It is clarified that the illegal action of EIL was in respect of putting the undersigned under Negative List and not under Holiday or Blacklist which are categories of debarment. The Declaration under Form 6-A is only confined to Holiday and Blacklist and it does not include Negative List. Further, the entire Tender document in issue does not refer to or define the concept of Negative Listing. The concept of Negative list is alien to the tender conditions of GAIL. The declaration under Form F-6A is limited declaration that cannot be expanded by the unilateral interpretations of GAIL. Such penal provisions are required to be interpreted strictly and in favour of the undersigned. It is clear that the declaration is limited to holiday or blacklist and it does not encompass a contractor who is under Negative List. A copy of declaration in Form F-6A is enclosed herewith."

(Emphasis Supplied)

A plain reading of the aforesaid averments makes it clear that it is the case of the petitioner that he has not suppressed any relevant information, which was required to be disclosed. He in very clear terms stated that the declaration in Form-6A is confined to "holiday" and "black list" and it does not include "negative list". The said reply of the petitioner which is running in five pages is dealt with in one paragraph. In the impugned order. It reads as under:-

"In response to aforesaid show cause notice dated 17.06.2014, M/s S.K. Jain had submitted reply vide letter dated 02.07.2014 which was examined by GAIL (India) Limited and it is observed that M/s S.K. Jain have miserably failed to provide any cogent reason or shown any cause to satisfy GAIL for submitted false declaration in Form F-6A."

9. The main attack on this order is on the ground of non-application of mind.

10. In view of aforesaid, during the course of argument, a specific question was asked by the Bench to Shri S.S. Bansal. The question was whether the word "negative list" is defined anywhere in the tender documents of the respondents. Learned counsel for the respondents is unable to show any definition of "negative list". In my view, the petitioner has raised a very relevant objection in his reply. The respondents were bound to deal with this objection whether the negative list

includes black list. The respondents have not assigned a single reason on the reply filed by the petitioner. In *Onkar Lal Bajaj Vs. Union of India (UOI) and Another etc. etc.*, AIR 2003 SC 2562 : (2003) 2 SCC 673 : (2002) 5 SCR 605 Supp : (2003) AIRSCW 2757 : (2003) 1 Supreme 402 , the Apex Court opined as under in para 36:-

"36. The role model for governance and decision taken thereof should manifest equity, fair play and justice. The cardinal principle of governance in a civilized society based on rule of law not only has to base on transparency but must create an impression that the decision-making was motivated on the consideration of probity. The Government has to rise above the nexus of vested interests and nepotism and eschew window-dressing. The act of governance has to withstand the test of judiciousness and impartiality and avoid arbitrary or capricious actions. Therefore, the principle of governance has to be tested on the touchstone of justice, equity and fair play and if the decision is not based on justice, equity and fair play and has taken into consideration other matters, though on the face of it, the decision may look legitimate but as a matter of fact, the reasons are not based on values but to achieve popular accolade, that decision cannot be allowed to operate."

11. This Court in *The Central Homeopathic and Biochemic Association and Others Vs. State of Madhya Pradesh and Others*, (2013) ILR (MP) 837 : (2013) 4 MPHT 468 : (2013) 1 MPJR 280 : (2013) 2 MPLJ 419 considered catena of judgments on the question of principle of natural justice and fair play in action. Paras 22 to 24 read as under:-

"22. The legal position stated above makes it clear that whether impugned order is outcome of a quasi judicial act or an administrative act in both the situations, principles of natural justice and fair play in action were the requirement of law. In other words, the impugned order could have been passed only after following the principles of natural justice and fair play in action. Fairness is an integral part of good administration. In the present case, in the first round, the petitioners succeeded because despite filing reply by him, the respondent No. 2 opined that reply has not been filed. When it was found to be incorrect on perusal of record, this Court directed the respondent No. 2 proceed further from that stage. Now in the impugned order, the respondent No. 2 mentioned about factum of filing of reply but did not deal with the contentions and averments of the reply in his order/communication. He has given a finding, which is detriment to the petitioner and an elected body is ousted before completion of normal tenure. In my considered opinion, it has serious consequences on the petitioners and this order certainly falls within the ambit of "civil consequences". The requirement of principles of natural justice and fair play was to examine, deal with, consider and discuss the reply filed by the petitioner. In absence thereof, the impugned order runs contrary to principles of natural justice and fair play in action.

23. This is settled in law that principles of natural justice does not supplant the law but supplements the law. Its application may be excluded either expressly or

by necessary implication *Dr Umrao Singh Choudhary Vs. State of M.P. and Another*, (1994) 2 SCALE 1008 : (1994) 4 SCC 328 : (1994) 3 SCR 842 : (1994) 2 UJ 337 . In *Mohinder Singh Gill* (supra), it is held by the Supreme Court that it is not permissible to interpret any statutory instrument so as to exclude natural justice. Unless the language of the instrument leaves no option to the Court. It is further observed that natural justice is so integral to the good government that the onus is on him who urges exclusion to make out why.

24. In the light of this legal position, in my opinion, the principles of natural justice are implicit and are required to be read into Section 32(4) of the *Adhiniyam*. In cases, whether after supplying the result of the enquiry, the Registrar receives the response of the society and if he intends to pass any order which affects the right of the society in any manner or which may entail civil consequences, the Registrar is bound to follow the principles of natural justice and fair play in action. Accordingly, he is under an obligation to deal with the stand of the party going to be effected in his order. In absence of thereof, the order would be an order without assigning any reason on the defence of the petitioners. The necessity to assign reason is emphasized by the Supreme Court in *Kranti Associates Pvt. Ltd. and Another Vs. Sh. Masood Ahmed Khan and Others*, (2010) 9 JT 362 : (2010) 9 SCC 496 : (2010) 10 SCR 1070 : (2010) 8 UJ 4022 , in following words:-

- "(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.
- (b) A quasi-judicial authority must record reasons in support of its conclusions.
- (c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.
- (d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.
- (e) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.
- (f) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.
- (g) Reasons facilitate the process of judicial review by superior courts.
- (h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.
- (i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been

objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or "rubber-stamp reasons" is not to be equated with a valid decision-making process.

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny.

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence.

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "due process".

12. In the present case, the respondents have not applied mind on the reply submitted by the petitioner. They did not deal with the objection raised in the reply. The respondents are bound to deal with every aspect which is raised in the reply.

13. Considering the aforesaid, the impugned order cannot be permitted to stand. The decision making process and the decision is totally vitiated and cannot sustain judicial scrutiny. This is also settled in law that reasons are heartbeat of conclusion. In absence of reasons, the conclusion cannot be permitted to stand.

14. Resultantly, the impugned order dated 7.4.2015 is set aside. Liberty is reserved to the respondents to pass appropriate order after dealing with the reply of the petitioner in accordance with law.

15. Petition is allowed. It is made clear that this Court has not expressed any opinion on merits of the case.