

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

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**Date of Decision: 24.07.2013**

**+ W.P.(C) 4583/2013**

**M/S BRITE ARICON (CONSORTIUM) & ANR ..... Petitioners**

Through: Ms. Anusuya Salwan, Advocate

versus

**AIRPORTS AUTHORITY OF INDIA & ANR ..... Respondents**

Through: Mr. Digvijay Rai, Standing Counsel

for the respondent/ Airport Authority of India.

**CORAM:**

**HON'BLE MR. JUSTICE V.K. JAIN**

**JUDGMENT**

**V.K. JAIN, J. (ORAL)**

A Consortium named M/s Brite Aricon (Consortium) consisting of two companies M/s B.R. Arora and Associates Private Limited and M/s Aricon Developers Private Limited entered into a contract with the respondent Airports Authority of India for the work of expansion of apron, construction of additional taxi way, extension of runway and allied works at Varanasi Airport. The work was required to be completed by 11<sup>th</sup> March, 2009 and according to the petitioner, the said work was completed to the satisfaction of the respondents on 20<sup>th</sup> August, 2010 and a certificate dated 11<sup>th</sup> December, 2010 in this regard was issued. Vide order dated 1<sup>st</sup> July, 2013 passed by AGM Engg(C), the respondent Airports

Authority of India decided that henceforth Airports Authority of India shall not award any contract to the said Consortium or to any firm or company having business link in the form of joint venture agreement or the like with. It appears from a perusal of the said order that some recommendation was made by CBI for blacklisting the contractor who was awarded the work of expansion of apron, construction of additional taxi way, extension of runway and allied works at Varanasi Airport. The impugned order was passed pursuant to the recommendations received from CBI and after producing the relevant record in this regard.

2. The grievance of the petitioners is that no show cause notice or opportunity of hearing was given to them by the respondent Airports Authority of India before blacklisting of the above referred entities. It is by now a settled proposition of the law that since an order blacklisting an individual or a firm or a company, visits the blacklisted person with serious civil consequences, no such order can be passed without following the basic principles of natural justice which comprise issuing a show cause notice against the proposed blacklisting, followed by an opportunity of hearing to the noticee. Admittedly, no show cause notice or opportunity of hearing was given to the aforesaid entities before the order was passed.

3. In **Raghunath Thakur vs. State of Bihar and Ors.** (1989) 1 SCC 229, where Supreme Court, inter alia, held as under:-

“4. ... It has to be realized 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 **Vinay Construction Co. & Ors. vs. Municipal Corporation of Delhi and Anr.** [116(2005) DLT 14], this Court rejected the contention that there can be indefinite period of blacklisting, holding that since blacklisting carries a very severe consequence and needs to be for a prescribed period.

In **A. Rajendran vs. The General Manager** [Writ Petition No.17517 of 2002 decided on 16.10.2003], the Madras High Court, noticing that the order of blacklisting the petitioner did not specify the period of blacklisting, quashed the said order, thereby upholding the contention that blacklisting could not be for an indefinite period.

In **Well Protect Manpower Service Pvt. Ltd. v. Delhi Development Authority & Ors.** 117(2005) DLT 293 (DB), this Court, inter alia, held as under:-

“14. There is no gainsaying that any order or decision in matters involving civil consequences has to be made consistently with rules of natural justice. A "civil consequence" is an infraction of not merely property or personal rights but also of material deprivations and non-pecuniary damages. [See: Mohinder Singh Gill and Anr. v. The Chief Election Commissioner and Ors.

[1978]2SCR272 ]. It is true that the rules of natural justice can neither be cast in a rigid mould nor put in a legal strait jacket. They "are not cut and dried. They vary indefinitely" said Lord Denning M.R. in Regina v. Home Secretary, Ex. P. Santillo, (1981) Q.B. 778. Thus, the principles of natural justice are flexible and have to be adopted to the circumstances prevailing in any particular case. Nonetheless, it is an elementary principle of natural justice that parties affected by any order should have the right of being heard and making representations against the order. It is an equally implied principle of rule of law that any order having civil consequence should be passed only after following the principles of natural justice [SEE: Raghunath Thakur v. State of Bihar: AIR1989SC620 ]. Undoubtedly black listing of any person in respect of business ventures entails serious civil consequences for his future business and Therefore, any authority taking such a decision must act in accordance with the principles of natural justice. While dealing with a similar issue in Erusian Equipment and Chemicals v. State of West Bengal and Anr. [1975]2SCR674 , their Lordships of the Supreme Court observed thus:

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.

4. The learned counsel appearing for the respondents submits that the order in question is not an order of blacklisting but an order debarring certain entities from entering into a contract with Airports Authority of India. I fail to appreciate what is the difference between blacklisting and an order debarring someone from entering into contract, the consequence of both the orders being one and the same

and the only difference being in the nomenclature used in the order. In any case, the subject of order in question, itself describes the aforesaid order as an order debarring/blacklisting from Airports Authority of India for future tendering and even the operative part says that the competent authority had decided to blacklist Mr.Baldev Raj Arora from participating in any of the tenders of Airports Authority of India in future in any capacity.

5. The learned counsel for the respondents states that no purpose would have been served from giving show notice to the petitioners since they cannot go beyond the recommendations made by CBI for blacklisting/debarring the petitioners. In my view, the contention is wholly misconceived and in fact betrays a decision before even giving opportunity of hearing to the person sought to be blacklisted/debarred. Such an attitude cannot be said to be fair and impartial approach in the matter and in fact may turn the whole exercise of giving show cause notice and hearing into a farce.

6. It is very much open to the respondents, after considering the reply of the notices and hearing them to take a view different from the view taken by CBI and it would not be a correct to say that the recommendations made by CBI is binding upon the authority which is called upon to take decision in the matter. It would not be a correct approach to proceed in such matters with preconceived notions and a fair and impartial approach needs to be adopted in the matter by applying an

independent mind to the facts and circumstances of the case including the plea taken by the notice and the material placed by him before the authority concerned.

7. For the reasons stated hereinabove, the impugned orders No. AAI/CHQ/Engg(C)/2013-14/397 and AI/CHQ/Engg(C)/2013-14/397 both dated 1<sup>st</sup> July, 2013 passed by AGM Engg (C), Airports Authority of India are, hereby, set aside. The respondents are permitted to serve requisite show cause notice upon the petitioners within two weeks from today, giving two weeks time to the petitioners to respond to the said notice. In case the competent authority is not satisfied with the reply to the show cause notice, it shall give an opportunity to the noticee to appear before it for the purpose of hearing on 2<sup>nd</sup> September, 2013 and, thereafter, pass an appropriate order in the matter, taking into consideration the entire material available to him including the material, if any, made available by the petitioners. While taking a fresh decision in terms of this order, the Competent Authority will also take into consideration the decisions in **Vinay Construction Co. & Ors.** (supra) and **A. Rajendran** (supra) holding that an order of blacklisting cannot be for an indefinite period and, therefore the period of blacklisting can be only for a specified period.

The writ petition stands disposed of in terms of this order.

**V.K. JAIN, J**

**JULY 24, 2013**

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