
(2010) 03 AHC CK 0052
In the Allahabad High Court
Case No : C.M.W.P. No. 5004 of 2004

Smt. Rajni Chauhan

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 15-03-2010

Acts Referred:

Citation : (2010) 6 AWC 5762

Hon'ble Judges : Vineet Saran, J;Ran Vijay Singh, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Vineet Saran and Ran Vijai Singh, JJ.—The Petitioner is a registered contractor of category "A" with the Respondent No. 2. She is aggrieved by order dated 23.1.2004, passed by Regional Food Controller Agra Division, Agra (the Respondent No. 2) by which the Petitioner's registration as Class "A" contractor has been cancelled and the Petitioner has been black listed. The impugned order has been assailed on the ground that the same has been passed without affording any opportunity of hearing to the Petitioner.

2. A counter-affidavit has been filed by the Respondents. In paragraph 5 of the counter-affidavit it is stated that the Petitioner had got herself registered under category "A" after concealing material facts, therefore, it was not necessary to afford an opportunity before passing the order dated 23.1.2004.

3. Learned Counsel appearing for the Petitioner has submitted that had there been any illegality or misrepresentation/fraud committed by the Petitioner while obtaining the registration, it should have been informed to the Petitioner in the form of show-cause notice so that she could rebut the same but without notice the order should not have been passed as the cancellation of registration will affect not only the present Registration with the Respondent but it will debar the Petitioner from being registered in other Government departments, which will affect the livelihood of the Petitioner.

4. We have heard learned Counsel for the parties and perused the record.

5. From the perusal of the impugned order, it is apparent that no opportunity of hearing has been afforded to the Petitioner before cancelling his registration and passing an order of black listing. This has also been admitted in the counter-affidavit filed by the State Respondents. It is settled position of law that when an order leads to civil consequences and the same has been passed without affording an opportunity of hearing that cannot be sustained in the eye of law.

6. The Apex Court in the case of *Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and Another*, held that :

12..... The Government cannot choose to exclude persons by discrimination. The order of black-listing has the effect of depriving a person of equality of opportunity in the matter of public contract. A person who is on the approved list is unable to enter into advantageous relations with the Government because of the order of black-listing. A person who has been dealing with the Government in the matter of sale and purchase of materials has a legitimate interest or expectation. When the State acts to the prejudice of a person it has to be supported by legality.

15. The blacklisting order does not pertain to any particular contract. The black-listing order involves civil consequences. It casts a slur. It creates a barrier between the persons blacklisted and the Government in the matter of transactions. The blacklists are "instruments of coercion".

7. In the case of *Raghunath Thakur v. State of Bihar and Ors.* AIR SC 620, the Apex Court has taken the view that even if rules do not provide to offer "an opportunity of hearing before passing an order of Blacklisting then also opportunity of hearing is necessary before passing the order which leads to civil consequences. In paragraph 4 of the judgment it has been held that :

4. Indisputably, no notice had been given to the Appellant of the proposal of blacklisting the 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. In so far 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. In that view of the matter, the last portion of the order in so far as it directs blacklisting of the Appellant in respect of future contracts, cannot be sustained in law. In the premises, that portion of the order directing that the Appellant be placed in the blacklist in respect of future contracts under the Collector is set aside.

8. In the case of M/s. Southern Painters Vs. Fertilizers and Chemicals Travancore Ltd. and another, the Apex Court has observed as under :

9. The deletion of the Appellant's name from the list of approved contractors on the ground that there were some vigilance report against it, could only be done consistent with and after the compliance of the principles of natural justice. That not having been done, it requires to be held that withholding of the tender form from the Appellant was not justified. In our opinion, the High Court was not justified in dismissing the writ petition.

9. The same view has been reiterated by the Apex Court in the case of Grosons Pharmaceuticals (P) Ltd. and Another Vs. The State of Uttar Pradesh and Others,

10. Here in the present case, undisputedly no opportunity of hearing was given to the Petitioner before cancelling his registration as class "A" contractor and passing of an order of blacklisting. We are therefore of the considered opinion that before passing the impugned order the opportunity of hearing must have been afforded to the Petitioner as the impugned order leads to civil consequences as this will not only affect the Petitioner's registration with Respondent No. 2 but will affect his future working with various other Government departments, which of course is the means of livelihood of the Petitioner. Hence, the impugned order cannot be sustained in the eye of law.

11. In the result, the writ petition succeeds and is allowed. The impugned order dated 23.1.2004, passed by Respondent No. 2 as Annexure-5 to the writ petition is hereby quashed. The Respondents are at liberty to proceed in accordance with law.