Court No. - 4

Case :- WRIT - C No. - 28098 of 2019

Petitioner :- Sunil Rajak
Respondent :- State Of U.P. And 3 Others
Counsel for Petitioner :- Abhinav Gaur,Anoop Trivedi (Senior Adv.),Vibhu Rai
Counsel for Respondent :- C.S.C.

Hon'ble Bala Krishna Narayana,J.
Hon'ble Prakash Padia,J.

Per: Hon'ble Prakash Padia, J.

1. The petitioner has preferred the present writ petition challenging the order dated 21.06.2019 passed by the respondent No.3/District Magistrate Prayagraj, copy of which is appended as Annexure 15 to the writ petition.

2. Facts in brief as contained in the writ petition are that by means of e-auction and e-tender notice dated 7.9.2017, respondent No.3 invited bids from general public for grant of mining lease for the area mentioned in the advertisement including the area of 8 hectares situated on the banks of river Yamuna situated at Tehsil Bara, Village Pratappur, District Prayagraj. The petition duly participated in the aforesaid auction and had been declared highest bidder. Accordingly, letter of intent dated 30.11.2017 was issued in favour of the petitioner to excavate 1,60,000 cubic meter sand each year.

3. By the aforesaid letter of intent, the petitioner was required to deposit an installment of Rs.1,47,20,000/- after due adjustment of principal bid earnest money deposited by the petitioner i.e. Rs.26,00,000/-. Accordingly, the petitioner deposited the said first installment of Rs.1,21,20,000/- with the respondent No.3. on 04.12.2017 after due adjustment of the pre-bid deposit. Subsequently, a lease deed was also executed in favour of the petitioner on 20.02.2018 for a period of five years. Thereafter, on 22.02.2018 a work order was issued by the respondents in favour the petitioner. It is stated in the writ petition that the

lease was granted in favour of the petitioner on the pretext that from the lease land, the petitioner could excavate 1,60,000 cubic meters sand but the petitioner carried out mining activities over the lease land for a period of about one year i.e. till 20.02.2019 and excavated sand only to the extent of 1,04,171 cubic meters. Since the amount as contained in the letter of intent was not deposited by the petitioner, a notice dated 20.02.2019 was issued by the Senior Mines Officer Prayagraj demanding a sum of Rs.90,67,520/- from the petitioner towards first installment of second year of lease.

4. It is stated in the writ petition that in response to the same, the petitioner deposited a sum of Rs.20,00,000/-. It is stated in the writ petition that due to Kumbh Mela-2019 and due to reason that about 80% lease area was submerged in the river water, the petitioner was not able to carry out his mining activities over lease area. Senior Mining Officer, Prayagraj again issued a notice to the petitioner on 24.4.2019 demanding a sum of Rs.1,61,35,040/-. Against the aforesaid demand notice, the petitioner submitted a representation dated 6.5.2019. Thereafter representations were again made on 13.05.2019 and 20.05.2019 by the petitioner before the respondents ventilating all his grievances. It is stated in the writ petition that no response whatsoever has been given by the respondents and without considering the representations submitted by the petitioner order dated 21.06.2019 was passed by the respondent No.2 as provided under Sections 58 and 60 of the U.P. Minor Minerals (Concession) Rules, 1963 by which the lease deed granted in favour of the petitioner was cancelled, directions were given to issue recovery certificate for payment of amount of royalty till the cancellation of lease deed and blacklisting the petitioner for two years.

5. It is stated in the writ petition that the order impugned passed by the respondent No.3 is arbitrary, unjust, illegal and liable to be set aside by this Court due to following reasons :-

(i) No opportunity of personal hearing was given to the

petitioner before passing the order impugned by which not only the lease of the petitioner was cancelled, security amount was forfeited but he has also been blacklisted for two years.

(ii) The show cause notice was issued to the petitioner by Mines Officer but the order impugned has been passed by the District Magistrate.

(iii) Nothing has been stated in the show cause notice regarding blacklisting of the petitioner but in the impugned order, the petitioner was also blacklisted without giving any opportunity of hearing as such the order of blacklisting the petitioner is in complete violation of principles of natural justice.

6. It is contended by Sri Giyanadra Srivastava, learned Standing Counsel, that since terms and conditions contained in the lease deed were violated by the petitioner, therefore, the action was rightly taken by the respondent No.3. It is further contended by him that the order impugned in the present writ petition is absolutely perfect and valid order does not warrant any interference specially under Article 226 of the Constitution of India.

7. Heard Sri Giyanadra Srivastava, learned Standing Counsel and perused the record.

8. The petitioner has assailed the order dated 21.06.2019 passed by respondent No.3/District Magistrate by which reply submitted by the petitioner was rejected and an order was passed directing the petitioner to deposit a sum of Rs.1,41,92,000/- towards arrears of lease amount and Rs.3,23,840/- as T.CS. and Rs.16,19,200/- towards contribution to District Mineral Foundation Trust respectively. It was further ordered that otherwise the same will be realized as per the provisions of the Land Revenue Act. Apart of the same, the petitioner was also blacklisted for a period of two years.

9. From perusal of the record it is clear that before passing the

impugned order no opportunity of hearing was given to the petitioner. It is also clear from perusal of the record that notices were issued by the Senior Mines Officer but the impugned order was passed by the respondent No.3, i.e. District Magistrate Prayagraj. Apart from the same, it is also clear that although nothing is contained in the show cause notice regarding factum of blacklisting of the petitioner but while passing the order impugned, the petitioner was also blacklisted for a period of two years.

10. The order impugned is in two parts:-

(i) recovery against the petitioner

(ii) blacklisting of the petitioner for two years.

11. Insofar as the first part is concerned, it is clear from the record that the notices were issued to the petitioner by the Senior Mines Officer, Prayagraj but the order was passed by District Magistrate Prayagraj, in this view of the matter, we are of the opinion that the order passed by the District Magistrate Prayagraj is in complete violation of principles of natural justice.

12. Insofar as the blacklisting of the petitioner is concerned, From perusal of the impugned order, we find that the respondents have proceeded on the basis of a show cause notice. Nothing has been stated in the show cause notice regarding blacklisting of the petitioner. Learned Standing Counsel has not been able to refute this fact on record. In our opinion, the issue which was not raised even in the show cause notice, therefore, could not be made the basis for blacklisting of the petitioner.

13. The central issue, however, pertains to the requirement of stating the action which is proposed to be taken. The fundamental purpose behind the serving of show cause notice is to make the noticee understand the precise case set up against him which he has to meet. This would require the statement of imputations detailing out the alleged breaches and defaults he has committed, so that he gets an opportunity to rebut the

same. Another requirement, according to us, is the nature of action which is proposed to be taken for such a breach. That should also be stated so that the noticee is able to point out that proposed action is not warranted in the given case, even if the defaults/ breaches complained of are not satisfactorily explained. When it comes to black listing, this requirement becomes all the more imperative, having regard to the fact that it is harshest possible action. In the case of ***Gorkha Security Services Vs. Government (NCT of Delhi) and others (2014) 9 SCC 105,*** the Supreme Court was pleased to hold that it is incumbent on the part of the department to state in show cause notice that the competent authority intended to impose such a penalty of blacklisting, so as to provide adequate and meaningful opportunity to show cause against the same. Relevant paragraph namely paragraph 27 of the aforesaid judgement is quoted below:-

> *"27. We are, therefore, of the opinion that it was incumbent on the part of the Department to state in the show cause notice that the competent authority intended to impose such a penalty of blacklisting, so as to provide adequate and meaningful opportunity to the appellant to show cause against the same. However, we may also add that even if it is not mentioned specifically but from the reading of the show cause notice, it can be clearly inferred that such an action was proposed, that would fulfill this requirement. In the present case, however, reading of the show cause notice does not suggest that noticee could find out that such an action could also be taken. We say so for the reasons that are recorded hereinafter."*

14. In the case of ***Erusian Equipment & Chemicals Ltd. Vs. State of West Bengal (1975) 1 SCC 70,*** it was held by the Supreme Court that blacklisting has the affect of preventing a person from the privilege and advantage of name into relationship with the Government for purpose of aim. It was held by the Supreme Court in the aforesaid case that the fundamentals of fair play require that a person concerned should be given an opportunity to represent his case. Paragraphs 12 and 20 of the said judgment is quoted below :-

> *"12. Under Article 298 of the Constitution the executive power of the Union and the State shall extend to the carrying on of any trade and to the acquisition, holding and disposal of property and the*

making of contracts for any purpose. The State can carry on executive function by making a law or without making a law. The exercise of such powers and functions in trade by the State is subject to Part III of the Constitution. Article 14 speaks of equality before the law and equal protection of the laws. Equality of opportunity should apply to matters of public contracts. The State has the right to trade. The State has there the duty to observe equality. An ordinary individual can choose not to deal with any person. The Government cannot choose to exclude persons by discrimination. The order of blacklisting has the effect of depriving a person of equality of opportunity in the matter of public contract. A person who is on the approved list is unable to enter into advantageous relations with the Government because of the order of blacklisting. A person who has been dealing with the Government in the matter of sale and purchase of materials has a legitimate interest or expectation. When the State acts to the prejudice of a person it has to be supported by legality.

20. Blacklisting has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for purposes of gains. The fact that a disability is created by the order of blacklisting indicates that the relevant authority is to have an objective satisfaction. Fundamentals of fair play require that the person concerned should be given an opportunity to represent his case before he is put on the blacklist."

15. Again in the case of ***Raghunath Thakur Vs. State of Bihar [(1989) 1 SCC 229]*** the aforesaid principles was reiterated in the following manner: (SCC p. 230, para 4).

"4. ..... 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 rules 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. In that view of the matter, the last portion of the order insofar as it directs blacklisting of the appellant in respect of future contracts, cannot be sustained in law....."

20. Thus, there is no dispute about the requirement of serving show-cause notice. We may also hasten to add that once the show-cause notice is given and opportunity to reply to the show-cause notice is afforded, it is not even necessary to give an oral hearing. The High Court has rightly repudiated the appellant's attempt in finding foul with the impugned order on this ground. Such a contention was specifically repelled in Patel Engg. [Patel Engg. Ltd. v. Union of India, (2012) 11 SCC 257 : (2013) 1 SCC (Civ) 445]."

16. In the case of ***M/s Mahabir Auto Stores & Ors. Vs. Indian Oil Corporation Ltd. (1990) 3 SCC 752*** it was held by the Supreme Court that arbitrariness and discrimination in every matter is subject to judicial review. Paragraph 11 of the aforesaid judgement is quoted below :-

> *"It is well settled that every action of the State or an instrumentality of the State in exercise of its executive power, must be informed by reason. In appropriate cases, actions uninformed by reason may be questioned as arbitrary in proceedings under Article 226 or Article 32 of the Constitution. Reliance in this connection may be placed on the observations of this Court in M/s Radha Krishna Agarwal & Ors. v. State of Bihar & Ors., [1977] 3 SCC 457.1t appears to us, at the outset, that in the facts and circumstances of the case, the respondent-company IOC is an organ of the State or an instrumentality of the State as contemplated under Article 12 of the Constitution. The State acts in its executive power under Article 298 of the Constitution in entering or not entering in contracts with individual par- ties. Article 14 of the Constitution would be applicable to those exercises of power. Therefore, the action of State organ under Article 14 can be checked. M/s Radha Krishna Agarwal v. State of Bihar, (supra) at p. 462, but Article 14 of the Constitution cannot and has not been construed as a charter for judicial review of State action after the contract has been entered into, to call upon the State to account for its actions in its manifold activities by stating reasons for such actions. In a situation of this nature certain activities of the respondent company which constituted State under Article 12 of the Constitution may be in certain circumstances subject to Article 14 of the Constitu- tion in entering or not entering into contracts and must be reasonable and taken only upon lawful and relevant consideration, it depends upon facts and circumstances of a particular transaction whether heating is necessary and reasons have to be stated. In case any right conferred on the citizens which is sought to be interfered, such action is subject to Article 14 of the Constitution, and must be reasonable and can be taken only upon lawful and relevant grounds of public interest. Where there is arbitrariness in State action of this type of entering or not entering into contracts, Article 14 springs up and judicial review strikes such an action down. Every action of the State executive authority must be subject to rule of law and must be informed by reason. So, whatever be the activity of the public authority, in such monopoly or semi-monopoly dealings, it should meet the test of Article 14 of the Constitution. If a Governmental action even in the matters of entering or not entering into contracts, fails to satisfy the test of reasonableness, the same would be unrea- sonable. In this connection reference may be made to E.P. Royappa v. State of Tamil Nadu & Anr., [1974] 4 SCC 3; Maneka Gandhi v. Union of India & Anr., [1976] 1 SCC 248; Ajay Hasia & Ors. v. Khalid Mujib Sehravardi & Ors., [1981] 1 SCC 722; R.D. Shetry v. International Airport Authority of India & Ors., [1979] 3 SCC 1 and*

> *also Dwarkadas Marlaria and sons v. Board of Trustees of the Port of Bombay, [1989] 3 SCC 293. It appears to us that rule of reason and rule against arbitrariness and discrimination, rules of fair play and natural justice are part of the rule of law applicable in situation or action by State instrumentality in dealing with citizens in a situation like the present one. Even though the rights of the citizens are in the nature of contractual rights, the manner, the method and motive of a decision of entering or not entering into a contract, are subject to judicial review on the touchstone of relevance and reasonableness, fair play, natural justice, equality and non-discrimination in the type of the transactions and nature of the dealing as in the present case."*

17. Since in the facts of the present case, there is a complete failure to follow due process, we find ourselves unable to sustain the order dated 21.06 .2019 passed by the respondent No.3.

18. We accordingly allow the writ petition and quash the the order dated 21.06.2019. We further clarify that in case the respondents do choose to initiate fresh proceedings against the petitioner, we leave it open to them to do so subject to the observation that the proceedings if initiated shall be undertaken in accordance with law and the observations appearing herein above.

Order Date :- 05.09.2019
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