

Ms Allahabad Traders Vs. State of U.P. and Another

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Court : Allahabad

Decided On : Jan-25-2011

Judge : Satya Poot Mehrotra; Pankaj Mithal, JJ.

Appeal No. : WRIT - C No. - 66219 of 2010

Appellant : Ms Allahabad Traders

Respondent : State of U.P. and Another

Advocate for Def. : C.S.C. Adv

Advocate for Pet/Ap. : Tarun Agrawal,Ravi Kant, Advs

Judgement :

1. On conclusion of the hearing on 21.1.2011, we had expressed our opinion of allowing the writ petition. The reasons for allowing the same are contained in the judgment and order herein below:

2. Petitioner M/s Allahabad Traders through one of its partner has filed this writ petition challenging the order dated 15.9.2010 passed by the Regional Food Controller, Allahabad Region, Allahabad cancelling the petitioner's registration with the department and directing it to be placed in the black list.

3. The petitioner is a Contractor registered with the office of the Regional Food Controller, Allahabad Region, Allahabad and is engaged in the business of

transport.

4. In the year 2008-2009, the petitioner was entrusted with the transportation of 29693.20 quintal of custom paddy from the Purchase Centre, Manjhanpur for the purpose of hulling to Rakesh Mini Rice Mill (in short 'Mill') situate in Manjhanpur itself. It is alleged that the petitioner performed the above work. On the certificate of satisfactory completion of work issued on 23.5.2009 by the Marketing Inspector, Manjhanpur, the District Food Marketing Officer recommended for payment to the petitioner. The recommendations dated 8.5.2009 were accepted by the Regional Food Controller and vide letter dated 26.6.2009 directions for payment and refund of security furnished for due performance of the said contract were issued. The petitioner was accordingly paid the transportation charges in respect of the above quantity of the custom paddy.

5. It appears that a complaint was made on behalf of the Mill to the effect that it had only received 11,659.05 quintal of custom paddy instead of the allotted quantity of 29,693.20 quintal. The Regional Food Controller, Allahabad on 30.10.2009 passed an order black-listing the petitioner and restraining it from working as a transporter with the department. The enquiry report dated 3.9.2009 was made the sole basis for passing the aforesaid order. The said order of black-listing dated 30.10.2009 was assailed by the petitioner by filing Civil Misc. Writ Petition No.60643 of 2009. The writ petition was allowed vide judgment and order dated 30.11.2009 and the order impugned was quashed with liberty to the authorities to proceed in accordance with law and to pass appropriate order after affording fullest opportunity of hearing to the petitioner as the same was found to have been passed in violation of principles of natural justice. Thereafter, the petitioner was issued a show cause notice dated 4.12.2009 in connection with the short supply of custom paddy to the Mill. The said show cause notice was replied by the petitioner on 14.12.2009 and it was contended that the entire consignment of the paddy was duly transported and delivered to the Mill, the delivery of which stands proved by the TCDCs on record. Thereafter a fresh order of black-listing was passed on 22.12.2009. This order was again challenged by the petitioner by filing Writ Petition No.1148 of 2010. The said writ petition was allowed on 19.7.2010 and this order was also quashed with the direction to the authorities to

pass a fresh order as neither full opportunity of hearing was given to the petitioner nor there was proper application of mind in passing the same.

6. The impugned order in the present writ petition, which was passed on 15.9.2010 against the petitioner is the third order in succession to the same effect. It may be pertinent to mention that before passing the impugned order the petitioner was again given a show cause notice dated 3.8.2010 to which a reply was filed by it on 27.8.2010.

7. Necessary pleadings between the parties have been exchanged and they agree for final disposal of the writ petition at the admission stage.

8. We have heard Sri Ravi Kant, learned Senior Counsel assisted by Sri Tarun Agrawal, learned counsel for the petitioner and Sri C.S.Singh, learned Additional Chief Standing Counsel appearing on behalf of the respondents.

9. The submission of Sri Ravi Kant on behalf of the petitioner is that the impugned order is unsustainable as it has been passed without application of mind to the reply of the petitioner dated 27.8.2010. The order refers only to the earlier reply of the petitioner dated 14.12.2009 given pursuant to the show cause notice dated 4.12.2009. Moreover, in passing the impugned order two reports; one by the Chief Development Officer, Kaushambi dated 30.7.09 and the other of the Regional Food Marketing Officer, Kanpur dated 6.1.2010 have completely been ignored. The said reports are material and non-consideration of the same vitiates the impugned order. The first information report does not name the petitioner and the petitioner has not been assigned any role which may warrant cancellation of its registration and black-listing. The order simply states that the endorsement/signatures of the Mill owner/his representative on some of the TCDCs are forged and the said receipts are fictitious. The petitioner is also involved though no reason or any material in support of such conclusion has been assigned and referred. The petitioner has submitted counter foils in original of all TCDCs with regard to the supply of the requisite quantity of custom paddy with the endorsement of receipt of the proprietor/ representative of the Mill. The entire quantity of rice having been recovered from the custody of the Mill owner it cannot be said that the petitioner committed any default in supply or that certain quantity

of the custom paddy was not actually transported by it.

10. Sri C.S.Singh, learned Additional Chief Standing Counsel, appearing for the respondents contends that the impugned order dated 15.9.2010 has been passed after issuance of fresh show cause notice and affording full opportunity of hearing to the petitioner. The enquiry report dated 3.9.2009 clearly reveals the involvement of the petitioner and that the requisite quantity of custom paddy was not actually supplied to the Mill. The TCDCs on record in connection with 14612.55 quintal of custom paddy, as referred to at item no.(iii) in the above report are fictitious and it proves that the aforesaid quantity of custom paddy was not transported and supplied to the Mill by the petitioner. It also appears that in respect of the above quantity of custom paddy, the entire booklet of TCDCs was got printed afresh on which fictitious TCDCs were manufactured and put on record. The possibility of the involvement of the officers of the department, miller and the transporter in this connection cannot be ruled out.

11. We have carefully gone through the impugned order, the earlier orders which were set-aside by the Court, the show-cause notice dated 3.8.2010, reply dated 27.8.2010, the first information report and the three reports aforesaid.

12. The first two orders dated 30.10.2009 and 22.12.2009 black-listing the petitioner were passed basically in view of the enquiry report dated 3.9.2009. The basis of the present order is also primarily the above report only. The enquiry report dated 3.9.2009 records that 14612.55 quintal of custom paddy was not actually transported doubting the TCDCs in respect thereof and an observation has been made that without transportation of said quantity of custom paddy payment was made to the transporter in collusion with the Miller and the officers of the department. However, in conclusion of the report no specific allegation of involvement of the petitioner was made, rather it was concluded that the petitioner on the request of the department had supplied the necessary trucks for transportation of the custom paddy from time to time and the payment was made after due verification. The Proprietor of the Mill is actually guilty of manipulating documents and he has accepted having received custom paddy in excess of the quantity mentioned in clause (i) and (ii) of the enquiry report dated 3.9.2009. The

enquiry officer nowhere concluded that the petitioner was also involved.

13. Sri C.S.Singh, learned Additional Chief Standing Counsel appearing for the respondents has very candidly admitted that the impugned order does not deal with the other two enquiry reports dated 30.7.2009 and 6.1.2010. A perusal of the impugned order reveals that though there is a passing reference to the aforesaid reports but they have not been considered and dealt with in passing the order blacklisting the petitioner.

14. It may be important to note that the shortfall of paddy rice, which was allegedly not supplied/received by the Mill, was recovered by the department from the illegal custody of the Mill. The proprietor of the Mill made a complaint dated 8.7.2009 on which the Chief Development Officer, Kaushambi submitted an enquiry report dated 30.7.2009 to the District Magistrate, Kaushambi. He found that the entire quantity of custom paddy i.e. 29,693 quintal was found to have been sent and received by the Mill on physical verification.

15. The Regional Food Marketing Officer, Kanpur was simultaneously entrusted with the work of physical verification of the supply of custom paddy to various rice mills of the district of Fatehpur and Kaushambi. He made the necessary enquiry and verification on 2.1.2010 and 3.1.2010 in respect whereof a report was submitted by him to the Commissioner, Food and Civil Supplies, Lucknow on 6.1.2010. He records that the representative of the mill owner produced a copy of a document countersigned by the proprietor of the mill which shows the due supply and receipt of 29547.47 quintal of paddy. He thus concluded collusion between the officers of the department and the mill owner. Petitioner was not found to be involved.

16. In view of above, we are of the opinion that the aforesaid two enquiry reports were very material and relevant for the purpose of passing any order against the petitioner.

17. Apart from the above, even in the first information report dated 5.9.2009 the petitioner has not been named and no allegation of any kind of misappropriation has been made against him. Nothing has been brought on record to indicate the

outcome and involvement of the petitioner in pursuance thereof.

18. The finding in the impugned order that the petitioner is also involved in the fictitious purchase of custom paddy in the year 2008-09 and had been paid without fulfilling and completing the contract of transportation is not supported by any reason, except for the fact that it is based on the enquiry report dated 3.9.2010, which says so. This finding is totally perverse and cannot be maintained. The said conclusion has been recorded by only mentioning about the enquiry reports dated 30.7.2009 and 6.1.2010 but without actually considering the impact thereof. The said enquiry reports form the relevant material, inasmuch as they suggest that the entire quantity of custom paddy was duly transported. The non-consideration of such a material on record vitiates the impugned order.

19. The letter of the Regional Food Controller, Jhansi dated 23.9.2010 addressed to the Food Commissioner, Lucknow annexed with the supplementary affidavit states that at least 26.5 thousand quintal of paddy was essentially delivered to the miller, if not the balance, and in fact the miller vide letter dated 20.2.2009 had prima facie accepted delivery of 29.5 thousand quintal of paddy.

20. It is also significant to note that the impugned order has been passed verbatim repeating the contents of the two earlier orders which were quashed and by taking into consideration the reply of the petitioner dated 14.12.2009 which was actually submitted in response to the earlier show-cause notice. However, only a mention of petitioner's reply dated 27.8.2010 submitted to the show cause notice dated 3.8.2010 was made but in fact the said reply has not been dealt with in passing the impugned order. Sri C.S.Singh, learned Additional Chief Standing Counsel appearing for the respondents fairly accepts this factual position.

21. In *Raghunath Thakur v. State of Bihar* AIR 1989 SC 620 it was observed as under:

"Indisputably, no notice had been given to the appellant of the proposal of blacklisting the appellant. It was contended on behalf of the State Government that there was no requirement in the rule of

giving any prior notice before blacklisting any person. Insofar as the contention that there is no requirement specifically of giving any notice is concerned, the respondent is right. But it is an implied principle of the rule of law that any order having civil consequence should be passed only after following the principles of natural justice. It has to be realised that blacklisting any person in respect of business ventures has civil consequence for the future business of the person concerned in any event. Even if the rule do not express so, it is an elementary principle of natural justice that parties affected by any order should have right of being heard and making representations against the order."

(emphasis supplied)

22. It has been followed with approval in AIR 1994 SC 1277 M/s. Southern Painters v. Fertilizers and Chemicals Travancore Ltd and another.

23. The same principle was reiterated by their Lordships of the Supreme Court in the case of Grosons Pharmaceuticals (P) Ltd. and another v. State of U.P. and others (2001) 8 SCC 604 and it was said that an order of blacklisting an approved contractor results in civil consequences and in the absence of statutory rules, the requirement of law is to observe principles of audi alteram partem which is one of the facets of the principles of natural justice.

24. In AIR 1975 SC 266 Erusian Equipment & Chemicals Ltd. v. State of West Bengal and another, the Supreme Court laid down that fundamentals of fair play require that the person concerned should be given an opportunity to represent his case before he is put on the black list. Opportunity to represent or show cause would be futile if the representation or the cause shown is not considered by the authority in passing the order of black listing.

25. The Supreme Court in Union of India v. M.L.Capoor and others AIR 1974 SC 87 in paragraph 28 observed:

"Reasons are the links between the materials on which certain conclusions are based and the actual conclusions. They disclose how the mind is applied to the subject matter for a decision whether it is purely administrative or quasi-judicial. They should reveal rational nexus between the facts considered and the conclusions reached. Only in this way can opinions or decisions recorded be shown to be manifestly just and reasonable"

26. In *Mohinder Singh Gill and others v. Chief Election Commissioner, New Delhi and others* AIR 1978 SC 851 it has been observed that when statutory functionary makes an order, its validity must be judged by reasons so mentioned in the order itself.

27. In view of above, consideration of the reply or representation of the petitioner and assignment of reasons for the conclusions arrived are part of the principles of natural justice, unless recording of reasons has been expressly or by necessary implication has been taken away.

28. As stated earlier, the impugned order fails to deal with the reply of the petitioner and only records the conclusion with regard to the involvement of the petitioner in the alleged fictitious purchase of custom paddy and its non-supply/shortage in supply or transportation for which no reason for arriving at such a conclusion has been recorded.

29. In view of the above legal position and the facts and circumstances of the case, we are of the opinion that the impugned order dated 15.9.2010 cannot be sustained in law for the reasons that

(i) even the enquiry report dated 3.9.2009 which forms the basis of passing the impugned order does not in its conclusion alleges the involvement of the petitioner;

(ii) the other enquiry reports dated 30.7.2009 and 6.1.2010 which were also material and relevant were not considered;

(iii) petitioner's reply dated 3.8.2010 to the show-cause notice was not dealt with;

(iv) petitioner has not been named in the first information report dated 5.9.2009 and no allegation of petitioner's involvement has been made therein; and

(v) no reasons in support of the finding that the petitioner is also involved have been recorded.

30. Accordingly, we are of the considered opinion that the impugned order dated 15.9.2010 is unsustainable and is liable to be quashed. We, therefore, issue a writ of certiorari quashing the order dated 15.9.2010 (Annexure - 21 to the writ petition) keeping it open for the Food Commissioner (Food and Civil Supplies), Lucknow (respondent No.3) to consider the matter at its own level and, if necessary, to take appropriate action and pass a fresh order, in accordance with law after affording proper opportunity of hearing to the parties and on consideration of the above referred material or any other material which may have come into existence in the meantime or is found to be necessary. We are giving this liberty to the respondent No.3 only for the reason that all through the record reveals the possibility of involvement of the departmental officers up to a very high level and therefore action on any lower level would not serve any purpose.

31. The writ petition as such is allowed with the aforesaid observation.

32. No order as to costs.

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