

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[Judgment Reserved on 04.03.2015]

Dated:18.03.2015

Coram

THE HONOURABLE Mr. JUSTICE SATISH K.AGNIHOTRI
AND
THE HONOURABLE Mr. JUSTICE M.VENUGOPAL

W.A.Nos.291 & 292 of 2015

and

M.P.No.1 of 2015 in W.A.No.291 of 2015

M/s.Sri Sai Caterers
Represented by its Proprietor,
S.Satish Kumar
Shop No.1 and 2, Bhavini Township,
Anupuram 603 127
Kancheepuram District.

... Appellant in both WAS

Vs.

1. The Station Director,
Nuclear Power Corporation of India Ltd.,
Madras Atomic Power Station,
Kalpakkam 603 102.
Kancheepuram District.

2. The Manager (HR-ER- & Engineer in charge
Nuclear Power Corporation of India Ltd.,
Madras Atomic Power Station,
Kalpakkam 603 102
Kancheepuram District.

... Respondents in W.A.No.291 of 2015

The Engineer-in-charge, (Contract)
Nuclear Power Corporation of India Ltd.,
Madras Atomic Power Station,
Kalpakkam 603 102 Kancheepuram District.
Tamil Nadu.

... Respondent in W.A.No.292 of 2015

Prayer: Writ Appeals filed under Clause 15 of the Letters Patent
against the common order dated 12.02.2015 made in W.P.No.23181 of
2014 and W.P.No.5649 of 2014.

Prayer in W.P.No.23181 of 2014 :-Writ Petition praying to Writ of Certiorari to call for the records on the file of the first respondent in his proceedings NPCIL/MAPS/SD/2014/S, dated 16.08.2014 in confirming the order of the second respondent in his proceedings NPCIL/MAPS/HR-HS/Canteen/2014, dated 11th April, 2014 and quash the same as illegal, arbitrary, violative of principles of natural justice.

Prayer in W.P.No.5649 of 2014 :-Writ Petition praying to Writ of Certiorari to call for the records of the proceedings dated 21.2.2014 in No. NPCIL/ MAPS/ HR-HS/CANTEEN/ BLACKLISTING/1 on the file of the respondent and to quash the same as arbitrary illegal and ultra vires.

In both W.As. : Mr.Avinash Wadhvani
For Appellant For Mr.V.Raghavachari

For Respondents 1 & 2 : Mr.V.Vijayashankar

COMMON JUDGMENT

M.VENUGOPAL, J.

The Appellant has preferred these intra Court Writ Appeals as against the common order dated 12.02.2015 in W.P.No.23181 of 2014 and W.P.No.5649 of 2014 passed by the Writ Court.

2.The Writ Court, while passing the impugned order in W.A.Nos.23181 and 5649 of 2014, dated 12.02.2015, had, inter alia, observed, in paragraph 17, that '... During the course of personal hearing, the petitioner reiterated that he had intimated that he was de-barred in page 40 of the tender notification and there is no litigation pending to be mentioned in page 21 of the tender documents. In the preceding paragraphs, this Court has dealt with these issues and held that the plea raised by the petitioner is wholly unsustainable. The fact that the petitioner was afforded an opportunity of personal hearing clearly reveals that there has been full compliance of the principles of natural justice. The respondents are not judicial or quasi judicial authorities and are not trained to write judgments or orders, what is required to be seen in these matters is as to whether fundamentals of fair play were followed whether there was an opportunity for the petitioner to represent his case. Facts disclose that effective and adequate opportunity has been granted to the petitioner. In such circumstances, it is not a case

where there has been a violation of principles of natural justice for this Court to interfere with the matter' and resultantly dismissed W.P.No.23181 of 2014 and dismissed W.P.No.5649 of 2014 as infructuous without costs. Further, it observed that 'Taking note of the fact that the period of contract is for two years and the period is going to come to an end in April 2015, the respondents may consider permitting the petitioner to complete the contract on the petitioner's submitting a representation as expeditiously as possible'.

3. According to the Learned Counsel for the Appellant, the common order passed by the Writ Court in W.P.Nos.23181 & 5649 of 2014 is legally unsustainable for the reason that the same is in contravention of the settled principles governing the application of the principles of natural justice.

4. The Learned Counsel for the Appellant contends that the tabulated column under Clause 1.10 of the Tender Form only called upon the Appellant/Applicant to disclose a pending dispute, if any, of the bidder with other contractors and further, an applicant who is expected to fill up the details, in simple English, cannot be called upon to guess the mind of the prospective contractors so as to disclose information beyond the scope of the details sought for. Moreover, the Appellant had disclosed in the form that he was debarred and the finding of the Writ Court that the factum of blacklisting required mandatory disclosure of details when the same was not even sought for in the Tender Form is ex facie, perverse and legally unsustainable.

5. The Learned Counsel for the Appellant contends that the Appellant had challenged the show cause notice dated 21.02.2014 in W.P.No.5649 of 2014 by taking a plea that the said notice was pre-mediated inasmuch as a cursory perusal of the same would reveal that the Respondent had already made up its mind to take action against the Appellant. As a matter of fact, the Writ Court had dismissed W.P.No.5649 of 2014 on the footing that it had become an infructuous one, because of the imposition of penalty by the Respondent as per order dated 11.04.2014.

6. The Learned Counsel for the Appellant takes a stand that the Writ Court had committed an error in not noticing that the original order was passed in a pre-mediated fashion, in contravention of the principles of natural justice, the subsequent order imposing a penalty and the consequent order of the appellate authority dated 16.08.2014 were wholly illegal and without jurisdiction.

7.The Learned Counsel for the Appellant projects an argument that the Writ Court should have known that when the first authority violated the Principle of Hearing, the same cannot be cured by granting a hearing at the appellate stage.

8.The Learned Counsel for the Appellant submits that the Writ Court had erred in holding that the Respondents were not judicial or quasi judicial authorities and were thus relieved from adhering to the Principles of Natural Justice.

9.The Learned Counsel for the Appellant contends that the Writ Court had failed to appreciate that the order of blacklisting cannot exceed the original order and in fact, Bhavini had punished the Appellant only for a year and the order based on the said order is punishing the Appellant for two years is not valid in the eye of Law.

10.The Learned Counsel for the Appellant submits that the Appellant submits that the Appellate Authority had mentioned in the minutes of the meeting that the Appellant had produced records but in the impugned order it was mentioned that no records or documents were produced and as such, the present case is one of non-application of mind and further, such a procedure cannot pass the test of fairness as wrongly held by him.

11.The Learned Counsel for the Appellant cites the decision in Leary V. National Union of Vehicle Builders, (1971) Ch. 34 (Chancery Division) wherein, it is held as follows:

"That whilst a complete rehearing by an original tribunal or by some other body competent to decide an issue might satisfy the requirements of natural justice, a plaintiff, where there was a right of appeal from an original decision, was entitled to natural justice both before the original tribunal and the appellate tribunal."

12.The Learned Counsel for the Appellant relies on the decision of the Hon'ble Supreme Court in Institute of Chartered Accountants of India V. L.K.Ratna and others, (1986) 4 Supreme Court Cases 537 wherein it is observed that 'Tribunal or body, responsible to take first determinative decision which has grave adverse effects on the person against whom it is taken, should afford opportunity of hearing to the concerned person before taking decision' and held that 'the fact that such an opportunity had already been afforded to him a subordinate body, conclusion of which is not a 'finding' but is subject to the decision of the parent body and that the statute provided for appeal against that decision, not sufficient to deny

opportunity of hearing before the parent body or Tribunal before taking the decision.'

13. That apart, the Learned Counsel for the Appellant seeks in aid of the aforesaid decision, wherein, in paragraph 17 & 18, it is, inter alia, observed as follows:

"17. Section 22-A of the Act entitles a member to prefer an appeal to the High Court against an order of the Council imposing a penalty under s. 21(4) of the Act. It is pointed out that no limitation has been imposed on the scope of the appeal, and that an appellant is entitled to urge before the High Court every ground which was available to him before the Council. Any insufficiency, it is said, can be cured by resort to such appeal. Learned counsel apparently has in mind the view taken in some cases that an appeal provides an adequate remedy for a defect in procedure during the original proceeding. Some of those cases are mentioned in Sir William Wades erudite and classic work on "Administrative Law" But as that learned author observes, "in principle there ought to be an observance of natural justice equally at both stages", and "if natural justice is violated at the first stage, the right of appeal is not so much a true right of appeal as a corrected initial hearing: instead of fair trial followed by appeal, the procedure is reduced to unfair trial followed by fair trial."

"18. But perhaps another way of looking at the matter lies in examining the consequences of the initial order as soon as it is passed. There are cases where an order may cause serious injury as soon as it is made, an injury not capable of being entirely erased when the error is corrected on subsequent appeal. For instance, as in the present case, where a member of a highly respected and publicly trusted profession is found guilty of misconduct and suffers penalty, the damage to his professional reputation can be immediate and far-reaching. "Not all the King's horses and all the King's men" can ever salvage the situation completely, notwithstanding the widest scope provided to an appeal. To many a man, his professional reputation is his most

valuable possession. It affects his standing and dignity among his fellow members in the profession, and guarantees the esteem of his clientele. It is often the carefully garnered fruit of a long period of scrupulous, conscientious and diligent industry. It is the portrait of his professional honour. In a world said to be notorious for its blase attitude towards the noble values of an earlier generation, a man's professional reputation is still his most sensitive pride. In such a case, after the blow suffered by the initial decision, it is difficult to contemplate complete restitution through an appellate decision. Such a case is unlike an action for money or recovery of property, where the execution of the trial decree may be stayed pending appeal, or a successful appeal may result in refund of the money or restitution of the property, with appropriate compensation by way of interest or mesne profits for the period of deprivation. And, therefore, it seems to us, there is manifest need to ensure that there is no breach of fundamental procedure in the original proceeding, and to avoid treating an appeal as an overall substitute for the original proceeding."

14. The Learned Counsel for the Appellant draws the attention of this Court to the decision in S.N. Mukherjee V. Union of India, AIR 1990 SC 1984 : 1990 STPL (LE) 15762 (SC), wherein, in paragraphs 28 & 29, it is observed as follows:

"28. In Travancore Rayon Ltd. v. Union of India, [1970] 3 SCR 40: (AIR 1971 SC 862) this Court has observed:

"The Court insists upon disclosure of reasons in support of the order on two grounds; one, that the party aggrieved in a proceedings before the High Court or this Court has the opportunity to demonstrate that the reasons which persuaded the authority to reject his case were erroneous; the other, that the obligation to record reasons operates as a deterrent against possible arbitrary action by the executive authority invested with the judicial power." (P. 46) (of SCR) : (at p.866 of AIR)

29. In Mahabir Prasad Santosh Kumar v. State of U.P. (1970 (1) SCR 201 : AIR 1970 SC 1302) (supra) the District Magistrate had cancelled the licence granted under the 'U.P. Sugar Dealers' Licensing Order, 1962 without giving any reason and the State Government had dismissed the appeal against the said order of the District Magistrate without recording the reasons. This Court has held:

"The practice of the executive authority dismissing statutory appeal against orders which prima facie seriously prejudice the rights of the aggrieved party without giving reasons is a negation of the rule of law." (P. 204) : (at p.1304 of AIR).

"Recording of reasons in support of a decision on a disputed claim by a quasi-judicial authority ensures that the decision is reached according to law and is not the result of caprice, whim or fancy or reached on grounds of policy or expediency. A party to the dispute is ordinarily entitled to know the grounds on which the authority has rejected his claim. If the order is subject to appeal, the necessity to record reasons is greater, for without recorded reasons the appellate authority has no material on which it may determine whether the facts were properly ascertained, the relevant law was correctly applied and the decision was just." (P. 205) (of SCR) : (at p.1304 of AIR)."

15. The Learned Counsel for the Appellant refers to the decision of the Hon'ble Supreme Court in Oryx Fisheries Private Limited V. Union of India and others, (2010) 13 Supreme Court Cases 427, at special page 436, wherein, in paragraphs 27 to 29, it is observed and held as follows:

"27. It is no doubt true that at the stage of show cause, the person proceeded against must be told the charges against him so that he can take his defence and prove his innocence. It is obvious that at that stage the authority issuing the charge-sheet, cannot, instead of telling him the charges, confront him with definite conclusions of his alleged guilt. If that is

done, as has been done in this instant case, the entire proceeding initiated by the show cause notice gets vitiated by unfairness and bias and the subsequent proceeding become an idle ceremony.

28. Justice is rooted in confidence and justice is the goal of a quasi-judicial proceeding also. If the functioning of a quasi-judicial authority has to inspire confidence in the minds of those subjected to its jurisdiction, such authority must act with utmost fairness. Its fairness is obviously to be manifested by the language in which charges are couched and conveyed to the person proceeded against.

29. In the instant case from the underlined portion of the show cause notice it is clear that the third respondent has demonstrated a totally close mind at the stage of show cause notice itself. Such a close mind is inconsistent with the scheme of Rule 43 which is set out below. The aforesaid rule has been framed in exercise of the power conferred under Section 33 of The Marine Products Export Development Authority Act, 1972 and as such that Rule is statutory in nature."

16. Also, the Learned Counsel for the Appellant, in the aforesaid decision, at page 436 & 437, in paragraphs 31 to 33 & 35, it is observed as follows:

"31. It is of course true that the show cause notice cannot be read hyper-technically and it is well settled that it is to be read reasonably. But one thing is clear that while reading a show-cause notice the person who is subject to it must get an impression that he will get an effective opportunity to rebut the allegations contained in the show cause notice and prove his innocence. If on a reasonable reading of a show-cause notice a person of ordinary prudence gets the feeling that his reply to the show cause notice will be an empty ceremony and he will merely knock his head against the impenetrable wall of prejudged opinion, such a show cause notice does not commence a fair procedure especially when it is issued in a quasi-judicial proceeding under a statutory regulation which promises to give the

person proceeded against a reasonable opportunity of defence.

32. Therefore, while issuing a show-cause notice, the authorities must take care to manifestly keep an open mind as they are to act fairly in adjudging the guilt or otherwise of the person proceeded against and specially when he has the power to take a punitive step against the person after giving him a show cause notice.

33. The principle that justice must not only be done but it must eminently appear to be done as well is equally applicable to quasi judicial proceeding if such a proceeding has to inspire confidence in the mind of those who are subject to it.

35. Going by the aforesaid test any man of ordinary prudence would come to a conclusion that in the instant case the alleged guilt of the appellant has been prejudged at the stage of show cause notice itself."

17. Apart from that, in the aforesaid decision, he also refers to paragraph 40, at page 439, it is held as follows:

"40. In M/s Kranti Associates, (2010) 9 SCC 496, this Court after considering various judgments formulated certain principles in para 51 of the judgment which are set out below a. In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

b. A quasi-judicial authority must record reasons in support of its conclusions.

c. Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

d. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

e. Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous

considerations.

f. Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

g. Reasons facilitate the process of judicial review by superior Courts.

h. The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice.

i. Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

j. Insistence on reason is a requirement for both judicial accountability and transparency.

k. If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

l. Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process.

m. It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harvard Law Review 731-737).

n. Since the requirement to record reasons

emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR 553, at 562 para 29 and Anya vs. University of Oxford, 2001 EWCA Civ 405, wherein the Court referred to Article 6 of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".

o. In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".

18. Per contra, it is the submission of the Learned Counsel for the Respondents submits that in the instant case, sealed tenders were invited on behalf of the Nuclear Power Corporation of India Limited, Madras Atomic Power Station for 'Running of Industrial Canteen at Madras Atomic Power Station, Kalpakkam on round the Clock Shift basis on all the days and that the Appellant, being L1, was awarded to carry out the works from April 2013 and not from 2014 onwards and based on the complaint received against the Appellant/Caterers, after scrutinising the documents, the Respondents came to know that the Appellant had deliberately concealed the fact that it was blacklisted from Bharatiya Nabhikiya Vidyut Nigam Limited (BHAVINI), one of the DAE Unit for a period of one year with effect from 15.12.2012.

19. The Learned Counsel for the Respondents 1 and 2 contends that the Appellant had knowingly applied for the tender on 09.01.2013, when the blacklisting order was very well in existence and in fact, it had stated that the relevant information in the Tender Document as 'Nil'.

20. It is the stand of the Respondents that the Appellant sought information under RTI and the CPIO, NPCIL furnished the information sought for relating to the concealment of order of blacklisting by BHAVINI and after analysing the documents, it was known that the Appellant had concealed the fact of blacklisting by BHAVINI for a period of one year.

21. At this stage, the Learned Counsel for the Respondents refers to Clause 1.10 of 'Information Regarding Qualification of Bidders' and wherein the Appellant had stated Nil under the caption 'Cause of

dispute' and signed on 25.02.2013 and the same runs as follows:
"1.10.Information on litigation history in which the Bidder is involved. (format for clause 3.7. of Annexure I - Pre-qualification criteria)

Client & Address	Cause of dispute	Amount	Remarks and the present status
	- Nil	-	

22.Further, the Learned Counsel for the Respondents brings it to the notice of this Court that the Clause 3.7 of Annexure I - under the caption 'Pre-Qualification Criteria' enjoins as follows:

"3.7 Information regarding projects in hand, current litigation, orders regarding exclusion/expulsion or black listing, if any."

23.Also, it is represented before this Court that the Appellant under Section II, Form of Contract or Item Rate Tender for Works on 25.02.2013 while affixing his signature had stated as under:

"I / ~~We~~ hereby declare that I/ ~~We~~ have been debarred / ~~not been debarred~~ and/or ~~delisted~~ / ~~not delisted~~ any Government or Quasi - Government agencies or PSUs.

Dated the 25th day of February 2013

Witness + _____

* Signature of Tenderer _____

Address : _____

Occupation : _____

The above tender is hereby accepted by me on behalf of the Nuclear Power Corporation of India Limited.

Dated the _____ day of _____ 20 .
= + _____

Tenderer is advised to read carefully and strike out whichever is not applicable and furnish details wherever applicable.

* Signature of Contractor before submission of tender.

+ Signature of witness of contractors signature.

=+ Signature of the officer by whom accepted."

24.The Learned Counsel for the Respondents contends that the Appellant/Tenderer was advised to read carefully and strike out

whichever was not applicable and further he was to furnish details wherever is applicable and this was categorically mentioned in Form of Agreement and General Rules and Directions for the Guidance of the Contractors in Section II and in the present case, the Appellant had deliberately concealed the earlier blacklisting.

25.The Learned Counsel for the Respondents contends that the Nuclear Power Plants are of utmost importance that contracts are awarded to eligible bidder with good track record, any concealment of information which has a vital bearing on the decision to award contract has to be viewed seriously and blacklisting was known to the Respondents, they would not have awarded the contract to the Appellant.

26.The Learned Counsel for the Respondents submits that even though there is no provision for an Appeal in the Respondents' Standing Order, the Appellate Authority heard the Appeal filed by the Appellant and passed orders on merits on 16.08.2014.

27.It is to be borne in mind that in the decision Dandapani Roula V. State, AIR 1986 Orissa 220, at special page 221, in paragraph 4, it is observed as follows:

"4.Law is well settled that nobody should be blacklisted without giving an opportunity of being heard. An order of blacklisting a person results in civil consequences. It affects the reputation of the person blacklisted not only in his dealings with the Government but in his dealing with private firm. It affects his business prospects. These principles have been enunciated in the decisions reported in (1971) 1 Cutt WR 147, (Puranchandra Das v. Director of Public Instruction, Orissa), AIR 1975 SC 266 (Erusian Equipment and Chemicals Ltd. v. State of West Bengal) and AIR 1978 SC 930 (Joseph Vilangandan v. Executive Engineer (P.W.D.), Ernakulam)."

28.At this stage, this Court aptly points out the decision Vijay Singh Nahata V. Union of India and others, AIR 1998 Calcutta 153, at special page 158, wherein in paragraph 42, it is observed as follows:

"42.In the case of Mahabir Auto Stores v. Indian Oil Corporation reported in AIR 1990 SC 1031 it was held by the Supreme Court that the State acts in its executive power under Article 298 of the Constitution in entering or not entering into contracts with individual parties.

Article 14 of the Constitution would be applicable to those exercise of power. Therefore, the action of State organ can be checked under Article 14. Every action of the State executive authority must be subject to rule of law and must be informed by reason. So whatever be the activity of the public authority, it should meet the test of Article 14 of the Constitution. If a Governmental action even in the matters of entering or not entering into contracts, fails to satisfy the test of reasonableness, the same would be unreasonable. Rule of reason and rule against arbitrariness and discrimination, rules of fair play and natural justice are part of the rule of law applicable in situation or action by State instrumentality in dealing with citizens. Even though the rights of the citizens are in the nature of contractual rights, the manner, the method and motive of a decision of entering or not entering into a contract, are subject to judicial review on the touchstone of relevance and reasonableness, fair play, natural justice, equality and non-discrimination. It is well settled that there can be 'malice in law'. Existence of such 'malice in law' is part of the critical apparatus of a particular action in administrative law. Indeed 'malice in law' is part of the dimension of the rule of relevance and reason as well as the rule of fair play in action."

Also, in the aforesaid decision, at page 162, in paragraph 57, it is held as follows:

"57. It is therefore settled by several decision of the Apex Court that the writ Court is entitled to interfere whenever it is satisfied that there has been any unfairness or arbitrary action or decision whether or not it be an administrative decision or in the contractual field. The question of blacklisting and impugned order of ban imposed on the petitioner does not relate to contractual field at all but in the instance of arbitrary decision taking away the right of the petitioner to carry on business and the said action and decision cannot at all be said to be fair and also cannot stand the test of reasonableness, and is liable to be set aside. It

also appears from records that the petitioner's business has been suspended from as far back as 5-6-95 pending the CBI enquiry. If that be so, the petitioner had already suffered loss of business of 5 years on 5-6-95 which is prior to the filing of the writ petition. Further, banning the writ petitioner from business dealings really involves double punishment. The petitioner has also suffered due to suspension order and there is no justified reason to impose any further ban on the petitioner."

29. In this connection, this Court worth recalls and recollects the decision M/s. Monika Plastic Pipes (P) Ltd., Muzaffarnagar V. Director of Industries, Kanpur and another, AIR 1998 Allahabad 111, at special page 119, in paragraph 25, it is observed as follows:

"25. There can be no quarrel about the well established proposition of law that the person who is proposed to be black-listed for having committed malpractice in trade has to be given an opportunity of hearing. In the instant case it would appear from the following facts that the petitioner was afforded more than the reasonable opportunity to clarify his stand. Annexure-7 to the writ petition is the letter of the Director dated 4-8-1995 addressed to the petitioner in which it was mentioned that the petitioner has committed breach of the 'fall clause' and therefore, why he should not be proceeded against. The petitioner sent reply dated 14-8-1995, Annexure-8 to the writ petition. Again there is another letter Annexure-9 dated 16-5-1995 which is almost in the same terms as letter Annexure-7. A specific letter dated 25-1-1997, Annexure-14, was addressed by the Director to the petitioner to show cause why the petitioner should not be blacklisted or debarred for having committed breach or the 'fall clause'. A detailed reply dated 30-1-1997, Annexure-15 was furnished by the petitioner to the Director. The petitioner has also pleaded that he had met the Director personally and explained his position. From the above facts, therefore, it is clear that the petitioner was afforded adequate and reasonable opportunity before passing the impugned order dated 10-2-1997, Annexure-18, in which the

Director has taken the view that the explanation submitted by the petitioner was not satisfactory and since the petitioner was guilty of malpractice and defrauded the departments, he is liable to be blacklisted for a period of five years and accordingly the impugned order, Annexure-18, was passed."

30.Further, in the decision *Govinda Chandra Mishra V. The Superintendent, Government Ayurvedic Pharmacy, Bolangir and another*, AIR 1992 Orissa 37, it is held as follows:

"Blacklisting a businessman is a stigma and affects his career in the business and prospects therein. Accordingly such blacklisting has civil consequences. It affects reputation of the person black-listed not only in his dealings with other private persons. So, principles of natural justice is required to be followed in such cases. In the show cause notice, the petitioner was not called upon to explain why the outstanding amount should not be recovered or to explain why he should not be blacklisted, the order being violative of principles of natural justice was liable to be quashed."

31.Moreover, in the decision *M/s.P.T.Sumber Mitra Jaya V. The National Highways Authority of India, New Delhi*, AIR 2003 Madras 221 at special page 236, in paragraph 46, it is observed as follows:

"46.By way of a desperate argument, it was submitted that the writ petition itself was not maintainable as this was in respect of a non-statutory contract and, therefore, this Court should be slow to interfere under Art.226. The argument is obviously incorrect. Firstly, when we are deciding the order of blacklisting, it does not merely remain to be a matter of contract. As has been explained by the Supreme Court in catena of decisions, an action of blacklisting brings in with it the civil consequences apart from stigmatising the contractor, who is blacklisted. The reported decisions relied upon by Shri V.T. Gopalan in the matter of Government contracts are of no use for the simple reason that in this case, the contract was not tinkered with. On the other hand, the contract was allowed to go on and, therefore, this is not a dispute regarding

the contract. This is essentially a dispute regarding the stigma caused on account of flimsy and nonexistent reasons based on a completely incorrect interpretation of clause 7.1. This action also brought stigma to the appellant and, therefore, it could not be said that the writ petition itself was not maintainable. We reject the argument."

32.As far as the present case is concerned, admittedly, the Appellant was issued with a show cause notice dated 21.02.2014 inter alia stating that it had deliberately concealed the information of blacklisting by another unit of DAE i.e. BHAVINI for a period of one year w.e.f. 20/10/2012 and further this information was concealed to prevent them from disqualification as the currency of the said blacklisting was alive during the bidding of aforesaid tendering and that the competent authority found that the allegation charged against the Appellant was proved and ordered to impose a penalty on the Appellant banning for doing business with NPCIL for a period of two years and also terminating the existing contract with them and the Appellant was provided with an opportunity of making representation on the penalty proposed and that the said representation should reach the Engineer-In-Charge (Contract) not later than 15 days from the date of receipt of notice etc. The Appellant for the show cause notice dated 21.02.2014 sent a reply dated 07.03.2014 addressed to the Engineer-in-Charge of MAPS Canteen, Kalpakkam, among other things, mentioned that there was no opportunity given to him to defend the allegations and further that the notice of Blacklisting, which was issued was passed in violation of the principles of natural justice and therefore illegal and arbitrary and that he had approached this Court regarding the same issue wherein a notice was served vide letter dated 26.02.2014 by its Advocate regarding W.P.No.5649 of 2014 filed by it. The 2nd Respondent/Manager (HR - ER) & Engineer-in-Charge, on 11.04.2014, had passed an order inter alia stating that the explanation submitted by the Appellant, through their letter dated 07.03.2014, was not satisfactory and from doing any business with NPCIL for a period of two years with effect from the date of issuance of the order and further informed that the Appellant viz., M/s.Sri Sai Caterers are vested with the option to Appeal against the order within a period of 45 days from the date of receipt of this order and the Appellate Authority being the Station Director, MAPS.

33.Further, the Appellant preferred an Appeal before the Appellate Authority on 21.04.2014 together with stay petition. In this connection, this Court, in W.P.No.19717 of 2014 (filed by the

Appellant) on 24.07.2014 directed the Appellate Authority to entertain the Appeal, if the papers are in order and to dispose of the stay petition first, in accordance with law, within a period of two weeks from the date of receipt of a copy of this order and till such time, to maintain status quo as exists and dispose of the main appeal within a period of four weeks thereafter. Indeed, the Appellate Authority had confirmed the penalty order on 11.04.2014. Also, the Appellate Authority had provided a personal hearing of the Appellant on 11.08.2014 and also personal hearing was held on the Appeal. It was opined by the Appellate Authority that the Appellant had not furnished any additional documentary proof to substantiate his Appeal before the said authority. Moreover, the Proprietor of the Appellant had stated that as per his understanding, he had mentioned the litigation history as 'Nil' on page No.21 against Clause 1.10 as there was no litigation pending at that point of time and further, he had also indicated regarding debarment of his Firm on Page No.40. But, no details were furnished. Also, a perusal of the record of personal hearing with the Proprietor of the Appellant in respect of the Appeal filed by it before the Appellate Authority shows that the contractor had informed the said authority that he understood the tender specifications and conditions before applying for the tender.

34.Although a show cause notice dated 21.02.2014 issued to the Appellant indicates that the competent authority found the allegation charged against it was proved and ordered to impose the penalty banning it for the business with NPCIL for a period of two years and also terminate the existing contract with them, yet, the last paragraph of the said communication in a latent and patent manner shows that the Appellant was provided with an opportunity of making representation on the penalty proposed and it was directed to submit the same within a period of 15 days from the date of receipt of the said notice etc. and therefore, in strict sense of the term, it cannot be said that the Appellant was not provided with an adequate opportunity to project his version in the subject matter in issue. Even otherwise, the Appellant cannot be an aggrieved person because no prejudice was caused to him because of the fact that he had furnished his reply dated 07.03.2014 to the show cause notice dated 21.02.2014 issued. Moreover, he had filed an Appeal before the Appellate Authority together with a stay petition and also projected W.P.No.19717 of 2014 whereby this Court had passed an order on 24.07.2014 as stated supra.

35.Suffice it for this Court to point out that the Appellant was provided with a personal hearing before the Appellate Authority on

11.08.2014 and personal hearing was also held on the Appeal. Thereafter only the Appellate Authority passed an order on 16.08.2014 confirming the penalty order dated 11.04.2014 imposed by the Original Authority. Therefore, it is quite crystal clear that the Appellate Authority had provided a personal hearing on 11.08.2014 and also personal hearing on the Appeal and therefore, the Appellant is not anyway prejudiced, in the considered opinion of this Court.

36. In the present case on hand, the Appellant in the Form of Agreement and General Rules and Directions for the Guidance of the Contractors (Section II) had stated 'I / ~~We~~ hereby declare that I/~~We~~ have been debarred / ~~not been debarred~~ and / or ~~delisted~~ / ~~not delisted~~ any Government or Quasi-Government agencies or PSUs' and affixed his signature on 25.02.2013 as Tenderer. It is true that Clause 3.7 of Annexure I - Pre - Qualification Criteria speaks of 'Information regarding projects in hand, current litigation, orders regarding exclusion/expulsion or blacklisting, if any'. As a matter of fact, the Appellant had not explicitly mentioned in the Form of Contract or Item Rate Tender for Works about its blacklisting, but it had declared that it was debarred. At best, the said non-mentioning of blacklisting can be characterised as omission or lapse on his part.

37. At this juncture, it is to be borne in mind that on every misrepresentation or concealment of a fact a contract cannot be avoided merely on trivial and inconsequential, misstatement or non-disclosure as per decision in Bhagwani Bai Vs. Life Insurance Corporation of India, Jabalpur, AIR 1984 Madhya Pradesh 126. Furthermore, there must be a representation i.e. Statement of fact either by words or by conduct and secondly, the representation must be false and made as to some material fact, in the considered opinion of this Court.

38. It is true that 'Half the truth is alive'. But there must be an active attempt to deceive either by a statement which is false or by a statement not untrue in itself but accompanied with such a suppression of facts as to convey a misleading impression (vide Anson's Law of Contract, 28th Edition page 238). Also that, if the representation is not false to the knowledge of person making it, there is no right of action for deceit although an injury results as a consequence of it.

39. In the light of qualitative and quantitative discussions mentioned supra and in view of the fact that the non-mentioning of 'Blacklisting' of the Appellant in the Tender Form submitted to the Respondents can only be characterised at best as an omission or as a lapse on his part (although the same is not a palatable/desirable or

prudent one) and it is only a trivial or an inconsequential one because of the reason that the Appellant had declared that it was 'Debarred' and also this Court taking note of the fact that the Appellant is still running the Canteen and only in April 2015 the same is coming to an end and also this Court bearing in mind of the fact of the Respondents' stand that they are not proposing to terminate the Appellant's contract in the meanwhile and also, this Court, considering the overall attendant facts and circumstances of the present case in an integral fashion, holds that the Appellant cannot be held guilty of concealment of fact pertaining to its Blacklisting. As such, the contra view taken by the Learned Single Judge in the common order dated 12.20.2015 in W.P.Nos.23181 and 5649 of 2014 is not a correct and proper one. Viewed in that perspective, this Court, to prevent an aberration of justice and to promote substantial cause of justice, sets aside the orders of the Writ Court dated 12.02.2015 as well as the orders of the Respondents 1 and 2 dated 16.08.2014 and 11.04.2014 and consequently, this Court disposes of the Appeals, by recording the fact that the Respondents are not proposing to terminate the contract of the Appellant till April 2015 and grants liberty to the Appellant to submit his representation to the Respondents for considering its case to take part in the future/subsequent tender works if it so desires/ advised, within a period of four weeks from the date of receipt of copy of this Judgment.

40. In the result, the Writ Appeals are disposed of, leaving the parties to bear own their costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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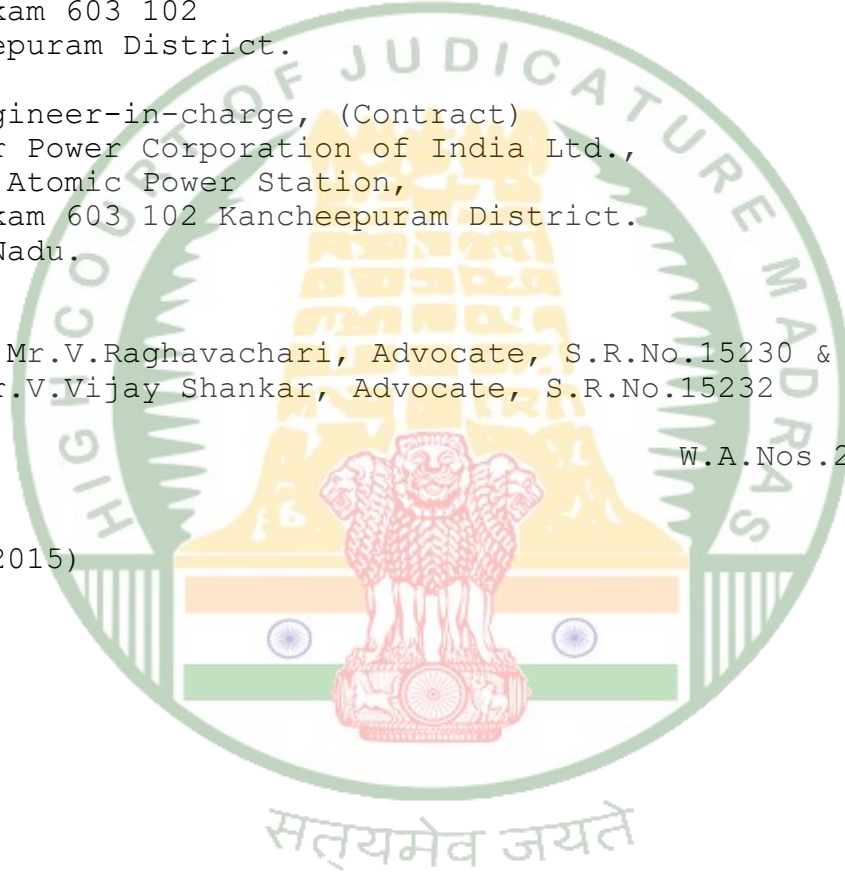
To

1. The Station Director,
Nuclear Power Corporation of India Ltd.,
Madras Atomic Power Station,
Kalpakkam 603 102.
Kancheepuram District.
2. The Manager (HR-ER- & Engineer in charge
Nuclear Power Corporation of India Ltd.,
Madras Atomic Power Station,
Kalpakkam 603 102
Kancheepuram District.
3. The Engineer-in-charge, (Contract)
Nuclear Power Corporation of India Ltd.,
Madras Atomic Power Station,
Kalpakkam 603 102 Kancheepuram District.
Tamil Nadu.

+2cc's to Mr.V.Raghavachari, Advocate, S.R.No.15230 & 15229
+1cc to Mr.V.Vijay Shankar, Advocate, S.R.No.15232

W.A.Nos.291 & 292 of 2015

MG(CO)
CA(25/03/2015)



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