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Court : Delhi

Decided On : Mar-04-2005

Reported in : 2005(1)CTLJ363(Del); 118(2005)DLT255; 2005(81)DRJ256

Judge : D.K. Jain and; H.R. Malhotra, JJ.

Acts : Companies Act; [Indian Penal Code \(IPC\), 1860](#) - Sections 186, 332 and 353; [Constitution of India](#) - Articles 32 and 226

Appeal No. : WP(C) 11739/2004

Appellant : Uee Electrical Engineers P. Ltd.

Respondent : Delhi Development Authority and ors.

Advocate for Def. : Anusuya Salwan, ; Monica Sharma and ; Rajesh Kumar, Adv

Advocate for Pet/Ap. : R.P. Bansal, Sr. Adv.,; Subhash Garg and; Rakesh Mahajan

Judgement :

D.K. Jain, J.

1. Rule D.B.

2. Having regard to the urgency of the matter, with the consent of learned counsel for the parties it is taken up for final disposal at this stage itself.

3. The challenge in this writ petition under Article 226 of the Constitution is to the validity and propriety of order dated 3 January 2003 passed by the Secretary, Contractors Registration Board, Delhi Development Authority, respondent No.1 herein, debaring the petitioner for a period of five years for his alleged misconduct with one of their officers on duty. By virtue of the said order all the directors of the petitioner company also stand debarred. It has also been directed that no tender papers shall be issued to the petitioner and no work shall be awarded to them from the date of issue of the said order.

4. The Delhi Development Authority (for short the DDA) and one V.K. Kapoor, Assistant Engineer (Electrical), DDA, the officer involved in the incident, have been imp leaded as respondents 1 and 3 respectively, besides the Contractors Registration Board ('CRB' for short).

5. Since the case has a chequered history, in order to appreciate the rival stands, it would be necessary to notice the background facts in greater details, which are as follows:

6. Some time in April 2001, the DDA issued a notice inviting tenders (for short the NIT) from approved contractors/specialized firms for supply and installation of clear water boosting pumping station at command tank-I Dwarka, Delhi. In response to the said notice, the petitioner, a company incorporated under the Companies Act, claiming to be a specialised firm in the field, submitted its tender on 10 April 2001.

6.2 On 21 May 2001 petitioner's Director, namely, Ashok Sehgal, visited the Divisional Office of the DDA in connection with an outstanding payment for the work completed by the company sometime in April 2000. It appears that some heated exchanges took place between Ashok Sehgal and said V.K. Kapoor. It was alleged that Ashok Sehgal insisted that the file pertaining to the said old payment be handed over to him for taking it to the next office for further processing, which V.K. Kapoor refused to do.

This resulted in physical fight between Ashok Sehgal and V.K. Kapoor. V.K. Kapoor sustained injury near his right eye. An FIR was lodged by V.K. Kapoor

against Ashok Sehgal for alleged commission of offence punishable under Sections 186, 353 and 332 of Indian Penal Code, 1860. Ashok Sehgal also lodged an FIR against V.K. Kapoor. A departmental inquiry was conducted by the Executive Engineer (HQ) of the DDA. The Inquiry Officer found the version of V.K. Kapoor to be correct and opined that the allegations of demand of money leveled by Ashok Sehgal against V.K. Kapoor and registration of FIR by him were in retaliation. Both the said FIRs are still pending investigation.

6.3 The bids submitted by the bidders in response to NIT issued in April 2001 were opened on 23 July 2001 and the petitioner was declared to be the successful bidder. Vide DDA's letter dated 3 August 2001 the petitioner was asked to furnish evidence in regard to its financial capabilities along with a bank solvency certificate.

6.4 On 28 August 2001 the Project Manager (Electrical) of the DDA wrote to the Secretary, CRB requesting for appropriate action against the petitioner in the light of the inquiry report, referred to above. The Works Advisory Board meeting took place on 25 October 2001 wherein it was resolved that the petitioner should not be considered for award of the tender and instead the work should be awarded to the next lowest bidder, as a show cause notice had been issued to the petitioner for the incident which had taken place on 21 May 2001.

6.5 The decision of the Works Advisory Committee not to award the work to them despite being the lowest tenderer, was challenged by the petitioner by filing a writ petition (WP(C) 6957/01). Vide order dated 10 July 2002 a Division Bench of this Court held that the act of the DDA in not awarding the contract to the petitioner was not in accordance with law. However, the contract awarded by the DDA to the second lowest bidder was not nullified as the said contractor had already made huge investments. Heavy costs were awarded against the DDA and leave was granted to the petitioner to file a suit for damages if they thought it proper.

6.6 In the meanwhile, on 14 August 2002, the CRB, upon consideration of the reply filed by the petitioner to the show cause notice, debarred the petitioner company and its directors for a period of five years. The petitioner challenged the said order by preferring a writ petition. Vide order dated 9 September 2002 a

learned Single Judge of this Court quashed the said order being non-speaking. The learned Judge, however, granted leave to the DDA to pass a speaking order in accordance with law. In furtherance of the said order, the impugned order has been passed. The penultimate paragraph of the said order reads as follows:

Now, therefore, in view of the reasons given above and after due and careful consideration, the Competent Authority has decided to debar the Agency for a period of five years for his misconduct with government official on duty. All the Directors of the firm M/s. UEE Electrical Engineers Pvt. Ltd. also stands debarred. No tender papers shall be issued to the agency and no work shall be awarded to the agency from the date of issue of these orders.

6.7 Since DDA's Special Leave Petition against the order of the Division Bench dated 10 July 2002 was pending in the Supreme Court, the petitioner challenged the order of debarment by means of a writ petition under Article 32 of the Constitution. However, while allowing DDA's appeal, vide order dated 19 March 2004, the Supreme Court transferred the writ petition to this Court. This is how the matter is now before us.

7. In the reply affidavit filed on behalf of the DDA, the impugned order is sought to be justified on the ground that the inquiry officer having found Ashok Sehgal guilty of physically assaulting V.K. Kapoor, the action of the DDA could not be said to be arbitrary or vindictive.

8. Mr. R.P. Bansal, learned senior counsel appearing for the petitioner, has contended that the order debarring the petitioner company for a period of five years is per se illegal inasmuch as the same has been passed on the alleged ground of breach of contract by the petitioner but there was no such stipulation in either the earlier contract awarded and executed by the petitioner or in the present NIT, pursuant where to the petitioner had submitted their bid in April 2001. It is also urged that the incident, which took place on 21 May 2001, has no relevance insofar as the question of debarment of the petitioner company is concerned, particularly when the matter is still pending investigation by the police. It is also submitted that the petitioner company should not be made to suffer for the act of misconduct by one of its directors. It is also contended that the punishment of

debaring the company for a period of five years is highly disproportionate to the alleged misconduct. It is, thus, pleaded that the impugned non-speaking order deserves to be set aside.

9. Per contra, Ms. Anusuya Salwan, learned counsel appearing for the DDA, has submitted that in view of the inquiry officer's report it cannot be said that the impugned order is arbitrary, irrational or unreasonable, warranting interference by this Court.

Refuting the stand of the petitioner that the impugned order is vocative of principles of natural justice, learned counsel has contended that the petitioner company was given full opportunity to participate in the inquiry proceedings. In support, reliance is placed on the decision of the Supreme Court in *Shiv Sagar Tiwari v. Union of India and Anr.* : AIR 1997 SC2725 . Learned counsel asserts that having regard to the nature of the misconduct on the part of the director of the petitioner company in physically assaulting a public servant, the order of debaring the petitioner company for a period of five years cannot be said to be disproportionate.

10. There is no gain saying that any order or decision in matters involving civil consequences has to be made consistently with the rules of natural justice. As observed by the Supreme Court in *Mohinder Singh Gill and Anr. v. The Chief Election Commissioner and Ors.* : [1978]2SCR272 , the civil consequence is an infraction of not merely property or personal rights but also of material deprivations and pecuniary damages. therefore, blacklisting or debaring of a person from the privileges and advantages on entering into a lawful relationship with the government or its instrumentalities for gain involves serious civil consequences and, therefore, an authority taking such a decision has to act in accordance with the principles of natural justice. (See: *Ersian Equipment and Chemicals v. State of West Bengal and Anr.*, : [1975]2SCR674 , *Raghunath Thakur v. State of Bihar* : AIR 1989 SC620 . Nevertheless, the principles of natural justice cannot be put in a legal straight jacket. In *The Chairman, Board of Mining Examination and Chief Inspector of Mines and Anr. v. Ramjee* : [1977]2SCR904 , the Apex Court observed that natural justice is after all no unruly horse, no lurking land mine and

its unnatural expansion without reference to these realities can be exasperating. In *Regina v. Home Secretary Ex. P. Santillo* (1981) QB 778 it was said that the rules of natural justice are not cut and dried. They vary indefinitely. Thus, the principles of natural justice are flexible and have to be adopted to the circumstances prevailing in a particular case. It would depend on the nature of the interest affected; circumstances in which the power is exercised and the nature of the consequences involved therein.

11. In the instant case, it is not in dispute that the order of debarment against the petitioner has been passed after giving an opportunity to them to explain their stand with regard to the incident which took place on 21 May 2001 between Ashok Sehgal, a director of the petitioner company and V.K. Kapoor, an officer of the DDA. The first order of debarment dated 14 August 2002 was quashed by this Court on the ground that it was non-speaking. After giving a fresh notice to the petitioner to explain its stand, the impugned order has been passed. Although it would appear from the afore-extracted operative part of the impugned order that it is not as speaking as it ought to be, but from the facts in hand it is evident that the order has been passed in the background of the aforementioned incident and the CRB decided to blacklist the petitioner company for the misbehavior of its director in allegedly assaulting an employee of the DDA. We are of the considered view that having regard to the nature of the allegation and the circumstances in which the impugned order has been passed, the decision of the DDA not to deal with the petitioner company cannot be said to be arbitrary or malicious. In judicial review the Court is concerned more with the process of decision making rather than the merits of the decision. What has to be ensured is that the decision is arrived at in a bona fide manner and not arbitrarily or vindictively. In the instant case, in our view, the decision of the DDA to blacklist the petitioner company cannot be faulted on the ground of arbitrariness or as vocative of principles of natural justice.

12. The next question which requires consideration is whether the order of debarring the petitioner company from tendering for the DDA in future for a period of five years is commensurate with the alleged misconduct on the part of its director?

13. It is well settled that the disciplinary authority is invested with the discretion to impose appropriate punishment keeping in view the magnitude and gravity of the misconduct. The High Court while exercising the power of judicial review is normally slow to substitute its own opinion on the penalty/punishment imposed. Nevertheless, if the punishment imposed shocks the conscience of the Court, it would appropriately mould the relief either directing the authority concerned to reconsider the penalty imposed or to shorten the litigation, it may itself imposed appropriate punishment with cogent reasons in support thereof. (See: B.C. Chaturvedi v. Union of India and Ors. : (1996)ILLJ 1231 SC . thereforee, when it appears to the Court that the punishment/penalty awarded to a person is shockingly disproportionate to the default alleged, in order to do complete justice the Court, while exercising power of judicial review under Article 226 of the Constitution, is fully competent to impose appropriate punishment/penalty.

14. In the present case, the conduct of the director of the petitioner company in misbehaving with or manhandling an officer of the DDA could not be ignored or condoned, howsoever great the provocation may have been. In a civilised society any act of misconduct has to be dealt with an iron hand. But the question for consideration is whether in the background of the incident, when admittedly the petitioner company had not been paid its dues for over a year for the work executed some time in the year 200, the punishment of debarring the petitioner company from dealing with the DDA for a period of five years from 3 January 2003 can be said to be proportionate to the alleged misconduct ?. We are of the considered view that bearing in mind the natural human reaction and the fact that the petitioner company was not considered for award of the work, despite the fact that in October 2001 they were declared to be the lowest tenderer, debarring the company for period of further five years from 3 January 2003 is too harsh. As a matter of fact the petitioner company has not only failed to secure any work from the DDA, it is stated to have been denied work by other public sector undertakings as well on account of the intimation sent by the DDA to those bodies about the order of debarment passed against the petitioner company. In our view, having regard to the aforementioned factual scenario, interest of justice would be subserved if the life of the impugned order is limited up to 30 April 2005, which would mean that effectively the petitioner company was debarred from dealing

with the DDA for a period of over four years.

15. Resultantly, while upholding the action of the DDA in debarring the petitioner company, the period of their blacklisting is restricted to the extent indicated above. The writ petition stands disposed of in the above terms with no order as to costs.

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