

HIGH COURT OF TRIPURA AGARTALA

WP(C) No.455 of 2023

M/S Kismat Spices Industry, Math Chowmohani, A.A. Road, Agartala, P.O- Agartala, P.S-East Agartala, Tripura West, PIN-799006, Having its Head office at Math Chowmuhani, Factory at Badharghat, Industrial Estate, P.O- A.D. Nagar, Agartala, West Tripura, Represented by its partners Shri Gautam Paul & Smti Subhra Paul.

..... Petitioner(s)

V E R S U S

1. The State of Tripura, Represented by the Secretary to the Government of Tripura, Food, Civil Supplies & Consumer Affairs, Civil Secretariat, P.O- Agartala Secretariat, PIN-799010.
2. The Additional Secretary & Director, Food, Civil Supplies & Consumer Affairs, Government of Tripura. P.N. Complex, Gurkhabasti, Agartala-799010.
3. The Director Food, Civil Supplies & Consumer Affairs, Government of Tripura, P.N Complex, Gurkhabasti, Agartala-799010.
4. The Union of India, Represented by the Secretary to the Government of India, Ministry of Commerce & Industry, Udyog Bhawan, New Delhi-110107, India.
5. The Salt Commissioner, the Government of India, 2-A Lavan Marg, Post Box No.139, Jaipur

..... Respondent(s)

For Petitioner(s)	:	Mr. S.M. Chakraborty, Sr. Advocate. Mrs. P. Chakraborty, Advocate.
For Respondent(s)	:	Mr. D. Sarma, Addl. G.A.
Date of hearing & Judgment	:	21 st August, 2023.
Whether fit for reporting	:	YES

**HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR. JUSTICE T. AMARNATH GOUD**

JUDGMENT & ORDER (ORAL)

Heard Mr. S.M. Chakraborty, learned senior counsel appearing for the petitioner. Also heard Mr. D. Sarma, learned Additional Government Advocate appearing for the State respondents.

[2] By the impugned orders dated 25.04.2024 (sic.2023 ; wrongly written as 2024) (Annexure-18) and (Annexure-19), respondent No.2 has cancelled the Work Order and Agreement executed between the Department and the petitioner dated 14.12.2022 invoking Clause 27 & 28 of the General Terms & Conditions of the NIT. Petitioner has also been blacklisted for a period of 05 (five) years from the date of issuance of the order from participating in any e-Tender/Expression of Interests (EoI)/Request for Proposal (RFP) of the Department. It is also indicated that penalty will be deducted from his bill due and Performance Guarantee deposit as per NIT against the work order No.F.5-11(1)-PP (PD)-DF/2022-23 (Tender)/16620 dated 16.12.2022.

[3] From the pleadings on record and documents adduced, it is evident that the agreement was for procurement of 'Super Fine Crashed White Iodised Salt (as per FSSAI Standard) in one Kg Poly-packet' during the period November, 2022 to October, 2023.

[4] Petitioner has taken a plea that the termination of the contract has been made without following the prescription of mandatory 7 (seven) days notice under Clause 27 of the General Terms & Conditions of the NIT. In fact, no notice was issued on the petitioner before termination of the agreement and cancellation of the work order. No notice has either been issued before blacklisting the petitioner.

[5] Learned counsel for the petitioner has relied upon the decision of the Apex Court in *Gorkha Security Services Vs. Government (NCT of Delhi) and others* reported in (2014) 9 SCC 105 and *Kulja Industries Limited Vs. Chief General Manager, Western Telecom Project Bharat Sanchar Nigam Limited and others* reported in (2014) 14 SCC 731 in support of his submission.

[6] Petitioner has made reply on 27.04.2023 against the impugned order of cancellation of contract and blacklisting and requested them to review the matter with a holistic approach.

[7] Learned counsel for the petitioner submits that since the impugned orders suffers from violation of principles of natural justice and the terms and conditions of the agreement and entails adverse consequences as he has been debarred from participating in any tender for the next 5 (five) years affecting the prospects of the petitioner company in participating in tenders with any other State or its instrumentalities, the impugned orders may be set aside and the matter may be remanded to the respondent authorities to take a fresh decision in accordance with law.

[8] Mr. D. Sarma, learned Additional Government Advocate submits that the matter has been taken up for the first time, therefore, instructions are awaited. However, since a perusal of the impugned letter indicates that the order of cancellation of contract and blacklisting has not been preceded with any show-cause notice, this Court if it may deem so fit, remand the matter to

the respondent authorities to take a decision in accordance with law on the subject after giving due show-cause notice and opportunity to the petitioner.

[9] We have considered the submissions of learned counsel for the parties. The impugned letters bearing No.F.5-11(1)-PP (PD)-DF/2022-23 (Tender)/5766-70 (Annexure-18) and No.F.5-11(1)-PP (PD)-DF/2022-23 (Tender)/5771-75 (Annexure-19) both dated 25.04.2024 (should be read as 25.04.2023) are extracted hereunder:

"No.F.5-11(1)-PP (PD)-DF/2022-23 (Tender)/5766-70

Government of Tripura,
Directorate of Food, Civil Supplies & CA
P.N. Complex, Gurkhabasti, Agartala

Agartala, the 25th April, 2024.

To
M/S. Kismat Spices Industry,
Math Chowmuhani,
A.A. Road, Agartala, Tripura (West).

Subject: Cancellation of Work Orders for supply of Iodised Salt.

Sir,

As per provisions of the 'Clause 27' and 'Clause 28' of the 'General Terms & Condition' Section of the NIT No.F.5-11(1)-PP (PD)-DF/2022-23 (Tender)/12446 dated 12.09.2022, penal provisions have been invoked by the Department against your Company and the following Work Orders for supply of Iodised Salt are hereby cancelled.

Sl	W.O. No. & Date	Quantity	Last date of supply
i)	F.5-11(1)-PP(PD)-DF/2022-23 (Tender)/1325 dated 20.01.2023.	2520.00 MT	15.03.2023
ii)	F.5-11(1)-PP(PD)-DF/2022-23 (Tender)/3012 dated 04.03.2023.	2520.00 MT	28.04.2023

Sd/
(Nirmal Adhikari)
Addl. Secretary & Director
Food CS&CA, Tripura

Copy to:

1. PS to the Hon'ble Minister, Food CS&CA for kind information of the Hon'ble Minister.
2. PS to the Special Secretary, Food CS&CA for kind information of the Special Secretary.

3. All Sub-Divisional Magistrates of the State for information.
4. The DDF, Dharmanagar/Udaipur, O/C, Central Stores, A.D. Nagar for information.

Sd/
Addl. Secretary & Director
Food CS&CA, Tripura"

"No.F.5-11(1)-PP (PD)-DF/2022-23 (Tender)/5771-75

Government of Tripura,
Directorate of Food, Civil Supplies & CA
P.N. Complex, Gurkhabasti, Agartala

Agartala, the 25th April, 2024.

Subject: Procurement of Super Fine Crashed White Iodised Salt (as per FSSAI Standard) in one Kg Poly-packet during the period from November, 2022 to October, 2023-Cancellation of 'Deed of Agreement' and Blacklisting of M/S. Kismat Spices Industry, Agartala, Tripura from participating in any e-Tender, EoI and RFP of the Food CS&CA Department for 05 years.

References:

- a) NIT No.F.5-11(1)-PP (PD)-DF/2022-23 (Tender)/12446 dated 12.09.2022.
- b) Deed of Agreement F.5-11(1)-PP (PD)-DF/2022-23 (Tender)/12446 dated 14.12.2022.
- c) Work Order No. F.5-11(1)-PP (PD)-DF/2022-23 (Tender)/16620 dated 16.12.2022, Work Order No.F.5-11(1)-PP (PD)-DF/2022-23 (Tender)/1325 dated 20.01.2023 and Work Order No. F.5-11(1)-PP (PD)-DF/2022-23 (Tender)/3012 dated 04.03.2023.
- d) e-Mail communications of the Food CS&CA Department dated 05.03.2023, 06.03.2023, 05.04.2023, 09.04.2023 & 10.04.2023.

M/S. Kismat Spices Industry, Math Chowmuhani, A.A. Road, Agartala (herein under referred as the Supplier) participated in the e-Tender invited by the Food CS&CA Department, Govt. of Tripura (herein under referred as the Department) vide NIT No.F.5-11(1)-PP(PD)-DF/2022-23 (Tender)/12446 dated 12.09.2022 and offered lowest rate for supply of 'Super Fine Crashed White Iodised Salt (as per FSSAI Standard) in one Kg Poly-packet' during the period from November, 2022 to October, 2023. The Supplier quoted the lowest rate (L₁) for the supply and recognized by the Department as successful Bidder against the referred e-Tender.

2. Thereafter, in response to Letter of Intent (LoI) dated 11.11.2022 of the Department, the Supplier executed 'Deed of Agreement' on 14.12.2022 for supply of 22584.00 MT (tentative) of Iodised Salt with the Food CS&CA Department, Govt. of Tripura as per terms & conditions stipulated in the NIT

Document, Deed of Agreement & Work Orders etc. of the Food CS&CA Department.

3. Subsequently, the Department issued 03(three) Work Orders vide No. F.5-11(1)-PP (PD)-DF/2022-23 (Tender)/16620 dated 16.12.2022; Work Order No.F.5-11(1)-PP (PD)-DF/2022-23 (Tender)/1325 dated 20.01.2023 and Work Order No. F.5-11(1)-PP (PD)-DF/2022-23 (Tender)/3012 dated 04.03.2023 for supply of total 7560 MT (@2520 MT per Work Order) within the last date of supply stipulated in the respective Work Orders.

4. However, it has been observed that due to delay in supply and total non-responsive approach of the Supplier, regular monthly distribution of Iodised Salt through PDS has been hampered badly during last few months and thus, the 9.60 lakh ration cardholders of the State deprived of getting their monthly entitlement of Iodised Salt in time.

5. Upon review of the supply position, it is observed that the following defaults have been committed by the Supplier which are breach of the contractual obligations and contrary to the interest of the Department and ration cardholders of the State.

- a) Last date for supply of Iodised Salt at 55 (fifty five) nos. State Food Godowns against the Work Order No. F.5-11(1)-PP (PD)-DF/2022-23 (Tender)/16620 dated 16.12.2022 was 30.01.2023. However, the Supplier initiated supply at State Food Godown level on 13.02.2023 i.e. after 02(two) weeks from the date of supply.
- b) Last date for supply of Iodised Salt at 55 (fifty five) nos. State Food Godowns against the Work Order No.F.5-11(1)-PP (PD)-DF/2022-23 (Tender)/1325 dated 20.01.2023 was 15.03.2023. However, the Supplier has not yet supplied any quantity of Iodised Salt at State Food Godowns till date.
- c) In the meantime, the Department sent several e-mail communications to the Supplier periodically, requesting to inform regarding the status of supply. Unfortunately the Department hardly received any reasonable reply from the Supplier.

6. In view of the defaults detailed at para-5 above, the Competent Authority in the Department is of the view that the Supplier has failed to comply the contractual obligations, execute the Work Orders of supply and hampered the interests of the Department and 9.60 lakh ration cardholders of the State as well.

7. Now therefore, with approval of the Competent Authority, I hereby invoking penal provisions under Clause 27 & 28 of the 'General Terms & Conditions' Section NIT document under reference and passing the following orders.

- a) The Deed of Agreement executed between the Department and M/S. Kismat Spices Industry, Math Chowmuhani, A.A. Road, Agartala dated 14.12.2022 is hereby cancelled.
- b) M/S. Kismat Spices Industry, Math Chowmuhani, A.A. Road, Agartala is hereby blacklisted for a period of 05 (five) years from the date of issuance of this Order for participating any e-Tender/Expression of Interests (Eoi)/Request for Proposal (RFP) of the Department.
- c) Appropriate penal amount will be deducted from the Bill-due/Performance Guarantee deposit of the Supplier as per provisions of the NIT document under reference for delayed supply against Work Order No. F.5-11(1)-PP (PD)-DF/2022-23 (Tender)/16620 dated 16.12.2022.

Sd/
(Nirmal Adhikari)
Addl. Secretary & Director
Food CS&CA, Tripura

To
M/S. Kismat Spices Industry, Math Chowmuhani,
A.A. Road, Agartala

Copy to:

1. PS to the Hon'ble Minister, Food CS&CA for kind information of the Hon'ble Minister.
2. PS to the Special Secretary, Food CS&CA for kind information of the Special Secretary.
3. All Sub-Divisional Magistrates of the State for information.
4. The DDF, Dharmanagar/Udaipur, O/C, Central Stores, A.D. Nagar for information.

Sd/
Addl. Secretary & Director
Food CS&CA, Tripura

[10] Clause 27 of the terms and conditions of the NIT are also extracted hereunder which stipulates furnishing of mandatory 7 (seven) days notice before the agreement is terminated at the behest of the employer.

"27. Penalty on default / Extension of time:

- i. The successful Bidder shall have to supply the monthly ordered quantity of Iodised Salt as per specifications prescribed in the NIT and supply shall have to be completed in a span of 30 (thirty) days from the date of issuance of the supply order. However, the successful Bidder shall be given a one-time preparatory period of 30 (thirty) days from the date of issuance of the Letter of Appointment (LoA) for the Work.

- ii. In case of non-supply/delayed supply as per the above schedule, liquidated damage for delay in supply shall be recovered to be computing @2% of the work order value for 1st week, @3% of the work order value for 2nd week, of the quantity of delayed supply from the approved supplier. In case the supplier still fails to supply even after 2nd week, the Department shall have the right to cancel the supply order and make arrangements for the supply of Iodised Salt from other sources at the risk & cost of the defaulted supplier/Bidder and the incidental charges incurred thereon on this account shall be deducted from the due payments of the supplier as well as from the performance guarantee amount deposits. In addition to this, the Department shall also have the right to forfeit the Performance Guarantee Deposit of the supplier/Bidder besides black-listing the firm.
- iv. The Department reserves the right to terminate awarded contract at any time by giving 07 days prior notice, if the service of the Bidder is found un-satisfactory.
- v. Penalty provision as mentioned above for delayed supply will be applicable, but in exceptional circumstances and if it is sufficiently proved that the delay in supply is due to the circumstances beyond the control of the suppliers, extension of time will be granted at the discretion of Director, Food, CS&CA.
- vi. In the event of failure by the successful Bidder (L₁) the Food, CS&CA Department is at liberty and also reserves the right to purchase the ordered quantity to ensure uninterrupted supplies. In such circumstances the differential cost, transport charges, incidental charges and other excess expenditure, if any, will be recovered from the successful Bidder (L₁). If the new rate is cheaper the benefit will not accrue to the unsuccessful supplier.
- vii. Food, CS&CA Department reserves the right to charge penalty provision as mentioned above or withhold payment against any unsatisfactory stocks supplied by the supplier without prejudices to other rights. The decision of the Director, Food, CS&CA Department is final and cannot be called into question. The supplier is liable to reimburse/compensate the Food, CS&CA Department or to third party for any loss, damage, injury, etc. caused or arising out of the negligence in supply of low or inferior quality of stocks or any breach of contract.
- viii. Notwithstanding anything contained in the terms and conditions of this tender, The Director, Food, CS&CA Department is the authority in deciding the recovery of penalty from the supplier taking into account the stock position and future requirement of supply in the larger interest of the uninterrupted PDS supply."

[11] A perusal of the impugned letters itself show that there is no reference to any show-cause notice issued upon the petitioner before the

precipitate action of termination of the agreement and blacklisting has been taken against him. The law in this regard is quite well settled. Reference is made to the decision of the Apex Court in the case of *Gorkha Security Services (Supra)* (paragraphs 21 and 22) which are quoted hereunder:

"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 blacklisting, this requirement becomes all the more imperative, having regard to the fact that it is harshest possible action.

22. The High Court has simply stated that the purpose of show-cause notice is primarily to enable the noticee to meet the grounds on which the action is proposed against him. No doubt, the High Court is justified to this extent. However, it is equally important to mention as to what would be the consequence if the noticee does not satisfactorily meet the grounds on which an action is proposed. To put it otherwise, we are of the opinion that in order to fulfil the requirements of principles of natural justice, a show-cause notice should meet the following two requirements viz:

- (i) The material/grounds to be stated which according to the Department necessitates an action;
- (ii) Particular penalty/action which is proposed to be taken. It is this second requirement which the High Court has failed to omit.

We may hasten to add that even if it is not specifically mentioned in the show-cause notice but it can clearly and safely be discerned from the reading thereof, that would be sufficient to meet this requirement."

[12] Reliance is also placed on the decision of the Apex Court in the case of *Kulja Industries Limited (Supra)* (paragraphs 17, 18, 20, 27, 28, 28.1 &

28.2)_ The Apex Court has laid down that not only the order of blacklisting should precede a show-cause containing the charges but it should also indicate the proposed quantum of penalty in view of the doctrine of proportionality so that the noticee is in a position to offer his reply to the charges and also the proposed penalty since the order of blacklisting has serious adverse consequences as it affects the right to carry on business guaranteed under Article 19(1)(g) of the Constitution of India.

[13] It further appears that the impugned orders suffers from non application of mind as even the date mentioned in the orders are of 25.04.2024 which the concerned respondent has not even cared to correct before signing it.

[14] Having regard to the position in law referred to above and the facts and circumstances of this case, since the impugned orders of cancellation of work order, termination of agreement/contract and blacklisting are apparently in violation of principles of natural justice and not preceded by any show-cause notice, in order to give an opportunity to the petitioner to submit his defence, at this stage without observing anything on the merits of the charges referred to in the impugned orders, the impugned letters bearing No.F.5-11(1)-PP (PD)-DF/2022-23(Tender)/5766-70 and No.F.5-11(1)-PP(PD)-DF/2022-23 (Tender)/5771-75 both dated 25.04.2024 are quashed.

[15] The matter is remitted to the competent authorities/respondent No.2 to take a fresh decision in accordance with law on the issue of cancellation of work order, termination of contract and the blacklisting by

giving adequate opportunity to the petitioner to show-cause and upon consideration of his reply, if any. Needless to say, such decision be taken preferably within 4 (four) weeks as the issue not only affects the petitioner but the interest of the employer also whose work may continue to suffer. The writ petition is accordingly disposed of.

Pending application(s), if any, also stands disposed of.

(T. AMARNATH GOUD), J

Aparesk Kumar Singh
(APARESH KUMAR SINGH), CJ