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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on 26.05.2016

Judgment pronounced on 13.07.2016

+ LPA 108/2016

M/S BONN NUTRIENTS PRIVATE LTD. & ANR Appellants

Through Mr.Neeraj Grover, Mr.Jiten Mehra &
Mr.Aditya Singh, Advocates

versus

UNION OF INDIA & ORS.

..... Respondents

Through Mr.Arun Bhardwaj, CGSC for R-1
and R-2
Mr.R.K.Gupta, & Mr.M.K.Singh,
Advocates for AIIMS

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.

1. By the present appeal the appellant impugns the order of the learned Single Judge dated 24.11.2015 dismissing the writ petition of the appellant and upholding the order dated 24.09.2015 of respondent No.3 All India Institute of Medical Sciences (*in short 'AIIMS'*) debarring the appellant for a period of three years from all dealings and participating in all contracts and tenders.

2. The brief facts which led to filing of the writ petition are that appellant No.1 is a private limited company stated to be a manufacturer of Fast Moving Consumer Goods producing a variety of goods including breads, biscuits, cookies etc. with the brand name 'Bonn'. It is stated that appellant No.1 has a manufacturing facility in Ludhiana, Punjab and is an ISO 22000:2005 certified and FSSAI approved plant having Good

Manufacturing Practices (*in short* 'GMP') and Good Hygiene Practices (*in short* 'GHP') in place.

3. In 2012, respondent No.3, namely, AIIMS awarded a tender to one of the distributors of appellant No.1, namely, M/s. Chawlaji & Company for supply of 2500 packets of two slices of brown bread daily manufactured by the appellant for a period of two years. The contract was extended from time to time and lastly till 12.8.2015. Chawlaji & Company continued to supply bread manufactured by appellant No.1 till July 2015.

4. On 29.07.2015, the officials of respondent No.3 telephonically informed the representatives of the appellant and its distributor Chawlaji & Company about an incident i.e. that allegedly on 29.7.2015 a live rat was found in a packet of two bread slices manufactured by the appellant and supplied by Chawlaji & Company. On 5.8.2015 respondent No.3 issued a termination/cancellation notice to M/s Chawlaji & Company and cancelled the tender and forfeited the performance security of Rs.25,000/- deposited by the said Chawlaji & Company.

5. On 9.9.2015 respondent No.3 issued a show cause notice to appellant No.1 regarding the incident.

6. Appellant No.1 sent a detailed reply on 17.9.2015. In the reply various pleas were taken including that the sealing process of bread takes place at 170-180 °C and no living organism could survive at such temperatures. The bread takes 18-24 hours to reach the retailer/end users and no living organism can survive in a sealed environment for such duration of time.

7. On 24.09.2015 the impugned order was passed by respondent No.3 debarring appellant No.1 for a period of three years with immediate effect

from all dealings and participating in all contracts/tenders. Subsequently, on 21.10.2015 a corrigendum was issued amending the tender conditions of an existing tender published on 8th September, 2015 which stated that all tenders quoting as well as providing samples of M/s Bonn Nutrients Pvt. Ltd. (i.e. appellants) will be rejected until the show cause proceedings against the said M/s Bonn Nutrients Pvt. Ltd. are resolved.

8. The learned Single Judge in the impugned order on a visual inspection of the sealed pack posed a question to the learned counsel for appellant No.1 i.e. in the sealed packet a certain amount of air is trapped and that whether that air is sufficient for a live rat to be able to survive in a sealed pack. The impugned order notes that no answer was forthcoming from the learned counsel for appellant No.1. The impugned order also notes that facts on record speak for themselves and there was nothing that required further investigation or inquiry. The order further records that there is sufficient compliance of the principles of natural justice. The requirement of the element of giving reasons was held to be a subjective one especially regarding the nature and extent of reasons required. This may vary from facts to facts. Accordingly, as the scope for judicial review of administrative actions was of a limited nature i.e. to only see that the executive authorities have acted in a fair and transparent manner, the learned Single Judge found no merits in the matter. This was especially so keeping in view that eatables had been supplied by appellant No.1 to those who are already ailing and admitted in hospital. The writ petition was accordingly dismissed.

9. We have heard learned counsel for the parties. Learned counsel for the appellant has stressed and reiterated the submissions in their reply to the Show Cause Notice, namely, that the sealing operation of the two slice of

bread are carried out at temperatures of 170-180 °C. It is highly unlikely that a rat would survive in such high temperatures. There is a gap of more than 48 hours from the date the bread was sealed till the point it was served to the patient in AIIMS and hence a live rat could not have survived for such a long duration in a sealed packet. He has stressed that none of these aspects have been dealt with by the respondent No.3 while passing the impugned order debarring the appellant No.1. He has relied upon the judgments of the Supreme Court in *Erusian Equipment & Chemicals Ltd. vs. State of West Bengal and Anr.*, AIR 1975 SC 266 and *S.N.Mukherjee vs. Union of India*, AIR 1990 SC 1984 to stress that the principles of natural justice were not followed by respondent No.3 when passing the order debarring the appellant.

10. Learned counsel appearing for respondent No.3 has reiterated that principles of natural justice were followed and that the impugned order debarring the appellant No.1 was passed keeping in view the high standards the hospital maintains. He contended that there was no dispute that a live rat was found in the bread packet manufactured by the appellant. He handed over in Court a DVD which was taken at the time when the packet with the live rat was discovered.

11. We may first have a look at some of the relevant facts pertaining to the controversy. The show cause notice dated 09.09.2015 that was issued to appellant No.1 by respondent No.3 reads as follows:-

“The undersigned is directed to serve on you a show cause notice on the following grounds:
Why the company has failed in practicing “Good Manufacturing Practice”?

How, the quality wing of your company has failed in detecting such incident before the supplies are packed in cartons.

Your company's failure to maintain the quality concerns with patient safety issue amounts to tarnish the image of Dietetics Deptt. why not your firm should be black listed and debarred for participation in any tenders at AIIMS?"

12. Appellant No.1 gave a reply dated 17.09.2015 as follows:-

"Ours is an ISO 22000.2005 certified and FSSAI approved manufacturing unit having stringent GMP and GHP systems in place.

1. Pest control operations in our unit are looked after by one of the most reputed and professional pest control agencies in India, i.e. PCI.
2. As per their guidelines rat bait boxes have been installed along the inside of walls in our plants including the packing halls.
3. Glue traps placed in the rat bait boxes are changed regularly. There are no gaps or holes, from where any rat or pest can sneak in. Regular monitoring is done by the PCI officer and our Utility Manager. Pest Activity in this area has never been observed. Copy of our contract with PCI is attached.
4. The wrapping the sealing operations of two slice bread takes place simultaneously on a SS table, which is more than 3ft.high. The sealing temperature is 170-180.c. It is highly improbable that:-
Rat from an unknown source had crawled on the packing table, un-noticed by 5-6 food handlers working around the table. Got wrapped along with two slices, survived high sealing temperature, and remained un-detected inside this pack. Surprisingly it remained alive for next two days in the sealed pack.
5. During our meeting, we had also shown you a small opening (about 1-1.5 inch) on the sealing of the pack, from where it probably sneaked inside the pack.

6. We are manufacturing since 1995 having all stringent GMP and GHP systems in place, still this matter is concern for us and debatable point how and at what stage a live rat crawled into packet.”

13. The impugned order dated 24.09.2015 passed by respondent No.3 debarring appellant No.1 for 3 years gives the reasons for the bar imposed as follows:-

“1. A live rat was found on 29.07.2015 in the sealed packet of Brown-Hi Fibre Bread Slice manufactured by M/s. Bonn Nutrients Pvt. Ltd. and the company has failed to submit satisfactory reply to show cause notice dated 09.09.2015.

2. The company has also failed in practicing “Good Manufacturing Practice”.

3. The quality wing of company has failed in detecting such incident before the supplies are packed in cartons.

4. The company’s failure to maintain the quality concerns with patient safety issues.”

14. In our opinion, there is no reasoned order passed by the respondent No.3. The impugned order passed on 24.9.2015 is essentially nothing but a repetition of the show cause notice issued on 9.9.2015. The same grounds are more or less *ad verbatim* given in the impugned order and in the show cause notice.

15. A detailed reply and a hearing having taken place. The reply of the appellant especially states (i) that a live rat could not have survived the high temperatures at which the packet was sealed in the plant; (ii) that a live rat could not have survived in a sealed pack for 2 days; and (iii) that a rat has crawled in from an unknown source through a small opening of about 1 or 1.5 Inches on the sealing of the packet. None of the submissions made by the appellant have even been noted, let alone be dealt with by the respondent

while passing the impugned order. The order without application of mind mechanically repeats the contents of the show cause notice and debars appellant No.1 for 3 years. The order dated 09.09.2015 is bereft of any reasons whatsoever.

16. A catena of decisions have held that the respondents are obliged to follow the principles of natural justice. We may look at some of them.

17. Reference may be had to a judgment of the Supreme Court in ***Gorkha Security Services vs. Govt. of NCT of Delhi(2014) 9 SCC 105*** wherein Supreme Court has held:

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

18. Similarly, in ***Erusian Equipment & Chemicals Ltd. s. State of West Bengal and Anr. (supra)/AIR 1975 SC 266*** the Supreme Court in paragraphs 19 and 20 held as follows:-

“19. Where the State is dealing with individuals in transactions of sales and purchase of goods, the two important factors are that an individual is entitled to trade with the Government and an individual is entitled to a fair and equal treatment with

others. A duty to act fairly can be interpreted as meaning a duty to observe certain aspects of rules of natural justice. A body may be under a duty to give fair consideration to the facts and to consider the representations but not to disclose to those persons details of information in its possession. Sometimes duty to act fairly can also be sustained without providing opportunity for an oral hearing. It will depend upon the nature of the interest to be affected, the circumstances in which a power is exercised and the nature of sanctions involved therein.

20. Blacklisting has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for purposes of gains. The fact that a disability is created by the order of blacklisting indicates that the relevant authority is to have an objective satisfaction. Fundamentals of fair play require that the person concerned should be given an opportunity to represent his case before he is put on the blacklist.”

19. The next issue would be as to whether the authority issuing the order of blacklisting is obliged to give reasons when passing an order of blacklisting. Reference may be had to the judgment of the Constitutional Bench of the Supreme Court in *S.N.Mukherjee vs. Union of India*, AIR 1990 SC 1984. That was a judgment which was dealing with the challenge to the validity of a general Court Martial by the Army. In that factual background the Supreme Court held as follows:-

“35. The decisions of this Court referred to above indicate that with regard to the requirement to record reasons the approach of this Court is more in line with that of the American Courts. An important consideration which has weighed with the Court for holding that an administrative authority exercising quasi-judicial functions must record the reasons for its decision, is that such a decision is subject to

the appellate jurisdiction of this Court under Article 136 of the Constitution as well as the supervisory jurisdiction of the High Courts under Article 227 of the Constitution and that the reasons, if recorded, would enable this Court or the High Courts to effectively exercise the appellate or supervisory power. But this is not the sole consideration. The other considerations which have also weighed with the Court in taking this view are that the requirement of recording reasons would (i) guarantee consideration by the authority; (ii) introduce clarity in the decisions; and (iii) minimise chances of arbitrariness in decision-making. In this regard a distinction has been drawn between ordinary Courts of law and tribunals and authorities exercising judicial functions on the ground that a Judge is trained to look at things objectively uninfluenced by considerations of policy or expediency whereas an executive officer generally looks at things from the standpoint of policy and expediency.”

20. The above judgment was applied to a case of blacklisting by a learned Single Judge of this Court A.K.Sikri, J. (as he then was) in the case of ***Mekaster Trading Corporation vs. Union of India*, 106 (2003) DLT 573.**

21. Similar view was taken by another Single Judge of this court in ***Prakash Atlanta JV & Ors. v. National Highways Authority of India & Ors. (supra)***. The learned Single Judge relied upon the judgment of the Supreme Court in the case of ***S.N. Mukherjee v. Union of India (supra)*** and noted as follows:

“24. Thereafter in para 38, the Supreme Court observed “keeping in view the expanding horizon of the principles of natural justice, we are of the opinion, that the requirement to record reason can be regarded as one of the principles of natural justice which govern exercise of power by administrative

authorities”. The decision in *S.N. Mukherjee v. Union of India* by the Constitution Bench of the Supreme Court, rendered in the context of court martial proceedings under the Army Act 1950, has been consistently followed by the courts in other contexts as well and in particular in the context of orders blacklisting contractors. The decision of the Supreme Court in *Madhya Pradesh Industries Ltd.*, to which a reference is made by the learned senior counsel for NHAI, was considered by the Constitution Bench of the Supreme Court in *S.N. Mukherjee* which then explained the law as noted hereinbefore. Therefore, the decision of the larger Bench in *S.N. Mukherjee*, which has been consistently followed by this Court in the decisions noted hereinafter, holds the field.”

22. A reference may also be had to the judgment passed by this Court in **2015 (224) DLT 715, *Hyundai Rotem Company v. Delhi Metro Rail Corporation*** and other connected matters, pronounced on 23.11.2015. This court while noting various judgments as stated above held as follows:

“21. The order in the present case dated 10.08.2015 is without any reasons. Respondent was obliged to deal with the submissions of the appellant in a broad manner before passing the order debarring the appellant. If after a hearing, a non-speaking order is passed, the person affected by adverse order would be at a loss to know the reason for the adverse order. Even if the decision is right, the person against whom it was made should be told why the decision has been made. The absence of reasons leads to denial of justice. Accordingly, in our view the impugned order dated 10.08.2015 is passed in violation of the principles of natural justice. The same is liable to be quashed.”

23. We cannot help but notice that in the present case in the reply the appellant has raised substantial submissions which factually go to the root of

the matter which have been completely overlooked/ignored without giving any reasons by respondent No.3. The reply filed by the appellant shows that two contentions are clearly stated. The first contention is that the slice of bread are sealed at a temperature of 170-178 °C and a living animal cannot survive in that temperature if it got trapped in the packet. Further, it would be extremely difficult for a live rat to survive for two days in the sealed pack on account of non-availability of fresh air. It is noteworthy that one of the documents filed by respondent No.3 themselves, is a communication addressed by the ward where the defective bread was found to the Medical Superintendent which is dated 29.7.2015 which states that the bread was manufactured on 26.7.2015 and the rat was found in the packet on 29.07.2015. Hence, the bread is actually three days old which was served on 29.7.2015 and the possibility of the rat having survived for three days inside the sealed pack if it had got through in the pack in the factory appears to be bit remote.

24. The reply also states that there is a small opening of 1 to 1.5 inch in the sealing of the packet from where in all probability the rat has slipped inside. On playing the CD filed by respondent No.3 it is clear from the conversations of the officials of respondent No.3 that there is a slit in the bread packet through which the rat has slipped into the pack. This would mean that the slit in the sealing could have taken place at any stage, namely, in the factory of the appellant or during transport or while in the custody of the dealer of the appellant, namely, M/s Chawlaji & company or while stored in the godown of respondent No.3 Institute.

25. The above are the vital issues taken up in the reply of the appellant which go to the root of the factual controversy and had to be dealt with by

the respondent No.3 Institute while passing the impugned order banning the appellant for a period of three years. Blacklisting is a harsh order on the appellant preventing the appellant from the privilege and advantages of entering into a lawful relationship with government/government organizations. Clearly, the respondent No.3 was expected to act fairly and come up with satisfactory answers to the issues raised in the reply by the appellant while passing the impugned order blacklisting the appellant for a period of three years. We are of the view that in the facts of the case appropriate reasons had to be given by respondent No.3 to meet the submissions of the appellant. Instead respondent No.3 has in a mechanical manner passed the impugned order mainly reproducing the language *ad verbatim* as used in the show cause notice dated 09.09.2015. The impugned order fails to give any reasons for rejecting the contentions of the appellant to satisfy the test of reasonableness. No doubt the issue is serious as contaminated food was sought to be served to a patient. But that situation required proper application of mind on the part of respondent No.3. Hence, in our view, the order dated 24.09.2015 has been passed without adhering to the principles of natural justice and has to be *set aside* on that ground.

26. In the light of the above, we set aside the order of the learned Single Judge and allow the appeal. We quash the impugned order dated 24.9.2015 passed by respondent No.3 Institute and consequential acts.

27. Appeal is accordingly allowed.

(JAYANT NATH)
JUDGE

CHIEF JUSTICE

July 13, 2016/n