
(1991) 03 GAU CK 0002
In the Gauhati High Court
Case No : Civil Rule No. 1297 of 1986

Surat Ram Khadaria

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 22-03-1991

Acts Referred:

Constitution of India, 1950 — Article 226, 226

Citation : (1991) 1 GLJ 359 : (1991) 1 GLR 384

Hon'ble Judges : J.M.Srivastava, J and H.K.Sema, J

Bench : Division Bench

Advocate : R.Gogoi, P.K.Goswami, Advocates appearing for Parties

Judgement

J. M. Srivastava, J.—The petitioners, a partnership firm and its Managing partner, assail the order dated 23rd September, 1986 whereby the petitioner firm was blacklisted.

2. The petitioner No. 1 was carrying on the business of manufacture and sale of mustard oil. In response to a tender, the petitioners were awarded contract to supply mustard oil to the Police Department of the respondent State of Assam for the year 198586. On 6.1.86 tenders were invited for supply for the year 198687, The petitioner also submitted tender. However, the respondent department decided to retender and in the meanwhile required the petitioners to continue the supply of mustard oil at the rates of the earlier contract for the year 198586. The petitioners agreed to supply upto the month of May, 1986 but declined to do so thereafter. The respondents wanted the petitioner to take the contract for the year 198687 at the rates offered by the petitioners in response to the tender notice dated 6.1.86. The petticoats declined to accept the same on the ground that after the decision to retender, the rates offered had lapsed. The respondents, however, by order dated 2jrl September, 1986 blacklisted the petitioner firm for further supply. Aggrieved, the petitioners have come to this Court.

3. The respondents have not filed any affidavit in opposition.
4. We have heard Sri R. Gogoi, learned counsel for the petitioners, and Sri P.K. Goswarai, learned Government Advocate for the respondents.
5. The impugned order dated 23rd September, 1986 (Annexure 10) is assailed on the ground that the petitioner firm has been blacklisted without any opportunity having been given to the petitioners of being heard against the action taken which was in flagrant violation of the principles of natural justice. Even though Rule 18.1 was issued on 18.1.86, the respondents have not filed any affidavit in opposition and have not produced any material to controvert the petitioners' contention. We, therefore, accept the petitioners' submission that the impugned order of blacklisting the petitioner firm was made without any opportunity at all having been extended to the petitioners to show cause against the action taken. His order was clearly in violation of the principles of natural justice and accordingly cannot be sustained. In *Joseph Vilangandao vs. The Executive Engineer, PWD, Lrnakulam & others*, AIR 1978 SC 930, it was held that action to debar a contractor without having extended opportunity to show cause, was in violation of the principles of natural justice. We have, therefore, no hesitation in coming to the conclusion that the impugned order dated 23rd September, 1986 (Annexure 10) cannot be sustained and has to be quashed.
6. The petitioners have filed an additional affidavit on 23.1.91 seeking relief in respect of action taken to forfeit the earnest money under the aforesaid 1 contract by order dated 27.2.87. The cause of action for this prayer has arisen after the petition was filed and consequently we are not inclined to entertain the prayer in this petition. The petitioner may separately seek appropriate remedy for the reliefs in respect of the forfeiture of earnest money by order dated 27.2.87 (Annexure 1 with the additional affidavit).
7. For the aforesaid reasons, the petition is allowed. The impugned order dated 23rd September, 1986 (Annexure 1C) is quashed.