

(2016) 04 JH CK 0131

JHARKHAND HIGH COURT

Case No: Writ Petition (C) No. 4456 of 2013

Shiv Shakti Shramik Swawlambi
Sahkari Samiti Ltd.

APPELLANT

Vs

Bharat Coking Coal Limited

RESPONDENT

Date of Decision: April 20, 2016

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (2016) 4 JLR 625

Hon'ble Judges: Mr. Aparesh Kumar Singh, J.

Bench: Single Bench

Advocate: M/s. Raj Nandan Sahay, Senior Advocate and Yashvardhan, Advocate, for the Petitioner; Mr. Anoop Kumar Mehta, Advocate, for the Respondent

Final Decision: Disposed Off

Judgement

@JUDGMENTTAG-ORDER

Mr. Aparesh Kumar Singh, J. - Heard learned counsel for the parties.

2. The order of blacklisting for a period of 5 years inflicted upon the petitioner, a registered (Schedule of Rate) contractor vide Annexure-6 and 6/1 dated 26th April, 2013 are under challenge in the writ petition.

3. After hearing counsel for the parties on 19th September, 2014, notices were issued on the limited question of quantum of period of blacklisting of petitioner.

4. Show cause at Annexure-3 dated 17th April, 2013 preceding the impugned action alleged missing of 3 trucks from Madhuban Coal Washery receiving hopper out of 15 trucks loaded from 1 KPt assisted siding of Phularitand Colliery by the petitioner. Rest of 12 trucks were received at receiving hopper of Madhuban Coal Washery, while other three trucks were accosted and caught at Hirak Road under Bhaghmara Police Station of Dhanbad district. This led to the institution of F.I.R for theft of coal

vide Annexure-A. Undisputedly, the loss alleged in the impugned notice is Rs. 61,785/- for total 32.18 Metric Tones of Coal loaded in the aforesaid three trucks found missing.

5. The same has been challenged by the petitioner on the grounds that factum of theft though alleged cannot be established on the part of the respondents, as it is a matter of criminal investigation.

6. Petitioner is a Co-operative Society which is engaged in transportation work and on account of the impugned order huge amount of admitted dues against transportation work executed, have been withheld totalling Rs. 45 Lacs and odd. The impugned notice does not indicate the period of debarment or penalty, to which the petitioner would have adequately responded. The punishment of debarment for a period of 5 years is disproportionate even to the assumed misconduct as allegedly a loss of Rs. 61,785/- has only entailed due to missing of three trucks, which did not unload at Madhuban Coal Washery. The trucks were under hire from transporter by the petitioner and for that liability upon the petitioner society is too harsh.

7. Reliance has been placed upon the judgment rendered by Apex Court in the case of **Gorkha Security Services v. Government (NCT of Delhi) and others reported in (2014) 9 SCC 105**, paras 21 and 24 thereof. It is submitted that the essential ingredients of show cause notice before a harsh order of debarment is missing. The notice should not only contain the imputation of misconduct, but also indicate the proposed penalty, to which the petitioner may plead mitigation on grounds of seriousness and gravity of the alleged misconduct as also other defences available to the petitioner.

8. Respondents, in their counter affidavit, have defended the impugned action. The allegation of missing 3 trucks found ultimately at Hirak Road under Bhaghmara Police Station of Dhanbad district is sought to be substantiated and complicity on the part of the employees of BCCL with the petitioner agency is also being cited. Two employees of Respondent-BCCL have been dismissed for conniving with the petitioner agency in the theft of coal. Counsel for the respondents submits that adequate opportunity has been granted before imposing punishment of debarment which is wholly proportionate to the alleged misconduct. Therefore, no interference should be warranted.

9. Considered the submissions of the parties in the light of material facts pleaded. In the facts of the case noticed herein above, it is apparent that in the notice at Annexure-3 dated 17th April, 2013 alleging theft of coal through 3 trucks out of 15 loaded at Phularitand Colliery, there is no notice of the proposed penalty sought to be imposed upon the petitioner. Facts of the case reveal that the value of the coal said to have been stolen through three trucks is 61,784/- only. Petitioner in effect therefore did not get a chance to plead against the proposed penalty of debarment of five years. One of the essential ingredients of show cause notice of debarment as

laid down in the judgment rendered by the Apex Court in the case of Gorkha Security Services (Supra), therefore, is apparently missing. The debarment of 5 years for the alleged misconduct is certainly onerous enough to have preceded with a proper notice of the proposed penalty.

10. Since the impugned penalty is in violation of principles of natural justice so far as the period of debarment is concerned, it is quashed and the matter is remitted to respondent No. 4, General Manager (CMC) Contract Management Department, BCCL, Koyla Bhawan, Dhanbad to take fresh decision in accordance with law within a reasonable time on the quantum of punishment.

11. Accordingly, the writ petition is allowed to the limited extent. Pending I.As are closed.