



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

R

DATED THIS THE 1ST DAY OF DECEMBER, 2022

BEFORE

THE HON'BLE MR JUSTICE M.NAGAPRASANNA

WRIT PETITION NO.20978 OF 2022 (GM-TEN)

BETWEEN:

1. KRISHI INFRATECH
A REGISTERED PARTNERSHIP FIRM
HAVING OFFICE AT #19,
3RD FLOOR, 4TH CROSS
3RD PHASE, 5TH BLOCK
BANASHANAKRI 3RD STAGE
BENGALURU-560 085.
REPRESENTED BY ITS PARTNER
M. SURYANARAYANA REDDY
2. M. SURYANARAYA REDDY
AGED ABOUT 52 YEARS
S/O LATE VENKATA SUBBA REDDY
#522, 8TH CROSS, MCECHS LAYOUT
DR. SHIVARAMA KARANTH NAGAR
BENGALURU-560 077.
AND ALSO AT #1025, 25TH CROSS
MCECHS LAY OUT
DR. SHIVARAM KARANTH NAGAR
BENGALURU-560 077.

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

...PETITIONERS

(BY SRI. A.S.PONNANNA, SR. ADVOCATE FOR
SRI. VASUDEVA NAIDU S., ADVOCATE)



AND:

1. UNION OF INDIA
REPRESENTED BY ITS SECRETARY
MINISTRY OF RAILWAYS
RAIL BHAVAN, RAISINA ROAD,
NEW DELH- 110 001.
2. EXECUTIVE DIRECTOR
CIVIL ENGINEERING (G)
RAILWAY BOARD
RAIL BHAVAN, RAISINA ROAD
NEW DELHI-110 001.
3. GENERAL MANAGER
SOUTH WESTERN RAILWAY
HEADQUARTERS OFFICE
GADAG ROAD
HUBBLI-580 020.
4. CHIEF ADMINISTRATIVE OFFICER (CONSTRUCTION)
SOUTH WESTERN RAILWAY
18, MILLERS ROAD
BENGALURU-560 046.
5. DEPUTY CHIEF VIGILANCE OFFICER
SOUTH WESTERN RAILWAY
HEADQUARTERS OFFICE
EAST BLOCK, VIGILANCE BRANCH
GADAG ROAD
HUBBALLI 580 020

...RESPONDENTS

(BY SRI.M.B.NARGUND, ADDL. SOLICITOR GENERAL
a/w SRI.SHANTHI BHUSHAN H., DEPUTY SOLICITOR GENERAL)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227
OF THE CONSTITUTION OF INDIA, PRAYING TO SET ASIDE THE
IMPUGNED LETTER NO.2021/CE-I/CBL/9/KRISHI INFRATECH DT
17.10.2022 ANNEXURE-A ISSUED BY R2 AT THE INSTANCE OF THE



R4 BANNING THE BUSINESS DEALINGS WITH THE FIRST PETITIONER AND ALSO WITH THEIR ALLIED/SISTER CONCERNS/AND PARTNERS FOR A PERIOD 5 YEARS COMMENCING WITH IMMEDIATE EFFECT ON INDIAN RAILWAYS AND PRODUCTION UNITS ETC.,

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

ORDER

The petitioners are before this Court calling in question order dated 17-10-2022 issued by the 2nd respondent blacklisting the 1st petitioner or any of its sister concerns or partners to have any business dealings with the 1st respondent/Union of India, Ministry of Railways. For the sake of convenience the petitioners would be referred to as the petitioner unless specifically referred to by their ranking and the respondents as Railways.

2. Heard Sri A.S. Ponnanna, learned senior counsel appearing for the petitioner and Sri M.B.Nargund, learned Additional Solicitor General of India appearing for the respondents.



3. Brief facts that leads the petitioner to this Court, in the subject petition, as borne out from the pleadings, are as follows:

The 1st petitioner is a partnership firm engaged in the business of carrying out construction activities on contract basis for various Government organizations and claims to be in the said business from 2011. Concerning the Railways, the petitioner claims that it has executed all the works that are assigned by the Railways following due process of law and in compliance with Rules and Regulations. The issue in the case does not concern any notice issued inviting tender or award of contract for execution of works. The issue concerns aftermath of award of a particular tender. A tender was notified in which the petitioner had emerged to be a successful bidder which was construction of road over the bridge of railway span composite girder and PSC girder at Yeswanthpur – Yelahanka section.

4. The commencement of work had happened on 05-06-2015. The concerned authority notified an order of completion on 05-11-2018. After about 2 years of completion



of construction work, statement of charges/ misconduct against the petitioner comes to be issued on 10-08-2021 enclosing statement of charges directing the petitioner to submit its reply on or before 12-09-2021. The charges were four in number. The petitioner on 08-09-2021 submitted an elaborate reply on each of the charges. On 16-05-2022; a second reply and again on 17-06-2022 a third reply in greater detail and on 01-08-2022, the petitioner as insisted by the respondent/Railways informed that it would attend the office of the respondent on 04-08-2022 along with copies of detailed reply statements that were submitted from time to time. The petitioner claims to have attended the office and explained all the details. What comes about as a result of the said proceeding is the impugned order. The impugned order is dated 17-10-2022 which blacklists the petitioner/firm and bans it in any dealings with the Railways for a period of 5 years. Not stopping at that, on the very same day, a communication is sent to the Tender Inviting Authority and the Tender Inviting Authority rejects the bid of the petitioner on the ground that the petitioner has been



blacklisted on 17-10-2022. It is these actions that are called in question in the subject petition.

5. The learned senior counsel appearing for the petitioners, though has urged several contentions, what would merit consideration for the present is the contention that the order which blacklists the petitioner bears no application of mind as it contains no reasons. It is his submission that the order blacklisting has serious consequence upon the petitioner and the immediate consequence is non-consideration of his case in the tender on the ground that he has been blacklisted. Therefore, he submits that the order that blacklists the petitioner is untenable and requires to be reconsidered. He would submit that in the event the Court would not be considering the issue with regard to non-application of mind in the impugned order, he would then make his submissions on merits of the matter.

6. The learned Additional Solicitor General representing the respondent/Railways would refute, on the threshold, the issue that is raised by the learned senior counsel for the



petitioner with regard to non-application of mind on the part of the respondent in passing the impugned order and submits that the order need not be reasoned one. That charges were framed against the petitioner/Firm, notice was issued to it, personal hearing was accorded and then the order comes to be passed. With all these proceedings, there is compliance with the principles of natural justice and, therefore, the order need not be reasoned. He would submit that the petitioner has committed a grave misconduct insofar as the road over the bridge that it had constructed had collapsed, endangering life of road users. He would place reliance upon the judgment of the Apex Court in the **STATE OF ODISHA AND OTHERS v. PANDA INFRAPROJECT LIMITED** - (2022) 4 SCC 393 to buttress the aforesaid submission.

7. I have given my anxious consideration to the submissions of the respective learned senior counsel and perused the material on record. In furtherance whereof, what would merit consideration at this juncture is,



"Whether the order blacklisting the petitioner and banning it, in business for five years, suffers from want of application of mind?"

8. Since the issue to be decided now, is the impugned order, the same is extracted for the purpose of ready reference. The order reads as follows:

"Sub: Banning of business dealings with M/s Krishi Infratech (Partnership firm), No.19, Ground Floor, 3rd Floor, 4th Cross, 3rd Phase, 5th Block, BSK 3rd Stage, Bangalore – 560 085 and its allied/sister firms.

M/s Krishi Infratech (Partnership firm) were served with a Memorandum and Statement of charges/misconduct for banning of business dealings with them for indulging malpractices, executed substandard quality of works by deviated firm the contractual agreement with mala fide intention causing pecuniary loss to the Railways in connivance with Railway Officials.

2. Reply to the Memorandum submitted by **M/s Krishi Infratech (Partnership firm)** through South Western Railway has been considered in detail by the Competent Authority, who has concluded that M/s Krishi Infratech (Partnership firm) has indulged in malpractices, executed substandard quality of works in connivance with Railway Officials, violating general conditions of contract.

3. It has therefore, been decided by Ministry of Railways (Railway Board) to ban business dealing with **M/s Krishi Infratech (Partnership firm), No.19, Ground Floor, 3rd floor, 4th cross, 3rd phase, 5th block, BSK 3rd Stage, Bengaluru-560085 and also with their allied/sister concerns/and partners for a period of 05 (five) years commencing with immediate effect on Indian Railways and Production Units etc.**



4. Receipt of this letter may please be acknowledged."

What precedes the order needs to be considered *albeit* in brief. Statement of charges was issued against the petitioner concerning contract agreement of the year 2017 and the said statement of charges was communicated to the petitioner on 10-08-2021. The petitioner on 08-09-2021 replies in elaboration every one of the charges. The reply did not stop at that. Other replies were also submitted from time to time; one on 17-06-2022 and again when the petitioner was called to the office for hearing on 04-08-2022. All these replies were in great elaboration, which the learned senior counsel for the petitioner would submit had completely demolished the charges. It is his further contention that personal hearing was accorded only on charge No.4 as it was laid later and not on any other charge. Nonetheless, the replies given by the petitioner on their perusal would indicate that they are in great elaboration. Certain procedure is also stipulated by way of codes. Code No.1027 depicts procedure to be followed by the Railway Board of banning business applicable to all Ministries of Government of



India. Insofar as Railways are concerned, Clause (g) of Code No.1030 is required to be followed. Clause (g) reads as follows:

"(g) Procedure to be followed by Railways/ Production Units, etc. for Banning of business with a Contractor/Firm

The following procedure will be followed:

(i) All cases of banning of business with building contractors will be dealt with by the Ministry of Railways. The Railways/Production Units, etc., therefore, should send their proposals with a self-contained note, which should also contain particulars of all the Partners and allied firms, including their addresses, a draft Show Cause Notice in form as per Annexure-10.7 with a statement of charges/ misconduct, to the Railway Board for further action. All such proposals initiated on the basis of the Vigilance or CBI reports and the proposals initiated by the concerned Executive Branches on the Railways on their own where the building contractor is suspected by the concerned Head of the Department should be sent to the Vigilance Directorate through the Railway's Vigilance Branch. However, such proposals initiated by the concerned Executive Branches on the Railways on their own which do not attract any vigilance angle from the point of view of involvement of Officers/Staff therein, shall be sent by the Railways to the concerned Directorate in the Board's Office. The communications to and from the contractor/firm shall, however, be routed through the Railway concerned.

(ii) Banning order when issued shall be applicable to all Railways/Production Units, Subordinate Offices and PSUs under Ministry of Railways to whom copies of the orders shall be sent.

(iii) For banning business by all the Ministries with a contractor/firm, the same procedure as referred in para(g) (i) above shall apply, except that prior approval of Ministry of Urban Development would be necessary before serving the show cause notice upon the firm concerned and also before



issuing final order of banning of business with the contractor/firm.

(iv) Where banning is contemplated/ordered, separate action for removal from the list of approved contractors is not called for. It would be automatic, once the banning order is issued."

The procedure stipulated under the Code is for issuance of show cause notice calling for explanation and then passing of orders. The petitioner was issued statement of charges and it submitted its reply as observed hereinabove. What comes of the reply is the order impugned dated 17-10-2022 (*supra*).

9. The impugned order at the first paragraph notices that memorandum and statement of charges was served on the petitioner for misconduct. Paragraph-2 notices that the reply is given by the petitioner and paragraph-3 reads that the Ministry of Railways have decided to ban business dealings with the petitioner for 5 years. Except these three paragraphs there is no mention even to the extent of a word concerning reply submitted by the petitioner except saying that the Railways have considered the reply in detail and have concluded for banning. It does not even mention that the reply is not found



to be satisfactory. It is this action that does not inspire confidence of the Court.

10. It is not in dispute that the impugned order is an order blacklisting the petitioner or banning it for business for a period of five years commencing from 17-10-2022. Therefore, the order has economic and civil consequences upon the petitioner. Any order having civil or economic consequences should bear application of mind. Application of mind is discernible only when the order contains reasons, as reasons are live links between the decision maker and the decision taken. A perusal at the impugned order would not indicate even a semblance of application of mind on the part of the Competent Authority who takes away the right of the petitioner to enter into a trade for a period of 5 years. Such an order which has a sweeping ramification could not have been casually passed by the respondent/Railways.

11. It is now well settled that where an authority makes an order which has the effect of affecting civil or economic rights of a person and which action is liable to be reviewed by



the constitutional Courts as provided under the Constitution, it must record reasons in support of the order that it makes. It hardly requires any emphasis that compulsion of disclosure of reasons guarantees consideration and application of mind; it would introduce clarity and minimize arbitrariness. Therefore, a reasoned order is always desirable by any judicial, quasi judicial or administrative functionaries to pass, for the reason, that reasons are the heartbeat of a conclusion, without which the order becomes lifeless. The order impugned does not indicate any of the tenets of *audi alteram partem*. Merely giving a show cause notice and seeking a reply would not suffice. The reply must be considered and that consideration should bear presence in the order that would be passed on consideration of such reply, failing which, it would demonstrate an inscrutable face of the sphinx. On this solitary ground, in the considered view of this Court, the order is rendered unsustainable.

12. Insofar as the judgment relied on by the learned Additional Solicitor General in the case of **PANDA INFRAPROJECT LIMITED** (*supra*) is concerned, the same



would not be applicable to the facts of the case at hand, as that was concerning observations of principles of natural justice to the extent where an opportunity was given to show cause and reply was sought for from the hands of the Contractor who was sought to be blacklisted. The judgment does not consider the issue whether the order of blacklisting must contain reasons or otherwise.

13. In view of the preceding analysis *qua* the order dated 17-10-2022, the Court is of the considered view that the same is to be obliterated, as there are no reasons indicated in the order to blacklist the petitioner. It is trite that, **“an unreasoned order, is an unreasonable order”**.

14. For the aforesaid reasons, I pass the following:

ORDER

- (i) Writ Petition is allowed in part and the order dated 17-10-2022 passed by the Railways stands quashed.
- (ii) The matter is remitted back to the hands of the respondent No.2 to pass appropriate orders in accordance with law, bearing in mind the observations made in the course of



this order as also the justification tendered by the petitioner, in replies to the notice on 08-09-2021, 16-05-2022 and 17-06-2022.

- (iii) The petitioner shall also be afforded an opportunity of hearing on all the charges where it has not been afforded opportunity of hearing.
- (iv) Consequential action taken pursuant to the order dated 17-10-2022 shall remain subject to further orders that would be passed by the authorities in terms of these proceedings. The authorities shall pass appropriate orders within four weeks from the date of receipt of a copy of this order, if not earlier.
- (v) All other contentions other than the one considered hereinabove shall remain open.

**Sd/-
JUDGE**

MV
List No.: 1 Sl No.: 103