

HIGH COURT OF CHHATTISGARH, BILASPUR
Writ Petition (C) No.27 of 2016

Girja Shanker Dubey, S/o Late Shri Bisahu Prasad Dubey, aged about 45 years, Contractor, R/o village Kalkasa (Malidhouri) Tahsil Dondi Lohara, District Balod (CG)

---- Petitioner

Versus

1. Collector, Balod, District Balod (CG)
2. Chief Municipal Officer, Dondi Lohara, District Balod (CG)
3. Joint Director, Urban Administration and Development Officer, Chhattisgarh Raipur (CG)

---- Respondents

For Petitioner	: Ms Hamida Siddique, Advocate
For Respondents No.1 & 3	: Mr.Avinash Singh, P.L.
For Respondent No.2	: Mr. C.J.K.Rao, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal
Order on Board

15/05/2018

1. Invoking writ jurisdiction of this Court under Article 226 of the Constitution of India, the petitioner herein calls in question legality, validity and correctness of the order dated 26.5.2014 (Annexure P/1) passed by respondent No.2, whereby respondent No.2 has blacklisted the petitioner pursuant to the order dated 19.5.2014 passed by the Joint Director, Directorate, Urban Administration and Development, Raipur and also order dated 24.6.2014 (Annexure P/2) by which order of recovery has been passed.

2. The writ petition is primarily filed on the ground that the order of blacklisting has been passed without providing a reasonable opportunity of being heard to the petitioner by which he could not defend himself and therefore, the impugned order of blacklisting

and taking other action against the petitioner is bad and unsustainable in law.

3. Return has been filed by the State and respondent No.2 opposing the writ petition stating inter-alia that order has been passed pursuant to the order dated 19.5.2014 passed by the Joint Director, Directorate, Urban Administration and Development, Raipur.
4. Ms Hamida Siddique, learned counsel appearing for the petitioner, would submit that order blacklisting the petitioner is in violation of principles of natural justice as well as in breach of settled principles of law declared by the Supreme Court in this behalf in catena of judgments and therefore, the impugned order deserves to be set aside.
5. On the other hand, Mr.Avinash Singh, learned Panel Lawyer appearing for respondents No.1 & 3 and Mr. C.J.K.Rao, learned counsel appearing for respondent No.2, would support the impugned order and submit that in view of the order dated 19.5.2014 passed by the Joint Director, Directorate, Urban Administration and Development, Raipur, order blacklisting the petitioner and order of recovery have been passed.
6. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also gone through the records with utmost circumspection.

7. Before considering all the factual aspects of the matter, it would be appropriate to notice the principles of law, on which the order of blacklisting can be passed by the competent authority.

8. In the matter of M/s. Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and another¹, Their Lordships of the Supreme Court have clearly held that before placing the name of person on blacklist, that person is entitled to be heard. Relevant paragraph of the report states as under:-

“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.”

9. The aforesaid principles of law laid down *qua* the blacklisting has been followed by the Supreme Court again in the matter of Joseph Vilangandan v. The Executive Engineer (P.W.D.), Ernakulam and others².

10. Thus 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.³, wherein the Supreme Court has held as under:-

“4. Indisputably, no notice had been given to the

1AIR 1975 SC 266

2 AIR 1978 SC 930

3(1989) 1 SCC 229

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 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.”

11. In Southern Painters Vs. Fertilizers & Chemicals Travancore Ltd. And another⁴, 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.”

12. Very recently, in the matter of Gorkha Security Services Vs. Government (NCT of Delhi) and others⁵ 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

41994 Supp (2) SCC 699
5(2014) 9 SCC 105

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.”

13. Now, the question is whether the principle of opportunity of hearing has been afforded to the petitioner before blacklisting the petitioner ?
14. On being asked, learned counsel for respondent No.2 submits that no show-cause notice was served to the petitioner before taking action against him.
15. Reverting to the facts of the present case following the principles of law laid down by the Supreme Court in the aforesaid judgments (supra), it is quite vivid that pursuant to the order dated 19.5.2014 passed by the Joint Director, Directorate, Urban Administration and Development, Raipur, order of blacklisting the petitioner has been passed, but reasonable opportunity of being heard has not been afforded to the petitioner and such an extreme action of blacklisting the petitioner is in full violation of principles of natural justice.
16. As a fallout and consequence of the above-stated discussion, the impugned order dated 26.5.2014 (Annexure P/1) passed by respondent No.2 is hereby quashed. However, liberty is reserved in favour of respondent No.2 to proceed further in accordance with law.
17. Be that as it may, the petitioner is at liberty to make a representation to Nagar Panchayat, Dondi Lohara in detail against notice/order of recovery (Annexure P/2), which shall be considered

afresh by Nagar Panchayat, Dondi Lohara in accordance with law after hearing the petitioner and a reasoned and speaking order will be passed within two months from the date of receipt of certified copy of this order. The petitioner is also at liberty to submit additional representation (if any) in support of his case before respondent No.2.

- 18.** The writ petition is allowed to the extent indicated hereinabove leaving the parties to bear their own cost(s).

Sd/-

(Sanjay K. Agrawal)

Judge

B/-