**HIGH COURT OF MADHYA PRADESH**

**W.P.No. 7861/2020**
**(Bombay Intelligence Security (India) Ltd. Vs. State of M.P. and others)**

**Jabalpur, Dated : 16.11.2021**

Shri Naman Nagrath, learned Senior Counsel with Shri Jubin Prasad, learned counsel for the petitioner.

Shri Ranjeet Dwivedi, learned counsel for the respondent no. 2.

Shri Ravindra Kumar Gupta, learned counsel for the intervenor.

Shri Amar Pandey, learned PL for respondent -State.

With the consent of learned counsel for the parties, the matter is finally heard.

Heard on **IA No. 11765/2021,** an application for intervention.

Counsel appearing for the intervenor has pointed out that he is a Journalist and has made a complaint to the respondent no. 2 regarding serious corruptions made by the petitioner. On the basis of the investigation carried out on the complaint made by the intervenor, fake bills to the tune of Rs.823640/- were found and that is why the contracts of the company were terminated and subsequent order was passed regarding blacklisting of the company. He has placed reliance upon the judgment passed by the Hon'ble Supreme Court in the case of **Bakshi Security and Personnel Services Pvt. Ltd. Vs. Kevkishan Computed Pvt. Ltd. Decided on 26th of July 2016 in Civil Appeal No. 6978/2016,** wherein it is held that "if the process adopted or decision

made by the authority is mala fide or intended to favour someone, or whether the public interest is affected, the matter may not interfered under Article 226 of the Constitution of India".

Counsel appearing for petitioner on the contrary has opposed the application vehemently and has contended that the intervenor has no right to intervening in the matter owing to the fact he is only the complainant in the case and on the basis of the complaint made by the intervenor, cognizance was already by the respondent no. 2. The respondent no. 2 acted on the complaint and has passed by the impugned order whereby on one hand the contract of the petitioner was terminated and on the other hand, he was blacklisted for an indefinite period. The aforesaid aspect was considered by the Division Bench of this court in **W.P. No. 18387/2020, (M.P. Karmachari Congress Vs. State of M.P. and others,** wherein it is held that once on the complaint filed by the petitioner, a cognizance is taken then the work of the petitioner is over. No further locus is available to the petitioner to seek further action on the complaint or the enquiry report.

The Single Bench in the case of **M.P. Karmachari Congress Vs. State of M.P. and others, (supra)** passed in **W.P. No. 18387/2020** has held as under :-

> "In view of the aforestated legal position, the petitioner has no locus to file this petition. The right to avail a remedy under the law is the right of every citizen but such right cannot extend to misuse the judicial process."

The aforesaid order was put to challenge by the petitioner before the Division Bench in **W.A. No. 64/2021, (M.P. Karmachari Congress Vs. State of M.P. and others)** and the order passed by the Single Bench was upheld, vide order dated 10.2.201 and the Division Bench has held as under :-

> "In view of the aforesaid, we do not find any illegality or perversity in the order passed by the learned Single Judge dismissing the writ petition on the ground of the *locous*.
>
> Accordingly, the present writ appeal is **dismissed**."

In such circumstances, once the cognizance has been taken by the respondent no. 2 on the complaint made by the intervenor the intervenor/complainant is having no locus to intervene in the matter.

Looking to the fact that on the complaint made by the intervenor, cognizance has already been taken by the authorities and the order impugned has been passed, considering the judgment passed by the Division Bench in the case of **M.P. Karmachari Congress Vs. State of M.P. and others,** (supra)**,** the intervenor/complainant is having no locus to intervene in the matter. In such circumstances, the application for intervention is hereby **rejected.**

With the consent of learned counsel for the parties, the matter is finally heard.

The present petition has been filed challenging the order dated 23.5.2020, passed by the respondent no. 2, whereby the petitioner company has been blacklisted for an unlimited period. It is pointed that

the petitioner is a company registered under the Companies Act 1956 having its registered office at 101, Omega House, Hiranandani Gardens, Powai, Mumbai.

A tender was floated by the respondent no. 2 inviting respondent no. 2 for providing/outsourcing unskilled/ skilled/ semi skilled labour in the establishment of respondent no. 2. The petitioner duly participated in the tender process and was declared as successful bidder. In pursuance to the same, the work order was issued to the petitioner and the petitioner entered into an agreement with the establishment and started doing the work. Two more work orders were issued on 1.3.2018 and 23.8.2018 to the petitioner- company.

All of sudden the petitioner was served with a notice dated 23.4.2020 mentioning that the petitioner - firm when discharging the duties pertaining to outsourcing manpower at Labour School, Bhopal and Labour School, Gwalior had submitted forged and fabricated bills, in the establishment of the respondent no. 2 amounting to Rs.4,11,820/- between 21.8.2018 to 31.8.2018, then, why the petitioner -company should not be blacklisted.

The reply to the show cause notice was submitted by the petitioner explaining the embezzlement of the said amount. It is pointed out that in the reply to the show cause notice, the petitioner has categorically submitted that they are keeping a Manager in each and every place to take care of the managemment and to check proper functioning and in the relevant case, one Harshlal Dwivedi was the Branch Manager and entire

work was under his supervision and during the tenure Harshlal Dwivedi has engaged his relatives in the work and has got done the financial embezzlement. As soon as the matter relating to financial irregularities was brought to the notice of the petitioner- company by show cause notices, a complaint was made by the petitioner – company against Harshlal Dwivedi and after enquiry into the matter, he has been arrested on 11th December 2019 and he is still in custody. Effective steps have been taken by the company as soon as the notice was received to them. It is further pointed out that with respect to financial embezzlement and loss being cause to the respondent no. 2, a decision was taken by the company to immediately cure the default by depositing the amount of Rs.452.014/- vide cheque no. 033742, dated 22.5.2020 and Rs.4,52,014, vide cheque no. 033742, dated 22nd of May 2020. Thus, the loss incurred to the respondent no. 2 was fulfilled by the petitioner – company showing bonafides.

It is argued that the reply filed by the petitioner – company was not even taken into consideration by the respondent no. 2 and all of a sudden, the order impugned blacklisting the petitioner for an indefinite period has been passed.

It is argued that the order of blacklisting can not be passed for an indefinite period placing reliance upon the judgment passed by the Supreme court in the case of **Kulja Industries Limited Vs. Chief General Manager, Western Telecom Project Bharat Sanchar Nigam Limited and others** reported in **(2014) 14 SCC 731** and in the case of

**Vetindia Pharmaceuticals Limited Vs. State of Utter Pradesh and others** reported in **(2021) 1 SCC 804.** He has placed reliance upon the judgment passed by the coordinate Bench of this court in the case of **Fibretch Vs. Bharat Heavy Electricals Limited and Anr. in W.P. No.19945/2017,** decided on **30.11.2018**, whereby in similar circumstances, placing reliance upon the judgment passed by the Supreme Court in the case of **Kulja Industries Limited Vs. Chief General Manager, Western Telecom Project Bharat Sanchar Nigam Limited and others,** (supra), the blacklisting order was set aside and the period which has been passed by the authorities as blacklisted was reduced to that already undergone by him. He has prayed that the similar relief be extended to the petitioner.

It is further pointed out since 23.5.2020, i.e. the date of blacklisting, the petitioner has remained blacklisted for almost more than one and a half years. Thus, he prays that the similar relief be also extended to him that the period of blacklisting be reduced to that already undergone by the petitioner.

Per contra, counsel appearing for the respondent no. 2 as well as the State counsel have vehemently opposed the averments and have contended that on the complaint made by one Ravindra K. Gupta, the cognizance was taken by the respondent no. 2 and a show cause was issued to the petitioner. The petitioner has filed response to the show cause notice admitting the guilt to the extent that his employee has committed the embezzlement of the amount and by playing fraud has

got engaged his own relatives and has transferred the amounts to their accounts from the account of the company. The company is responsible to take care of the aforesaid. The reply to the aforesaid notice was filed by the petitioner on 23.4.2020. The reply was filed on 22nd May 2020 pointing out the fact that they have identified the person, who has committed the embezzlement being one Harshlal Dwivedi, who was engaged as a Branch Manager by the petitioner -Company and an FIR was registered against him on 17.4.2019 as Crime No. 256/19 for the offence punishable under Sections 365, 367, 371, 420/120 of IPC and he has been arrested and sent to jail, but the fact remains that it is the responsibility of the company to take care of its employees. If any illegality has been committed by the employee of the company, the company is vicariously liable for the same. The order of blacklisting has been passed by the authorities after due enquiry and scrutiny into the matter. The impugned order is just and proper and the same does not call for interference in the present writ petition.

It is argued that the law is well settled with respect to blacklisting of a company owing to financial embezzlement and if after enquiry it is found that the involvement of the company is there, then under Article 226 of the Constitution of India, normally the court should not interfere, as has been held by the Supreme Court in the case of **Bakshi Security and Personnel Services Pvt. Ltd. Vs. Kevkishan Computed Pvt. Ltd., (supra).** They have supported the impugned order and have prayed for dismissal of the writ petition.

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

From the perusal of the record, it is not disputed that in pursuance of N.I.T., the petitioner - company has participated in the tender process and was declared as successful bidder. Work order was issued to them and they have started working. During the working, a complaint was made against them, on which the cognizance was taken by the respondent no. 2 and a show cause notice was issued to the petitioner – company on 23.4.2020, which was duly replied by the petitioner – company and after seeking the reply, the impugned order has been passed by the authorities. From perusal of the order impugned, it is seen that the petitioner - company is being blacklisted for an indefinite period.

As far as maintainability of the writ petition under Article 226 of the Constitution of India in the cases of blacklisting is concerned, the Hon'ble Supreme Court in the case of **Kulja Industries Limited Vs. Chief General Manager, Western Telecom Project Bharat Sanchar Nigam Limited and others** (supra) has considered the aspect of intervention in these cases and has held that the decision to blacklist a contractor is open to judicial review by a court on touchstone of the proportionality and natural justice. In the aforesaid cases, the Supreme Court has held as under :-

> 5. The respondent BSNL on the other hand has a different story to tell. According to it four of its officers had abused their official position and fraudulently generated "voucher numbers" on the duplicate and triplicate copies of the bills submitted by the appellant to facilitate payments as if the said bills were genuine thereby causing wrongful loss to the

respondent- BSNL and a corresponding gain to the appellant. There was in this process an excess payment of Rs.7.98 crores made and credited to the account of the appellant by the accounts officer of respondent BSNL.

25. Suffice it to say that 'debarment' is recognised and often used as an effective method for disciplining deviant suppliers/contractors who may have committed acts of omission and commission or frauds including misrepresentations, falsification of records and other breaches of the regulations under which such contracts were allotted. What is notable is that the 'debarment' is never permanent and the period of debarment would invariably depend upon the nature of the offence committed by the erring contractor.

26. In the case at hand according to the respondent BSNL, the appellant had fraudulently withdrawn a huge amount of money which was not due to it in collusion and conspiracy with the officials of the respondent- Corporation. Even so permanent debarment from future contracts for all times to come may sound too harsh and heavy a punishment to be considered reasonable especially when (a) the appellant is supplying bulk of its manufactured products to the respondent BSNL and (b) The excess amount received by it has already been paid back.

The Hon'ble Supreme Court in the case of **Vetindia Pharmaceuticals Limited Vs. State of Utter Pradesh and others,** (supra) has held as under :-

"12. In view of the aforesaid conclusion, there may have been no need to go into the question of the duration of the blacklisting, but for the arguments addressed before us. An order of blacklisting operates to the prejudice of a commercial person not only in praesenti but also puts a taint which attaches far beyond and may well spell the death knell of the organisation/institution for all times to come described as a civil death. The repercussions on the appellant were clearly spelt out by it in the representations as also in the writ petition, including the consequences under the Rajasthan tender, where it stood debarred

> expressly because of the present impugned order. The possibility always remains that if a proper show cause notice had been given and the reply furnished would have been considered in accordance with law, even if the respondents decided to blacklist the appellant, entirely different considerations may have prevailed in their minds especially with regard to the duration.
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> 14. Since the order of blacklisting has been found to be unsustainable by us, and considering the long passage of time, we are not inclined to remand the matter to the authorities. In M/s *Daffodills Pharmaceuticals*, relied upon by the appellant, this court has observed that an order of blacklisting beyond 3 years or maximum of 5 years was disproportionate. "

Considering the judgments passed by Supreme Court, it is apparently clear that the order of blacklisting passed by the authorities, cannot be for an indefinite period. It is also seen from the impugned order that the reply filed by the petitioner to show cause notice is not considered by the respondents as the impugned order does not spell out the same. In such circumstances, the order impugned regarding blacklisting for an indefinite period is unsustainable and is hereby **quashed.**

The other arguments advanced by the counsel for petitioner that the petitioner has already suffered for more than fifteen months in pursuance to the order dated 23.5.2020 and he was debarred from participating in the tender process, as it has been pointed out by him by filing a document **(Ann. P-7)**:-

| Sr. No. | Branch Name | Client Name | Participate/ could not | EMD-PAID AMT Rs. | Participated/ could not |
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| | | | | | |
|---|---|---|---|---|---|
| | | | participate | | participate |
| 10. | Gurgaon | M/s. Bureau of Indian Standards | | | could not participate |
| 11. | Ranchi | M/s. LIC | | | could not participate |
| 12. | Pune | M/s Bank of Maharashtra | | | could not participate |
| 13. | Gurgaon | M/s B D Sharma University | | | could not participate |
| 14. | MP and Gujarat | M/s Bharat Oman Refineries Ltd. | | | could not participate |

for which he has further placed reliance upon a judgment passed by the Coordinate Bench of this court in **M/s. Fibretech Vs. Bharat Heavy Electricals Limited and Anr. passed in W.P. No. 19945 of 2017 vide dated 30.11.2018,** wherein dealing with similar aspect placing reliance **Kulja Industries Limited Vs. Chief General Manager, Western Telecom Project Bharat Sanchar Nigam Limited and others** (supra) the coordinate Bench has reduced the period of blacklisting from three years to eighteen months. The Bench has not found it appropriate to remand the matter for consideration to the authorities. The learned Single Bench of this court has held as under :-

> **22.** This court is of the opinion that the period of black-listing of three years imposed upon the Petitioner is unduly harsh in the facts and circumstances of the case which have been discussed hereinabove. The reasonable inference that can be drawn in this case are that **(a)** that

> the Petitioner filed false documents along with their bid and attempted to mislead the Respondents, **(b)** the Petitioner were not the recipient of the bid process and, therefore, it did not stand to gain monetarily from the Respondents, **(c)** the Respondents did not suffer any monetary loss on account of the misdemeanor of the Petitioner, and finally, **(d)** the order of black-listing was passed five years after the bid process itself.
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> **23.** Under the circumstances, the order of black-listing the Petitioner for three years from participating in the bid process of any of the units of the Respondents, in the opinion of this court, is unduly harsh. In the case of **(2014) 14 SCC 731 – Kulja Industries Limited Vs. Chief General Manager, Western Telecom Project, Bharat Sanchar Nigam Limited and others**, the Supreme Court had opted to remand the case to the Respondent to consider the appropriate period of black-listing after drawing up the guidelines for the same as in that case, the order of black-listing was passed only on the ground that the bid document had a clause providing for black-listing of a party under certain circumstances. However, in this case, this court does not consider it essential to remand the case to the Respondent to reconsider the period of black-listing as guidelines for suspension of business dealings with suppliers/contractors, which is an elaborate document already exists. Therefore, the period of black-listing is reduced from three years to eighteen months from the date of the impugned order of black-listing.

It is submitted that immediately on receiving the notices by the petitioner prompt action was taken by him and the complaint was inquired into and it was found that his employee was involved in financial embezzlement, therefore, they themselves have directed for registration of an FIR against him. With great difficulty and with the help of Police authority, he was taken into custody on 11.12.2019. The FIR was registered as Crime No. 256/2019 for the offence punishable under

Sections 365, 367, 371, 420/120 of IPC. The trial is still going on and the guilt is still to be established. The petitioner – company has already suffered for more than fifteen months, the matter may not be remanded back to the authorities for reconsideration and the period of blacklisting may be reduced to that already undergone, considering the fact that a prompt action was taken by the petitioner – company against its own employee and the amount towards the loss caused to the respondents has already been deposited by the petitioner – company.

Counsel appearing for the respondents to the aforesaid has submitted that it is upon discretion of the court to consider the arguments, in view of the judgments passed by the Hon'ble Supreme Court and the coordinate bench of this court.

Considering the overall facts and circumstances of the case, when this court has arrived at a conclusion that the order of blacklisting is per see illegal as it does not reflect the definite period of blacklisting of a petitioner – company and has quashed the impugned order dated 23.5.2020 and looking to the fact that prompt action was taken by the petitioner – company immediately after receiving notices, and an FIR was got registered by them, coupled with the fact that the petitioner – company has taken a decision to refund back the entire amount to the respondent no. 2 and virtually they have refunded back the amount, vide cheque no. 033742, dated 22.5.2020 and vide cheque no. 033742, dated 22nd of May 2020, this court does not deem it appropriate to remand the matter back to the authorities for reconsideration on the period of

blacklisting, rather the period is reduced to that already undergone by the petitioner - company, i.e. from the date of order till the date of decision of this writ petition.

With the aforesaid observation, the petition stands **allowed and disposed of.**

No order as to costs.

**(VISHAL MISHRA)**
**JUDGE**

*bks*