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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 29.04.2016

Pronounced on : 22-07-2016

CORAM :

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Writ Petition (MD) No. 2676 of 2016

and WMP.(MD) No.2371 & 2372 of 2016

S.S. Perumal
Tank Trunk Contractor
34, Panneer Selvam Street
New Vilangudi
Madurai - 625 018

.. Petitioner

Versus

The Senior Regional Manager
Hindustan Petroleum Corporation Limited
No.7, III Floor, Rakesh Towers
By-pass Road
Madurai - 625 010

.. Respondent

Petition filed under Article 226 of The Constitution of India praying for a Writ of Certiorarified Mandamus to call for the entire records in connection with the impugned proceedings of the respondent dated 20.01.2016 in MDRO/VK/RET and quash the same and consequently direct the respondent to restore the contract awarded to the petitioner.

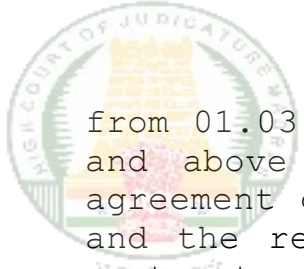
For Petitioner : Mr. M. Venkatachalapathy,
Senior Advocate for Mr. Ananth C. Rajesh

For Respondent : Mr. M. Sridhar

ORDER

The petitioner calls in question the order dated 20.01.2016 passed by the respondent by which the respondent terminated the contract awarded to the petitioner *inter alia* blacklisted and prohibited him from participating in the future contracts that may be awarded by the respondent.

<https://hcservices.courts.gov.in/hcservices/>
2. The petitioner would contend that he was awarded a contract on 01.03.2015 by the respondent for five years commencing



from 01.03.2013 to 31.03.2018 to run Trucks with capacity of 12 KL and above to transport bulk white oil petroleum products. An agreement dated 01.03.2015 was entered into between the petitioner and the respondent. In order to give effect to the terms of the contract, the petitioner has purchased five trucks, appointed 10 drivers and 10 cleaners besides a clerical staff for monitoring the day to day transactions.

3. According to the petitioner, on 03.12.2015, the respondent corporation made a surprise inspection of one of the trucks bearing TN 04 T 6220 owned by him and allegedly found that the locking system was tampered with. In connection with this incident, a show cause notice was issued to the petitioner on 09.12.2015 asking him to show cause as to why action should be initiated against him for violation of Clause Nos. 2.2.6, 3.2, 4.1.2 and 8.12 of the agreement dated 01.03.2015. The petitioner submitted a detailed reply dated 15.12.2015 contending *inter alia* that the alleged tampering is a result of defect in the fabrication of the lock and due to natural rusting owing to heavy rains and it is an act of God. In other words, the petitioner has specifically contended that there was no wilful tampering of the locking system. In spite of such reply, the respondent has passed the order dated 20.01.2016, terminating the contract of the petitioner and also blacklisted him from the existing list of contractors thereby prevented him from participating in the future contracts to be awarded by the corporation. Challenging the same, the petitioner has come up with this writ petition questioning the correctness of the above order passed by the respondent.

4. The learned Senior counsel appearing for the petitioner would contend that the impugned order dated 20.01.2016 is in violation of the principles of natural justice and on that ground it is liable to be set aside. According to the learned Senior counsel for the petitioner, the respondent is a corporation, a statutory body and it is expected to give a personal hearing to the petitioner before passing any order adverse to him. The respondent has merely sent a show cause notice on 09.12.2015, obtained the explanation from the petitioner on 15.12.2015 and thereafter passed the impugned order which is not in consonance with the principles of natural justice.

5. The learned Senior counsel for the petitioner also contended that in the show cause notice dated 09.12.2015, the petitioner was not called upon to show cause as to why he should not be blacklisted. In other words, the show cause notice was issued calling upon the petitioner only to submit his explanation as to why his existing contract should not be terminated. Thus, there is no proposal in the show cause notice dated 09.12.2015 to remove the petitioner from the list of existing contractor. Therefore, the petitioner submitted his explanation on 15.12.2015 confining his objection only in so far as it relates to



termination of his contract. Thus, without even putting the petitioner on notice regarding the proposed action to blacklist him from the existing list of contractors, the impugned order has been passed by the respondent and it is in violation of principles of natural justice.

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6. The learned Senior counsel for the petitioner mainly contended that the impugned order in so far as it relates to blacklisting the petitioner would have adverse civil consequences against him. In such circumstances, the respondent ought to have given an opportunity of hearing to the petitioner. In the absence of compliance of such a procedure, the impugned order is legally not sustainable. In order to buttress this submission, the learned Senior counsel for the petitioner relied on the decision of the Honourable Supreme Court in (**Raghunath Thakur vs. State of Bihar**) reported in **1989 1 SCC 229** wherein it was held that blacklisting a person in respect of business ventures has civil consequences for future business and therefore, even if the Rules do not express so, it is an elementary principle of natural justice that parties affected by any order should have right of being heard and making representation against that order.

7. The learned Senior counsel for the petitioner also relied on the decision of the Rajasthan High Court in (**M/s. Laxmi Petroleum vs. Indian Oil Corporation Limited and others**) reported in **2015 SCC Online Raj 3357** to contend that blacklisting an existing contractor would amount to 'civil death' and a harshest possible action. Therefore, before taking such action, it would be desirable to give an opportunity of hearing to the contractor.

8. The learned Senior counsel for the petitioner further relied on the order dated 03.12.2009 passed by this Court in *C. Shanmugavel vs. Indian Oil Corporation Limited* (WP No. 19513 of 2009) to contend that blacklisting has the effect of preventing a person from asserting privilege and advantage of entering into lawful relationship with the government for purposes of gains besides it will have adverse civil consequences. By reason of blacklisting, a disability is created on the business carried on by such person. In such circumstances, fair play require that the person concerned should be given an opportunity to represent his case before he is put on the blacklist.

9. The learned Senior counsel for the petitioner also attacked the impugned order of the respondent by contending that it is not a speaking order. The respondent has passed a cryptic order without any reasons. According to the learned Senior counsel for the petitioner, in the absence of any reasons for the conclusion arrived at by the respondent, the petitioner cannot effectively appeal against such an order and it cause prejudice to him. In this context, the learned Senior counsel for the

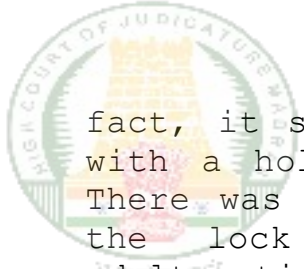


petitioner relied on the order passed by this Court in **(K.V.S. Palanivel vs. The District Collector, Pudukottai and others)** reported in **2010 (1) CWC 108** wherein it was held that while exercising administrative or quasi judicial power by an authority, it would be in the interest of justice that reasons for the conclusion has to be clearly spelled out and recorded and in the absence of the same, such an order cannot be sustained under law.

10. The learned Senior counsel for the petitioner also contended that the agreement entered into between the petitioner and the respondents provides for resolution of the disputes, if any, before the Arbitrator. However, in the present case, since there is violation of principles of natural justice, the clause for arbitration contained in the agreement is not a bar for approaching this Court with this writ petition. In this context, the learned Senior counsel for the petitioner relied on the decision of this Court in the case of **(Community Action for Rural Development (CARD) rep. By its Program Director and Chief Functionary, P. Vedachalam, Purivalam Post, Thirumayam Taluk, Pudukottai District vs. The Secretary, Ministry of Women and Child Development and Chairman of Rashtriya Kosh, New Delhi and others)** reported in **2015 3 Law Weekly 90** wherein this Court held that blacklisting a person is a serious matter and it involve civil consequences. If an existing contractor has been blacklisted without following the principles of natural justice, alternative remedy is not a bar for filing the writ petition.

11. The learned Senior counsel for the petitioner also relied on the decision of this Court in **(M/s. ICMC Corporation Limited vs. M/s. Electronics Corporation of Tamil Nadu (ELCOT) rep. By its Managing Director, Chennai)** reported in **CDJ 2016 MHC 108** wherein it was held that the arbitration clause in the agreement sought to be pressed against the petitioner will not stand in the way of the petitioner in getting the relief when there is a violation of principles of natural justice in passing the order.

12. Per contra, the learned Standing counsel appearing for the respondent vehemently opposed the writ petition by contending that the respondent has followed the principles of natural justice in letter and spirit and it is not a ground for setting aside the impugned order. The learned counsel for the respondent, by placing reliance on the counter affidavit, would contend that the petitioner has no enforceable right to file the present writ petition. The agreement entered into between the petitioner and the respondent contains certain terms and conditions and if any of the conditions is breachd, the respondent is entitled to take action by following the procedures contemplated under law. In the present case, during an inspection of the trucks belonged to the petitioner at the loading point, it was found that the locking arrangement of the dome was welded to the body of the tank. In

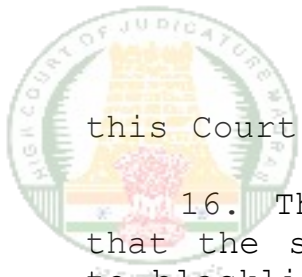


fact, it should be one piece of rod without any fabrication only with a hole to facilitate the tampering of the locking system. There was an illegal fitting arrangement made wilfully to remove the lock without the keys to facilitate pilferage and adulteration. The contention of the petitioner that the lock was rusted due to rain or it was an act of God cannot be accepted. In the show cause notice dated 09.12.2015 issued to the petitioner, his attention was invited to clauses 2.2.6, 3.2, 4.1.2 and 8.2 of the agreement and the petitioner has submitted his objections. After considering the objection, the respondent thought it fit not only to terminate the existing contract but to remove/blacklist the petitioner from the existing contractor list as per Clause 17 (e), 17 (f), 17 (g) and 17 (i) of the agreement dated 04.05.2015.

13. As regards the averment that the impugned order has been passed without application of mind and there was no reason assigned for arriving at a conclusion, the learned counsel for the respondent would contend that a detailed order has been passed by the respondent meeting each and every one of the objections raised by the petitioner. The allegation that the petitioner was not given an opportunity of hearing cannot be sustained. When the petitioner was given an opportunity to submit his explanation to the show cause notice, it amounts to compliance of principles of natural justice. Further, the petitioner committed acts of pilferage and was caught red handed for committing a violation of the Transport Discipline Guidelines. Therefore, the petitioner was blacklisted from the list of existing contractors. Even in the show cause notice, reference was made to the action to be taken to blacklist the offenders from the list of existing contractors in the event of commission of certain types of irregularities or malpractice. Therefore, according to the learned counsel for the respondent, the petitioner was also called upon to submit his explanation to the proposed action to black list him from the existing contractor list. In such circumstances, according to the learned Standing counsel for the respondent, the submissions made by the learned Senior counsel for the petitioner need not be considered by this Court.

14. Above all, the learned Standing counsel for the respondent would contend that the writ petition is not maintainable when there is a clause contained in the agreement entered into between the petitioner and the respondent for referring the dispute to an arbitrator. When there is an alternative remedy before the Arbitrator, the present writ petition is not maintainable. The learned counsel for the respondent therefore prays for dismissal of the writ petition.

15. I heard the learned Senior counsel for the petitioner as well as the learned Standing Counsel for the respondent corporation. I had carefully examined the submissions made on both sides and perused the materials placed for consideration of



this Court.

16. The main argument advanced on behalf of the petitioner is that the show cause notice does not indicate any proposed action to blacklist the petitioner from the list of existing contractors and therefore, he confined his explanation only in so far as it relates to the action to terminate his existing contract. Therefore, the combined action proposed to be taken by the respondent to terminate the existing contract of the petitioner as well as to blacklist him from the existing contractors list is legally not sustainable and it is in violation of the principles of natural justice.

17. In order to consider the above submission of the learned Senior counsel for the petitioner, it is just and necessary to look into the show cause notice dated 09.12.2015. The relevant portion of the show cause notice dated 09.12.2015 is extracted hereunder:-

"Special Terms and conditions

9. *Transporter shall comply with the following requirements;*

(a) *Security locking system:*

The tank trucks are provided with the security lock in the delivery valves as well as in the top dome covers. The security locks have the unique feature of master key maintained with the supply locations and dealer specific keys at the receiving end. Scope of inspection is to ensure that the security locking system is not tampered with and all the empty and loaded trucks reach/leave the premises with the locking system intact in the tank lorry as per the Security Locking Manual.

Transport Discipline Guidelines

2.2.6 *Carrier as per the design given by the Oil Company from time to time shall provide the product sealing/security locking/electronic sealing arrangements (security locking system) as advised by Oil Company from time to time. The transporter to ensure that the integrity of the locking arrangements is maintained against any tampering at all the times.*

3.2 *Sealing/Locking of Tank Lorry*

3.2.1 *Security locking of the TT shall be done in accordance with the guidelines of the Oil Company*

3.2.2 *Carrier to ensure that the integrity of the security locking system is intact at all times*

3.2.3 *Carrier shall ensure that the TT is always in locked condition (as per security locking system) including on its return journey except during loading/unloading operation. Any act of tampering with*

security locking system shall be construed as malpractice and action shall be taken against the carrier



4.1.2 Checking Security locking system

4.1.2.1 The security locking system shall be checked and if it is found O.K. then proceed to clause 4.1.3. If found tampered, then it will be construed as a malpractice and action shall be taken as mentioned in clause 4.2 and 8.

8.2. Penalties for malpractice/irregularities

8.2.1 Malpractice/irregularities will cover any of the following

k. Tampering with standard fittings of TT including the sealing, security locks, security locking system, calibration, vehicle mounted unit or its fittings/fixtures

Clause No.	Type of Malpractice/Irregularity:	Penalty against number of instance
8.2.2.11	Tampering with standard fittings of TT including the sealing, security locks, security locking system, calibration	TT shall be blacklisted
8.2.2.16	Any act of the carrier/carrier's representative that may be harmful to the good name/image of the Oil Company, it's products or it's services	As decided by the company

However, in case of the following irregularities, the complicity of the carrier shall be deemed to be existent and the whole contract comprising of all the TTs belonging to the concerned carrier shall be terminated, security deposit forfeited and the concerned carrier and their all TTs shall be blacklisted on industry basis.

1. False hidden compartment, unauthorised fittings or alteration in standard fittings affecting Quality and Quantity

2. Illegal/un-authorized duplicate keys of security locks

3. Duplicate dip rod/calibration chart

4. Misappropriation of security locking system

Transport Agreement

<https://hcservices.ecourts.gov.in/hcservices/>

17. This agreement is valid for a period ending 30.09.2018 and w.e.f. 01.03.2015. However, company



reserves his right to terminate this agreement by giving two months advance notice without assigning any reasons and contractor is not entitled to claim any compensation from the corporation.

Notwithstanding anything to the contrary contained hereinabove, Company reserves the right to terminate this Agreement forthwith upon or at any time after happening of any of the following-

(e) Breach of any of the terms or conditions of this Agreement by the Carrier

(f) If the carrier commits or suffers to be committed any act which in the opinion of the company whose decision shall be final, is prejudicial to the good name/image of the company or its products or activities.

(g) If the carrier causes disruption in transportation of bulk petroleum products. The decision of Company will be final and binding on the carrier

(i) The irregularities mentioned below shall be deemed to have the complicity of the carrier

s. Unauthorised fabrication such as hidden chamber/facility to siphon product from the tank etc.,

t. Duplication of any key pertaining to the security system

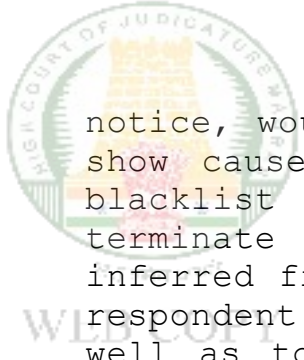
u. Duplicate Dip-rod

For the above offences, the carrier will be blacklisted in the first instance itself as a penal action.

You have violated Clause of the agreement and TDG Clause Nos. 2.2.6, 3.2, 4.1.2, 8.2 for the irregularities inspected on 3rd December 2015. The offences committed by you are viewed seriously considering that you have violated the terms and conditions of the agreement dated 4th May 2015 and the Transport Discipline Guidelines and you are hereby called upon to show cause as to why action as deemed fit including termination as per Clause 17 of the said Transport Agreement dated 4th May 2015 should not be taken against you considering the irregularity committed by you. Please note that your explanation should reach us within 10 days from the date of receipt of this letter failing which it will be construed that you have no explanation to offer and action as deemed fit would be taken without any further/reference or notice to you."

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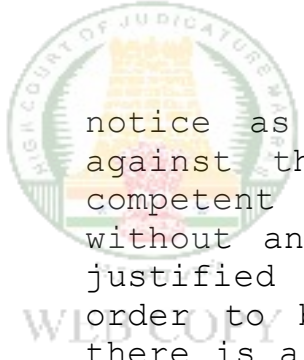
18. The learned counsel appearing for the respondent, by placing relying on the various clauses extracted in the show cause



notice, would contend that the petitioner was duly informed in the show cause notice regarding the proposed action to be taken to blacklist him from the list of existing contractors and also to terminate his contract. Even otherwise, it could be safely inferred from the show cause notice regarding the intention of the respondent to take combined action to terminate his contract as well as to blacklist him from the existing list of contractors. In such event, it cannot be said that the petitioner was not aware of the proposed action to be taken by the respondent, To add strength to such contention, the learned counsel for the respondent relied on the tabulation made in the impugned show cause notice to contend that it was clearly stated therein that for the violations committed by the petitioner, action will be taken both to terminate his contract and to blacklist him from the existing list of contractors. Therefore, the learned counsel for the respondent would contend that the argument of the learned Senior counsel for the petitioner that in the impugned show cause notice there was no indication as to the combined action to be taken against the petitioner is incorrect.

19. A perusal of the show cause notice dated 09.12.2015 does not specifically indicate the combined action to be taken against the petitioner. In the show cause notice, the clauses contained in the agreement entered into between the petitioner and the corporation has been re-produced. In this context, useful reference can be made to the decision of the Honourable Supreme Court in the case of **(Gorkha Security Services vs. Government (NCT of Delhi) and others)** reported in **(2014) 9 Supreme Court Cases 105** wherein it was held in Para No.21 that the fundamental purpose behind serving the show cause notice is to make the noticee understand the precise case set up against him which he has to meet. In other words, the proposed action contemplated against the noticee has to be specifically indicated therein. Moreover, when it comes to blacklisting, this requirement becomes all the more imperative, having regard to the fact that it is a harshest possible action. It was held by the Honourable Supreme Court that a show cause notice should meet the two important requirements namely (i) the materials/grounds to be stated which according to the department necessitates an action and (ii) particular penalty/action which is proposed to be taken. Ultimately, it was held by the Honourable Supreme Court that in the show cause notice, the competent authority has to indicate the intended penalty of blacklisting, so as to provide adequate and meaningful opportunity to the contractor and in the absence of the same, the order blacklisting the firm is not sustainable.

20. In that case before the Honourable Supreme Court, the contractor was imposed with various punishments of penalty of <https://hcservices.courts.gov.in/hcservices/> and forfeiture of performance guarantee besides blacklisting the firm. In that case, it was merely stated in the show cause



notice as to why action as mentioned above may not be taken against the firm, besides other action as deemed fit by the competent authority. The Honourable Supreme Court held that without any specific stipulation, the competent authority is not justified in imposing the penalty of blacklisting and such an order to blacklist the firm is attached with a stigma. Thus, there is a necessity to give an opportunity of hearing to the firm to meet the allegations which were in the mind of the authority contemplating blacklisting of such a person. It was further held that had the action of blacklisting being specifically proposed in the show cause notice, the appellant could have mentioned as to why such extreme penalty is not justified. It was also held that the extreme nature of such a harsh penalty like blacklisting with severe consequences, would itself amount to causing prejudice to the appellant.

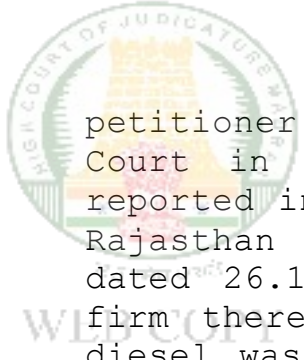
21. The learned Senior counsel for the petitioner would contend that the show cause notice has been issued without specifically indicating as to what is the proposed action the respondent intended to take against the petitioner. Unless it is specified, the petitioner will not be in a position to submit his explanation effectively. In the show cause notice, it was merely indicated that action as deemed fit by the respondent will be taken against the petitioner, which is not in compliance with principles of natural justice. According to the learned Senior counsel for the petitioner, blacklisting the petitioner from the list of existing contractors would result in adverse civil consequences to him. While so, when there is violation of principles of natural justice, the contention of the respondent that there is an alternative remedy before the arbitrator is not sustainable or it is a bar for filing the present writ petition.

22. The learned counsel appearing for the respondent vehemently contended that the writ petition is not maintainable inasmuch as the agreement entered into between the petitioner and the respondent provides a specific clause for referring any dispute between the parties for arbitration.

23. Applying the ratio laid down by the Honourable Supreme Court, as mentioned supra, in the present case, the corporation did not specifically indicate in the show cause notice as to the proposed action to be taken against the petitioner. The show cause notice merely states that action as deemed would be taken against the petitioner, which, in my opinion, is not in compliance with the principles of natural justice. Therefore, I hold that the petitioner was not given adequate opportunity to defend himself before passing the impugned order blacklisting him from the existing list of contractors and consequently, the impugned order is to be set aside.

<https://hcservices.courts.gov.in/act/cases/>

24. In this context, the learned Senior counsel for the



petitioner placed reliance on the decision of the Rajasthan High Court in **(Laxmi Petroleum vs. Indian Oil Corporation Limited)** reported in **2015 SCC Online Raj 3347**. In the said case before the Rajasthan High Court, the respondent corporation passed an order dated 26.12.2014 whereby the contract awarded to the petitioner firm therein for transportation of bulk motor spirit/high speed diesel was terminated besides blacklisting the contractor for two years. The said order dated 26.12.2014 was challenged before the Rajasthan High Court on the ground of violation of principles of natural justice. The corporation contended that the writ petition is not maintainable as there is a clause contained in the agreement for referring the dispute to arbitration. In such circumstances, in Para Nos. 19, 21, 23, 25 and 26, it was held as follows:-

"19. It is well settled that ordinarily when a dispute between the parties requires adjudication of the disputed question of facts, where parties are required to lead evidence which can be determined by the domestic forum chosen by the parties, the writ court would refuse to exercise the discretionary jurisdiction. But then, the rule of exclusion of writ jurisdiction on account of availability of alternative remedy is a rule of discretion and not a rule of compulsion and therefore, the availability of the alternative remedy by itself does not fetter the extraordinary jurisdiction of the Court under Article 226 of The Constitution which is plenary in nature and is not limited by any other provisions of the constitution.

20.

21. Suffice it to say that the availability of alternative remedy to the petitioner does not operate as a bar to the jurisdiction of the High Court under Article 226 of the Constitution of India and the court can always exercise its discretion taking into consideration facts and circumstance of the case.

22.

23. Indisputably, the action in terminating the contract prematurely and blacklisting of the awardee of the contract on account of malpractice casts stigma and many civil and evil consequences flow therefrom and therefore, such an action could only be taken after following the principles of natural justice.

24.

25.the Honourable Supreme Court observed that blacklisting any person in respect of business ventures has civil consequences for future business of the person concerned and therefore, even if the rules do not express so, it is an elementary principle of natural justice that parties affected by any order should have right of being heard and making



representation against the order.

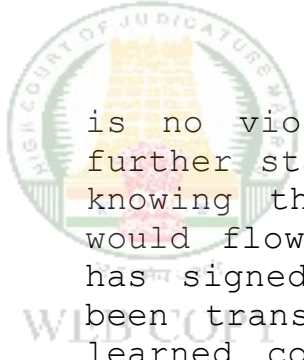
26.The Court further observed that when it comes to the action of blacklisting which is termed as 'civil death', a harshest possible action, it would be difficult to accept the proposition that without even putting the noticee to such a contemplated action and giving him a choice to show cause as to why such action be not taken, final order can be passed blacklisting such a person only on the premises that it is one of the actions as stated in the provision of NIT."

25. It is to be mentioned that the contract between the petitioner and the respondent is governed by certain terms and conditions incorporated in the agreement entered into between them. The agreement also contain a clause for resolving dispute, if any, through an arbitrator. However, as rightly pointed out by the learned Senior counsel for the petitioner and by applying the decision of the Rajasthan High Court mentioned supra, when there is violation of principles of natural justice, alternative remedy is not a bar for filing this writ petition. Therefore, I hold that the present writ petition is maintainable and availability of an alternative remedy is not a bar for filing this writ petition.

26. The learned standing counsel for the respondent brought to the notice of this Court that immediately after finding certain lapses or irregularity on the part of the petitioner during inspection, a joint statement was obtained from the petitioner along with the officials of the corporation wherein the petitioner admitted lapses on his part. For ready reference, the joint statement signed by the petitioner along with the officials of the corporation on 09.12.2015 is reproduced hereunder:-

"While carrying out inspection of gantry at Madurai New IRD by Sr. Depot Manager on 03.12.2015, it was found that TT No. TN04T6220 the security locking system of M2 compartment dome cover was tampered. The locking slot of M2 dome cover was fitted with a small piece of metal which could be easily separated from the locking system and the lock can be removed through the opening thus created, without opening the lock with key. Photographs (8 Nos) of the tampering of security locking system is also attached herewith. You were also called to the Depot on 03.12.2015 and witnessed the same."

27. By relying on the above joint statement, the learned counsel for the respondent would contend that the petitioner was fully aware of the irregularities committed by him and transparent service procedure has been followed by the respondent. After obtaining the joint statement from the petitioner, the show cause notice dated 09.12.2015 was sent to the petitioner and therefore, there



is no violation of the principles of natural justice. It is further stated that the petitioner has signed the joint statement knowing the contents therein as well as the consequences that would flow therefrom. It is further stated that the petitioner has signed the joint statement after the contents thereof have been translated from English to Tamil. This submission of the learned counsel for the respondent cannot be countenanced. By merely obtaining a joint statement from the petitioner along with the officials of the corporation and by issuing a show cause notice without indicating the proposed action to be taken, it cannot be said that the respondent has complied with the principles of natural justice. In such circumstances the averment of the respondent that they have complied with all due formalities and adhered to principles of natural justice cannot be accepted, rather it has to be rejected.

28. The learned Senior counsel appearing for the petitioner would contend that the impugned order has been passed without assigning any reasons especially relating to the blacklisting of the petitioner. In this context, the learned Senior counsel for the petitioner relied on the decision of the Rajasthan High Court, mentioned supra, wherein in para No.35, it was held as follows:-

"35. Having gone through the material on record in its entirety and objectivity, this Court is of the considered opinion that no proper inquiry into the allegations levelled against the petitioner was made by the IOCL and the petitioner has been held guilty of the allegation of tampering with the unauthorised fittings in collusion with the welding workman/security personnels of IOCL regarding which, he was never put on notice. Further, it is not the case of the respondents that the material evidence on the record of IOCL indicating involvement of the petitioner in tampering with the fittings was made available to it. Thus, on the facts and in the circumstances of the case discussed hereinabove, it can safely be concluded that the petitioner has been held guilty on the allegations of malpractice/irregularities in putting the unauthorised fittings and tampering with the same, without extending it fair opportunity of hearing. Moreover, it is well settled that every action of the State or instrumentality of the State in exercise of the executive power must be informed by reason. But in the instant case, the petitioner has been held guilty and penalised by the respondent authority without justifiable reason, by passing a non-speaking order, which cannot be countenanced by this Court.

<https://hcservices.courts.gov.in/hcservices> and again, it was held by the Honourable Supreme Court that an order passed by an administrative or quasi judicial authority must be based on sound and valid reasoning without which



such order cannot be legally sustainable. In the words of the Honourable Supreme Court in the case of **Steel Authority of India Limited vs. Sales Tax Officer, Rourkela-I Circle and others** reported in [2008] 16 VST 181 (SC), reasons are the heart beat of any conclusion. A perusal of the impugned order in this case would show that even though the respondent has passed a detailed order, there is no justifiable reasons assigned for blacklisting the petitioner. I find that the order passed by the respondent only runs to pages, without any reason assigned thereof. The respondent has merely reproduced the nature of irregularity committed by the petitioner, the terms and conditions governing the petitioner and the respondent, the explanation offered by the petitioner and passed the order to terminate the existing contract and also to blacklist the petitioner from the existing contractors list so as to prohibit him from participating in the future contracts. While so, I am of the view that the respondent has not assigned any reason, much less justifiable reason for his conclusion and therefore, the argument advanced by the learned Senior counsel appearing for the petitioner has to be accepted by this Court.

30. In all the decisions relied on by the learned Senior counsel for the petitioner, mentioned supra, it was held that before blacklisting the contractor, he or she should be put on notice specifically indicating as to why he or she should not be blacklisted from the existing contractor list and in the absence of the same, the order blacklisting the contractor is illegal. It is also further specifically held in all the decisions relied on by the learned Senior counsel for the petitioner, mentioned supra, that before passing an order blacklisting the contractor, he or she should be given an opportunity of hearing, which is one of the elementary principles of natural justice. Admittedly, in the present case, the respondent has not given an opportunity of hearing to the petitioner before passing the impugned order. The respondent has also not specifically indicated the proposed action to be taken against the petitioner, including blacklisting him from the existing contractor list. In such view of the matter, I am of the view that the impugned order passed by the respondent cannot be sustained as it is in violation of principles of natural justice and the impugned order is liable to be set aside.

31. Accordingly, the impugned order of the respondent is set aside. The writ petition is allowed. No costs. The respondent is directed to issue fresh notice to the petitioner and also afford him an opportunity of hearing and proceed further in accordance with law. The connected Mps are closed.

Sd/
Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar



The Senior Regional Manager
Hindustan Petroleum Corporation Limited
No.7, III Floor, Rakesh Towers
By-pass Road
Madurai - 625 010

+1 cc to MR.ANANTH C.RAJESH, Advocate Sr.No.39044

+1 cc to MR.SRIDHER, Advocate Sr.No.39093

SMA/KP/12/08/2016 :15P/4C

WP (MD) No. 2676 of 2016
and WMP.(MD).NO.2371 & 2372/16

22-07-2016