

Court No. - 21

Case :- WRIT - C No. - 15363 of 2022

Petitioner :- M/S Bcits Pvt. Ltd.

Respondent :- Purvanchal Vidhyut Vitran Nigam Ltd. And Another

Counsel for Petitioner :- Ujjawal Satsangi

Counsel for Respondent :- Udit Chandra

Hon'ble Manoj Kumar Gupta,J.

Hon'ble Dinesh Pathak,J.

1. The short issue that arises for consideration in the instant writ petition is whether show cause notice issued to the petitioner seeking explanation as to why it should not be black listed and debarred from entering into contracts for next two years is a valid notice or not.

2. The petitioner-Company was given contract of “Door to Door Meter Reading, Bill Generation and Serving through SBM/Mobile App/Other Suitable Means with Downloading” by the respondent-Corporation on 23.7.2018 for a period of three years. Subsequently it was extended for two months more. On 6.06.2020, the petitioner was issued a notice threatening to blacklist it on account of alleged irregularities on its part. It was replied by the petitioner on 19.6.2020 and according to the case of the petitioner, the notice was dropped, as no action was taken in pursuance thereof. After about a year and a half, another notice dated 13.8.2021 was issued with the same/similar allegations. It was replied by the petitioner company on 23.8.2021 but thereafter no further action was taken. Yet another notice dated 18.8.2021 with the same allegations was issued, again threatening the petitioner to blacklist it. It was replied to by the petitioner company on 30.10.2021. The respondent-Corporation after considering the explanation arrived at a definite finding that the explanation offered is unsatisfactory and the alleged irregularities and breaches committed by the Company has resulted in tarnishing the image

of the respondent-Corporation. Accordingly, the petitioner company has been called upon to show cause as to why it should not be black listed/debarred for a period of two years.

3. On 25.5.2022, we passed the following order:

"It is urged by Sri Prashant Chandra, learned Senior Advocate, assisted by Sri Kartikeya Dubey and Sri Ujjawal Satsangi, that the impugned show cause notice is illegal as it has been issued with premeditation to debar and blacklist the petitioner-firm for a period of two years, inasmuch as, the respondents have already disclosed their mind by recording finding to the effect that the explanation submitted by the petitioner-firm in response to earlier notice, has not been found to be satisfactory. In support of the said contention, learned counsel for the petitioner has placed reliance upon the judgment of Supreme Court in *Siemens Ltd. vs. State of Maharashtra and Others*, 2006 (13) SCALE 297 and *ORYX Fisheries Private Ltd. vs. Union of India and Others*, 2010 (13) SCC 427.

Sri Udit Chandra, learned counsel for the respondent corporation, seeks time to obtain instructions by tomorrow.

Accordingly, the matter is adjourned.

Put up as fresh tomorrow."

4. Sri Udit Chandra, learned counsel for the respondent-Corporation, after seeking instructions, states that he does not wish to file any counter affidavit. He submitted that the notice is strictly valid inasmuch as the respondent-Corporation has only examined the explanation offered by the petitioner-Company and having found the same to be unsatisfactory, issued fresh notice for black listing the petitioner firm.

5. In ***Siemens Ltd. vs. State of Maharashtra and Others*, 2006 (13) SCALE 297** a challenge was made to a show cause notice on the ground that if it has been issued with pre-meditation then issuing notice and seeking explanation would not serve any purpose as the person issuing notice had already made up its mind. The contention was upheld. The relevant observations made in this behalf in Paragraphs No. 8, 9 and 10 are reproduced below:

"8. Although ordinarily a writ court may not exercise its discretionary jurisdiction in entertaining a writ petition questioning a notice to show cause unless the same inter alia appears to have been without jurisdiction as has been held by this Court in some decisions including *State of Uttar Pradesh v. Brahm Datt Sharma and Anr.* MANU/SC/0711/1987: [1987] 2SCR444, *Special Director and Anr. v. Mohd. Ghulam Ghouse and Anr.* MANU/SC/0025/2004: 2004(164) ELT141 (SC) and *Union of India and another v. Kunisetty Satyanarayana* MANU/SC/5137/2006: AIR2007SC906 but the question herein has to be considered from a different angle, viz, when a notice is issued with pre-meditation, a writ petition would be maintainable. In such an event, even if the courts direct the statutory authority to hear the matter afresh, ordinarily such hearing would not yield any fruitful purpose [See *K.I. Shephard and Ors. v. Union of India and Ors.* MANU/SC/0643/1987: (1988) ILLJ162SC]. It is evident in the instant case that the respondent has clearly made up its mind. It explicitly said so both in the counter affidavit as also in its purported show cause.

9. The said principle has been followed by this Court in *V.C. Banaras Hindu University and Ors. v. Shrikant* MANU/SC/8170/2006: AIR2006SC2304, stating:

The Vice Chancellor appears to have made up his mind to impose the punishment of dismissal on the Respondent herein. A post decisional hearing given by the High Court was illusory in this case.

In *K.I. Shephard and Ors. etc. etc. v. Union of India and Ors.* MANU/SC/0643/1987 (1988): ILLJ162SC, this Court held:

...It is common experience that once a decision has been taken, there is tendency to uphold it and a representation may not really yield any fruitful purpose.

[See also *Shri Shekhar Ghosh v. Union of India and Anr.* MANU/SC/8616/2006 : (2007)1SCC331 and *Rajesh Kumar and Ors. v. D.C.I.T. and Ors.* MANU/SC/4779/2006 :]2871TR91(SC)]

10. A bare perusal of the order impugned before the High Court as also the statements made before us in the counter affidavit filed by the respondents, we are satisfied that the statutory authority has already applied its mind and has formed an opinion as regards the liability or otherwise of the appellant. If in passing the order the respondent has already determined the liability of the appellant and the only question which remains for its consideration is quantification thereof, the same does not remain in the realm of a show cause notice. The writ petition, in our opinion, was maintainable."

6. Again in *ORYX Fisheries Private Ltd. vs. Union of India and Others, 2010 (13) SCC 427*, the Supreme Court held as follows:

"28. It is no doubt true that at the stage of show cause, the person proceeded against must be told the charges against him so that he can take his defence and prove his innocence. It is obvious that at that stage

the authority issuing the charge- sheet, cannot, instead of telling him the charges, confront him with definite conclusions of his alleged guilt. If that is done, as has been done in this instant case, the entire proceeding initiated by the show cause notice gets vitiated by unfairness and bias and the subsequent proceeding become an idle ceremony."

"32. Therefore, while issuing a show-cause notice, the authorities must take care to manifestly keep an open mind as they are to act fairly in adjudging the guilt or otherwise of the person proceeded against and specially when he has the power to take a punitive step against the person after giving him a show cause notice."

7. In the case at hand, the situation is similar as the respondent-Corporation in the impugned show cause notice has already expressed its mind that the explanation offered is unsatisfactory and the petitioner-Company is guilty of the charges levelled against it.

8. In the above backdrop, even if the petitioner offers its explanation, it would be an empty formality and a futile exercise. Fairness demanded that the respondent should have taken care to keep their mind open to the issues while seeking the explanation. The respondent-Corporation having already held that the explanation is not worthy of acceptance, it could not be treated to be a show cause notice but a decision already taken. We accordingly quash the impugned notice leaving it open to the respondent-Corporation to issue fresh notice in accordance with law, if so advised.

9. The petition stands allowed to the extent indicated above.

(Dinesh Pathak,J.) (Manoj Kumar Gupta,J.)

Order Date :- 26.5.2022

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