

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 307 of 2017**

M/s Vinay Rice Industries, through its Proprietor Murlidhar Lalwani, S/o Late Shri Chandiram Lalwani, aged about 56 years, R/o Shanti Colony Chowk, Shihawa, Dhamtari (CG)

---- Petitioner**Versus**

- 1.** State of Chhattisgarh, Through the Secretary, Department of Food & Civil Supplies, Mahanadi Mantralaya, Naya Raipur, Post Office & Police Station Naya Raipur, District Raipur (CG)
- 2.** Director, Directorate of Food & Civil Supplies, Chhattisgarh, Indrawati Bhawan, Naya Raipur, Post Office & Police Station Naya Raipur, District Raipur (CG)
- 3.** Collector (Food Branch), Dhamtari (CG)

---- Respondents

For Petitioner	:	Mr.B.D.Guru, Advocate
For Respondents	:	Mr.Dheeraj Wankhede, G.A.

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****04/08/2017**

1. The petitioner has filed this writ petition under Article 226 of the Constitution of India calling in question the order dated 18.1.2017 (Annexure P/1) passed by respondent No.3 by which the petitioner's firm has been black-listed in exercise of powers conferred under clause 9 of the Chhattisgarh Custom Milling Chawal Uparjan Order 2006 on the ground that order of black-listing the petitioner's firm has been passed without issuing notice and without affording an opportunity of hearing to the petitioner and as such, order of blacklisting passed without issuing notice and

without affording an opportunity of hearing deserves to be set aside.

2. Return has been filed opposing the writ petition stating inter-alia that the impugned order is appealable before the District Judge and as such the writ petition as framed and filed is not maintainable and deserves to be dismissed.
3. Mr.B.D.Guru, learned counsel appearing for the petitioner, would submit that order of black-listing the petitioner firm without affording an opportunity of hearing is unsustainable and bad in law.
4. On the other hand, learned State Counsel would support the impugned order.
5. I have heard learned counsel appearing for the parties, considered their rival submissions made hereinabove and also gone through the record with utmost circumspection.
6. The question raised in this writ petition is no longer res-integra and stands authoritatively decided by the pronouncement of the Supreme Court in the matter of **Raghunath Thakur Vs. State of Bihar and Ors.**¹,

wherein the Supreme Court has held as under:-

“4. Indisputably, no notice had been given to the appellant of the proposal of black-listing the appellant. It was contended on behalf of the State Government that there was no requirement in the rule of giving any prior notice before black-listing any person. Insofar

1 (1989) 1 SCC 229

as the contention that there is no requirement specifically of giving any notice is concerned, the respondent is right. But it is an implied principle of the rule of law that any order having civil consequence should be passed only after following the principles of natural justice. It has to be realised that black-listing any person in respect of business ventures has civil consequence for the future business of the person concerned in any event. 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 representations against the order.”

7. In **Southern Painters Vs. Fertilizers & Chemicals Travancore Ltd. And another**², Their Lordships of the Supreme Court have held that black-listing of the petitioner contractor affects his reputation, therefore, he is entitled to opportunity of being heard. It was observed as under:-

“11. The deletion of the appellant's name from the list of approved contractors on the ground that there were some vigilance report against it, could only be done consistent with and after due compliance with the principles of natural justice. That not having been done, it requires to be held that withholding of the tender form from the appellant was not justified. In our opinion, the High Court was not justified in dismissing the writ petition.”

8. Very recently, in the matter of **Gorkha Security Services Vs. Government (NCT of Delhi) and others**³ the Supreme Court took cognizance of **Raghunath Thakur** (supra) and held that the fundamental purpose behind the serving of show-cause notice is to make the noticee

² 1994 Supp (2) SCC 699

³ (2014) 9 SCC 105

understand the precise case set up against him which he has to meet. It was observed as under:-

“21. The Central issue, however, pertains to the requirement of stating the action which is proposed to be taken. The fundamental purpose behind the serving of Show Cause Notice is to make the noticee understand the precise case set up against him which he has to meet. This would require the statement of imputations detailing out the alleged breaches and defaults he has committed, so that he gets an opportunity to rebut the same. Another requirement, according to us, is the nature of action which is proposed to be taken for such a breach. That should also be stated so that the noticee is able to point out that proposed action is not warranted in the given case, even if the defaults/ breaches complained of are not satisfactorily explained. When it comes to black listing, this requirement becomes all the more imperative, having regard to the fact that it is harshest possible action.

26. In the present case, it is obvious that action is taken as provided in sub clause 2(ii). Under this clause, as is clear from the reading thereof, the Department had a right to cancel the contract and withhold the agreement. That has been done. The Department has also a right to get the job which was to be carried out by the defaulting contractor, to be carried out from other contractor(s). In such an event, the Department also has a right to recover the difference from the defaulting contractor. This clause, no doubt, gives further right to the Department to blacklist the contractor for a period of 4 years and also forfeit his earnest money/ security deposit, if so required. It is thus apparent that this sub-clause provides for various actions which can be taken and penalties which can be imposed by the Department. In such a situation which action the Department proposes to take, need to be specifically stated in the show cause notice. It becomes all the more important when the action of black listing and/ or forfeiture of earnest money/ security deposit is to be taken, as the clause stipulates that such an action can be taken, if so warranted. The words “if so warranted”, thus, assume great significance. It

would show that it is not necessary for the Department to resort to penalty of black listing or forfeiture of earnest money/ security deposit in all cases, even if there is such a power. It is left to the Department to inflict any such penalty or not depending upon as to whether circumstances in a particular case warrant such a penalty. There has to be due application of mind by the authority competent to impose the penalty, on these aspects. Therefore, merely because of the reason that Clause 27 empowers the Department to impose such a penalty, would not mean that this specific penalty can be imposed, without putting the defaulting contractor to notice to this effect.

27. We are, therefore, of the opinion that it was incumbent on the part of the Department to state in the show cause notice that the competent authority intended to impose such a penalty of blacklisting, so as to provide adequate and meaningful opportunity to the appellant to show cause against the same. However, we may also add that even if it is not mentioned specifically but from the reading of the show cause notice, it can be clearly inferred that such an action was proposed, that would fulfill this requirement. In the present case, however, reading of the show cause notice does not suggest that noticee could find out that such an action could also be taken. We say so for the reasons that are recorded hereinafter.

33. When we apply the ratio of the aforesaid judgment to the facts of the present case, it becomes difficult to accept the argument of the learned Additional Solicitor General. In the first instance, we may point out that no such case was set up by the respondents that by omitting to state the proposed action of blacklisting, the appellant in the show-cause notice, has not caused any prejudice to the appellant. Moreover, had the action of black listing being specifically proposed in the show- cause notice, the appellant could have mentioned as to why such extreme penalty is not justified. It could have come out with extenuating circumstances defending such an action even if the defaults were there and the Department was not satisfied with the explanation qua the defaults. It could have even pleaded with the Department not to blacklist the

appellant or do it for a lesser period in case the Department still wanted to black list the appellant. Therefore, it is not at all acceptable that non mentioning of proposed blacklisting in the show cause notice has not caused any prejudice to the appellant. This apart, the extreme nature of such a harsh penalty like blacklisting with severe consequences, would itself amount to causing prejudice to the appellant."

9. Reverting back to the facts of the present case, it appears that no show-cause notice was issued to the petitioner before passing the impugned order nor the petitioner was provided any opportunity of hearing and the impugned order of black-listing the petitioner firm for a period of three years has been passed, which is in teeth of the decision rendered by the Supreme Court in **Gorkha Security Services** (supra).
10. For the foregoing reasons, the impugned order dated 18.1.2017 passed by respondent No.3 so far as it blacklists the petitioner firm is set aside but without prejudice to the rights of the respondents to proceed afresh in accordance with law, if so advised.
11. The writ petition is allowed to the extent indicated hereinabove. No order as to cost(s).

Sd/-

(Sanjay K.Agrawal)
Judge

B/-

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPC No.307 of 2017

Petitioner

M/s Vinay Rice Industries

Versus

Respondents

State of Chhattisgarh and others

HEAD-NOTE

(English)

Order of black-listing cannot be passed without hearing and without notice to the person effected.

(हिन्दी)

पीडित व्यक्ति को बिना सुने और बिना सूचना दिये काली सूची में डालने का आदेश नहीं दिया जा सकता।