Supreme Court of India
Southern Painters vs Fertilizers & Chemicals ... on 10 September, 1993
Equivalent citations: 1994 AIR 1277, 1994 SCC Supl. (2) 699
Author: M Venkatachalliah
Bench: Venkatachalliah, M.N.(Cj)

PETITIONER:
SOUTHERN PAINTERS

Vs.

RESPONDENT:
FERTILIZERS & CHEMICALS TRAVANCORE LTD.

DATE OF JUDGMENT10/09/1993

BENCH:
VENKATACHALLIAH, M.N.(CJ)
BENCH:
VENKATACHALLIAH, M.N.(CJ)
ANAND, A.S. (J)

CITATION:
1994 AIR 1277 1994 SCC Supl. (2) 699

ACT:

HEADNOTE:

JUDGMENT:

ORDER

1. Petitioner seeks special leave to appeal to this Court from the order dated 17-2-1993 of the Kerala High Court dismissing the petitioner's Writ Appeal No. 280 of 1993. Special leave granted.

2. Appellant is stated to be a firm of partners carrying on business as painting contractors. The appellant was on the list of eight qualified painting contractors on the panel prepared by the respondent-Public Sector Undertaking. Appellant's name was stated to be deleted from the list of qualified contractors on account of what is stated to be a Vigilance Report. Consequently, the respondent did not issue the tender form for the work of 'Anti-Corrosive Coating of the Prilling Tower' of urea plant in its factory to the appellant.

3. Before its name was deleted from the list of qualified contractors, appellant was not notified of the reason for the deletion. The tender forms were issued to the remaining seven contractors, out of

whom only two submitted their quotations and one of them was issued the work order on 6-1- 1993. The appellant aggrieved by the discriminatory treatment filed a writ petition in the High Court of Kerala. The petition was filed on 19-1-1993. The learned Single Judge of the High Court has dismissed the writ petition. The Division Bench dismissed the appellant's appeal, and observed:

> "Admittedly, following the procedure laid down in paras 5.1.1 and 5.1.2 in regard to pre- qualification (as set out in the counter- affidavit of the first respondent) the appellant's name was included in the list of contractors. Initially it was included in a list of 12 contractors as provided in the said rules and subsequently the appellant's name was included in another list of 8 contractors consequent to the approval thereof by the Executive Director (Operation). The tender forms were issued oh 1-6-1992 to the other seven parties, but not to the appellant. A reading of the counter-affidavit and the reply-affidavit will disclose that there was enough relevant material before the FACT for taking a decision not to issue any tender form to the appellant, including the material relating to the inflated measurements given by the appellant in relation to one of the previous contracts."

4. We have heard Shri Sivasubramanium, learned Senior Counsel for the appellant and Shri P.S. Poti, learned Senior Counsel for the respondent. The deletion of the name of the appellant from the list of qualified contractors, says Shri Sivasubramanium, in effect, amounts to blacklisting, and that it is now settled law that before a person's reputation could be so affected, he is entitled to have an opportunity of being heard. We think that Shri Sivasubramanium is right in his submission.

5. The Full Bench decision in V. Punnen Thomas v. State of Kerala1 presents an interesting stage in the development of law on the matter. The facts were somewhat similar. The majority opinion in that case held:

> "Surely, the term, 'civil consequences' means something more than consequences which the person concerned does not like. There must be at least the possibility of an invasion of some civil right of his before it can be said that anything done in respect of him has civil consequences. A mere refusal to afford a man the prospect of doing profitable or unprofitable business with the Government, of entering into advantageous relationships with the Government as it has been put entails no civil consequences however serious a blow that might be to the person concerned. It is said that the impugned order casts a stigma on the petitioner. Assuming that it does, does that by itself attract the principle of natural justice? We think not. The question whether an impugned act involves a stigma or not is relevant only for the purpose of determining whether the act sounds only in the region of contract or involves a punishment attracting the rules of natural justice....
>
> To accept the contention of the petitioner would so widen the scope of the principle of audi alteram pattern and therefore the scope for judicial interference as to seriously hamper the administration. It would mean, for example, that before Government refuses to deal with a person.... it would have to give the person

concerned a hearing." (pp. 84-85)

6. However, in his dissenting opinion, Justice Mathew (as he then was) said: "Government has right like any private citizen to enter into contracts with any person it chooses and no person has a right fundamental or otherwise to insist that Government must enter into a contractual relation with him. A contractual relationship presupposes a consensus of two minds. If Government is not willing to enter into contract with a person, I do not think that Government can be forced to do so. It is one thing to say that Government, like any other private citizen can enter into contract with any person it pleases, but a totally different thing to say that Government can unreasonably put a person's name in a blacklist and debar him from entering into any contractual relationship with the Government for years to come. In the former case, it might be said that Government is exercising its right like any other private citizen, but no democratic government should with impunity passing proceeding which will have civil consequences to a citizen without notice and an opportunity of being heard. The reason why the proceeding for blacklisting the petitioner and debarring him from taking Government work for ten years was passed, is that he committed irregularities in connection with the tender of the contract work.

An ex parte adverse adjudication that the petitioner committed irregularities in connection with the tender for working down timber from 1 AIR 1969 Ker 81 : 1968 Ker LT 800: 1968 Ker LJ 619 Udumbandhola Block No. 1 by Government on the report of some petty officer without notice and an opportunity of being heard to the petitioner and putting his name in the blacklist and debarring him from 'taking any Government work for ten years' by way of punishment, appear to me, to be against all notions of fairness in a democratic country." (pp. 86-87)

7. Justice Mathew held that "Reputation can be viewed both as an interest of personality and as an interest of substance, viz., as an asset" and recalled these words of Roscoe Pound:

"On the one hand there is the claim of the individual to be secured in his dignity and honour as part of his personality in a world in which one must live in society among his fellow-men. On the other hand there is the claim to be secured in his reputation as a part of his substance in that in a world in which credit plays so large a part the confidence and esteem of one's fellow-men may be a valuable asset." (See: Interest of Personality' 28 Harvard Law Review, pp. 445,

447).

Concluding, Justice Mathew observed: "As the memorandum in question casts a stigma on the reputation of the petitioner, which is both an interest of personality and an interest of substance, and as it is attended with civil consequences to the petitioner, and as it operates as a punishment for an alleged irregularity, I think, the

memorandum should have been proceeded by notice and an opportunity of being heard. If anybody were to say that Ext. P-1 is an administrative proceeding and so no notice or opportunity of being heard was required and that no interference under Article 226 is possible, I would answer him in the high and powerful words of Mr Belloc, 'you have mistaken the hour of the night: it is already morning'." (p. 89)

8. The minority view of Justice Mathew is now the law. The majority view in V. Punnen Thomas case1 is not good law and must be considered to have been, impliedly, overruled by the Erusian case2. Indeed, in Joseph Vilangandan v. Executive Engineer, Buildings & Roads (PWD) Division, Ernakulam3 it was held:

" The majority judgment of the Kerala High Court, inasmuch as it holds that a person is not entitled to a hearing, before he is blacklisted, must be deemed to have been overruled by the decision of this Court in Erusian Equipment2.....

9. In Erusian Equipment & Chemicals Ltd. v. State of W.B.2 this Court observed: (SCC p. 75, paras 17, 18 & 20) "The State need not enter into any contract with any one but if it does so, it must do so fairly without discrimination and without unfair procedure. Reputation is a part of a person's character and personality. Blacklisting tarnishes one's reputation. Exclusion of a member of the public from dealing with a State in sales transactions has the effect of preventing him from purchasing and doing a lawful trade in the goods in discriminating against him in favour of other people.

_ Erusian Equipment & Chemicals Ltd. v. State of W.B, (1975) 1 SCC 70, 75 3 (1978) 3 SCC 36, 41 : (1978) 3 SCR 514.

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."

10. Again, in Raghunath Thakur v. State of Bihar4 this Court observed: (SCC p. 230, para

4) "Indisputably, no notice had been given to the appellant of the proposal of blacklisting the appellant. It was contended on behalf of the State Government that there was no requirement in the rule of giving any prior notice before blacklisting any person. Insofar as the contention that there is no requirement specifically of giving any notice is concerned, the respondent is right. 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."

11. The deletion of the appellant's name from the list of approved contractors on the ground that there were some vigilance report against it, could only be done consistent with and after due compliance with the principles of natural justice. That not having been done, it requires to be held that withholding of the tender form from the appellant was not justified. In our opinion, the High Court was not justified in dismissing the writ petition.

12. However, on the question as to what is the effective relief grantable to the appellant, the case presents its own difficulties. The work order was issued to the other tenderer on 6-1-1993. According to the respondent and that is not disputed the work has reached almost the stage of completion and would be completed in a couple of months. It is not possible to retrace the steps, nullify the contract awarded to the successful tenderer and efface the work already done. It is unfortunate that the appellant has been denied this opportunity to compete: but all that can now be done is to direct the continuance of the appellant's name in the list of qualified contractors. If the respondents want to have the appellant's name deleted, that could be done only consistent with the principles of natural justice. Till that is done, the appellant shall continue to be entitled to be issued the tender forms to compete with other qualified contractors. The appeal is disposed of accordingly. There will be no order as to costs. 4 (1989) 1 SCC 229