

(1999) 04 AP CK 0048

In the Andhra Pradesh High Court

Case No : Writ Petition No. 2976 of 1998

Sri Shiva Shakthi Constructions Pvt. Ltd.

APPELLANT

Vs

Engineer-in-Chief (Adm. Wing), Irrigation and CAD Dept.,
Hyd. and Another

RESPONDENT

Date of Decision : 20-04-1999

Acts Referred:

Citation : AIR 1999 AP 270 : (1999) 3 ALD 280 : (1999) 3 ALT 304

Hon'ble Judges : B. Sudershan Reddy, J

Bench : Single Bench

Advocate : Mr. A. Ravinder Reddy, for the Appellant; Government Pleader for Irrigation, Counsel, for the Respondent

Judgement

1. The Letter No.Rc.ENC. ADA/TC.3/20233/97, dated 22-1-1998 written by the first respondent to the petitioner-firm cancelling its registration as a Special Class Contractor and debarring it from tendering in all categories in future is impugned in this writ petition. The petitioner-firm got itself registered as a Special Class Contractor in the year 1989. It claims to have executed various civil works worth over Rs.20 crores of the Government and its agencies. It appears that serious differences arose between one of the Directors of the petitioner-firm and the then Chief Engineer, D. Sreerama Murthy (for short the said "Chief Engineer") with regard to awarding works relating to widening the Mahabubghat in KM.256/710 to 263 NM-7 of Nagpur-Hyderabad Section. One of the Directors of the petitioner-firm appears to have levelled certain serious allegations against the said Chief Engineer, by loading a representation before the Government. However, the petitioner-firm appears to have withdrawn the said complaint: but, according to it, under pressure. We are not concerned with the details relating to the said complaint. While so, the first respondent herein called for tenders for execution of work of laying of roads in ten reaches in Adilabad area in October, 1997. The petitioner-firm was the only Contractor which satisfied all the requirements, including the essential condition relating to the location of the machinery of the Contractor within a radius of seventy kilo metres of the

proposed work. The contract accordingly was awarded to the petitioner-firm. The petitioner-firm entered into an agreement with the respondent in January, 1998 for laying of the road in the said reaches. The said work is stated to be in progress.

2. In the meanwhile, the first respondent issued show-cause notice Confdl. Lr. No. RC/ENC/ADA/TC3/20235/ 97, dated 29-10-1997 alleging that the behaviour adopted by M. Rameshwara Reddy, one of the Directors of the petitioner-firm was "faulty" and as per G.O. Ms. No.521, Irrigation (PW. Wing) Department, dated 10-12-1984 a Contractor shall be removed from the approved list, if he fails to abide by the conditions of registration. Explanation was sought for from the petitioner-firm as to why its name shall not be removed from the approved list of the contractors. The petitioner-firm having come to know about the action initiated by the respondents submitted its explanation on 3-12-1997 denying the allegation of faulty behaviour attributed to one of its Directors and requested the respondents to furnish the details of allegations, as the allegations made in the show-cause notice dated 29-10-1997 were vague and indefinite. No details were furnished by the respondents. The petitioner-firm again addressed a letter on 17-12-1997 contending inter alia that the action initiated was not bona fide one and it was based on extraneous consideration and that in any event the petitioner-firm is not guilty of any faulty behaviour attributed to one of its Directors. The petitioner-firm has also raised its objections in the matter that its name cannot be deleted from the list of approved contractors on account of any alleged faulty behaviour of one of its Directors. Thereafter the impugned letter dated 22-1-1998 has been communicated to the petitioner-firm,

3. It is evident from the record that tender schedules were not issued to the petitioner-firm in respect of the work of "widening the single lane carriage way to double lane without strengthening the reach from KM 256.710 to 263.400 of Nagpur - Hyderabad Section of NH-7" on the ground that the petitioner-firm does not fulfil the conditions of tender notice. The petitioner-firm approached this Court and obtained interim orders to issue schedules and receive the tenders, but not to publish the results of the tender. However, the said writ petition was dismissed on 7-10-1996. But the tenders, however, could not be finalised on account of the directions from the Government, as an inquiry was initiated into the matter by the Vigilance and Enforcement Department. Subsequently clearance appears to have been given by the Vigilance and Enforcement Department and tenders were directed to be finalised in accordance with the Rules.

4. In the counter-affidavit filed by the respondent, it is, inter alia, stated that the Chief Engineer, National Highways (R&B) was directed to initiate appropriate action against the petitioner-firm, including black-listing of the firm, in view of the "black-mailing and arm twisting tactics" adopted by the petitioner-firm. It is obvious that an inquiry by the Vigilance and Enforcement Department has been ordered by Government on a complaint filed by the petitioner-firm in respect of

the work referred to earlier herein above. In the counter-affidavit, it is further stated that the Chief Engineer, National Highways, through letter dated 7-7-1997 requested the Engineer-in-Chief (Admn. Wing) to take action with regard to the black-listing of the petitioner-firm. Accordingly the issue was placed before the Board of Chief Engineers in the meeting held on 30-9-1997 and the Board of the Chief Engineers decided for cancellation of the name of the petitioner-firm from the approved list of contractors and debar the firm from tendering in all categories. Accordingly, Orders were issued by the Engineer-in-Chief 22-1-1998 cancelling the registration of the petitioner-firm and debarring it from tendering in all categories in future. The action is purported to have been taken as per the Rules contained in G.O. Ms. No.521, dated 10-12-1984.

5. It is also evident from the counter-affidavit that the petitioner-firm levelled allegations against the Chief Engineer, National High Ways in the matter of issuing under schedules incorporating certain conditions in the NITS, awarding works by manipulating and maneuvering of tender system. The Government having examined the matter found that the allegations levelled by the petitioner were not proved and directed the department to initiate appropriate action against the petitioner-firm, including black-listing in view of the black-mailing and arm-twisting tactics adopted by it.

6. The report stated to have been submitted by the Vigilance and Enforcement Department, after making an inquiry with reference to the allegations levelled by the petitioner-firm against the Chief Engineer is not made available for the perusal of this Court. The record produced by the Chief Engineer does not contain a copy of the report. The record, however, would disclose a D.O. Letter written by the Joint Secretary to Government, Transport, Roads and Buildings Department, dated 7-6-1997 asking the Chief Engineer, National Highways, Hyderabad, to initiate appropriate action against the petitioner-firm, including black-listing the firm in view of the black-mailing and arm twisting tactics" adopted by it. The record also would disclose as if clearance was given by the Vigilance and Enforcement Department as early as on 24-10-1996 to deal with the matter that is processing/ finalisation of tenders relating to the said work, in respect of which certain complaints were made by the petitioner-firm. The record produced would not disclose as on what basis the Government came to such a conclusion that the petitioner-firm had indulged in "blackmailing and arm twisting tactics". A copy of the complaint purported to have been filed by the petitioner-firm against the Chief Engineer is also not available in the record.

7. The question that would arise for consideration in the instant writ petition is as to whether the decision making process in cancelling the Registration of the petitioner-firm as a Special Class Contractor is vitiated ? (b) Does it suffer from any legal infirmities ? and (c) whether the respondents have followed any lawful procedure to pass the impugned order on the grounds stated in the show-cause notice dated 29-10-1997 ?

8. A perusal of the record would disclose glaring and shocking irregularities

committed by the respondents in issuing the impugned letter. The whole decision making process is vitiated for more than one reason. It is clear from the record that the respondents appear to have decided to teach a lesson to the petitioner-firm for the reason of filing a complaint against the Chief Engineer, National Highways. May be, the allegations levelled against the Chief Engineer were proved to be incorrect. Does it mean that the respondents should go to the extent of cancelling the registration of a contractor on the ground that certain incorrect allegations were made against the first respondent officer. The respondents have proceeded in the matter, as if they are entitled to deal with the registered contractors in any manner whatsoever please them.

9. D. Sreerama Murthy, Chief Engineer (R&B), National Highways, addressed Confidential letter - Lr. NO. 12078/TA.5/NH.II-2/S8, dated 7-7-1997 to the Engineer-in-Chief, I&CAD (Admn.Wing) and the Chairman, Board of Chief Engineers, requesting to black-list the petitioner-firm as ordered by the Government. The letter itself is purported to have been addressed pursuant to the directions of the Government through its letter - Lr.No.1060/RD.2.2/96-7, dated 7-6-1997. The Government through the said letter appears to have directed the Chief Engineer, National Highways, to initiate appropriate action against the petitioner-firm, including black-listing of the firm. The Engineer-in-chief through his letter dated 16-7-1997 required the Chief Engineer (R&B), National Highways (D. Sree Rama Murthy) to furnish the copies of the D.O. Letter dated 7-6-1997 addressed by the Government and other material with a brief note to enable the office to prepare a detailed note on the matter and place it before the next Board of Chief Engineers meeting. In response to the said letter, the said Chief Engineer through letter dated 4-8-1997 requested the Engineer-in-chief to place orders of the Government before the Board of Chief Engineers and take necessary action. But, it would be interesting to notice that through the said letter the Chief Engineer observed that "the Government has given clear orders to initiate appropriate action against the petitioner-firm including black- listing of the firm. In view of the blackmailing and arm twisting tactics adopted by the firm." There is no doubt whatsoever in the mind of the Chief Engineer even at that stage to black-list the petitioner-firm.

10. The matter was promptly placed in the meetings of the Board of Chief Engineers held on 30-9-1997. It is evident from the record that D. Sreerama Murthy, Chief Engineer also participated in the meeting of the Board of Chief Engineers on 30-9-1997 as one of its Members. In the said meeting a resolution to the following effect has been passed.

"6.3. Action against the firm M/s. Shiva Shakti Construction Pvt. Ltd. The Chief Engineer, R&B (National Highways), Hyderabad, vide letter No.12078/TAE/NH 11-2/88, dated 7-7-1997 desired to take action against the firm M/s. Shiva Shakti Construction Pvt. Ltd. for alleged black-mailing and adopting arm twisting tactics by making allegation against tender received in the organisation. The Government also desired that action may be taken against the firm. The matter

was taken up for discussion and the members decided for cancellation of the name of the firm from the approved list of contractors and debarred the firm M/s. Shiva Shakti Constructions (Pvt.) Ltd., Nizamabad for tendering in all categories.

(Action : Engineer-in-Chief, (Admn. Wing) and Chief Engineer, (R&B) National Highways)."

11. It is thus clear that the Board of Chief Engineers in its meeting held on 30-9-1997 took decision to black-list and cancel the registration of the petitioner-firm. It is only thereafter the Engineer-in-chief (Admn.Wing) issued the show-cause notice dated 29-10-1997 to the petitioner-firm asking to submit its explanation within the time specified therein, as to why its name should not be removed from the approved list of contractors on the ground that the behaviour adopted by one of the Directors of the firm, at the time of tenders was found to be "Faulty". The said show-cause notice was followed by the impugned letter dated 22-1-1998.

12. It may be noticed that the impugned letter does not refer to the explanation submitted by the petitioner-firm on 3-12-1997 and 17-12-1997 pursuant to the show-cause notice dated 29-10-1997. The record would disclose that the explanations submitted by the petitioner-firm were placed before the Engineer-in-Chief (Admn.Wing). The Engineer-in-chief through his letter - Lr.NO.ENC.ADA/TC.3/20233/97, dated 3-1-1998 promptly directed the Chief Engineer (R&B) National Highways, to intimate the action taken as per the decision taken in the Board of Chief Engineers meeting held on 30-9-1997. The Chief Engineer in his turn through D.O. Lr.No.I2078/TA5/NHII-2/88, dated 21-1-1998 requested the Engineer-in-chief (Admn.Wing) to issue suitable orders in terms of the directions issued by the Government and the decision taken by the Board of Chief Engineers in its meeting held on 30-9-1997, to cancel the name of the petitioner-firm from the approved list of contractors and debar the firm from tendering in all categories in future. The Engineer-in-Chief promptly despatches the impugned letter dated 22-1-1998.

13. It is absolutely clear from the record that the respondents have decided to cancel the registration of the petitioner-firm as a registered contractor and blacklist the same preventing the petitioner-firm from participating in future tenders, even before issuance of the show-cause notice. Every Officer of the Department was under the impression that the Government had issued directions compelling the competent authority to black-list the petitioner-firm. The respondents have obviously treated the show-cause notice as a ritual. Clear and un-ambiguous decision has been taken in the Board of Chief Engineers meeting held on 30-9-1997 to cancel the registration and black-list the petitioner-firm, having prejudged the whole issue, obviously acting under the dictation of the State Government the respondents wanted to give it some legal colour. The decision of the respondents undoubtedly is violative of the principles of natural justice.

14. The registration of Contractors is governed by the executive instructions, though styled as Rules, issued by the Government of Andhra Pradesh in G.O. Ms. No.521, Irrigation (Projects Wing) Department, dated 10-12-1984. It provides the Rules for registration and categories of contractors. Rule 5 of the said instructions provide for removal of a contractor from the approved list, if the Contractor-

(a) has on more than one occasion failed to execute a contract or has executed it unsatisfactorily, (or)

(b) fails to abide by the conditions of registration or is found to have given false particulars or information at the time of registration,

(c) persistently violates any important condition(s) of the contract, (or)

(d) is proved to be responsible for construction defects in a number of cases, (or)

(e) is declared or is in the process of being declared bankrupt insolvent wound-up dissolved or partitioned,

(f) persistent violation of labour, regulations and rules.

15. Rule 6 of the said Rules deals with black-listing of the Contractors. The Head of the Department (the Chief Engineer) may black-list a Contractor with the approval of the Government, where there are sufficient and strong reasons to believe that the Contractor or his employee has been guilty of malpractice, such as bribery, corruption, fraud, including substitution and interpolation of tenders etc., and also for continuous refusal to pay the Government dues without adequate reasons or where a Contractor or his partner has been convicted by a Court of law for offences involving moral turpitude in relation to businesses, or security considerations including suspected disloyalty to the State.

16. It is evident from a reading of Rules 5 and 6 that the name of a contractor could be removed from the approved list subject to the conditions provided in Rule 5 and for the reasons mentioned in Rule 6. The show-cause notice issued in the instant case does not mention any of the grounds mentioned either in Rule 5 or Rule 6 of the said Rules. It is very interesting to note that the Rules 5 and 6 direct the reasons for removal from the approved list and also the reasons for blacklisting shall not be communicated to the Contractor concerned. It is very strange that such a Rule exists. At any rate, the Rules are not challenged and, therefore, I am not inclined to express any opinion on the same.

17. The facts narrated hereinabove would in unmistakable terms reveal that a formal show-cause notice has been issued to the petitioner-firm requiring its explanation in the matter as to why its registration should not be cancelled, after taking the decision to cancel the registration and blacklisting the petitioner-firm. Even that formal show-cause notice does not refer to any of the grounds or reasons stated either in Rule 5 or 6 or both. The show-cause notice, itself, undoubtedly is ultra vires. On the grounds mentioned in the show-cause notice,

the respondents have no authority whatsoever to cancel the registration or blacklist the petitioner-firm.

18. The show-cause notice merely states in bare and general terms that "faulty behaviour adopted by one of the Directors of the petitioner-firm at the time of tenders has been observed." Such a vague and indefinite allegation is incapable of any reply whatsoever from the person against whom it is directed. The show-cause notice, which does not reveal any precise and clear terms as to what is the accusation against the persons from whom the explanation is sought for is no show-cause notice in the eye of law at all. It is essential for a show-cause notice to indicate the precise scope of notice and also to indicate the points on which the person concerned is expected to give reply. A show-cause notice which lacks such precise allegations and the point to be answered by the concerned, itself, suffers from incurable legal infirmities and would be violative of the principles of natural justice. The consequential proceedings would be vitiated for the reason of non-compliance of the principles of natural justice.

19. In the absence of a proper notice the consequential order cancelling registration of the petitioner and blacklisting it from participating in future tenders would be invalid for violation of the Rules of natural justice. In the instant case, the contents of the show-cause notice are so vague and imprecise that the petitioner could not effectively defend itself. It may be required to notice that the respondents have failed to provide necessary particulars even after a request is made by the petitioner-firm.

20. It is not as if the show-cause notice and the consequential impugned letter has not resulted in any civil consequences. Undoubtedly, the petitioner-firm's right to claim equal treatment to enter into a contract has been adversely effected. Black-listing order involves civil consequences and it casts a slur. It creates a barrier between the persons black-listed and the Government in the matter of transactions. The Apex Court observed that "black-lists are the instruments of coercion." It is further observed by the Apex Court that when the State acts to the prejudice of a person it has to be supported by legality. (See : Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and Another, .

Yet one more aspect:

21. One of the Directors of the petitioner-firm is stated to have filed a false complaint against D. Sreerama Murthy, Chief Engineer. Obviously, the Chief Engineer is hurt. The record would disclose that the said Chief Engineer pursued the matter for taking appropriate action against the petitioner-firm with single minded devotion. Initiative is taken by him in requesting the Engineer-in-Chief to take appropriate action in the matter, pursuant to the directions stated to have already been issued by the Government to black-list the petitioner-firm and cancel its registration. The said Chief Engineer attends the meeting of the Board of Chief Engineers held in the chambers of the Engineer-in-Chief on 30-9-1997 under the Chairmanship of the Engineer-in-chief (Admn.Wing), where it was

resolved and decided for cancellation of the name of the firm from the approved list of Contractors and to debar the firm from tendering in all categories.

22. The said Chief Engineer does not stop there. He shoots up another D.O. Letter dated 21-1-1998 to the Engineer-in-Chief (Admn.Wing) to issue necessary orders pursuant to the resolution of the Board of Chief Engineer Meeting to cancel the name of the petitioner-firm from the approved list of Contractors and debar the firm from tendering in all categories. The very next day the Engineer-in-Chief obliges the Chief Engineer and issues the letter cancelling the registration of the petitioner-firm as a Special Class Contractor and further debarring it from tendering in all categories in future. In all fairness the said Chief Engineer, ought not to have participated in the meeting of the Board of Chief Engineers. There is no doubt whatsoever to hold that the Chief Engineer had some personal grudge against the petitioner-firm for one of the Directors of the petitioner-firm is alleged to have made a false complaint against him. The Chief Engineer adorned the role of Prosecutor, as well as Judge. He became Judge in his own cause. "It is against all canons of justice to make a man judge in his own cause." At every stage of his participation in the deliberations of the board there was a conflict between his interest and duty. It is difficult to believe that he could have been impartial. The Chief Engineer could not have associated himself in any manner whatsoever in the decision making process for cancellation of the registration of the petitioner-firm. The facts and circumstances of the case would reveal personal bias on the part of the Chief Engineer. In fact, the whole issue was pre-determined and obviously the Chief Engineer wanted to teach lesson to the petitioner-firm for one of the Directors of the petitioner-firm has filed a false complaint against him. It would have been perfectly open to the said Chief Engineer to proceed against the person, who is stated to have filed the complaint against him, adversely effecting his reputation in a proper manner; but, he could not have pressed his authority into service to defend himself with a view to teach a lesson to the petitioner-firm. Such a course is not permissible in law. Persons in authority are expected to act within the bounds of law. Offices which they hold and the power and the authority which they wield cannot be utilised to settle personal scores. Such a course would be destructive of rule of law. The actions on the part of the State and its instrumentalities are required to be fair, reasonable and just. The decision making process in the instant case is totally vitiated. It would be subversive of all principles of justice that the interested should take decision to his own advantage. The officers manning the executive branch of the State form part of public life. Harassment or inconvenience must be considered as an inevitable cost of public life, which the repositories of public life should have no hesitation to pay, as justice must not only be done but must also appear to be done. (See : Sheonandan Paswan Vs. State of Bihar and Others, .

One more aspect:

23. The record would disclose at every stage that the authority who is required

to take decision in the matter felt as if it is bound to cancel the registration and black-list the petitioner-firm from future tendering under the orders of the Government. The proceedings after proceedings would refer to the directions of the Government in the matter. The Registering Authority and the Head of the Department clothed with the jurisdiction to cancel the registration and black-list the Contractors is required to apply its mind independently to the facts of each case, it is so obvious and glaring that the authorities concerned have abdicated their responsibility and succumbed to the dictation of the Government. The authorities concerned have perceived the observations of the Government requiring them to take an appropriate action in the matter as a direction to cancel the registration and black-list the petitioner-firm. Such a course is not permissible in law.

24. Viewed from any angle, the decision making process, since its inception is vitiated for more than one reason stated supra and tainted with malice. Collateral considerations played dominant role in the decision making process and the conclusions reached in the matter. The record for itself.

25. For all the aforesaid reasons, the whole proceedings, including the show-cause notice dated 29-10-1997 is declared non est. The proceedings are declared ultra vires. Let a writ of mandamus declaring the proceedings as void be issued. The petitioner is entitled to have costs.

The writ petition is accordingly allowed to the extent indicated above.