
(2015) 07 KAR CK 0232

In the Karnataka High Court

Case No : Writ Petition No. 56638/2014 (GM-RES)

Varman Aviation Pvt. Ltd. and Others

APPELLANT

Vs

Hindustan Aeronautics Limited

RESPONDENT

Date of Decision : 20-07-2015

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 226, 227

Citation : (2015) 5 KarLJ 292

Hon'ble Judges : A.V. Chandrashekara, J

Bench : Single Bench

Advocate : Jayna Kothari, for the Appellant; T. Rajaram, Advocates for the Respondent

Final Decision : Disposed off

Judgement

A.V. Chandrashekara, J—The present petition is filed under Articles 226 and 227 of the Constitution of India to issue a writ of certiorari to quash the order passed by the respondent in No. CD/724/2002/PC dated 12.8.2002 as found in Annexure-T and to direct the respondent to consider the application of the 1st petitioner to register it as a sub contractor within a period of four weeks and to pass any such order or direction as this court deems fit in the interest of justice and equity.

2. Detailed objections have been filed by the respondent. The facts leading to the filing of the present writ petition are as follows:

"a) The respondent is a public sector undertaking involved in the manufacture of aircraft products to meet the defence and civil needs of the country. The petitioner company was formerly known as VARMAN AVIATION SUPPLIES PRIVATE LIMITED incorporated in the year 1994. The company was promoted by the 2nd petitioner and his son, Mr. Navneet Varman. Subsequently the 2nd petitioner retired as director and Dr. C.R. Ramanujachar came to be appointed on the board of directors as Chairman in 1994.

b) The 1st petitioner is stated to be a premier corporation in the country that undertakes repair and overhauling of piston as well as Pratt and Whitney Turboprop PT6A engines for aircrafts. It is stated that it is a supplier to the Ministry of Defence and is registered with the Indian Navy, ADE, GRTE, etc. for the last several years and goods have also been exported by the petitioner for overseas establishments.

c) It is further stated that the petitioner company was a regular contracting party to the respondent and was a vendor for several requirements of the respondent, both for securing and repairing parts. Since 2011, the petitioner has been regularly supplying aircraft engine parts to the respondent's Kanpur Division. As per purchase order dated 21.9.2011 placed by the respondent, goods were supplied worth more than Rs. 26 crores. Further purchase order is stated to have been placed on 8.5.2012 for more than Rs. 17.5 crores pursuant to which goods have been supplied by the petitioner.

d) The 2nd petitioner was earlier an employee of Hindustan Aeronautics Limited (HAL, for short) and when he retired in the year 1993, he was heading the Material Management Group and was considered by the respondent as one of the best officers of the time. According to the 1st petitioner, the 2nd petitioner was employed by Boysen GmbH, Germany as marketing manager for India duly approved by the Reserve Bank of India.

e) It is further mentioned that on 29.6.2012, senior members of the respondent establishment visited the petitioner's factory and showed keen interest in off loading/sub contracting repair/overhauling of certain helicopter engines. It is further stated that a presentation was made on 31.7.2012 and subsequently the petitioner made an application for registration as a sub contractor with the engine division of the respondent establishment. The said application is found at Annexure-C.

f) One more letter was addressed on 25.2.2013 by the 1st petitioner to the respondent requesting to be registered as a sub contractor. Since it did not receive any response, a representation was sent on 18.4.2013 with the same request. Another letter dated 18.4.2013 was sent to the Chief Vigilance Officer seeking response as to the registration of the petitioner as a sub contractor with the respondent's engine division at Kanpur.

g) On 2.5.2013, the 1st petitioner received a letter from the respondent's Kanpur Division requesting it to submit certain documents relating to the company and also some queries relating to the former director, i.e. 2nd petitioner and the investigation conducted by the Central Bureau of Investigation (CBI, for short). The said letter is marked as Annexure-G.

h) On 6.5.2013 the 1st petitioner is stated to have responded to the list of queries and it is marked as Annexure-H. One more letter was sent on 7.5.2013 requesting the respondent to acknowledge the registration application and duly register the 1st petitioner as a sub contractor under it. Two more letters dated

11.6.2013 and 20.8.2013 were sent by the 1st petitioner reminding the respondent it as about the application submitted by the first petitioner to be registered as a supplier.

i) On 20.2.2014, the respondent's Rotary Wing Academy placed an order with the 1st petitioner for inspecting and test running of defective Lycoming HIO 360 D1A helicopter engine. This was done in spite of a notification banning all dealings with the petitioner. On 12.6.2014, a letter was addressed personally to the respondent's General Manager requesting him to intimate reasons as to why the respondent had not considered the petitioner's registration application. In the light of not receiving any reply, the petitioner filed two RTI applications before the respondent's Kanpur Division and corporate office respectively and got a copy of the order dated July 2002. This is an order passed by the CBI in No. RC.16/00/DLR against Haridas. In the said letter, it is mentioned that the former director, Varman was 5th accused and that the CBI had recommended that he be banned from further business dealings with HAL in future.

j) Later, petitioner obtained a copy of the internal order dated 12.8.2002 through RTI proceedings wherein HAL has decided to ban all business dealings with the 2nd petitioner and has also stated that this ban would apply to all companies associated with the 2nd petitioner.

k) What is specifically averred is that the order banning all business dealings in future or companies associated with the 2nd petitioner, is illegal, that too, without providing any opportunity of being heard. Therefore it is specifically averred that the blacklisting of the petitioner company is in utter violation of the principles of natural justice."

3. The respondent has filed detailed objections, denying that the 1st petitioner company was a regular contracting party of the respondent. However, placing of purchase orders on 21.9.2011 and 8.5.2012 is admitted. According to the respondent, the said purchase orders were issued on the basis of original equipment manufacturer (OEM). It is mentioned that Kanpur Division of HAL used to procure supplies required for rotax engine manufactured by Greaves Cotton Limited, New Delhi, authorized distributors in India. Subsequently Greaves Cotton Limited communicated to the respondent stating that they had been ceased to be distributor for BRPO power in India with effect from 1.4.2011. Since the 1st petitioner was the only distributor and after-sales service provider for rotax engine in India, the respondent was left with no option but to place purchase orders on 21.9.2011 and 8.5.2012. It is also averred that the purchase orders were issued due to exigencies that arose beyond the control of the respondent.

4. According to the respondent, the prayer sought for quashing the order passed on 13.8.2002 as found in Annexure-T is highly barred by time and the relief claimed in the writ petition suffers from serious lapses and laches. It is further averred that the question of issuing a writ of certiorari does not arise at all, and

the petitioner does not have any statutory right to seek registration as a sub contractor under the respondent though it is a "state" under Article 12 of the Constitution of India. It is further averred that the CBI has already recommended for banning of all transactions with the 2nd petitioner, and the petitioners have approached this court at a highly belated stage and they cannot take advantage of the purchase orders placed by the respondent with it.

5. On the above grounds, the respondent has requested the court to dismiss the petition.

REASONS

6. Admittedly the 1st petitioner, M/s. Varman Aviation Pvt. Ltd. and another is a private limited company incorporated under the Companies Act of which the 2nd petitioner was a temporary director and earlier, the 2nd petitioner was a senior employee of the respondent-HAL. In the month of September 2002, the then Deputy Inspector General of Police, CBI, HR, Hyderabad had addressed a letter to the Executive Director (Vigilance), HAL corporate office, Bengaluru-560 001, about the investigation conducted in connection with the serious allegation made against Haridas, former general manager, HAL Aircraft Division. ON the basis of other report of the Superintendent of Police, CBI, it was found that in the departmental inquiry held, the 2nd accused-Haridas had been censured and the 1st accused had retired on 30.6.1998 and hence no departmental inquiry could be initiated against him.

7. The departmental proceedings had also been initiated against accused Nos. 3 and 4 for negligence and misconduct and the report of the inquiry was awaited. But insofar as Mr. Varman who was accused No. 5 (2nd petitioner herein) is concerned, it was recommended that all business dealings with Mr. Varman will; has to be banned. The letter so addressed in the month of August 2002 is found in Annexure-S and on receipt of the same, the respondent took a decision and an internal note was circulated amongst the various divisions of the respondent. The internal note which bears the word "secret" dated 12.8.2002 is found in Annexure-T in respect of which a writ of certiorari is sought and it reads thus:

SECRET

No. CD/724/2002/PC

12 August 2002

Sub: Banning of business dealings in the non-statutory sphere with Shri. M.M. Varman

The undersigned is directed to say that HAL has decided to ban business dealings in the non-statutory sphere with Shri M.M. Varman s/o Shri G.R. Varman with immediate effect.

2. It is notified that the above decision of HAL applies to all the allied firms/ Companies etc., if any, associated with Shri MM. Varman, No. 1199. IIIrd cross,

HAL IIIrd stage, Thipasandra, Bangalore-560075 INDIA.

3. The above-mentioned facts shall not be conveyed to the firm(s)/persons not concerned.

4. This issues with the approval of competent authority.

Sd/- (S.K. Chopra) Addl General Manager(IMM)"

8. Admittedly this was not communicated either to the 1st petitioner or the 2nd petitioner. It was a confidential note circulated amongst various divisions of HAL and had been circulated with the approval of the competent authority. Any decision taken by a statutory authority and not communicated to the concerned, it will have virtually no effect. According to the 1st petitioner, the "secret" note dated 12.8.2002 as indicated in Annexure-T came to its knowledge only when it obtained information through RTI proceedings.

9. The purchase orders dated 21.9.2011 and 8.5.2012 referred to above have not been denied by the respondent. Annexure-A is the purchase order placed by the respondent with the 1st petitioner on 21.9.2011 calling upon it to supply various materials as per the terms and conditions mentioned therein. The total cost of the materials to be supplied by the 1st petitioner was Rs. 27,40,040.40. After deducting Rs. 68,501.01 towards discount, the total amount payable by HAL to the 1st petitioner was Rs. 26,71,539.39. The 1st petitioner had been asked to acknowledge the said order within 10 days from the date of receipt. The details of the materials for which the purchase order was placed are forthcoming in the said document.

10. On 3.1.2012, an amended purchase order was placed by the Kanpur division of the respondent and it did not have any financial implication.

11. Another purchase order dated 8.5.2012 placed by the respondent with the 1st petitioner is found in Annexure-B. The 1st petitioner had been asked to supply various types of materials, the total cost of which was Rs. 1,74,39,506.40 and the net cost excluding discount of Rs. 6,10,382.72 was Rs. 1,71,65,706.10. Insofar as these two purchase orders are concerned, the respondent has expressed its stand in paragraph 6 of its written objections. The respondent has not denied placing of purchase orders on two occasions, i.e. 21.9.2011 and 8.5.2012 and has explained that the because of unavoidable circumstances, it had to place the orders in view of M/s. Greaves and Cotton Limited having ceased to be distributors for BRPO power in India with effect from 1.4.2011. The contents of paragraph 6 found in the objections filed to the writ petition is relevant and it is extracted below:

"6. It is submitted that the averments made at Para 4 are false and hereby denied. Further it is denied that the company was a regular contracting party to the Respondent. However it is true that HAL, Kanpur Division has placed Purchase Order dated 21.09.2011 and 08.05.2012 on the Petitioner. The said Purchase Orders were issued based on the advice of the Original Equipment

Manufacturer (OEM) and the same is evident from Annexure K of the writ petition. Further it is submitted that previously HAL, Kanpur used to procure the spares required for Rotax Engine for UAV Aircraft from M/s. Greaves Cotton Ltd., New Delhi the then authorized distributors in India for M/s. BRP Power Train CMBH & Co., KG, Austria. Subsequently M/s. Greaves Cotton Ltd., vide its letter dated 21.4.2011 communicated that they do not represent as distributor for M/s. BRP Power Train GMBH & Co., in India with effect from 1.4.2011 as per Annexure R4. As admitted by the petitioner that it is the only distributor and After sale Service Provider for Rotax in India, the Respondent was left with no option to place the above mentioned Purchase Orders on the Petitioner. It is humbly submitted that the said Purchase Orders were issued due to exigencies that arouse beyond the control of the Respondent. Hence the other averments in the said paragraph are hereby denied."

12. As already discussed, though HAL had taken a conscious decision to ban all dealings with the 1st petitioner, it had virtually not given effect to the same and this is evident from the two purchase orders placed in the years 2011 and 2012. Though the respondent had blacklisted the 1st petitioner, it had not communicated the same and it has virtually paled into insignificance in the light of subsequent event, i.e. placing two orders on 21.9.2011 and 8.5.2012 as indicated in Annexures-A and B. Even to this day, the respondent has not communicated its decision of blacklisting the 1st petitioner, to the petitioners and it was not in public domain.

13. It would not be out of place to mention that the respondent has virtually waived its decision to blacklist the 1st petitioner. Hence the question of issuing a writ of certiorari at this point of time does not arise.

14. What is argued before this court by the learned counsel for the petitioners is that if a supplier is to be blacklisted temporarily or for a long time, the authorities concerned are expected to give prior notice and then only to take a decision. Reliance has been placed upon the latest decision of the Hon'ble apex court in the case of Gorkha Security Services Vs. Govt. of NCT of Delhi, (2014) AIRSCW 4586 : (2014) 9 SCALE 148 : (2014) 9 SCC 105 . What is reiterated in the said decision, after analyzing its earlier decisions, is that the mandatory requirement before blacklisting is to issue a show-cause notice. It is further held that it is incumbent on the part of the department to state in the show-cause notice that it intends to impose the penalty of blacklisting so as to provide an adequate and meaningful opportunity to show cause against the same. What is further made clear is that even if it is not mentioned specifically, but from the reading of the notice, it may be clearly inferred that such action was proposed and it would fulfill this requirement.

15. Dealing with the application of the principles of natural justice found in administrative law, the Hon'ble apex court has held that unless statutory provision either specifically or by necessary implication excludes the application of any rules of natural justice, any exercise of the power prejudicially affecting

another must be in conformity with the rules of natural justice. Article 14 of the Constitution has also been discussed.

16. The purpose of issuing show-cause notice before taking the decision of blacklisting by the department is explained. It is held that the fundamental purpose behind serving of notice is to make the notice understand the precise case set up against him which he has to meet. This would require the statement of imputations detailing out the alleged breaches and defaults he has committed, so that he gets an opportunity to rebut the same. It is amplified that prior notice that would be issued must be able to point out that the proposed action is not warranted in the given case even if the defaults/breaches complained of are not satisfactorily explained.

17. As already discussed earlier, the respondent has not virtually given effect to the decision taken earlier in the year 2002 to blacklist the 1st petitioner. On the other hand, it chose to place purchase orders on two occasions, i.e. one in the year 2011 and another in the year 2012. It had not communicated the said order to the 1st petitioner at any point of time in any manner. This action of the respondent could be construed as "waiver" and therefore, the question of issuing a writ of certiorari after a lapse of 13 years would serve no purpose and hence the question of issuing a writ of certiorari does not arise.

18. Insofar as the writ of mandamus is concerned, the 1st petitioner has already submitted an application requesting the respondent to register it as a sub contractor. In this regard, certain clarifications had been sought by the respondent from the petitioner and on 6.5.2013 vide Annexure-H, a letter had been addressed to the General Manager, HAL. The grievance of the petitioner is that in spite of several requests, nothing is forthcoming from the respondent's side relating to the application filed for registration as a sub contractor. In fact, on 20.2.2014, a letter came to be addressed by the maintenance manager, Helicopter Division, HAL, to the 1st petitioner accepting the quotation relating to the repair of engine along with accessories.

19. It need not be reiterated that whenever the respondent intends to blacklist the petitioner, prior notice is absolutely required to be given in terms of the law reiterated down in the case of GORKHA SECURITY SERVICES (supra).

20. Two documents have been produced by the respondent along with a memo dated 9.7.2015. One is a letter dated 16.11.2012 addressed by the executive director, Engine Division, HAL, to the Deputy Director General of Police, CBI, Hyderabad, stating that the ban order was passed on 4.7.2002 against the 1st petitioner. In the said letter, it is stated that the 1st petitioner has certain test facilities for overhaul of Pratt and Whitney Turboprop PT6A engines for aircrafts and HAL is considering to make use of their services in the future only if they are not banned. As against this letter, CBI has addressed a letter, CBI has addressed a letter on 23.11.2002 reiterating their stand that the recommendation has already been made for a permanent ban.

21. As already discussed earlier, it is for HAL to consider the application filed by the 1st petitioner for registration as sub contractor and while considering the said application, the principles reiterated by the Hon''ble apex court in the case of GORKHA SECURITY SERVICES (supra) will have to be kept in mind.

22. With the above observation, the petition is disposed of.

Parties to bear their own costs.