

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

BEFORE

HON'BLE SHRI JUSTICE SUSHRUT ARVIND DHARMADHIKARI

&

HON'BLE SHRI JUSTICE PRAKASH CHANDRA GUPTA

ON THE 9th OF MAY, 2023

WRIT PETITION No. 2193 of 2023

BETWEEN:-

**M/S TORQUE ELECTRICALS THROUGH ITS
PROPRIETOR DEVESH SINGH DASONDHI 275,
TRIMURTI NAGAR, DHAR, DISTRICT DHAR (MADHYA
PRADESH)**

....PETITIONER

(SHRI MANOJ MUNSHI, LEARNED COUNSEL FOR THE PETITIONER)

AND

**MADHYA PRADESH PASCHIM KSHETRA VIDYUT
VITRAN COMPANY LIMITED THROUGH EXECUTIVE
DIRECTOR G.P.H. COMPOUND, POLOGROUND,
DISTRICT INDORE (MADHYA PRADESH)**

....RESPONDENT

**(SHRI ABHISHEK TUGNAWAT, LEARNED COUNSEL FOR THE
RESPONDENT)**

.....
*This petition coming on for admission this day, JUSTICE SUSHRUT
ARVIND DHARMADHIKARI passed the following:*

ORDER

Since the pleadings are complete, therefore, this matter is heard finally with the consent of both the parties.

2. This petition under Article 226 of the Constitution of India has been filed by the petitioner questioning the legality, validity and propriety of the order dated 02/03/2021(Anexure-P/1) whereby the petitioner/firm has been debarred from the future business with the Madhya Pradesh Paschim Kshetra Vidyut

Vitran Company Ltd., Indore for a period of 3 years, from the date of issuance of this order with forfeiture of Earnest Money Deposit, deposited against TS-1433.

3. Brief facts leading to filing of this case are that the aforesaid impugned order amounts to black-listing of the petitioner/firm and the same has been passed contrary to the terms and conditions of contract and has breached the settled principle of law as before passing the orders which carry civil consequences, has not been followed, the principle of *audi alteram partem*. Before blacklisting the petitioner/firm the respondent did not care to issue any show cause notice and passed the order of black-listing of the petitioner/firm and also consequentially forfeiting the Earnest Money Deposit. The said impugned order has been passed for the reason of non-completion of the contractual formalities i.e., non-submission of Bank Guarantee/FDR towards security deposit and non-execution of required agreement within the stipulated time period against the awarded rate contract, the said rate contract has been cancelled vide order dated 25/01/2021.

4. The petitioner is a reputed Class "A" electrical contractor engaged in execution of contracts with various government authorities from time to time. The respondent/Company is a Government Company wholly owned by the Government of Madhya Pradesh Corporations and the same is governed by the provisions of The Companies Act, 2013. Thus, the respondent is a State within the meaning of Article 12 of the Constitution of India and, therefore, is amenable to the writ jurisdiction of this Court.

5. The respondent/authority had issued a NIT dated 02/05/2020 for **"Repairing & Testing of 11/0.433 KV Distribution Transformers(16KVA**

to 200 KVA)" for a probable amount of contract being **8800 (Rs. in lakh)**.

The petitioner took part in the tender process and was eventually awarded the tender being the Lowest Bidder. The respondent, thereafter, intimated the petitioner to submit the security deposit, execute the contract before 04/11/2020. However, due to non-deposit of the security deposit and non-execution of the agreement within time, the respondent vide the impugned order dated 25/01/2021 cancelled the contract. Thereafter, vide impugned order dated 02/03/2021(Annexure-P/1) debarred/blacklisted the petitioner without following the principles of natural justice.

6. Learned counsel for the petitioner has contended that the order of blacklisting is illegal because as per the settled legal position, the order of blacklisting cannot be issued without giving any opportunity of hearing or issuing show-cause notice. He submitted that the basic order of blacklisting is not sustainable in the eyes of law. He relied upon the decisions reported in **(1975) 1 SCC 70 (M/s. Erusian Equipment & Chemicals Ltd. Vs. State of West Bengal and another, (1989) 1 SCC 229 (Raghunath Thakur Vs. State of Bihar and others), (2001) 8 SCC 604 (Grosos Pharmaceuticals (P) Ltd. and another Vs. State of U.P. and others, (2007) 14 SCC 517 (Jagdish Mandal Vs. State of Orissa and others), 2014 (4) M.P.L.J. 225 (Bhupendra Singh Kushwah Vs. State of M.P. and another), (2014) 14 SCC 731 (Kulja Industries Limited Vs. Chief General Manager, Western Telecom Project Bharat Sanchar Nigam Limited and others) and (2014) 9 SCC 105 (Gorkha Security Services Vs. Government (NCT of Delhi) and others).**

7. Per Contra, Shri Abhishek Tugnawat, learned counsel appearing for the respondent submitted that there was no need to issue show-cause notice to

the petitioner in the light of Condition/Clause No.17(iv) of the tender document in which it was clearly mentioned that the petitioner is required to deposit the security amount, failing which, the tender would be cancelled without assigning any reason. The petitioner had the knowledge of the aforesaid condition, therefore, show-cause notice was not necessary. The Clause/condition No.17(iv) of the tender document is reproduced below :-

(17)(iv) No Permanent Security Deposit(PSD) shall be considered against this tender and the bidder shall have to furnish the requisite fresh Security deposit as above.

The Firm/repairer shall not be allowed to commence the work of repair till such time he deposits security as detailed above. After the acceptance of security deposit by the regional C.E.s allotment of the defective transformers for the repairs shall be made by him. If security is not deposited within 30 days of receipt of award, then the rate contract be cancelled without any liability and such firm shall be debarred for next 3 years.

8. In view of the aforesaid, learned counsel for the respondent submits that this petition deserves to be dismissed.

9. Heard learned counsel for the parties and perused the record.

10. It is an admitted position that before passing the order impugned of blacklisting of the petitioner/firm, no show cause notice was issued to the petitioner/firm which amounts to violation of the principle of natural justice and giving go-bye the principle of *audi alteram partem*, action of the respondent cannot be countenanced.

11. The Supreme Court in case of **M/s.Erusian Equipment & Chemicals Ltd.(supra)** has observed as under:-

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.

12. In case of **Raghunath Thakur(supra)**, the Supreme Court has observed as under:-

4. Indisputably, no notice had been given to the appellant of the proposal of black-listing 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 black-listing any person. In so far 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 PG NO 869 principles of natural justice. It has to be realised that black-listing 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. In that view of the matter, the last portion of the order in so far as it directs black-listing of the appellant in respect of future contracts, cannot be sustained in law. In the premises, that portion of the order directing that the appellant be placed in the black-list in respect of future contracts under the Collector is set aside. So far as the cancellation of the bid of the appellant is concerned, that is not affected. This order will, however, not prevent the State Government or the appropriate authorities from taking any future steps for blacklisting the appellant if the Government is so entitled to do so in accordance with law, i.e. giving the appellant due notice and an opportunity of making representation. After hearing the appellant, the State Government will be at liberty to pass any order in accordance with law indicating the reasons therefor. We, however, make it quite clear that we are not expressing any opinion on the correctness or otherwise of the allegations made against the

appellant. The appeal is thus disposed of.

13 . In case of Grosos Pharmadeuticals (P) Otd. And another(supra), the Supreme Court has observed as under:-

2. Learned counsel appearing for the appellant, urged that seeing the nature and seriousness of the order passed against the appellant, the respondent ought to have supplied all the materials on the basis of which the charges contained in the show cause notice were based along with show cause notice and in the absence of supply of materials, the order impugned is against the principles of natural justice. We do not find any merit in this contention. Admittedly, the appellant has only contractual relationship with the State government and the said relationship is not governed by any statutory Rules. There is no statutory rule which requires that an approved contract or cannot be blacklisted without giving an opportunity of show cause. It is true that an order blacklisting an approved contractor results in civil consequences and in such a situation in the absence of statutory rules, the only requirement of law while passing such an order was to observe the principle of *audi alteram partem* which is one of the facet of the principles of natural justice. The contention that it was incumbent upon the respondent to have supplied the material on the basis of which the charges against the appellant were based was not the requirement of principle of *audi alteram partem*. It was sufficient requirement of law that an opportunity of show cause was given to the appellant before it was blacklisted. It is not disputed that in the present case, the appellant was given an opportunity to show cause and he did reply to the show cause which was duly considered by the State Government. We are, therefore, of the view that that the procedure adopted by the respondent while blacklisting the appellant was in conformity with the principles of natural justice.

14. Further, in case of Jagdish Mandal(supra), the Supreme Court has observed as under:-

27. The learned counsel for the fifth respondent submitted that the Department ought not to have acted on a complaint received

against him, without giving him an opportunity to show cause. This contention has no merit. Whether any complaint is received or not, the Department is entitled to verify the authenticity of the document pledged as earnest money deposit. Such verification is routinely done. The Committee was neither blacklisting the tenderer nor visiting any penal consequences on the tenderer. It was merely treating the tender as defective. There was, therefore, no need to give an opportunity to the tenderer to show cause at that stage. We no doubt agree that the Committee could have granted an opportunity to the tenderer to explain the position. But failure to do so cannot render the action of the Committee treating the EMD as defective, illegal or arbitrary.

15. In case of **Bhupendra Singh Kushwah(supra)**, the Supreme Court has observed as under:-

10. Therefore in view of the aforesaid fact and the legal position, it is clear that before passing any order of cancellation of registration or blacklisting a Contractor, the State Government or its departments are necessarily required to issue a show cause notice or to provide an adequate hearing to a Contractor, in terms of the principles of natural justice. A perusal of the document annexed with the petition and the record placed for consideration of the Court on behalf of the respondents clearly demonstrate that no show cause notice was ever issued to the petitioner before ordering for cancellation of the registration and placement of the name of the petitioner in the blacklist seriously violates the cardinal principles of *audi alteram partem*, therefore, on this ground alone, the order of cancellation of registration of Contractor and order of blacklisting deserves to be quashed.

16. Further, in case of **Kulja Industries Ltd.(supra)**, the Supreme Court has observed as under:-

18. The legal position on the subject is settled by a long line of decisions rendered by this Court starting with **Erusian Equipment & Chemicals Ltd. v. State of W.B.[(1975)1SCC70]** where this Court declared that

blacklisting has the effect of preventing a person from entering into lawful relationship with the Government for purposes of gains and that the authority passing any such order was required to give a fair hearing before passing an order blacklisting a certain entity. This Court observed:(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.

Subsequent decisions of this Court in *Southern Painters v. Fertilizers & Chemicals Travancore Ltd.* [1994 Supp (2) SCC 699 : AIR 1994 SC 1277] ; *Patel Engg. Ltd. v. Union of India* [(2012) 11 SCC 257 : (2013) 1 SCC (Civ) 445] ; *B.S.N. Joshi & Sons Ltd. v. Nair Coal Services Ltd.* [(2006) 11 SCC 548] ; *Joseph Vilangandan v. Executive Engineer (PWD)* [(1978) 3 SCC 36] among others have followed the ratio of that decision and applied the principle of *audi alteram partem* to the process that may eventually culminate in the blacklisting of a contractor.

17. Likewise in a case **Gorkha Security Services(supra)**, the Supreme Court has held as under:-

21. The Central issue, however, pertains to the requirement of stating the action which is proposed to be taken. The fundamental purpose behind the serving of Show Cause Notice is to make the noticee understand the precise case set up against him which he has to meet. This would require the statement of imputations detailing out the alleged breaches and defaults he has committed, so that he gets an opportunity to rebut the same. Another requirement, according to us, is the nature of action which is proposed to be taken for such a breach. That should also be stated so that the noticee is able to

point out that proposed action is not warranted in the given case, even if the defaults/breaches complained of are not satisfactorily explained. When it comes to black listing, this requirement becomes all the more imperative, having regard to the fact that it is harshest possible action.

27. We are, therefore, of the opinion that it was incumbent on the part of the Department to state in the show-cause notice that the competent authority intended to impose such a penalty of blacklisting, so as to provide adequate and meaningful opportunity to the appellant to show cause against the same. However, we may also add that even if it is not mentioned specifically but from the reading of the show-cause notice, it can be clearly inferred that such an action was proposed, that would fulfill this requirement. In the present case, however, reading of the show-cause notice does not suggest that noticee could find out that such an action could also be taken. We say so for the reasons that are recorded hereinafter.

28. In the instant case, no doubt the show-cause notice dated 6-2-2013 was served upon the appellant. Relevant portion thereof has already been extracted above (see para 5). This show-cause notice is conspicuously silent about the blacklisting action. On the contrary, after stating in detail the nature of alleged defaults and breaches of the agreement committed by the appellant the notice specifically mentions that because of the said defaults the appellant was "as such liable to be levied the cost accordingly. It further says "why the action as mentioned above may not be taken against the firm, besides other action as deemed fit by the competent authority". It follows from the above that main action which the respondents wanted to take was to levy the cost. No doubt, the notice further mentions that the competent authority could take other actions as deemed fit. However, that may not fulfill the requirement of putting the defaulter to the notice that action of blacklisting was also in the mind of the competent authority. Mere existence of Clause 27 in the agreement entered into between the parties, would not suffice the aforesaid mandatory requirement by vaguely mentioning other "actions as deemed fit."

As already pointed out above insofar as penalty of blacklisting and forfeiture of earnest money/security deposit is concerned it can be imposed only, "if so warranted". Therefore, without any specific stipulation in this behalf, the respondent could not have imposed the penalty of blacklisting.

29. No doubt, rules of natural justice are not embodied rules nor can they be lifted to the position of fundamental rights. However, their aim is to secure justice and to prevent miscarriage of justice. It is now well-established proposition of law that unless a statutory provision either specifically or by necessary implication excludes the application of any rules of natural justice, in exercise of power prejudicially affecting another must be in conformity with the rules of natural justice."

18. The Apex Court in the case of **Ranjit Buildcon Ltd. Vs. State of M.P. & Others reported in [2020(2) M.P.L.J.] 330** has held as under :

7. When a commercial Firm is put in the blacklist, it entails serious civil consequences for the Firm and at the same time it affects the reputation of the Firm, which is a drastic step to be taken against a person. In such a situation, the State is expected to proceed with care and responsibility before blacklisting any Firm. It is a trite law that the parties who are adversely affected by an order, should have a right of being heard against the same and in such circumstances, the principles of natural justice must be adhered to.

19. In the case of **UMC Technologies Private Limited Vs. Food Corporation of India & Another [(2021) 2 SCC 551]**, the Apex Court in Paragraphs 13 to 19 has held as follows :

13. At the outset, it must be noted that it is the first principle of civilised jurisprudence that a person against whom any action is sought to be taken or whose right or interests are being affected should be given a reasonable opportunity to defend himself. The basic principle of natural justice is that before adjudication starts,

the authority concerned should give to the affected party a notice of the case against him so that he can defend himself. Such notice should be adequate and the grounds necessitating action and the penalty/action proposed should be mentioned specifically and unambiguously. An order travelling beyond the bounds of notice is impermissible and without jurisdiction to that extent. This Court in *Nasir Ahmad v. Assistant Custodian General, Evacuee Property, Lucknow and Anr.*,¹ has held that it is essential for the notice to specify the particular grounds on the basis of which an action is proposed to be taken so as to enable the noticee to answer the case against him. If these conditions are not satisfied, the person cannot be said to have been granted any reasonable opportunity of being heard.¹ (1980) 3 SCC 1.

14. Specifically, in the context of blacklisting of a person or an entity by the state or a state corporation, the requirement of a valid, particularized and unambiguous show cause notice is particularly crucial due to the severe consequences of blacklisting and the stigmatization that accrues to the person/entity being blacklisted. Here, it may be gainful to describe the concept of blacklisting and the graveness of the consequences occasioned by it. Blacklisting has the effect of denying a person or an entity the privileged opportunity of entering into government contracts. This privilege arises because it is the State who is the counterparty in government contracts and as such, every eligible person is to be afforded an equal opportunity to participate in such contracts, without arbitrariness and discrimination. Not only does blacklisting takes away this privilege, it also tarnishes the blacklisted persons reputation and brings the persons character into question. Blacklisting also has long-lasting civil consequences for the future business prospects of the blacklisted person.

15. In the present case as well, the appellant has submitted that serious prejudice has been caused to it due to the Corporations order of blacklisting as several other government corporations have now terminated their contracts with the appellant and/or prevented the appellant from participating in future tenders even though the impugned blacklisting order was, in fact, limited to the Corporation's Madhya Pradesh regional office.

This domino effect, which can effectively lead to the civil death of a person, shows that the consequences of blacklisting travel far beyond the dealings of the blacklisted person with one particular government corporation and in view thereof, this Court has consistently prescribed strict adherence to principles of natural justice whenever an entity is sought to be blacklisted.

16. The severity of the effects of blacklisting and the resultant need for strict observance of the principles of natural justice before passing an order of blacklisting were highlighted by this Court in **Erusian Equipment & Chemicals Ltd. v. State of West Bengal** in the following terms:

12. The order of blacklisting has the effect of depriving a person of equality of opportunity in the matter of public contract. A person who is on the approved list is unable to enter into advantageous relations with the Government because of the order of blacklisting. A person who has been dealing with the Government in the matter of sale and purchase of materials has a legitimate interest or expectation. When the State acts to the prejudice of a person it has to be supported by legality.

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15. The blacklisting order involves civil consequences. It casts a slur. It creates a barrier between the persons blacklisted and the Government in the matter of transactions. The black lists are instruments of coercion.

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."

17. Similarly, this Court in Raghunath Thakur v. State of Bihar, struck down an order of blacklisting for future contracts on the ground of non-observance of the principles of natural justice. The

relevant extract of the judgment in that case is as follows:

"4. [1] It is an implied principle of the rule of law that any order having civil consequences 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."

18. This Court in **Gorkha Security Services v. Government (NCT of Delhi) and Ors.** has described blacklisting as being equivalent to the civil death of a person because blacklisting is stigmatic in nature and debars a person from participating in government tenders thereby precluding him from the award of government contracts. It has been held thus: (SCC p.115, para 16)

"16. It is a common case of the parties that the blacklisting has to be preceded by a show-cause notice. Law in this regard is firmly grounded and does not even demand much amplification. The necessity of compliance with the principles of natural justice by giving the opportunity to the person against whom action of blacklisting is sought to be taken has a valid and solid rationale behind it. With blacklisting, many civil and/or evil consequences follow. It is described as "civil death" of a person who is foisted with the order of blacklisting. Such an order is stigmatic in nature and debars such a person from participating in government tenders which means precluding him from the award of government contracts.Ã,Â

19. In the light of the above decisions, it is clear that a prior show cause notice granting a reasonable opportunity of being heard is an essential element of all administrative decision-making and particularly so in decisions pertaining to blacklisting which entail grave consequences for the entity being blacklisted. In these cases, furnishing of a valid show cause notice is critical and a failure to do so would be fatal to any order of blacklisting pursuant thereto.

20. Thus, it is clear that in the present case, before issuing the order

impugned dated 02/03/2021(Annexure-P/1), which is the order of blacklisting, the same suffers from the violation of principle of *audi alteram partem* and as such, the order is not sustainable and is hereby set-aside. The blacklisting has the effect of denying a person or an entity the privileged opportunity of entering into government contracts.

21. The writ petition is, hereby, allowed. No order as to costs.

(S. A. DHARMADHIKARI)
JUDGE

(PRAKASH CHANDRA GUPTA)
JUDGE

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