



IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 14TH DAY OF DECEMBER, 2022
BEFORE
THE HON'BLE MR JUSTICE M.NAGAPRASANNA
WRIT PETITION NO. 22793 OF 2022 (GM-TEN)

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BETWEEN:

1. THE CAP A PIE,
D-12, FIRST FLOOR PRUTHVI,
NEAR JODHPUR CROSS ROADS,
SATELLITE, AHMEDABAD – 380 015.
REPRESENTED BY ITS PROPRIETOR,
BHUPESHKUMAR,
S/O JAGADISHCHANDRASHAH,
AGE MAJOR, OCC: BUSINESS,
R/O D-12, FIRST FLOOR PRUTHVI,
NEAR JODHPUR CROSS ROADS,
SATELLITE, AHMEDABAD – 380 015.

...PETITIONER

(BY SRI.GIRISH V BHAT., ADVOCATE)

AND:

1. THE SOUTH WESTERN RAILWAYS,
REPRESENTED BY
SR. DIVISIONAL
MECHANICAL ENGINEER,
BANGALORE DIVISION,
SOUTH WESTERN RAILWAY,
BANGALORE – 560 023.

...RESPONDENT

(BY SRI.B.S.VENKATANARAYANA, ADVOCATE)

Digitally signed by
PADMAVATHI B K
Location: HIGH
COURT OF
KARNATAKA



THIS W.P. IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED NOTICE BEARING NO.B/M.271/CONT/LINEN/W AND I/2022-23 DATED 10.11.2022 PASSED BY THE RESPONDENT TERMINATING THE CONTRACT OF THE PETITIONER VIDE ANNEXURE – K AND ETC.,

THIS PETITION, COMING ON FOR ORDERS, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The petitioner is before this Court calling in question the notice dated 10.11.2022 terminating the contract of the petitioner and seeks a consequential direction to permit the petitioner to execute the work in terms of the contract dated 17.10.2022.

2. Heard Sri. Girish V. Bhat, learned counsel appearing for the petitioner, Sri. B.S. Venkatanarayana, learned counsel appearing for the respondent and perused the materials on record.

3. *Shorn* of unnecessary details, facts in brief are as follows:



The petitioner is in the business of performing work of collection, washing and ironing of bedroll linen supplied to AC coach passengers in several trains coming under the respondent – South Western Railways. The respondent- South Western Railways issue a notice inviting tender for the aforesaid work which the petitioner is said to be performing on 24.05.2022. The petitioner participates in the said tender. On 17.10.2022 the respondent awards the contract in favour of the petitioner. In terms of the said order of award of contract, the petitioner requests permission to execute the work at M/s. Laundry Labs India Pvt. Ltd., which was not the one that was necessary in terms of the tender conditions. Noticing the fact the petitioner did not have appropriate infrastructure and had deliberately misrepresented with regard to the laundry space issues a notice on 02.11.2022 seeking to show cause as to why the contract of the petitioner should not be terminated.

4. The petitioner replies to the said notice. Pending consideration of the reply, certain developments take place. The respondent terminates the contract between the petitioner



and the South Western Railways on account of the aforesaid circumstance of the act of the petitioner being in violation of tender conditions. It later transpires that the tender itself gets cancelled. In the light of the cancellation of the tender, what remains to be considered is, whether the impugned notice of termination would be necessary to be gone into.

5. The learned counsel appearing for the petitioner though would accept the fact that the tender has been cancelled and, in the light of such cancellation, the prayer with regard to termination of the contract of the petitioner would not survive, the learned counsel claims that he is still aggrieved of the impugned order dated 10.11.2022 insofar as it blacklists the petitioner for a period of 2 years.

6. On the other hand, the learned counsel for the respondent Sri.B.S.Venkatanarayan would refute the submissions to contend that since the petitioner has deliberately misrepresented before the Authorities, the action of blacklisting cannot be found fault with, but he would admit



that the show cause notice issued was only with regard to termination of contract.

7. I have given my anxious consideration to the submissions made by the learned counsel for the respective parties and have perused the material on record.

8. The afore-narrated facts are not in dispute. With the subsequent development of cancellation of the tender itself, the issue now revolves around a narrow compass only with regard to the impugned order blacklisting the petitioner for a period of 2 years from the date of the said order i.e., from 10.11.2022. To consider the tenability of the said order of blacklisting, it is germane to notice the show cause notice issued to the petitioner seeking to show cause as to why the contract should not be terminated. The notice was issued on 02.11.2022, the notice so issued reads as follows:

*"M/s. The Cap A Pie,
Regd Office D/12 Pruthvi,*

*Nr Jodhpur Cross Roads,
Sette Road, Ahmedabad -350015*



SEVEN DAYS NOTICE as per GCC Service.claves.no.7.4.2
(WITHOUT PREJUDICE)

Sub:	The work of Collection, Washing & Ironing of Bedroll Linens supplied to AC coach passengers in various trains of SBC & YPR depots for a period of one year. Commencement of work.
Ref:	1.GeM Work Order No. GEMC-5116677563978 Dated 17.10.2022 2. The Cap A Pie Ltr No. Nil, dated.01.11.2022

Vide reference-1, the work of Collection, Washing & Ironing of Bedroll Linens supplied to AC coach passengers in various trains of SBC & YPR depots for a period of one year has been awarded to your firm with instruction to commence the work within 15 days from the date of issue of LOA, i.e. work should commence on or before 02.11.22. In this regard, vide reference no. 2, you have submitted a letter for commencement of work from 02.11.2022 with a request to permit the washing of linen items at laundry situated at 14/A, KIADB Industrial Area, Kumbalgodu, 2nd Phase, Bangalore 560074. The laundry which you have proposed for washing of linen items vide your reference letter no. 2 is not the laundry proposed and leased by you while participating in the tender, therefore the letter of commencement issued by your firm vide ref. 2 is not as per the issued LOA and is not acceptable.

As on date you have not started the work as per terms and conditions mentioned in the LOA Issued vide ref, no. 1, Therefore, you have violated the terms and conditions of contract, clause 4.15 in GCC services, for commencement of the work within 15 days from the date of issue of LOA Accordingly, you are hereby given 7 days' notice in accordance with clause no. 7.4.2 of the GCC Services, for violating clause 7.4(g) Le.



"persistently disregard the instructions of the Engineer, or contravene any provision of the contract", to commence the work as per terms and conditions in the contract immediately.

If no action to commence the service is taken by you within the seven days' notice period, then final termination notice as per Annexure XV shall be issued to you. Post issue of termination notice, your contract shall stand rescinded and the service under this contract will be carried out independently without your participation and EMD/SD/PG, if any, shall also be encashed/forfeited.

Please acknowledge receipt.

(Emphasis added)

In terms of the notice quoted hereinabove, what can be unmistakably gathered is, the petitioner was asked to show cause as to why the contract awarded to him should not be terminated. Based on the contents of the show cause notice, the petitioner submits his reply on 04.11.2022. The reply submitted results in the passage of the impugned order terminating the contract of the petitioner on 10.11.2022. The order did not stop at termination of contract, it went a little further. It therefore becomes germane to notice the order of termination and it reads as follows:

*"M/s. The Cap A Pie,
Regd Office D/12 Pruthvi,*



Nr Jodhpur Cross Roads,
Sette Road, Ahmedabad -350015

TERMINATION NOTICE
South Western Railway
(WITHOUT PREJUDICE)

Sub:	The work of Collection, Washing & Ironing of Bedroll Linens supplied to AC coach passengers in various trains of SBC & YPR depots for a period of one year. Commencement of work.
Ref:	1. GeM Work Order No. GEMC-5116677563978 Dated 17.10.2022 2. Seven days notice No. B/M 271/Cont/Linen/W&I/2022-23 dated 02.11.2022

Vide reference-1, the work of Collection, Washing & Ironing of Bedroll Linens supplied to AC coach passengers in various trains of SBC & YPR depots for a period of one year has been awarded to your firm With instruction to commence the work within 15 days from the date of issue of LOA i.e. work should commence on or before 02.11.22 in this regard, vide reference 2, seven days notice has been issued to commence the work as per terms and condition of the contract agreement. But you have taken no action to commence the services as per contract terms and conditions.

Since the period of 7 days notice has already expired, the above contract stands rescinded in terms of clause 7.4 of general condition of contract and the balance services under this contract will be carried out independently without your participation. Your participation as well as participation of every member/partner in any manner as an individual or a



partnership firm is hereby debarred from participation in the bid for executing the balance services and your performance guarantee shall also be forfeited.

In addition, your participation as well as participation of every member/partner in any manner as an individual or a partnership firm is hereby debarred from participation in the bid for executing any work being tendered by the said railway division for a period of two (02) years from the date of issue of this letter

Kindly acknowledge receipt."

(Emphasis added)

A perusal at the afore-quoted order would indicate that it did not stop at termination, but directed blacklisting of the petitioner for a period of 2 years.

9. In all these link in the chain of dates, the developments that takes place is cancellation of the tender itself. Therefore, the petitioner is now debarred from participating in any subsequent tender for a period of 2 years. If the show cause notice issued to the petitioner is juxtaposed with the order, it would unmistakably depict that it travels beyond the show cause notice. The petitioner submits his reply to the contents of the show cause notice, which results in the



order of termination. The order of termination blacklists the petitioner for a period of 2 years, quoting it to be “in addition”. For this “in addition” in the order, the petitioner was not put on notice. The order of blacklisting comes to the petitioner as a bolt from the blue, as he had no notice prior to the order of blacklisting. The show cause notice only contained the contents about the termination of contract and not on blacklisting. Therefore, it is a case where the petitioner without being aware is blacklisted. If the show cause notice was for a particular purpose and the petitioner had replied for that particular purpose, the order cannot add something more to which the petitioner had no notice. This would be in clear violation of the elementary principle of natural justice namely, “*audi alteram partem*”, as it is trite that the Authority cannot seek to pass an order upon which, it did not seek to issue notice. The view of mine, in this regard, is fortified by the judgment of the Apex Court in the case of **SACI ALLIED PRODUCTS LTD. V. COLLECTOR OF CENTRAL EXCISE**¹ wherein the Apex Court holds as follows:

¹ (2005)7 SCC 159



"16. Thus according to the Appellate Tribunal, since the dealers in Uttar Pradesh who purchased the goods from Syndet, and independent dealers in other parts of the country to whom the appellants directly sold the goods are different class of buyers, the appellants' price to the independent dealers cannot be taken as the basis for assessing the appellants' sales to Syndet in Uttar Pradesh. This finding of the Appellate Tribunal is based on first proviso to Section 4(1)(a) of the Act. While the show-cause notice and the order of the Collector proceeded on the basis of the invocation of third proviso to Section 4(1)(a) of the Act, the Appellate Tribunal for the first time in the impugned order has sustained the proceedings on the basis of first proviso to Section 4(1)(a) of the Act. It was argued that the first proviso to Section 4(1)(a) of the Act was never invoked by the Department either in the show-cause notice or in the impugned order and it was for the first time that the Appellate Tribunal in the impugned order has sought to sustain the impugned order by invoking the first proviso to Section 4(1)(a) of the Act. It is thus seen that the Tribunal has gone totally beyond the show-cause notice and the order of the Collector, which is impermissible. The Appellate Tribunal cannot sustain the case of the Revenue against the appellants on a ground not raised by the Revenue either in the show-cause notice or in the order.

17. In this context, we may usefully refer to the judgment of this Court in the case of *Reckitt & Coiman of India Ltd. v. CCE [(1997) 10 SCC 379 : (1996) 88 ELT 641]*. This Court held that it is beyond the competence of the Tribunal to make out in favour of the Revenue a case which the Revenue had never canvassed and which the appellants had never been required to meet.

18. The impugned order of the Tribunal which had gone beyond the show-cause notice and the order of the respondent Collector is, therefore, liable to be set aside."

(Emphasis supplied)



The Apex Court in **SACI** (*supra*) clearly holds that the case that was never canvassed by the revenue to which the appellants therein had no opportunity to meet could not have been made a part of the order of the Tribunal. The facts in the case at hand are akin to what the Apex Court renders in the aforesaid judgment. The Apex Court in the aforesaid judgment was following the judgment of **RECKITT & COLMAN OF INDIA LTD., V. COLLECTOR OF CENTRAL EXCISE**². The Apex Court in the said judgment holds as follows:

"3. It will be remembered that the case of the Revenue, which the appellant had been required to meet at every stage from the show-cause notice onwards, was that the said product was a preparation based on starch. Having come to the conclusion that the said product was not a preparation based on starch, the Tribunal should have allowed the appeal. It was beyond the competence of the Tribunal to make out in favour of the Revenue a case which the Revenue had never canvassed and which the appellants had never been required to meet. It is upon this ground alone that the appeal must succeed."

(Emphasis supplied)

In the light of the aforesaid facts and the judgments rendered by the Apex Court, the impugned order dated

² (1997) 10 SCC 379



10.11.2022 warrants interference, only insofar as it adds blacklisting to its order.

10. For the aforesaid reasons, the following:

ORDER

- (i) Writ Petition is allowed in part.
- (ii) The order dated 10.11.2022 stands quashed only insofar as it blacklists/debars the petitioner from participating in any tender for a period of 2 years.
- (iii) Liberty is reserved to the respondent to issue a show cause notice concerning blacklisting of the petitioner, seek a reply, consider the reply and pass appropriate orders, in accordance with law in regard to the blacklisting of the petitioner.

**Sd/-
JUDGE**

JY/BKP
List No.: 1 SI No.: 8