

IN THE HIGH COURT OF TELANGANA AT HYDERABAD

W.P. No. 518 of 2023

Between:

M/s Anjana Sravani Enterprises

... Petitioner

And

The State of Telangana and others

... Respondents

JUDGMENT PRONOUNCED ON: 24.03.2023

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

1. Whether Reporters of Local newspapers : yes
may be allowed to see the Judgment?
2. Whether the copies of judgment may be
marked to Law Reporters/Journals? : yes
3. Whether Their Lordships wish to
see the fair copy of the Judgment? : yes

SUREPALLI NANDA, J

THE HON'BLE MRS JUSTICE SUREPALLI NANDA**W.P. No. 518 of 2023**

% 24.03.2023

Between:

M/s Anjana Sravani Enterprises

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.....Respondents

< Gist:

> Head Note:

! Counsel for the Petitioners : Mr. Ponnam Mahesh Babu

^ Counsel for the Respondent No.1: G.P. for Medical & Health

^ Counsel for the Respondent Nos. 2 to 4:

Dy Solicitor General of India

? Cases Referred:

1. (2014) 14 SCC 731

2. (2020) 18 SCC 550

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

W.P. No. 518 of 2023

ORDER:

Heard the learned Counsel for petitioner and the Learned Government Pleader for Medical Health and Family Welfare.

2. The prayer pleaded by the petitioner in the present writ petition is as follows:

"to issue order, Writ or direction more particularly one in the nature of Mandamus declaring the action of respondent No. 4 in black listing and terminating the services of the petitioner vide letter No.523-D/25/13/DIET/2017-Gen-V-II, dated 26.12.2022 without looking into the explanation submitted by the Petitioner as illegal, arbitrary and violative of principles of natural justice apart from violative of Fundamental Rights under Articles 14 and 21 of the Constitution of India and consequently set aside the same."

3. The case of the petitioner, in brief, is as follows:

a) The petitioner is a Diet Contractor and had participated in the e-tender notice Bid No GEM/2021/B/1636730, dated 02.11.2021 to provide Health Care and Kitchen Dietary Services in ESIC Super Specialty Hospital for a period of one

year from 01.01.2022 to 31.12.2022 and the said bid had been awarded to petitioner as successful bidder. Since then, the petitioner had been providing satisfactory services to the patients and Doctors.

b) To the surprise of the petitioner, a show cause notice has been issued by the 4th respondent on 03.12.2022 stating that the Director (FAC), MIMS, Hyderabad vide letter Rc.No.10560/P1/2021 dated 11.11.2022, the experience certificate of ESI, Nacharam, submitted by the petitioner is fake and not genuine and further that the same certificate has been submitted by the petitioner for GeM bid.

c) The petitioner had submitted a reply to the said show cause notice dated 05.12.2022 denying all the allegations against the fake certificate and sought the details of the enquiry conducted behind the back of the petitioner.

d) The 4th respondent without taking into consideration the explanation of the petitioner had mechanically issued the impugned letter No.523-D/25/13/DIET/2017-Gen-V-II, dated 26.12.2022 terminating the petitioner's service from 01.02.2023 and blacklisting the petitioner from participating

in future tender/bids floated by ESIC for 3 (Three) years from the date of blacklisting and revoking the bank guarantee No. 04250100000116 dated 21.12.2021.

d) The petitioner had filed the W.P.No. 42999 of 2022 before this High Court against suspension of the petitioner's service and blacklisting the petitioner firm and the interim orders were passed suspending the letter Rc.No.10560/P1/2021, dated 11.11.2022 issued by the Director (FAC), MIMS, Hyderabad. Despite the pending Writ Petition, the 4th respondent had issued the proceedings impugned letter No.523-D/25/13/DIET/2017-Gen-V-II, dated 26.12.2022, which is already being challenged in W.P.No. 42999 of 2022.

e) The action of the 4th respondent is based on the frivolous complaint of the unsuccessful bidders with malafide and ulterior motive. The coercive Action/s taken against the petitioner vide impugned letter No.523-D/25/13/DIET/2017-Gen-V-II, dated 26.12.2022 is illegal and arbitrary. Blacklisting takes away the petitioner's right to participate in

e-tender and tarnishes the reputation and brings the character into question.

f) Even though the present lease period ends on 31.12.2022, the impugned order was passed blacklisting the petitioner in the future bids of ESIC and terminating the petitioner's service from 01.02.2023 and for the petitioner to participate in fresh bids of ESIC for the year 2023, the impugned letter passed by the 4th respondent dated 26.12.2022 have to be set aside.

g) The petitioner had challenged the order passed by the 4th respondent dated 26.12.2022 vide W.P.No.46490 of 2022 and the same was withdrawn giving liberty for including the 3rd respondent herein. Hence, this Writ Petition.

PERUSED THE RECORD

4. The order impugned dated 26.12.2022 issued by the 4th respondent reads as under:

"Please refer to this office show cause notice cited under reference (3) wherein you were directed to show cause as to why

1. the contract mentioned under reference 1 & 2 with your firm M/s. Anjana Sravani Enterprises for supplying

patient diet to ESIC Super Speciality Hospital, Sanathanagar should not be terminated.

2. your firm be blacklisted from participating in the future tenders/bids floated by ESIC for three years from the date of blacklisting.

3. the bank guarantee No. 04250100000116 dated 21.12.2021 for Rs 1,31,608/- issued by Axis Bank be not revoked

Against the above notice, you submitted a reply cited under reference (4). On perusal of the said reply, the following are the observations:

As per show cause notice it is not clear regarding who made complaint and when enquiry was conducted and who is the enquiry officer on the allegations on my experience certificate and without following natural justice by putting me on notice regarding complaint against and not call for any explanation on the said complaint state way proposed to put me in black list by terminating my services by revoking my bank guarantee for Rs 131608/- is contrary to the terms of our contract agreement (point No 3 of the reply)

As already informed vide reference (3), a letter No. RC.No.10560/P1/2021 dated 11.11.2022 was received from the Director (FAC), Insurance Medical Services, Hyderabad informing that work experience certificate from M/s Maharajah's Institute of Medical Sciences submitted by you for the tender for patient diet floated by ESIS Hospital, Nacharam is fake and not genuine. A

letter No.Ref.No.MIMS/ESI/Enquiry/SNR/2022, dated 10.10.2022 from M/s Maharajah's Institute of Medical Sciences informing the above was also enclosed to the said letter. Based on the above, as the same certificate was also submitted by you for the GeM bid floated by this Office, the show cause notice was issued. The said show cause notice was issued in the interest of natural justice and an opportunity was given to you to submit the reasons for the issues raised in the said notice.

That I deny all the allegations, averments and contentions raised in the impugned notice as false, and contrary to tender conditions and contract agreement I never submitted any fake experience certificate which evident from the experience certificate issued by your own Hospital as I am satisfactorily working from last three years as such the allegations made against me is unsustainable (Point No.4 of the reply)

From the above submission, it is evident that you have not specifically commented on the certificate purportedly issued by M/s Maharajah's Institute of Medical Sciences and submitted by you for the GeM tender for patient diet services which is the reason for issue of show cause notice. As M/s Maharajah's Institute of Medical Sciences already confirmed the certificate as fake and not genuine vide their letter dated 10.10.2022 please be informed that

1. the contract mentioned under reference 1 & 2 with your firm M/s. Anjana Sravani Enterprises for supplying patient diet to ESIC Super Speciality Hospital Sanathanaga shall stand terminated wef 01.02.2023
2. your firm is blacklisted from participating in the future tenders/bids floated by ESC for three years from the date of blacklisting.
3. The bank guarantee No. 04250100000116 dated 21.12.2021 for Rs 1,31,605 issued by Axis Bank shall be revoked.

This issue with the approval of the competent authority.

5. The orders passed in I.A.No.1 of 2023 in Writ Petition 518 of 2023, dated 26.01.2023 is extracted below:

"Order

Notice before admission.

Learned Government Pleader for Medical and Health takes notice on behalf of respondents No.1 and 2 and waives further notice and seeks time to file counter.

Learned Deputy Solicitor General takes notice on behalf of respondent No.3 and waives further notice. Mr.Pasham Srinivasulu, learned counsel takes notice on behalf of respondent No.4 and waives further notice and seeks time to file counter.

Registry is directed not to take out notice to respondents No.1 to 4 in view of this waiver.

Learned counsel for the petitioner submitted that the petitioner while applying for a tender notification to the respondent No.4 institute, had only submitted an experience certificate issued by the ESI Hospital at Sanathnagar, Hyderabad dated 08.02.2020. It is submitted that the respondents have issued a show cause notice dated 03.12.2022 alleging that the petitioner has submitted a fake and not genuine certificate from Maharajah's Institute of Medical Sciences. The petitioner submits that he has already submitted a reply dated 05.12.2022 to the show cause notice, but without considering the contentions of the petitioner that he has not submitted any fake certificates, the order dated 26.12.2022 has been passed blacklisting the petitioner from participating in the future tenders/bids floated by ESIC Hospital for three years from the date of blacklisting and the contract for supplying patient diet to ESIC, Sanathnagar has been terminated with effect from 01.02.2023.

Learned counsel for the petitioner further submitted that this is in clear violation of the principles of natural justice as the contentions of the petitioner have not been considered by the authorities and the petitioner has been blacklisted and the contract has been terminated after the end of his tenure of the tender. He submitted that a fresh tender notification has already been issued and the petitioner's tender would not be considered, if the blacklisting order is not suspended.

List on 10.02.2023.

In the meantime, there shall be interim suspension of the letter of termination dated 26.12.2022."

6. Order dated 10.03.2023 passed in W.P.No.42999 of 2022, whereunder the petitioner herein challenged the action of the 3rd respondent thereunder in black listing and suspending the services of the petitioner vide Memo No.1511/ESI/HL/SNR/S1/2022, dated 24.11.2022 without looking into the explanation submitted by the petitioner as illegal arbitrary and violative of principles of natural justice, and in particular, paras 19 and 20 of the said order read as under:

"19. This Court opines that the order impugned as borne on record clearly indicates the fact that the Petitioner's explanation/reply dated 30.09.2022 had not been considered at all by the 3rd Respondent nor the Petitioner had been provided a reasonable opportunity of hearing or putting forth Petitioner's case prior to passing the impugned order.

20. Taking into consideration the interim order of this Court dated 29.11.2022 passed in WP No.42999/2022 and also the above referred facts and circumstances and the law laid down by the Apex Court in the

judgment reported in (2020) 18 SCC 550 – in Deffodills Pharmaceuticals Limited and Another vs. State of Uttar Pradesh and Another and also the law laid down by the Apex Court in Kulja Industries Ltd., vs. BSNL reported in (2014) 14 SCC 731 and the specific averments in paras 6 to 8 of the counter affidavit filed by Respondent No.2 which clearly indicates that the order impugned 13 has been passed upon the directions of the DIMS on the basis of confirmation received from the MIMS, Vijayanagaram District, A.P. as fake and the same admittedly was on an enquiry behind the back of the Petitioner, without giving notice to the Petitioner without even looking into or considering the petitioner's explanation dated 30.09.2022 to the Office Memo dated 22.09.2022 and in clear violation of principles of natural justice, this Court opines that the Petitioner is entitled for the relief as prayed for in the writ petition and accordingly the writ petition is allowed setting aside the order impugned i.e., Memo No.1511/ESI/HL/SNR/S1/2022, dated 24.11.2022. However, there shall be no order as to costs.

7. The counter affidavit filed by the respondent No.4, in particular, paras 5, 6 and 12 reads as under:

"5. In reply to para 3 of the wp it is submitted that the letter No.523- D/25/13/DIET/2017-Gen-V-II dated 26-12-2022 was issued based on the explanation

submitted by the petitioner vide letter dated 05.12.2022 which was found not satisfactory.

6. In reply to the para 4 to 7 of the wp, it is submitted that for qualifying in the said e-Tender notice Bid dated 2-11-2021, a bidder should, inter alia, have experience in providing Patient Diet Supplies in reputed hospitals having minimum bed strength of 100 beds, preferably in Govt. and Public Sector, Corporate, Tertiary care hospitals for at least 2 years in the last five years i.e., 2016-2017 to 2020-21.

It is submitted that the Petitioner participated in the said bid and was found qualified, inter alia, on the basis of experience certificate submitted by the petitioner which was purportedly issued by M/s. Mahrajah's Institute of Medical Sciences.

It is submitted that M/s. Mahrajah's Institute of Medical Sciences confirmed that the said certificate submitted by the petitioner is fake and not genuine vide their letter dated 10-10-2022. Which was resulted to termination of contract and also blacklisting the petitioner for a period of 3 years by this Office, and the issue was not regarding the performance of contract but submission of fake document for getting eligibility for qualifying in the e-Tender Bid No GEM/2021/B/1636730 dated 02-11- 2021.

As M/s. Mahrajah's Institute of Medical Sciences confirmed to have not issued the said

certificate, a notice dated 3-12-2022 was issued by this Office giving reasonable opportunity to the petitioner. As the reply dated 5-12-2022 given by the petitioner was not satisfactory, therefore letter dated 26.12.2022 was issued after considering his explanation.

It is submitted that the letter dated 26.12.2022 was issued after reviewing the averments in reply dated 05.12.2022 submitted by the petitioner. The point wise averments were denied in the said letter dated 26.12.2022. Hence, the statement that this Office has not considered the petitioners explanation is incorrect.

12. The averments made in paragraphs 14 and 15 of the WP, The letter dated 26.12.2022 was issued after giving reasonable opportunity to the petitioner and following principles of natural justice based on the letter issued by M/s Mahrajah's Institute of Medical Sciences and do not violate the Fundamental Rights under Articles 14 and 21 of the Constitution of India. Therefore, the letter dated 26.12.2022 is legal and valid."

DISCUSSION AND CONCLUSION

8. A bare perusal of the order impugned dated 26.12.2022 of the 4th respondent herein clearly indicates that the letter vide Rc.No.10560/P1/2021, dated 11.11.2022 issued by the Director (FAC),

Insurance Medical Services, Hyderabad, Telangana State as the sole basis for issuance of the order impugned in the present writ petition.

9. A bare perusal of the contents of Rc No.10560/P1/2021, dated 11.11.2022 addressed to the 2nd respondent herein clearly indicates that specific reliance had been placed on the letter dated 10.10.2022 vide letter ref.No.MIMS/ESI/ENQUIRY /SNR/2022, from Maharajah's Institute of Medical Sciences, Vizianagaram, A.P. addressed to the Medical Superintendent, ESI Hospital, Nacharam having stated that the Diet experience certificate in r/o M/s Anjana Sravani Enterprises, i.e the petitioner herein is fake and not genuine certificate and the certificate was not issued by them and further vide memo dated 11.11.2022 certain specific instructions had been issued to the 2nd respondent herein to take immediate necessary action as per the letter ref.No.MIMS/ESI/ENQUIRY/SNR/2022, dated 10.10.2022 from Maharajah's Institute of Medical Sciences, Vizianagaram, A.P. and to black list the

agency as per rules duly forwarding the said copy of the letter dated 10.10.2022 to the 2nd respondent herein.

10. The present order impugned dated 26.12.2022 issued by the 4th respondent to the petitioner in its conclusion very clearly observed that as M/s Maharajah's Institute of Medical Sciences already confirmed the certificate as fake and not genuine vide their letter dated 10.10.2022 the following three decisions as having been taken against the petitioner unilaterally, in clear violation of principles of natural justice, arbitrarily.

1. the contract mentioned under reference 1 & 2 with your firm M/s. Anjana Sravani Enterprises for supplying patient diet to ESIC Super Speciality Hospital Sanathanaga shall stand terminated wef 01.02.2023
2. your firm is blacklisted from participating in the future tenders/bids floated by ESC for three years from the date of blacklisting.
3. The bank guarantee No. 04250100000116 dated 21.12.2021 for Rs 1,31,605 issued by Axis Bank shall be revoked.

11. It is also relevant to take note of the fact that the petitioner herein challenged the action of the 2nd respondent in black listing and suspending the services of the petitioner vide memo No.1511/ESI/HL/SNR/S1/2022, dated 24.11.2022 without looking in to the explanation submitted by the petitioner as illegal, arbitrary and violative of principles of natural justice, apart from violative of fundamental Right under Articles 14 and 21 of the Constitution of India by filing Writ Petition No.42999 of 2022 and this Court vide its order dated 10.03.2023 allowed the writ petition as prayed for duly setting aside the order impugned thereunder of the 2nd respondent herein vide memo No.1511/ESI/HL/SNR/S1/2022, dated 24.11.2022.

12. This Court opines that the order impugned in the present writ petition passed by the 4th respondent dated 26.12.2022 vide letter No.523-D/25/13/DIET/2017-Gen-V-II, needs to be set aside for the following reasons:

a) W.P.No.42999 of 2022 filed by the petitioner had been allowed vide order dated 10.03.2023.

b) The order impugned refers to letter No. Rc.No. 10560/P1/2021, dated 11.11.2022 of the Director (FAC) Insurance Medical Services, Hyderabad informing that work experience certificate from M/s Maharajah's Institute of Medical Sciences submitted by the petitioner for the tender for patient Diet floated by ESIS Hospital, Nacharam is fake and not genuine and since Maharajahs Institute of Medical Sciences already confirmed the certificate as fake and not genuine vide their letter dated 10.10.2022, the present order impugned dated 26.12.2022 was issued to the petitioner by the 4th respondent herein, without independent application of mind by the 4th respondent on the subject issue erroneously, irrationally and mechanically.

c) The specific case of the petitioner as putforth by the petitioner in his explanation dated 05.12.2022 addressed to the 4th respondent herein in response to the show cause notice dated 22.11.2022 issued by the 4th respondent herein, is that the petitioner is unaware with regard to the complaint made against the

petitioner behind the back of the petitioner, nor the petitioner participated in the enquiry conducted pertaining to the genuinity of Diet Services experience certificate of M/s Anjana Sravani Enterprises i.e. the petitioner herein, issued by the Maharajah's Institute of Medical Sciences, but the same however, had not been curiously considered at all by the 4th respondent.

d) A bare perusal of Para 5, 6 and 12 of the counter affidavit filed by the respondent No.4 (extracted above) also clearly indicates that the order impugned in the present writ petition dated 26.12.2022 issued by the 4th respondent is based on the letter issued by M/s Maharajah's Institute of Medical Sciences alone and a bare perusal of the contents of the letter Rc.No.10560/P1/2021, dated 11.11.2022 of the Director (FAC) Insurance Medical Services, Hyderabad addressed to the 2nd respondent herein clearly indicates specific directions to the 2nd respondent to black list the petitioner agency as per the letter dated 10.10.2022 of MIMS, vide reference No.MIMS/ESI/Enquiry /SNR/2022.

e) This Court opines that fundamentals of fair play requires person concerned should be given an opportunity to represent his case before he is put on the black list. In the present case, admittedly, as borne on record the fact that M/s Maharajah's Institute of Medical Sciences already confirmed the certificate as fake and not genuine vide their letter dated 10.10.2022, which was the basis for passing the order impugned, this Court opines that the order impugned is not only in clear breach of principles of natural justice , but also very unreasonable, because admittedly, as borne on record, the petitioner was not heard nor provided with a reasonable opportunity prior to proposing to black list or debar the petitioner.

f) The Apex Court in its judgment (2020) 18 SCC 550 in Deffodills Pharmaceuticals Limited and Another vs. State of Uttar Pradesh and Another in its head note observed as under:

A. Government Contracts and Tenders Blacklisting - Effect of Hearing concerned person prior to blacklisting Essentially of Passing of adverse order based on assumption, that too

without complying with principles of natural Justice-Impermissibility of - Unilaterally passing adverse order against appellant for certain actions of its erstwhile Director who had left company long back-On facts held, order preventing procurement from appellant was of indefinite duration and disproportionate as it was passed on basis of assumption without hearing appellant - Considering long duration of operation of adverse order. Supreme Court itself decided matter without remanding matter to original authorities, and quashed the adverse order - Held, blacklisting has the effect of preventing a person from privilege and advantage of entering into lawful relationship with 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 person concerned should be given an opportunity to represent his case before he is put on the blacklist.

g) The Apex Court in the aforesaid Judgment, in particular, at Para 14 observed as under :

14. The decisions in Erusian Equipment & Chemicals Ltd. v. State of WB and Raghunath Thakur v. State of Bihar as well as later decisions have now clarified that before any executive decision-maker proposes a drastic adverse action, such as a debarring or blacklisting order, it is necessary that opportunity of hearing and representation against the proposed action is given to the party likely to be affected. This has been stated in unequivocal terms in Raghunath Thakur as follows: (Erusian Equipment & Chemicals case. SCC p. 75. para 20) "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."

h) The Apex Court in its judgment in Kulja Industries Ltd., vs. BSNL reported in (2014) 14 SCC 731, very clearly held that before proposing to pass a black listing order or debarring orders the parties had to be given hearing followed by an appropriate reasoned order.

13. Taking into consideration, the above referred facts and circumstances, and also the interim orders of the Court dated 06.01.2023 passed in W.P.No.518 of 2023, which are in force as on date, and the law laid down by the Apex Court, in the judgment reported in (2020) 18 SCC 550 – in Deffodills Pharmaceuticals Limited and Another vs. State of Uttar Pradesh and Another and also the law laid down by the Apex Court in Kulja Industries Ltd., vs. BSNL reported in (2014) 14 SCC 731

and the specific averments made in the counter affidavit of the 4th respondent at paras 5, 6 and 12 extracted above,, which clearly indicate that the order impugned dated 26.12.2022, has been passed on the basis of confirmation received from MIMS, Vijayanagaram District, A.P. as fake, and the same admittedly, was on an enquiry behind the back of the petitioner and in clear violation of principles of natural justice, this Court opine that the petitioner is entitled for the relief as prayed for in the present writ petition and accordingly, the writ petition is allowed as prayed for and the order impugned passed by the 4th respondent vide letter No523-D, dated 26.12.2022 is set aside. However, there shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

MRS JUSTICE SUREPALLI NANDA

Dated: 24.03.2023

Note: L.R.Copy to be marked
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