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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.10.2016

CORAM :

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Writ Petition (MD) No.18576 of 2014

and

M.P(MD)No.2 of 2014

and

W.M.P(MD)No.13880 of 2016

The South India Road Milk Transport
rep by its Proprietor N.Vaidhyanathan,
No.76, 12th Avenue,
Ashok Nagar,
Chennai 600 083.

... Petitioner

Vs.

1.The General Manager,
Dindigul District Co-operative
Milk Producers Union Ltd., DD 160,
No.9, East Govindapuram,
Dindigul 624 001.

2.The Managing Director,
Tamil Nadu Co-operative Milk Producers
Federation Ltd., Madhavaram,
Chennai 600 051.

3.The Secretary,
Government of Tamil Nadu,
Animal Husbandry and Fisheries Department,
Fort St., George,
Chennai 600 009.

... Respondents

Petition filed under Article 226 of the Constitution of India
praying for issuance of a Writ of Certiorari, calling for the
records relating to the impugned order dated 04.10.2014 and made
in Ref.No.2211/P&I/12, by the first respondent and quash the same.

For Petitioner : Mr.T.D.Vasu
for Mr.P.Adhimoolapandian

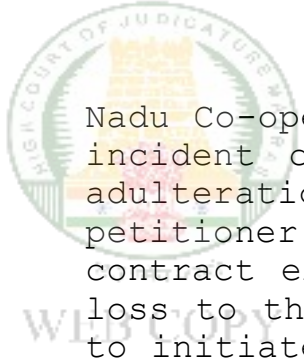
For Respondents : Mr.B.Pugalenth, AAG,
Assisted by Mr.D.Muruganandam, AGP

Challenging the order passed by the first respondent
blacklisting the petitioner company for a period of three years,

the present writ petition has been filed.

2. According to the petitioner, the petitioner is operating milk tanker lorries on hire basis to the respondent co-operative milk producers union. Originally, the contract was awarded by the first respondent cooperative milk producers Union, for transporting their milk to the Tamil Nadu Co-operative Milk Producers Federation Ltd., Chennai. The contract commenced on 13.08.2012 and it expired on 29.08.2014. But by way of interim arrangement, the petitioner company was allowed to continue beyond 29.08.2014, by a mutual consent for a period of six months or till finalisation of road milk tanker tender contract, 2014-2016 whichever is earlier. By virtue of the above mutual consent, the petitioner is operating tanker lorry for the respondent union. There is yet another company by name Deepika Transport which is being run by the petitioner's wife, is also engaged in transporting milk in tanker lorries from various milk unions.

3. It is further stated that on 19.08.2014, Vellimedupettai Police in Villupuram District arrested one Suresh and some other persons and confiscated two motor cycles and one TATA Ace vehicle and on investigation, the above said Suresh confessed that he committed theft of milk from the tanker lorry of Deepika Transport, after which they added water to equalise the quantity and a criminal case was also registered against the persons allegedly involved in the theft. Subsequently, Deepika Transport sent a detailed representation regarding the above theft to the second respondent. The petitioner also sent a representation stating that when the tanker lorry entered into Madhavaram Dairy Processing Unit, the seals were found intact and the milk was found as per the specified quality and quantity when the milk was unloaded. It is further stated that a criminal case was also registered against the petitioner and the above said Deepika Transport, since criminal case was pending against the petitioner, he moved anticipatory bail petition before the Principal Bench of this Court in CrI.O.P.No.24582 of 2014 and the same was dismissed on 15.09.2014 and right from 30.08.2014, the petitioner was not in his office or in the residence, since he apprehended arrest by the CBCID police, then, on 19.09.2014, he surrendered before the CBCID police and remanded in judicial custody. In the meantime, by an order dated 30.08.2014, the second respondent terminated the petitioner's contract for operating 7 vehicles in Chennai Metro Dairies. Thereafter, the second respondent also passed an order, dated 01.09.2014, cancelling the extension of road milk tanker tender contract given to the petitioner on the ground that, on 27.06.2014, the second respondent despatched 20,000 litres of milk with 4.2% fat and 8.2% SNF through the petitioner milk tanker whereas 20015 litres of milk with 4.2% fat and 7.7% SNF was acknowledged at Ambattur Dairy on 28.06.2014, and they have also lodged a complaint against the petitioner in this regard with the Joint Managing Director, Tamil



Nadu Co-operative Milk Producer's Federation Ltd., Chennai, as the incident clearly indicated suspicion of theft of milk and also adulteration of milk by the petitioner transport. Since the petitioner has violated the terms and conditions of tender contract executed with the second respondent which created a huge loss to the union and stigmatic, the second respondent was forced to initiate severe action against the petitioner besides cessation of road milk transport contract. It is further stated on 01.09.2014, Vellore-Tiruvannamalai Union also issued a proceedings terminating the extension of contract of the other transport company owned by the petitioner's wife namely, Deepika transport. Subsequent to that on 04.10.2014, the first respondent issued the impugned order blacklisting the petitioner for three years. The above said order has been passed on the ground that a show cause notice was issued to the petitioner on 10.09.2014, calling him to offer explanation and the above said notice was returned undelivered. Substituted service of notice was resorted to by way of affixture on the wall of the petitioner's office on 22.09.2014 and since no reply was received from the petitioner for the above said show cause notice, the first respondent passed the impugned order blacklisting the petitioner for a period of three years.

4. According to the petitioner, the petitioner surrendered before the CBCID police on 19.09.2014, and he was remanded to judicial custody. In the above circumstances, the show cause notice was sent by registered post to the office address to the petitioner where no one was present, was not received and therefore, he was not in a position to give any reply to the said show cause notice. The petitioner challenged the above said order mainly on the ground of violation of principles of natural justice since the order has been passed without giving proper opportunity to the petitioner. Apart from that the agreement entered into between the petitioner and the first respondent does not provide for blacklisting, and clause 17 of the agreement relates to adulteration of milk and it contemplates that if the milk is proved to be adulterated on the first occasion, only a fine amount of Rs.3000/- will be imposed, on the second occasion a sum of Rs.10,000/- and for the third violation a sum of Rs.25,000/- will be imposed. If the adulteration is found to be exceeded three times, the contract will liable to be cancelled. But the first respondent in violation of the above clause has cancelled the contract. Subsequently, the first respondent also blacklisted the petitioner by passing another order dated 04.10.2014 which is impugned in this writ petition.

5. During the pendency of this writ petition, the petitioner filed W.M.P(MD)No.13880 of 2016 to amend the prayer to challenge the earlier order of cancellation of contract dated 01.09.2014 which was strongly opposed by the respondents.



6. The first respondent has filed a counter affidavit contending that the writ petition itself is not maintainable in law since the respondent being a co-operative society, the petitioner cannot maintain a writ petition against the respondents. It is admitted that the contract commenced on 30.08.2012 and by way of an interim arrangement, the petitioner was allowed to continue beyond 29.08.2014 by mutual consent for a period of six months. It is further stated that on 27.06.2014, Dindigul Union despatched 20,000 litres of milk with 4.2% fat and 8.2% SNF from Dindigul District Co-operative Milk Producers Union Ltd., to Ambattur Dairy through the petitioner's road tanker whereas 20015 litres of milk with 4.2% and 7.7% SNF were received at Ambathur Dairy on 28.06.2014. Hence, this act of adulteration by the petitioner is liable for penal consequences and it also tarnished the image, and the reputation of the respondent. Since the contractor has violated contractual terms and caused damage to the Union, the Union cannot afford to endure adulteration of milk by the transporter. In the above circumstances, the contract of the petitioner was terminated by an order dated 01.09.2014. Subsequently, the Union has also issued a show cause notice dated 10.09.2014 calling upon the petitioner to explain as to why his transport company should not be blacklisted. The above show cause notice was sent by registered post by RPAD and speed post on 10.09.2014 but the same was returned as undelivered. Hence, substituted service was resorted to and the said show cause notice was duly served on the last known address of the petitioner by affixture in the presence of witnesses on 22.09.2014. Even though a show cause notice was sent to the petitioner, the petitioner did not avail the opportunity given to him to reply the show cause. Since no reply was given, the impugned order was passed on 04.10.2014 blacklisting the petitioner for a period of three years.

7. According to the first respondent, the Proprietor of M/s. South India Road Milk Transport namely the petitioner and another firm namely, M/s. Deepika Transport, owned by petitioner's wife Smt. V. Revathy, have come to adverse notice and the petitioner also used to file false and frivolous cases against the officials who are not amenable to his malpractices and also against Union. On 19.08.2014, the Sub Inspector of Police attached to Vellimaedupatti Police Station, intercepted a TATA ace Mini van and seized 45 milk cans filled with milk and on the investigation, it was revealed that the above milk was stolen from a road milk tanker belonged to the petitioner herein. It was carrying 20,000 litres of milk from Tiruvannamalai Chilling Centre to Madhavaram Dairy, the milk in the tanker was adulterated so as to compensate the theft. The police arrested eight persons and registered a case in Crime No. 122 of 2014 under Sections 120(b), 379, 407 and 272 IPC. In the above case, M/s. Deepa Transport Company was arrayed as A-1 and Proprietrix of the company was arrayed as A-2, the petitioner was arrayed as A3 and the petitioner company was



arrayed as A-4. It is further stated that subsequently the above case was transferred to CBCID and after investigation a final report was also filed by the CBCID. In view of the said incident, the contract awarded to M/s.Deepika Transport was terminated and the said M/s.Deepika transport was also blacklisted after following the procedure. Challenging the orders of blacklisting and cancellation of contract, the petitioner's wife filed writ petitions in W.P.Nos.24501 and 28029 of 2014. The Principal Bench of this Court, by an order dated 17.11.2014 dismissed the above said writ petitions and the orders passed in the above writ petitions is squarely applicable to the facts of this case also. It is further submitted that petitioner is involved in adulteration of milk during transport. On 27.06.2014, 20000 litres of milk with 4.2% and 8.2% SNF transported from Dindigul Aavin to Ambattur Dairy through the petitioner transport whereas it was received on 28.06.2014 with 20015 litres of milk with 4.2% and 8.2% SNF. The said incident clearly establishes the adulteration. Hence, after following the procedure, the transport contract has been cancelled and the petitioner transport has been blacklisted for three years.

8.Learned counsel appearing for the petitioner would submit that the impugned order blacklisting the petitioner transport company was passed without affording an opportunity of hearing to the petitioner which is in violation of principles of natural justice. He would further submit that the impugned order blacklisting the petitioner has been issued mainly based on the alleged adulteration case pending against another transport company namely, M/s.Deepika Transport Company for which the petitioner has no connection and which is exclusively owned by the petitioner's wife. He would further submit that for the alleged offence said to have committed by the said company, the petitioner cannot be penalised and the petitioner has been falsely implicated in the above said crime.

9.It is further submitted that apart from that there is no proof to show that the petitioner company is involved in adulteration and their own record would show that while the tanker lorry carried milk from Tiruvannamalai Federation to Madhavaram was unloaded at Madhavaram, the seals were intact and the fat content also did not vary. The first respondent also did not take any steps to conduct any test for the alleged adulteration of milk as alleged in the impugned order. Further the agreement entered into between the petitioner and the respondents does not provide for blacklisting and even as per clause 17 of the agreement, if at all, any adulteration is found, the petitioner company is liable only to pay penalty and in the event of violation for more than three occasions, the contract of the petitioner will be liable to be cancelled. At any event, the first respondent has no power or authority to blacklist the petitioner in the absence of any provision in the agreement.



10. Learned counsel for the petitioner further contended that so far as the issuance of show cause notice is concerned, after registering the crime by the CBCID police, the petitioner apprehending arrest did not attend office from 30.08.2014. In the above circumstances, the petitioner was not in a position to receive the show cause notice dated 10.08.2014 issued by the respondents. Subsequently, he was arrested on 19.09.2014 and remanded to judicial custody and lodged in Central Prison at Cuddalore. When the petitioner was in jail, the respondent is said to have affixed the said notice in the office on 22.09.2014 and thereafter, passed the impugned order on 04.10.2014 on the ground that the petitioner did not submit any reply for the said show cause notice. When the first respondent was fully aware of the fact that the petitioner was confined in Central Prison, Cuddalore, they ought to have sent a notice to the Central Prison where he was confined and without doing so, affixed the said notice in the petitioner's office. It is further stated that the impugned order has been passed in violation of principles of natural justice without affording opportunity of hearing to the petitioner.

11. Learned counsel appearing for the petitioner relied upon the following judgments:-

(i) In M/s. Sri Sai Caterers, Anupuram Vs. The Station Director, Nuclear Power Corporation of India Ltd., made in W.A.Nos.291 and 292 of 2015, dated 04.03.2015

(ii) In Union of India Vs. M/s. Sun TV Network Ltd., and others made in W.A.Nos.1253 and 1255 of 2015, dated 29.09.2015.

(iii) In Gorkha Security Services Vs. Govt (NCT of Delhi) and others reported in 2014(9) SCC 105

(iv) In M/s. Allied Motor Ltd., Vs. M/s. Bharat Petroleum Corpn Ltd., reported in AIR 2012 SC 709

(v) In Hindustan Petroleum Corporation Limited Vs. Super Highway services and another reported in 2010(3) SCC 321

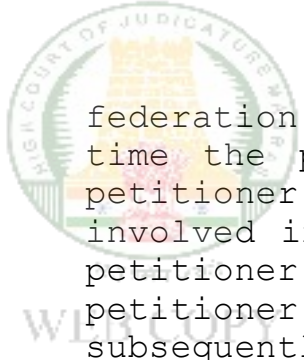
(vi) In Style (Dress Land) Vs. Union Territory, Chandigarh reported in 1999 (7) SCC 89

(vii) In Southern Painters Vs. Fertilizers and Chemicals Travancore Ltd., reported in 1994 (Supp) (2) SCC 699

(viii) In Raghunath Thakur Vs. State of Bihar reported in 1989(1) SCC 229

(ix) In M/s. Erusian Equipment & Chemicals Ltd., Vs. State of West Bengal and another reported in 1975 (1) SCC 70.

12. Per contra, Mr. B. Pugalenth, learned Additional Advocate General appearing for the respondents submitted that the petitioner company and another transport company namely, M/s. Deepika Transport company owned by the petitioner's wife are having registered office in the same address and virtually the petitioner is running both the transport companies by engaging tanker lorries for transporting milk from various union to the

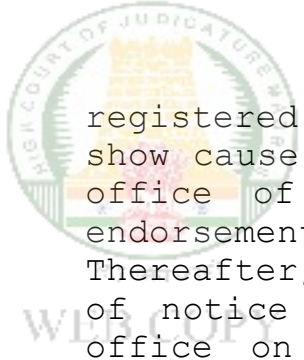


federation. He would further contend that it is not the first time the petitioner was found guilty of adulteration, both the petitioner company as well as M/s.Deepika Transport Company were involved in several occasions in adulterating the milk. When the petitioner contract was terminated by the first respondent, the petitioner did not challenge the same and kept quiet and subsequently when the show cause notice was issued to the petitioner on 10.09.2014, which was sent by registered post to the office of the petitioner, the same was returned as door closed and on the date of issuance of show cause notice, the petitioner was not arrested and though he was very much available, he deliberately avoided receipt of the show cause notice. In the above circumstances, a substituted service of notice was ordered and notice was affixed in his office on 22.09.2014. When a similar show cause notice was issued to another transport company owned by his wife namely, M/s.Deepika Transport Company, it was also returned. Subsequently, M/s.Deepika Transport Company was blacklisted and the contract was cancelled. The same was challenged before the Principal Bench of this Court by filing W.P.Nos.24501 and 28029 of 2014 and by an order dated 17.11.2014, the above writ petitions were dismissed. He would further contend that facts of the above case are squarely applicable to the present case and therefore, this writ petition is also liable to be dismissed.

13. So far as the blacklisting is concerned, learned Additional Advocate General relied upon a decision of the Hon'ble Supreme Court M/s.Kulja Industries Ltd., Vs.Chief General Manager W.T.Proj, BSNL and others made in Civil Appeal No.8944 of 2013, dated 04.10.2013 wherein the Supreme Court has held that the power of blacklisting is inherent and there is no need for any such power being specifically conferred by statute or reserved by the contractor. Hence, the first respondent has power to blacklist the petitioner. He would further contend that so far as the petition to amend the prayer to challenge the order of termination of contract passed on 01.09.2014 is not maintainable and the petitioner cannot challenge the order of termination after a long delay of more than two years that too by way of amending the prayer in the present writ petition. Hence, he sought for the dismissal of the said petition.

14. I have considered the submissions made on either side and perused the entire materials available on record.

15. So far as the first contention raised by the learned counsel for the petitioner regarding violation of principles of natural justice is concerned, admittedly a show cause notice was issued to the petitioner on 10.04.2014, calling for explanation, which was sent by RPAD as well as by speed post. The respondents also filed a typed set of papers showing the postal covers and acknowledgment card for sending the show cause notice by



registered post. From the perusal of the above, it is seen that show cause notice was sent by registered post on 10.04.2014 to the office of the petitioner and the same was returned with an endorsement stating that door closed on 12.04.2014 and 13.04.2014. Thereafter, the first respondent ordered for substituted service of notice and affixed a show cause notice in the petitioner's office on 22.09.2014. When registered post was sent to the petitioner, the petitioner was very much available and thereafter, he surrendered before the police only on 19.09.2014. Since notice has been sent by registered post to the office of the petitioner, it is the duty of the petitioner to receive the same and send suitable reply. Now, it is not open for the petitioner to contend that he was not given sufficient opportunity. There is no dispute regarding the principle laid down in all the judgments relied upon by the learned counsel for the petitioner that the order of blacklisting cannot be passed without giving sufficient opportunity to the person against whom an order of blacklisting has been passed. But in the instant case, as the show cause notice has been issued to the petitioner by Registered post to the last known address of the petitioner which was duly stamped and it is also returned as not claimed, under Section 27 of the General Clauses Act, it could be taken as deemed service and the petitioner cannot contend that no notice was served on him.

16. It is pertinent to note that when a similar order blacklisting another transport company namely, M/s. Deepika Transport Company owned by the wife of the petitioner was challenged before the Principal Bench of this Court in W.P.Nos.24501 and 28029 of 2014 and by an order dated 17.11.2014, the said writ petitions were dismissed, after elaborately considering all the judgments, it has been held as follows:-

"26. Therefore, the law is now settled that the order blacklisting a contractor cannot be passed without complying with the principles of natural justice. To this extent, Mr. V. Raghavachari, learned counsel for the petitioner is correct.

27. But, in the case on hand, it cannot be said on facts that the respondents failed to comply with the principles of natural justice. The respondents have filed a set of documents to show as to how the principles of natural justice have been scrupulously complied.

28. As stated earlier, the incident that led to the registration of a criminal complaint and the arrest of the petitioner's husband happened on 20.08.2014. According to the respondents, a show cause notice dated 09.09.2014 was issued both by speed post as well as by registered post. Both of them returned undelivered. The respondents have filed in the set of documents, the copies of the postal return covers and the online tracking results of the speed post and registered post. Therefore, the respondents affixed the copy of the show cause notice on the door of



the business premises of the petitioner on 16.09.2014. The writ petitioner admittedly took note of the show cause notice on 22.09.2014 and sent a reply dated 24.09.2014. But unfortunately, the reply, though dated 24.09.2014, was not sent by the writ petitioner immediately. The petitioner registered the same in the post office only on 30.09.2014 and it was received by the Vellore Tiruvannamalai District Cooperative Milk Producers' Union only on 07.10.2014. By this time, the order for blacklisting had been passed on 04.10.2014.

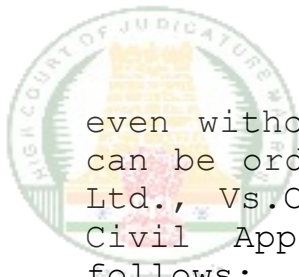
30. Therefore, it is clear that an opportunity was granted to the petitioner. This is not a case of a total denial of an opportunity and a total violation of the principles of natural justice. There is no explanation forthcoming from the petitioner as to why their reply dated 24.09.2014 was registered only on 30.09.2014. The petitioner has failed to avail the opportunity given to them to show cause.

31. Moreover, law is well settled to the effect that principles of natural justice are not in a straight jacket formula. The extent to which they are to be complied with, depends upon the facts and circumstances. Though the case on hand is that of a transport contractor, who has been blacklisted by the orders impugned in one of these writ petitions, their case cannot be treated on par with the cases of contractors covered by the said decisions of the Supreme Court in *Southern Painters, Style (Dress Land)*, *Gorkha Security Services*, *Hindustan Petroleum Corporation Limited* and *Allied Motors Limited*.

32. The petitioner was engaged for the transportation of milk, which is an essential commodity and food item. When the allegation is not merely of short delivery, but also of adulteration, the larger public interest requiring blacklisting of such persons, would override the necessity for scrupulous adherence to the principles of natural justice. Therefore, the third contention cannot also be accepted.

17. In the above circumstances, the contention of the learned counsel for the petitioner that the impugned order has been passed in violation of principles of natural justice which cannot be countenanced.

18. So far as the next contention of the learned counsel for the petitioner that the first respondent has no power or authority to blacklist the petitioner company is concerned, even though the agreement entered into between the petitioner company and the first respondent does not provide for blacklisting the petitioner company, the blacklisting simply signifies a business decision by which the party affected by the breach decides not to enter into any contractual relationship with the party committing breach and it is inherent in the party allotting the contract and



even without any provision in the agreement for blacklisting, it can be ordered. The Hon'ble Supreme Court in M/s.Kulja Industries Ltd., Vs.Chief General Manager W.T.Proj, BSNL and others made in Civil Appeal No.8944 of 2013, dated 04.10.2013 has held as follows:

"17.That apart the power to blacklist a contractor whether the contract be for supply of material or equipment or for the execution of any other work whatsoever is in our opinion inherent in the party allotting the contract. There is no need for any such power being specifically conferred by statute or reserved by contractor. That is because blacklisting simply signifies a business decision by which the party affected by the breach decides not to enter into any contractual relationship with the party committing the breach. Between two private parties the right to take any such decision is absolute and untrammelled by any constraints whatsoever. The freedom to contract or not to contract is unqualified in the case of private parties. But any such decision is subject to judicial review when the same is taken by the State or any of its instrumentalities.

....

24.Suffice it to say that debarment is recognised and often used as an effective method for disciplining deviant suppliers/contractors who may have committed acts of omission and commission or frauds including misrepresentations, falsification of records and other breaches of the regulations under which such contracts were allotted. What is notable is that the debarment is never permanent and the period of debarment would invariably depend upon the nature of the offence committed by the erring contractor."

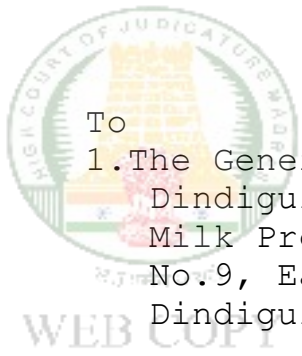
19.So far as W.M.P(MD)No.13880 of 2016 for amending the prayer so as to challenge the order of termination of contract dated 01.09.2014 is concerned, even though the order was passed as early as on 01.09.2014, the petitioner kept quiet for more than 2 years and now it is not open to the petitioner to challenge the same at this point of time, that too by amending the prayer in the writ petition. If at all, the petitioner was aggrieved by the order of termination of contract, he would have filed a separate writ petition and challenged the same in the manner known to law.

20.For all the above reasons, the writ petition is liable to be dismissed and consequently, it is dismissed. No costs. Consequently, M.P(MD)No.2 of 2014 and W.M.P(MD)No1338 of 2016 are closed.

Sd/-

Assistant Registrar(Records)

/True copy/



To

1.The General Manager,
Dindigul District Co-operative
Milk Producers Union Ltd., DD 160,
No.9, East Govindapuram,
Dindigul 624 001.

2.The Managing Director,
Tamil Nadu Co-operative Milk Producers
Federation Ltd., Madhavaram,
Chennai 600 051.

3.The Secretary,
Government of Tamil Nadu,
Animal Husbandry and Fisheries Department,
Fort St., George,
Chennai 600 009

+1 cc to M/s.P.Adhimoolapandian, Advocate in SR.No.62421

+1 cc to The Special Government Pleader in SR.No. 62764

sms

CSL/SS-2/08.11.2016: 11P/6C

Order made in
Writ Petition (MD) No.18576 of 2014
and
M.P(MD)No.2 of 2014
and
W.M.P (MD)No.13576 of 2016
21.10.2016