Pran Gopal Das Vs. the Chief Engineer, Apwd and Another

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SooperKanoon Citation : sooperkanoon.com/950670

Court : Kolkata

Decided On : Sep-18-2012

Judge : Harish Tandon

Appeal No. : W.P. No. 504 of 2012 With W.P. No. 500 of 2012

Appellant : Pran Gopal Das

Respondent : The Chief Engineer, Apwd and Another

Judgement :

Harish Tandon, J.

These two writ petitions are taken up together as the questions involved therein are interconnected.

Shorn of unnecessary details, the facts which decipher from the respective pleadings are that the writ petitioner was initially enlisted as Class-V(Civil) Contractor in the year 2000. He was thereafter upgraded to Class- IV(Civil) Contractor in the year 2003 and subsequently was further upgraded to Class-III Contractor w.e.f. 04.4.2007 for a period of five years.

A criminal case was initiated against the petitioner in the Court of Special Judge, A and N Islands, Port Blair being Special Case No.08 of 2010 alleging commission of offence under Section 120B and 420 of the Indian Penal Code. The petitioner was served with a show-cause notice dated 08.3.2012 by the Finance Officer to

Chief Engineer, APWD, Port Blair on the alleged commission of offence to explain as to why he should not be blacklisted. Challenging the show-cause notice on the plea that the authority who issued the same is not the enlisting authority, the petitioner filed a writ petition being W.P. No.169 of 2012 before this Court. The said writ petition was disposed of by directing the authority concerned to decide the objection as to the competence and jurisdiction of the said authority to issue show-cause notice before proceeding to decide the objection on merits.

The petitioner filed extensive reply to the said show-cause notice taking all pleas available to him against the allegations contained in the show-cause notice. By order dated June 20, 2012 it is held that the Finance Officer to Chief Engineer who issued the show-cause notice is an enlisting authority and is therefore competent to issue the show-cause notice. The said order is assailed in W.P. No.500 of 2012 by the petitioner.

Thereafter, the authority proceeded to decide the matter on merit and by order No.915 dated 16th July, 2012 the petitioner has been blacklisted from the approved list of Contractors. This order has been assailed by the petitioner in W.P. No.504 of 2012.

Mrs. Nag, learned advocate appearing for the petitioner in both the writ petitions have assailed those orders in contending that the authorities did not afford an opportunity of hearing before passing the impugned order. In support of the aforesaid contention she placed reliance upon two judgements of the Supreme Court namely, Raghunath Thakur v. State of Bihar and others reported in (1989) 1 SCC 229 and Southern Painters v. Fertilizers and Chemicals Travancore Ltd. and another reported in 1994 Supp (2) SCC 699. She streneously submits that the show-cause does not indicate the ground provided under Clause 23.3 and is therefore vague and uncertain. Alternatively, she submits that the petitioner has been blacklisted on the ground enumerated under Clause 23.3(f) which relates to the indulgence in any type of forgery or falsification of records and there is no allegation made in the said show-cause notice relating thereto and therefore the impugned order is liable to be set aside on the ground of non-application of mind.

Mr. Mandal, learned advocate appearing for the respondents disputed the aforesaid contention of the petitioner in contending that the enlistment order was issued by the Finance Officer to Chief Engineer of the APWD, Port Blair and the said authority has issued the show-cause notice and as such the petitioner cannot contend that the show-cause notice has not been issued by the competent authority. He further submits that there is a typographical error in the impugned order and in fact, the petitioner has been blacklisted under Clause 23.3(k) of the Rules of Enlistment of Contractors in APWD, 2009. He streneously submits that the show-cause notice contains the alleged offence committed by the petitioner and it cannot be said to be vague and/or ambiguous. Lastly, he submits that the Enlistment Rules, 2009 does not provide for a personal hearing and as such the order cannot be thrown on such ground.

Having heard the respective submissions, the facts as narrated above are more or less admitted. A criminal proceeding has been initiated against the petitioner by the Central Bureau of Investigation which is still pending. It is nobody's case that the Rules of Enlistment of Contractors in APWD, 2009 does not apply so far as disciplinary actions are concerned. Clause 10 thereof provides for enlistment of the contractors in different categories and classes. Clause 23 makes it imperative on the enlisting authority to issue a show-cause notice before taking a decision for delisting the enlisted Contractors from the approved list. Clause 23.3 postulates the grounds for such blacklisting/delisting which includes a ground of an involvement in complaint of a serious nature on prima facie satisfaction of its truthfulness by the authority. The order of enlistment dated 4th April, 2007 being Annexure P-1 to the writ petition is issued by the Finance Officer to Chief Engineer, APWD, Port Blair. The show-cause notice is also issued by the same authority. In the order dated 20th June, 2012 the authorities have held that the Finance Officer to Chief Engineer being the Principal Secretary of the Board of enlistment of Class IV to Class I Contractors in APWD is the enlisting authority and therefore is competent to issue a show-cause notice under Clause 23 of the said Enlistment Rules, 2009. The enlistment order has been issued by the said authority so as the show-cause notice. Therefore, it cannot be said that the show-cause notice was not issued by an enlisting authority.

The point that a personal opportunity of hearing should be afforded to the petitioner is concerned, the same is not tenable. The petitioner gave an extensive reply to a show-cause notice. A bare reading of the reply would show that the petitioner has tried to answer all the allegations levelled against him in the show-cause notice. The Enlistment Rules, 2009 does not contain any provision relating to giving an opportunity of personal hearing. What is sine qua non under the said Rules is the issuance of the show-cause notice and also giving an opportunity to reply.

The case cited by Mrs. Nag in Raghunath Thakur(supra) the Apex Court does not lay down the ratio that a personal opportunity of hearing should be given. It has been held therein that before blacklisting the contractor an opportunity of hearing should be given. The same view has been expressed in case of Southern Painters(supra) . Recourse can be had to a judgement of the Apex Court in the case of Grosons Pharmaceuticals (P) Ltd. and another v. State of U.P. And others reported in (2001) 8 SCC 604 where the Apex court held as follows:-

“2. Learned counsel appearing for the appellant urged that seeing the nature and seriousness of the order passed against the appellant, the respondent ought to have supplied all the materials on the basis of which the charges contained in the show-cause notice were based along with the show-cause notice and in the absence of supply of materials, the order impugned is against the principles of natural justice. We do not find any merit in this contention. Admittedly, the appellant has only contractual relationship with the State Government and the said relationship is not governed by any statutory rules. There is no statutory rule which requires that an approved contractor cannot be blacklisted without giving an opportunity of show-cause. It is true that an order blacklisting an approved contractor results in civil consequences and in such a situation in the absence of statutory rules, the only requirement of law while passing such an order was to observe the principle of audi alteram partem which is one of the facets of the principles of natural justice. The contention that it was incumbent upon the respondent to have supplied the material on the basis of which the charges against the appellant were based, was not the requirement of the principle of audi alteram partem. It was sufficient requirement of law that an opportunity of show-

cause was given to the appellant before it was blacklisted. It is not disputed that in the present case, the appellant was given an opportunity to show cause and it did reply to the show-cause which was duly considered by the State Government. We are, therefore, of the view that the procedure adopted by the respondent while blacklisting the appellant was in conformity with the principles of natural justice."

In case of Nova Steel (India) Ltd. v. M.C.D. and others reported in (1995) 3 SCC 334 it is held that issuance of show-cause notice to the petitioner for giving a suitable reply is consistent with the principle of natural justice and a subsequent order for blacklisting the petitioner cannot be said to have been passed in contravention to the principle of natural justice.

Therefore, this Court does not find any ground for interference with the impugned order,

Both the writ petitions, therefore, fail.

There shall however be no order as to costs.