

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) NO. 3118/2008 and CM 5998/2008**

Reserved on : May 26th , 2008

Date of Decision : July 7, 2008

SAHNEY KIRKWOOD PRIVATE LIMITED & ANR. ... Petitioners

Through:- Mr. Amir Singh Pasrich and

Ms. Simona Singh, Advocates.

Versus

UNION OF INDIA AND ORS.

.... Respondents

Through : Ms. Geetanjali Mohan, Advocate.

CORAM:

HON'BLE MR. JUSTICE MUKUL MUDGAL

HON'BLE MR. JUSTICE V.K. SHALI

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|---|-----|
| 1. Whether the Reporters of local papers
may be allowed to see the judgment? | No |
| 2. To be referred to the Reporter or not? | Yes |
| 3. Whether the judgment should be
reported in the Digest? | Yes |

J U D G M E N T

07.07.2008

V.K. SHALI, J.

1. This writ petition has been filed with the following prayers:-

“A. Issue an appropriate Writ, order or direction quashing the impugned Letter No.2002/LS/54/lb dated 1st November 2007 (Annexure P-41 Colly at Page 205-232 issued by Respondent No.4 as being illegal and void under Article 226 of the Constitution of India;

B. Issue an appropriate Writ to quash and set-aside all Letters/Orders/Memos whether issued internally or notified or published or circulated relating to the Petitioner No.1 by which the Respondents have in any way adversely affected or prejudiced the business of the Petitioner No.1 with Indian Railways and production units etc. under the Ministry of Railways consequent to Annexure P-41 Colly at Page 205-232;

C. Direct the Respondents to continue to honour existing orders issued earlier and to make appropriate payments accordingly as also to accept/receive tenders of Petitioner No.1.”

2. The facts leading to the filing of the present writ petition are that the petitioner is a supplier of products to the respondent-railways and challenges a short-term ban of nine months and 21 days imposed on the petitioner. The respondent has taken the stand that the petitioner had received double payment for certain bills raised by it. The case of the petitioner is that a mere receipt of double payment by inadvertence cannot be construed as 'misconduct' so as to impose the penalty of black listing on the petitioner. It has been contended *inter alia* by the petitioner that even the respondent had twice recovered the money from the petitioner in the year 1999 and they themselves failed to repay the re-recovered amount for a period of 8 to 9 months. The petitioner had earlier approached this Court by filing Writ Petition No.3829/2006 in which the following order was passed: -

“On instruction from Mr. Shangara Singh, Chief Law Assistant, DMW, learned counsel for the Respondent states that this Writ Petition may be disposed of by quashing the impugned order dated 6.2.2006 but permitting the Respondent to pass a speaking Order after adhering to the principles of natural justice and after granting a personal hearing to the Petitioner.”

3. On the basis of the above judgment, the following order of the Railways, the Respondent no.1 which reads as under, was set aside: -

“No.2002/LS/54/1 New Delhi, dated
06.02.2006

M/s. Sahney Kirkwood Pvt. Ltd.,
27, Kirol Vidyavihar (W),

Mumbai-400 086.

M/s. Sahney Commutators Pvt. Ltd.,
78, Victoria Road,
Bangalore-560 04

Sub.: Banning of business dealings with
M/s. Sahney Kirkwood Pvt. Ltd., 27, Kirol
Vidyavihar (W), Mumbai-400086 & M/s
Sahney Commutators Pvt. Ltd., 78, Victoria
Road, Bangalore – 560 047.

Ref: - (i) This Ministry's Memorandum
no.2002/LS/54/1 dated 06.09.2002 and
letters of even number dated 05.12.2003 and
29.04.2004.

(ii) Your office letters
no.SK/VL/RAILWAY BOARD/2003 dated
02.01.2004 and no.SK/VL/RAILWAY
BOARD/1 dated 20.05.2004.

The representation made by you under your
letter quoted above has been carefully
considered and the Ministry of Railways
(Railway Board), New Delhi have decided
to ban business dealings with you for a
period of 1 (One) year with effect from the
date of issue of this letter.

Please acknowledge receipt of the letter.
(Trilok Kothari)

Director Railway Stores (I.C.)
Railway Board
for & On behalf of the President of India”

4. The aforesaid order of this Court led to an oral hearing given to the petitioner and the consequent order dated 1st November, 2007 which is the subject matter of challenge in the present writ petition. The said order reads as under: -

“M/s Sahney Kirkwood Pvt. Ltd.,
27, Kirol Vidyavihar (W),

Mumbai-400 086.

Sub.:- Banning of business dealings with M/s Sahney Kirkwood Pvt. Ltd., 27, Kirol Vidyavihar (W), Mumbai-400 086.

Ref:- (i) This Ministry's Memorandum No.2002/LS/54/1b dated 20.04.2006 and letters of even number dated 08.05.06, 12.05.06 and 17.05.06.

(ii) Your letter No. Nil dated 03.05.06, letter No. SKPL/VL/Railway Board/06-07/2 dated 08.05.06 and letter No.SKPL/VL/Railway Board/06-07/10 dated 17.05.06.

(iii) Your sister concern M/s Sahney Commutators Pvt. Ltd., 78, Victoria Road, Bangalore's letter No. Nil dated 03.05.06, letter No. SCPL/PS/2006/82 dated 08.05.06 and letter no. SCPL/PS/2006/95 dated 17.05.06.

A memorandum along-with statement of charges/misconduct was issued to you and your sister concern M/s Sahney Commutators Pvt. Ltd., 78, Victoria Road, Bangalore on 20.04.06 by Regd. A.D.(copies enclosed as Annexure A & A1 and B & B1 respectively) to explain why business dealings with you and also your allied /sister concerns, if any, by the Ministry of Railways, should not be banned for a period of 03 (three) years for indulging in misconduct of claiming and accepting irregular duplicate payment for the material supplied against Diesel Component Works, Patials's Purchase Orders No. 02/94/2270/1/57267 dated 09.12.1993 to supply 75 Nos. of Commutator Seasoned for Traction Motor, 165m. You and your sister concern M/s Sahney Commutators Pvt. Ltd., 78, Victoria Road, Bangalore were requested to make a representation in writing and

submit the same so as to reach the Dir. Rly Stores (IC), Railway Board not later than the date of personal oral hearing i.e. 08.05.06. You and your sister concern M/s. Sahney Commutators Pvt. Ltd., 78, Victoria Road, Bangalore were also advised to meet Dir. Rly. Stores (IC), Railway Board on 08.05.06 and make any oral representation you and your sister concern M/s Sahney Commutators Pvt. Ltd. 78, Victoria Road, Bangalore may wish to make concerning the matter covered by Railway Board's memorandum referred to above. In response to above and during the course of oral hearing held on 08.05.06 in the Chamber of DRS (IC), Railway Board, you and your sister concern M/s Sahney Commutators Pvt. Ltd., 78, Victoria Road, Bangalore had submitted letter bearing No.SKPL/VL/Railway Board/06-07/2 and letter Nos. SCPL/PS/2006/RB/82 both dated 08.05.06 (copies enclosed as Annexure C & D respectively).

During the course of oral hearing, you and your sister concern have requested to have next oral hearing proceeding at later date (minutes of oral hearings are enclosed as Annexure E&F respectively). You and your sister concern M/s Sahney Commutators Pvt. Ltd., 78, Victoria Road, Bangalore agreed for next date of oral hearing as 17th May, 2006. During the course of oral hearing held on 17.05.2006 (minutes of oral hearings enclosed as Annexure G&H respectively), you and your sister concern M/s Sahney Commutators Pvt. Ltd. 78, Victoria Road, Bangalore had submitted letter bearing No. SKPL/VL/Railway Board/06-07/10 and letter No. SCPL/PS/2006/RB/95 both dated 17.05.06 (copies enclosed as Annexure I & J respectively).

In view of the above discussion and the reply/representations made by you and your sister concern M/s Sahney

Commutators Pvt. Ltd., 78, Victoria Road, Bangalore under letters quoted above and with the internal findings based on facts, it has been clearly established that M/s Sahney Kirkwood Pvt. Ltd., 27, Kirol Vidyavihar (W), Mumbai 400 086 indulged in misconduct of claiming and accepting irregular duplicate payment for the material supplied by you against Diesel Component Works, Patiala's Purchase Order No.02/94/2270/1/57267 dated 09.12.1993 to supply 75 Nos. of Commutator Seasoned for Traction Motor, 165m.

Therefore, the case has been carefully considered in detail and the Ministry of Railways (Railway Board), New Delhi have decided to ban business dealings with you and also your sister concern M/s Sahney Commutators Pvt. Ltd., 78, Victoria Road, Bangalore for a period of 09 (nine) months and 21 days w.e.f. the date of issue of this letter.

(Emphasis supplied)”

5. The petitioner has, thus, approached this Court against the aforesaid order contending that the order is non-reasoned and in effect does not comply with the orders of the learned Single Judge dated 21st March, 2006 in Writ Petition No. 3829/2006.

6. The learned counsel for the petitioner, Shri Amir Singh Pasrich, had relied upon an interim order of this Court dated 2nd April, 2008 in respect of the sister concern, which reads as follows: -

**“IN THE HIGH COURT OF DELHI AT
NEW DELHI**

+ W.P.(C) NO. 9313/2007

SAHNEY COMMUTATORS P.LTD.&
ANR. Petitioner

Through : Mr. Amir Singh Pasrich,

Ms. Simona Singh, Advs.

Versus

UOI & ORS Respondents

Through : Ms. Geetanjali Mohan, Advocate

CORAM:

HON'BLE MR. JUSTICE T.S. THAKUR

HON'BLE MR. JUSTICE SIDDHARTH

MRIDUL

ORDER

02.04.2008

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Issue rule and notice to the respondents. Ms. Mohan accepts notice for the respondents. She prays for and is granted six weeks time to file a counter affidavit. Rejoinder within four weeks thereafter. Post the writ petition for hearing at its turn.

CM No. 17565/2007

Heard. Pending further orders from this court, the operation of the impugned order of black listing shall remain stayed qua the petitioner company. Order dasti to parties.”

7. The learned counsel for the Railways, Ms. Geetanjali Mohan, however, contended that the above interim order, in fact, passed on the first date of hearing in effect allowed the writ petition by virtue of the effect of the interim order and therefore, cannot be cited as a precedent. She has particularly highlighted the fact that while the stay of black listing which was ordered for a period of 9 months and 21 days was granted on the first day of hearing but nevertheless the writ petition was directed to be posted for hearing only in its turn. In our view, this plea of the respondent need not detain us as we are hearing the writ petition finally and therefore we are not pronouncing on the merits or demerits of

this plea based upon the above interim order dated 2nd April, 2008 in W.P.(C) No.9313/2007.

8. The petitioner has also submitted that a mere inadvertent error is being made the basis for extremely harsh order of punishment imposed on the petitioner, totally sidelining the past dealings of 30 years of the petitioner with the Railways which have been blemishless. He has also submitted that the closed mind in dealing with the petitioner's case was evident from the fact that inspite of this Court's judgment directing passing of a speaking order, the respondents have persisted in passing again an order which in effect after narration of facts, merely reiterates the earlier order and no reason is to be found in the said order.

9. The learned counsel for the respondent submitted that the principles of natural justice were fully followed and the ban order was only issued after giving adequate opportunity to the petitioner on 20th April, 2006 and oral hearings subsequent thereto on 8th and 17th, May, 2006 which the petitioner fully participated in. It has been submitted that a corporate entity like the petitioner ought to have discovered the double payment on the basis of the auditing of the accounts. The petitioner had made a representation dated 14th November, 2007 to the Minister of State for Railways, who constituted a Committee of Directors to examine the representation of the petitioner in an objective manner and submit their report. The Committee came to the conclusion that the firm did not observe the accounting practices for issuing invoices and had issued duplicate invoices. Since the competent authority came to the

conclusion of imposing a ban on the petitioner based on the report of the Committee, the impugned order cannot be faulted. It has also been submitted that in the letter dated 16th November, 2007 the petitioner had stated as follows:-

“Clearly an error could have been committed on our part by submitting a duplicate invoice. However, this penalty on Sahney Kirkwood (& on Sahney Commutators) will destroy 30 years of hard work done. We fear that this ban may create a greater hardship to my company, and this may affect the quality party being available to Railways also during this period. My company has already suffered effectively ban for almost 2.5 months during the earlier ban order. However, to put this matter to rest, and without prejudice, we request that in lieu of banning a reasonable financial penalty may be considered.

I am also enclosing the latest communication between Railway Board and Sahney Kirkwood for your information. In the event you require any further information, please do not hesitate to call us.”

Consequently, the learned counsel for the respondent submitted that the writ petition does not deserve to be entertained and should be dismissed.

10. Pursuant to the aforesaid plea of the respondent, this Court had passed an order on 22nd May, 2008, which reads as follows: -

“The impugned order dated 1st November, 2007 was passed pursuant to the order of this court dated 21st March 2006 by virtue of which order dated 6th February 2006 was quashed as being without any reasons. The following directions were given by this Court by order dated 21st March 2006:

“On instructions from Mr. Shangara Singh, Chief Law Assistant, DMW, learned counsel

for the respondent states that this writ petition may be disposed of by quashing the impugned order dated 6.2.2006 but permitting the respondent to pass a speaking order after adhering to the principles of natural justice and after granting a personal hearing to the petitioner.”

The order dated 6th February 2006 leading to the writ petition No.3829-32/2006 was based upon the letter dated 6th February 2006 issued by the Government of India, Ministry of Railways, Railway Board. The relevant portion of the said letter reads as under:

“The representation made by you under your letter quoted above has been carefully considered and the Ministry of Railways (Railway Board), New Delhi have decided to ban business dealings with you for a period of 1 (one) year with effect from the date of issue of this letter”.

Now, the reasoning given in the impugned letter dated 1st November, 2007 reads as follows:

“In view of the above discussion and the reply/representations made by you and your sister concern M/s Sahney Commutators Pvt. Ltd., 78, victoria Road, Bangalore under letters quoted above and with the internal findings based on facts, it has been clearly established that M/s Sahney Kirkwood Pvt. Ltd., 27, Kirol Vidyavihar (W), Mumbai-400 086 indulged in misconduct of claiming and accepting irregular duplicate payment for the material supplied by you against Diesel component Works, Patiala's Purchase Order No.02/94/2270/1/57267 dated 09.12.1993 to supply 75 Nos. of commutator Seasoned for Traction Motor, 165m.

Therefore, the case has been carefully considered in detail and the Ministry of Railways (Railway Board), New Delhi have decided to ban business dealings with you and also your sister concern M/s Sahney

Commutators Pvt. Ltd., 78, Victoria Road, Bangalore for a period of 09 (nine) months and 21 days w.e.f. the date of issue of this letter.”

One of the principal pleas of the learned counsel for the petitioner is that in respect of direction of this Court that there are no reasons discernible from the above order save and except reiteration of the charge and the referring to the representations made by the petitioner.

We have considered the issue after hearing the learned counsel for the parties. At this stage, a plea was made by the learned counsel for the petitioner that in view of the fact that the large part of the ban has been undergone by the petitioner from 1st November, 2007 up to date, the petitioner may be given option of ameliorating his hardship by paying fine for the balance portion of the ban imposed. The issue of financial sanction in lieu of the entire ban has been rejected earlier by letter dated 20th March 2008 by the competent authority and the reasons to which our attention is drawn is that fine in lieu of ban was discussed as opposed to the policy. Since no policy has been shown to us, we are of the view that that in view of the fact that major portion of the ban has been undergone, this plea can certainly be examined by this Court whether the financial sanction in lieu of the ban for the balance period can be imposed. In this view of the matter, we are satisfied that the respondent may consider afresh the imposition of financial sanctions for the remaining part of the ban. The learned counsel for the respondent has sought time to seek instructions in this regard.

List on 26th May 2008.

A copy of this order be given *dasti* under the signatures of the Court Master.”

11. We have considered the pleas of the learned counsel for the parties. At the outset, we must say that since this Court had mandated

the passing of a reasoned order, the order passed in the present case does not contain sufficient reasons. However, since the matter has already come to this Court on two occasions, we decided to go into the merits of the matter and after having considered the rival pleas, we are satisfied that while the reasons given in the impugned order do not meet with the requirements of a reasoned order, nevertheless, on the present facts of the case, there is no warrant for interfering with the said order.

12. Learned counsel for the petitioner has made before us a number of submissions in support of his plea that the impugned order dated 1st November, 2007 is liable to be set aside on account of the following grounds:-

(a) that there is no evidence of intentional wrong having been committed by the petitioner in drawing the payment twice. Extending this argument further, the learned counsel for the petitioner contended that as a matter of fact the respondent themselves violated their own internal procedure by leading to the double payment for which no action could be taken against the petitioner. Apart from this, even the railway authorities while deducting the payment from the running account of the petitioner themselves had made the deduction on two different occasions for recovering the over payment and thus were practically sailing in the same boat.

(b) The second submission made by the learned counsel for the petitioner pertained to the penalty having been imposed on the

petitioner by black listing it from conducting the business with the railways for a period of 9 months and 21 days being totally disproportionate to the misconduct of which it was held guilty. It was also urged that there was delay and laches of almost 11 years and 5 months in all from the impugned cause of action to the date of passing of the banning order.

(c) The third limb of the argument advanced by the petitioner pertained to the alleged procedural lapses on the part of the respondents in not following the principles of natural justice in imposing the penalty on the petitioner. These violations were allegedly the reasons having not been given, documents allegedly having not been supplied, the decision having been taken to impose penalty by a person other than who had given the personal hearing.

13. The learned counsel for the petitioner also relied upon the following judgments in support of his submissions:-

- i. Har minder Singh Arora vs. Union of India and others 1986 (3) SCC 247
- ii. Tata Cellular vs. Union of India 1994 (6) SCC 651
- iii. Erusian Equipment & Chemicals Ltd vs. State of West Bengal & Anr. AIR 1975 (SC) 266
- iv. Nandkishore Ganesh Joshi vs. Commissioner, Municipal Corporation of Kalyan & Dombivali & others (2004) 11 SCC 417
- v. Delhi Development Authority and Anr. Vs. M/s Uee Electricals Engg.(P) Ltd. and Anr. (2004) 11 SCC 213
- vi. Sultan Sadik Vs. Sanjay Raj Subha and Ors. (2004) 2 SCC 377
- vii. M/s Teri Oat Estates (P) Ltd. Vs. U.T., Chandigarh and Ors. (2004) 2 SCC 130
- viii. M/s Pritam Singh and Sons and others vs. State of Punjab through Secretary and others 1996 AIR (P&H) 260

ix. Vijay Singh Nahata vs. Union of India AIR 1998 (Cal)
153
x. Madan Lal & Others vs. Union of India 63 (1996) DLT
154

14. We have considered the submissions made by the learned counsel for the petitioner. We have also gone through the record. We find ourselves unable to be persuaded by the submissions made by learned counsel for the petitioner.

15. At the outset, it is stated that learned counsel for the petitioner has all along been contending that the order of black listing passed against the petitioner is bad in law. In our opinion, the impugned order which has been passed by the respondents cannot be said to be an order of black listing as is ex facie apparent from the order itself. The impugned order bans the petitioner to conduct any business with the respondent only for a period of 9 months and 21 days from the date of passing of the order.

16. There is a difference between the order of banning and the order of black listing. While as in the case of banning order there would be a period which would invariably be specified during which the party/person would suffer a disability or disqualification of conducting the business with the organization passing the order. In the case of black listing the organisation which has passed the order of black listing, prevents the party or the person from conducting the business for all times to come with it. It is totally untenable in law on part of the petitioner to urge that the impugned order is an order of black listing because it prevents the petitioner from conducting the business only for a period specified therein. Therefore, the judgment in Erusian Equipment

& Chemicals Ltd vs. State of West Bengal & Anr. (supra) & M/s Pritam Singh and Sons and others vs. State of Punjab through Secretary and others (supra) are not applicable to the facts of the present case as they deal with the questing of black listing.

Even otherwise the petitioner was given an opportunity of being heard before the impugned order was passed and thus the petitioner cannot complain that principles of natural justice which were the basis for the above judgment were violated.

17. At the time when the arguments were heard a substantial portion of the banning order had already come to an end. To be precise, the banning order was for a period of 9 months and 21 days and was passed on 01.11.2007. Since the substantial portion of the banning order has already come to an end by efflux of time, it may not be an appropriate case where the court in exercise of its powers of judicial review ought to set aside the order especially when no legal infirmity has been shown in the impugned order.

18. The learned counsel for the petitioner in support of his submission had placed reliance on **Tata Cellular's case** (supra) for supporting his contention that the order dated 01.11.2007 is not sustainable in the eyes of law. As a matter of fact, the judgment which has been relied upon by the petitioner, instead of supporting the case of the petitioner, supports the stand of the respondent. In **Tata Cellular's case** it has been clearly laid down by the Hon'ble Supreme Court that while exercising its power of judicial review in exercise of Article 226, the court does not have to

see the quality of decision. The Court is called upon to only see as to how the decision is arrived at and unless and until it is shown that the decision is suffering from illegality, irrationality or procedural impropriety, the court will not be called upon to interfere with the same. In the instant case also we do not find that these infractions of law having been communicated by the respondent which would warrant the interference by this Hon'ble Court. Since the judgment in the case of **DDA and Anr. Vs. M/s Uee Electricals Engg.(P) Ltd.** (2004) 11 SCC 213 is on the lines of Tata Cellular's case the same would also not be applicable to the facts of the case.

19. The petitioner has no doubt raised the question of delay in passing the orders, non-supply of documents, the decision having been taken by the authority other than the one which had given hearing or no express rules or procedure having been followed or that no reasons having been given in the order itself, despite the first round of litigation. We have considered these alleged infractions of law by the respondent. So far as the reasons in passing the impugned order are concerned, no doubt a perusal of the impugned order shows that the order could have been worded in a better manner but by no stretch of imagination it can be said that there are no reasons. The reason given for passing the banning order is that double payment was drawn. Therefore, the judgment in Vijay Singh Mehta's case does not come to his rescue of the petitioner. In the said judgment no reasons for banning order were given which were sought to be resurrected by filing an affidavit which was not

permissible keeping in view Mohinder Singh Gill's case. The sum and substance of the reasons are given in the order itself are drawing of the public money on two different occasions in respect of same invoices.

20. Admittedly the petitioner is a contractor having a long dealing with the respondents and getting its accounts audited regularly so as to file its income tax return, therefore, the floating of two invoices bearing No. 185 dated 29th February, 1996 for a sum of Rs.1,64,091/- (being 98% of the total value) and again another invoice by the same number for a sum of Rs.1,88,890/- (being 100% of the value) on 9th May, 1996, the payment received by the petitioner clearly shows that as the aforesaid invoices were raised in immediate succession therefore punishment imposed could not be faulted in absence of a satisfactory explanation by the petitioner. The other infractions of documents having not been supplied or the report of the internal inquiry officer having not been supplied are of no consequence inasmuch as the internal inquiry was an inhouse inquiry of which the petitioner was not required to be informed of or communicated. This inquiry was being conducted by the respondents to fix the responsibility with regard to its own officials and the respondents in their counter affidavit have stated specifically that an inquiry was held and imposed punishment against their own delinquent officials as well. Rest of the documents claimed by the petitioner were all available with the petitioner and therefore it could not be said that the documents were relied upon by the respondents of which the petitioner was not aware.

21. So far as the decision having been taken by a person other than the one which gave the hearing is concerned, we are of the view that in a departmental action it is not always necessary that the action must be taken by the same person who has given the hearing unless and until the petitioner specifically shows that a serious prejudice has been caused to him on account of this. In the instant case, the petitioner has not shown any serious prejudice having been caused to him on account of this alleged infraction. Apart from this, these are all departmental matters where officers keep on being shifted in routine course and therefore if hearing is given by one and the decision is taken by his successor, it could not be said that it is a violation of principle of natural justice.

22. The third submission which has been urged by the petitioner is with regard to delay and laches in initiating the action as well as the question of proportionately of penalty. In our view, these concepts are only applicable to domestic inquiries where a person is visited with a punishment under the service rules and not in a case where the order of banning is passed. No judgment has been cited by the learned counsel for the petitioner in this regard to show that these concepts which have been equally made applicable in the case of banning order having been passed. The judgment which has been relied upon by the petitioner **M/s Teri Oat Estates (P) Ltd. Vs. U.T., Chandigarh and Ors** 2004 (2) SCC 130. The said judgment lays down that the question of proportionality may be relevant in a legislative and administrative action where there is a violation of a fundamental right under Article 19(1) (g)

of the Constitution of India. In the instant case, there is no violation of any fundamental right of the petitioner. It is not a fundamental right of the petitioner that it must conduct business with the respondent. Therefore, we are not impressed by this submission of the learned counsel for the petitioner. The petitioner, thus, is not entitled on the merits of the matter to succeed in the writ petition. On 22nd May 2008, the order was passed the contents of which are already reproduced hereinabove in para 10. The case was adjourned to 26th May, 2008, after hearing the arguments. The matter was again listed on 4th July, 2008 with the direction to the learned counsel for the respondent that she may seek clear instructions as to whether the respondents have a policy of substituting the imposition of penalty by imposition of financial sanction. This information was to be given on 26th May, 2008 and the learned counsel for the respondent had sought further time to inform the Court on 4th July, 2008. On 4th July, 2008, the learned counsel for the respondent had stated that there is no policy for substitution of financial sanction in lieu of penalty. Accordingly, the matter was adjourned for orders to 7th July, 2008 for orders. In view of the peculiar facts and circumstances of the present case namely:

- (a) Petitioner's past record except for the transgression which led to the filing of the writ petition is clean for a period of more than two decades and
- (b) Secondly even in the present case also, in spite of the order of this Court, the order passed by the respondent does not

appear to be very happily worded and does not contain appropriate reasons.

23. We are therefore of the view that as major portion of the ban is already over, therefore, while upholding the impugned order of ban passed by the respondent, we reduce the penalty of ban already undergone by the petitioner till date as this would meet the ends of justice and since only about 48 days period of the ban is left, accordingly the penalty is reduced to the extent of that having already undergone from a period of 9 months and 21 days.

24. The learned counsel for the petitioner has relied upon a number of other judgments mentioned herein above in para 13. However, we are not dealing with the said judgments as most of the said judgments do not have any direct bearing on the issue involved in the present case.

25. Accordingly, we are satisfied that there are no merits in the petition and the same is accordingly disposed of in terms of the above order.

(V.K. SHALI)
JUDGE

(MUKUL MUDGAL)
JUDGE

July 7, 2008
sk/dr/nk