

C.R. 100/-

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IN THE HON'BLE HIGH COURT OF CHHATTISGARH
AT BILASPUR

{W.P. (C) No.....2368...../2014}

PETITIONER :

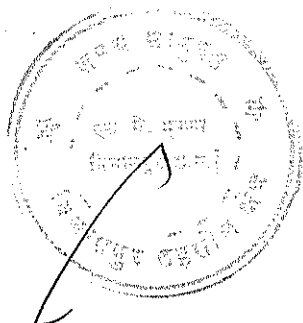
M/s Gulab Chand Jain
through Trihil Jain S/o Late
Shri Vinod Jain Aged about 28
years R/o Parshva
Appartment, Choubey Colony,
Raipur, Police Station Civil
Lines, Tehsil and District
Raipur (C.G.)

2368/14
R No. 2368/14
Presented by Shri. R. J. Jain
Before 01/12/14

VERSUS

RESPONDENTS :

1. ✓ State of Chhattisgarh
Through : Secretary
Urban Development
Department, Mahanadi
Bhawan, Mantralay, New
Raipur, (C.G.)
2. ✓ The Municipal Corporation
Raipur, through the
Commissioner, Municipal
Corporation Raipur, (C.G.)
3. ✓ The Commissioner, Municipal
Corporation Raipur, New Head
Office, Near Gandhi Chowk,
Raipur, (C.G.)
4. ✓ The Zonal Commissioner,
Municipal Corporation,
Raipur, New Head Office, Near
Gandhi Chowk, Raipur, (C.G.)



WRIT PETITION UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA FOR ISSUANCE OF A WRIT IN
THE NATURE CERTIORARY, MANDAMUS, ORDER OR
ORDERS, DIRECTION OR DIRECTIONS OR LIKE

HIGH COURT OF CHHATTISGARH, BILASPUR

**D.B.: HON'BLE SHRI NAVIN SINHA, ACTING C.J. &
HON'BLE SHRI GOUTAM BHADURI, J**

W.P. (C) No. 2368 of 2014

PETITIONER

M/s Gulab Chand Jain

Versus

RESPONDENTS

State of Chhattisgarh and others

**WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF
INDIA**

Appearance :

Shri Rahul Jha, counsel for the petitioner.
Shri J.K. Gilda, Advocate General for the State.
Shri Kashif Shakeel, counsel for the respondents No.2 to 4.

ORDER
(23.12.2014)

NAVIN SINHA, ACTING C.J.

1. We have heard Learned Counsel for the Petitioner, Advocate General on behalf of the State and Counsel for the Municipal Corporation.

2. Learned Counsel for the Petitioner at the outset submits that the termination of the contract is the subject matter for a separate challenge. The grievance in the present writ application against order dated 8.8.2014 is limited to the extent that it blacklists the Petitioner for one year from being a bidder for any contract under the Corporation. The ground urged is the absence of any opportunity by a show cause notice before the final order for

blacklisting.

3. Learned Counsel for the Corporation submits that clause-4 of the Additional Special Conditions of the contract provided for debarment from participating in any tender for a period of two years from the date of termination of the contract. The Petitioner was well aware that he could be black listed in case of non-performance.

4. Reliance is next placed on a letter dated 31.3.2014 issued to the Petitioner that his name would be placed in the blacklist for which he would be responsible himself. In any event the duration of blacklisting was short.

5. We have considered the submissions on behalf of the parties. Blacklisting of a contractor is a serious matter. It not only affects the reputation in the commercial world which in turn can have myriad consequences far beyond the immediate order for blacklisting. It has therefore been held repeatedly that before ordering blacklisting the person concerned must be given a proper show cause notice with an opportunity to defend and convince that blacklisting be not ordered. Merely because duration of the black listing may be 12 months only, we are not inclined to hold that period was too short to warrant any interference.

6. Clause-4 of the Additional Special Conditions of contract undoubtedly provides for blacklisting. It will not mean an absolute unilateral right to do so in violation of the principles of natural justice. It is merely an enabling provision subject to compliance with the law.

7. The letter dated 31.3.2014 sought to be relied upon by the respondents as a show cause notice prior to blacklisting is misconceived. The letter states that on 12.3.2014 as also on 24.4.2014 the Commissioner had inspected the works and given instructions for expediting completion of works. The Petitioner had agreed to do so. The progress was slow and it does not appear that it will be completed. He was directed to submit progress reports every week for completion of works within the schedule time. In the event of non compliance steps shall be taken in accordance with law for blacklisting.

8. The tenor of the letter leaves no doubt that it was essentially a reminder to expedite completion of the works and submit weekly reports. The letter itself stated that in the event of failure to do so steps would be taken for blacklisting in accordance with law. The reference undoubtedly was that a show cause notice would be issued as to why blacklisting be not ordered. We therefore have no hesitation in holding that letter dated 31.3.2014 was not show cause notice for blacklisting. The letter dated 8.8.2014 does not refer to the communication dated 31.3.2014 even.

9. The impugned order makes no reference to any show cause notice given as to why the petitioner be not be black listed. The impugned order straightaway proceeds to blacklist making it unsustainable on the face of it.

10. In (2014) 9 SCC 105 (Gorkha Security Services v. Govt. (NCT of Delhi) it has been observed :

"16. It is a common case of the parties that the blacklisting has to be preceded by a show-cause notice. Law in this regard is firmly grounded and does not even demand much amplification. The necessity of compliance with the principles of natural justice by giving the opportunity to the person against whom action of blacklisting is sought to be taken has a valid and solid rationale behind it. With blacklisting, many civil and/or evil consequences follow. It is described as "civil death" of a person who is foisted with the order of blacklisting. Such an order is stigmatic in nature and debars such a person from participating in government tenders which means precluding him from the award of government contracts.

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.

31. When it comes to the action of blacklisting which is termed as "civil death" it would be difficult to accept the proposition that without even putting the noticee to such a contemplated action and giving him a chance to show cause as to why such an action be not taken, final order can be passed blacklisting such a person only on the premise that this is one of the actions so stated in the provisions of NIT."

11. The order dated 8.8.2014 blacklisting the Petitioner is set aside without prejudice to the rights of the Respondents afresh in accordance with law.

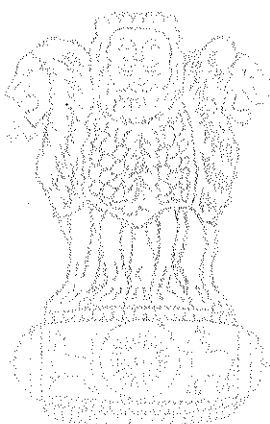
12. The application is allowed.

Sd/-
Acting Chief Justice

Sd/-
Goutam Bhaduri
Judge

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CHHATTISGARH HIGH COURT



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