

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 2740 of 2017**

M/s Om Enterprises Aged About 38 Years Through Its Partner Tekchand Agrawal, S/o Late Shri Girdhari Lal Agrawal, Aged About 38 Years, Churikala, Tahsil Katghora, District- Korba, Chhattisgarh

---- Petitioner**Versus**

- 1.** State Of Chhattisgarh Through The Secretary, Department Of Urban Administration And Development, Mahanadi Mantralaya, Naya Raipur, Post Office & Police Station Naya Raipur, District Raipur (Chhattisgarh).
- 2.** Director, Directorate Of Urban Administration, Chhattisgarh Indrawati Bhawan, Naya Raipur, Post Office & Police Station Naya Raipur, District Raipur Chhattisgarh
- 3.** Collector, Korba, District Korba Chhattisgarh
- 4.** Sub Divisional Officer, Katghora, District Korba Chhattisgarh
- 5.** Joint Director, Department Of Urban Administration Bilaspur Chhattisgarh
- 6.** Chief Municipal Officer, Nagar Panchayat, Churikala, Tahsil Katghora District Korba Chhattisgarh

---- Respondents

For Petitioner	:	Mr.S.R.J.Jaiswal, Advocate
For Res.No.1 to 5	:	Mr.P.K.Bhaduri, G.A.
For Respondent No.6	:	Mr.Arun Sao, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****21/11/2017**

- 1.** By the impugned order dated 14.9.2017 the petitioner firm has been blacklisted by respondent No.6 for two and half years and such an order has been passed without affording an opportunity of hearing to the petitioner.
- 2.** Return has been filed by respondent No.6 stating inter-alia

that the order is valid and in accordance with law as the petitioner has failed to execute the agreement and failed to deposit difference amount within the stipulated period.

3. Mr.S.R.J.Jaiswal, 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. Learned counsel for respondent No.6 would also support the impugned order.
6. I have heard learned counsel appearing for the parties, considered their rival submissions made hereinabove and also gone through the record with utmost circumspection.
7. 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 as the contention that there is no requirement

¹ (1989) 1 SCC 229

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.”

8. 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.”

9. 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 understand the precise case set up against him which he

² 1994 Supp (2) SCC 699

³ (2014) 9 SCC 105

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."

10. 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 black-listing the petitioner firm for a period of two and half years has been passed, which is in teeth of the decision rendered by the Supreme Court in **Gorkha Security Services** (supra).
11. For the foregoing reasons, the impugned order dated 14.9.2017 (Annexure P/1) passed by respondent No.6 so far as it blacklist 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.
12. The writ petition is allowed to the extent indicated hereinabove. No order as to cost(s).

Sd/-

(Sanjay K.Agrawal)
Judge

B/-