

Ashok Kumar Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Mar-04-2004

Reported in : (2004)2UPLBEC1780

Judge : V.M. Sahai and ;Krishna Murari, JJ.

Appeal No. : Civil Misc. Writ Petition No. 40501 of 1998

Appellant : Ashok Kumar

Respondent : State of U.P. and ors.

Advocate for Def. : Manish Goyal and ;R.P. Goyal, Advs. and ;S.C.

Advocate for Pet/Ap. : A.P. Sahi and ;G.K. Singh, Advs.

Disposition : Petition allowed

Judgement :

V.M. Sahai and Krishna Murari, JJ.

1. The petitioner is a registered contractor with Nagar Nigam, Aligarh. He took contract for construction of shops in the year 1981. After completion of constructions final payment was made to him in 1987. The State Government got vigilance enquiry conducted against the officers of Nagar Nigam, Aligarh and on the basis of ex-parte enquiry report directed Nagar Nigam, Aligarh on 5.9.1998 to

blacklist the petitioner. In pursuance of this direction of the State Government, the Nagar Nigam passed an order on 6.10.1998 blacklisting the petitioner. Both the orders had been challenged in the instant writ petition.

2. We have heard Sri A.P. Sahi learned Counsel for the petitioner, learned Standing Counsel appearing for respondent No. 1 and Sri Manish Goyal learned Counsel appearing for respondent Nos. 2 and 3.

3. Sri A.P. Sahi learned Counsel for the petitioner has urged that without issuing any show cause notice or giving opportunity of hearing, the petitioner could not be blacklisted. On the other hand Sri Manish Goyal learned Counsel appearing for respondents No. 2 and 3 has urged that post decisional hearing would be given to the petitioner and the impugned order is liable to be upheld.

4. The question involved in this petition is as to whether before blacklisting a contractor principles of natural justice have to be complied with and opportunity of hearing has to be given him or not. This question has been settled by the Apex Court. It has been held in *Erusian Equipment and Chemicals Ltd. v. State of West Bengal and Anr.*, AIR 1975 SC 266; *Raghunath Thakur v. State of Bihar and Ors.*, AIR 1989 SC 620 and *Grosons Pharmaceuticals (P) Ltd. v. State of U.P.*, (2001) 8 SCC 604, that an order of blacklisting against a contractor results in civil consequences and in such situation the only requirement of law, in absence of statutory rules, was to observe principles of natural justice.

5. A show cause notice was required to be given to the person against whom the order for blacklisting is to be passed and in absence of such notice the order of blacklisting would be illegal and in violation of principles of natural justice. Admittedly no notice or opportunity of hearing was given to the petitioner before passing the impugned orders. The argument of learned Counsel for the respondents that the respondent would give post decisional hearing to the petitioner cannot be accepted in view of the law laid down by the Apex Court.

6. In the result, this writ petition succeeds and is allowed. The orders dated 5.9.1998 and 6.10.1998, passed by the respondents, Annexures-1 and 2 respectively to the writ petition, are quashed. It shall be open to the respondents to

pass fresh order in accordance with law.

7. The parties shall bear their own costs.

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