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

Pronounced on: 02.02.2009

+ W.P. (C) 2520/2007

K.R.CONSTRUCTION CO. Petitioner
Through: Mr. D. Moitra, Advocate.

versus

GAIL INDIA LTD. & ANR. Respondents
Through: Mr. Arijit Mazumdar, Advocate.

**CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT**

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

S.RAVINDRA BHAT, J. (ORAL)

% Issue Rule. Mr. Arijit Mazumdar, Advocate waives notice on rule. With consent of counsel for the parties, the matter was finally heard.

2. The petitioner seeks directions to quash the holiday or black listing order issued against it. The consequential relief of a direction to allow the petitioner to participate in further tender processes, has also been sought.

3. The petitioner claims to be a contractor engaged in mechanical maintenance and allied activities. It had been an enlisted contractor with

respondent – Gas Authority of India Limited (GAIL) for a long period of time. The petitioner further contends that it successfully completed various projects and works for the GAIL worth Crores of Rupees. In terms of the averments, the business relationship between the two organizations has subsisted since 1991. It is alleged by the petitioner that the GAIL abruptly and without granting any explanation, stopped the petitioner from participating in its tender processes. The petitioner adverts to representations made to GAIL in this regard in 2003, 2005 and 2006. In one such representation dated 14.4.2006, the petitioner claims that three years had passed and that no reasons for the black listing had been intimated. It also alleged that the holiday/black listing was made known to him for the first time on 5.8.2005.

4. The GAIL in its return has not denied having a business relationship with the petitioner. It, however, adverts to events which led to a vigilance enquiry. The copy of the Chief Vigilance Officer's report dated 19.9.2002 is on the record. According to the document, the petitioner had furnished an experience certificate dated 10.5.1997 stating that it was the sub-contractor of one M/s Blue Star for fine water distillation network at Indian Oil Corporation Limited, Panipat. It was stated in the said vigilance report that M/s Blue Star could not verify a certificate furnished by the petitioner. When called upon to furnish proof of its genuineness, the petitioner was unable to do so. The Chief Vigilance Officer, therefore, recommended black listing.

5. The GAIL has produced the copies of the Circular dated 25.9.2002 by

which the petitioner was black listed permanently. The same is extracted below: -

**"GAS AUTHORITY OF INDIA LIMITED
UP PETROCHEMICAL COMPLEX PATA
CONTRACT & MATERIAL MANAGEMENT DEPARTMENT**

Ref: GAIL/UPPC/C&P/GM-CELL/084/2002

25th September, 2002

SUB: BLACK LISTING OF FIRMS FOR FUTURE BUSINESS WITH GAIL

Named below due to submission of false/forged documents in order to secure Contracts it has been decided to BLACK LIST M/S K R Construction and their partners against one of the tenders floated by GAIL.

<i>Sl.</i>	<i>Name of Partner</i>	<i>Address</i>
01	Sh. Rakesh Chaubey, S/o Late Sh. Moti Lal Chaubey	Near Water Tank Dibhopur.
02	Sh. Umesh Chaubey S/o Late Sh. Moti Lal Chaubey	- Do -
03	Sh. B.P. Ojha, S/o Sh. Rajnarain Ojha	Kauharpur Post Alaunpur Dist. Fazabad.
04	Sh. A.K. Chaubey S/o Sh. Moti Lal Chaubey	Near Water Tank Dibhopur.
05	Sh. P.K. Chaubey S/o Sh. Moti Lal Chaubey	-Do-
06	Sh. Vinod Kr. Dubey S/o Sh. Munnalal Dubey	Village Hirrni, P.O. Khatia, Aurayya.

Consequently there will not be further dealing with this party or their partners in future. All concerned are requested to take note of above and ensure compliance.

(R SHARMA)
General Manager (C&P)

6. The petitioner contended that the black listing order, impugned in this case has a permanence which cannot be upheld by the Court. It was also contended that the said order was never served upon the petitioner, who was not given any opportunity of hearing before its issuance. In the circumstances, he, therefore, asks for a order to quash the said order.

7. The GAIL, on the other hand, contends that the black listing order cannot be attacked as arbitrary. The petitioner was granted time to furnish the details to establish the veracity of the experience certificate. Upon its inability to do so, the GAIL was constrained to issue the black listing order. The petitioner's awareness of that order stands established from its repeated representations against it, copies of which are on the record. GAIL, therefore, urges this Court not to intervene under Article 226 of the Constitution.

8. The preceding discussion would show that there is no dispute about issuance of the black listing order on 25.9.2002. The same has been extracted above. Although, GAIL refutes the charge of violation of principle of natural justice, no material has been placed on record to suggest that a show cause notice seeking the petitioner's explanation and further warning of the intended consequence of black listing, was ever issued to the petitioner. The Supreme Court's judgment reported as **Erusian Equipments and Chemicals Ltd.** v. **State of West Bengal** (AIR (1975) SC 266) and a decision reported as **Raghu Nath Thakur** v. **State of Bihar and Ors.**, AIR 1989 SC 620 are authority for the proposition that having regard to the

adverse nature of black listing orders, the public agency should adhere to principles of natural justice by issuing a show cause notice, granting adequate opportunity and issuing a speaking order. Where the Agency proposes a drastic order of black listing for a long period of time, the onus of applying fairness standards is even greater. In this case, apart from the contents of the vigilance report which shows that petitioner was asked to produce a certificate, there is no material pointing to a specific show cause notice having been issued before the black listing order.

9. This Court is of the opinion that aside from the fatal infirmity to the black listing order noticed above, the impugned order also cannot be sustained because it suffers from the vice of permanence. It virtually forbids the petitioner from engaging in any business or commercial transactions with GAIL. Such an order is plainly unreasonable as it is absolutely disproportionate. While a public agency may choose not to enter into contract with a specific individual or concerned, for determined malpractices or misbehaviour, even for a long duration – say 5 years, its decision to never enter into contract or commercial transactions, would be utter violation of Articles 14 & 19 (1) (g) of the Constitution of India. It amounts to a permanent ban of business with such citizen of concerned, even when the particular business is available and otherwise lawful for all others. Such an indefinite or permanent term of black listing, therefore, cannot be sustained.

10. For the above reasons, the Writ Petition deserves to be allowed. Therefore, the impugned Circular dated 25.9.2002 is hereby quashed. The

respondents shall hereafter consider the petitioner's offers or applications on their merits and in accordance with law.

The Writ Petition is allowed in the above terms. No costs.

**S. RAVINDRA BHAT
(JUDGE)**

FEBRUARY 02, 2009
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