

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No.909 of 2018**

M/s. PSR ELECON Pvt. Ltd., A company incorporated under the Companies Act, 1956, having its registered office at 8-3-214/24, Plot No.24, MCH-249, 2nd Floor, Shrinivasa Colony (W), SR Nagar Hyderabad, Telangana.

Through its Managing Director namely Pokuri Srinivas Rao, S/o. Mr.Venkata Subbaih, aged about 50 years, R/o.D-97, Madura Nagar, Yusufguda, Hyderabad (Telangana), 500038

---Petitioner

Versus

1. Chhattisgarh State Power Distribution Company Limited, A company incorporated under the Companies Act, 1956, having its registered office at 1st Floor, Old Administrative Building, Danganiya, Raipur (CG)

Through its Managing Director, Chhattisgarh State Power Distribution Company Limited, Vidyut Sewa Bhawan, Danganiya Raipur, District Raipur (CG)

2. Executive Director (Project), Chhattisgarh State Power Distribution Company Limited, Raipur, District Raipur (CG)
3. Chief Engineer (O&M), Chhattisgarh State Power Distribution Company Limited, Raipur, Gudhiyari, District Raipur (CG)
4. Chief Engineer (ST.RE), Chhattisgarh State Power Distribution Company Limited, Raipur, CSEB Campus, Gudhiyari, Raipur, District Raipur (CG)

---Respondents

For Petitioner	: Mr.Manoj Paranjape, Advocate
For Respondents	: Mr.K.R.Nair, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

11/05/2018

1. Jurisdiction of this Court under Article 226 of the

Constitution of India is invoked calling in question legality, validity and correctness of the order dated 16.2.2018 (Annexure P/1) passed by respondent No.2 blacklisting the petitioner firm from further business with the respondents and debarring from carrying business from all power utilities/DICOMS and PSU's/CPSU'S.

- 2.** The petitioner firm was served with a show-cause notice dated 11.12.2017 asking him to file reply to show-cause as to why the petitioner firm should not be debarred and blacklisted. On receipt of notice to show-cause, the petitioner sent reply through e-mail on 22.12.2017, 6.1.2018 and 29.1.2018 seeking extension of time. The petitioner was neither granted time nor he was communicated with any order rejecting his representation for grant of time and ultimately, the impugned order came to be passed, which has been challenged by the petitioner herein by way of this writ petition.
- 3.** Mr.Manoj Paranjape, learned counsel for the petitioner, would submit that the impugned order is unsustainable and bad in law for two reasons, firstly, the petitioner was not afforded sufficient and adequate opportunity to meet the allegations made in the show-cause notice dated 11.12.2017 and secondly, the impugned order did not record any reasons and satisfaction for holding that it is fit case for blacklisting the petitioner from entering into business transactions with the respondent-CSPDCL.

Therefore, the impugned order deserves to be set aside.

4. Mr.K.R.Nair, learned counsel for the respondents while vehemently opposing the submissions would submit that despite adequate time of 21 days having been granted to the petitioner he did not file any reply to show-cause and kept writing letters seeking time. Even after expiry of time he did not file any reply, thereby a reasoned and speaking order has been passed by which the petitioner firm has been blacklisted and debarred from further business with the respondents, in which no interference is called for in exercise of power under Article 226 of the Constitution of India.

5. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also gone through the records with utmost circumspection.

6. In the matter of **M/s. Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and another**¹, 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.

1AIR 1975 SC 266

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.”

7. 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 others**².

8. 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 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.”

9. In **Southern Painters Vs. Fertilizers & Chemicals Travancore Ltd. And another**⁴, Their Lordships of the

² AIR 1978 SC 930

³(1989) 1 SCC 229

⁴1994 Supp (2) SCC 699

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 afterdue 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.”

10. 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 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

5(2014) 9 SCC 105

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.”

- 11.** In the light of principles of law laid down by the Supreme Court in the above-stated judgments (*supra*), it

would appear that the competent authority has to record the satisfaction stating that it is a fit case where the petitioner can be blacklisted.

12. A Division Bench of this Court in the matter of **D.J. Laboratories Private Limited v. State of Chhattisgarh and another**⁶ while emphasizing the need for recording reasons to blacklist a person has held as under:-

“5. An order of blacklisting primarily pertains to the commercial world. In view of the conduct of a party to the contract, another does not desire to deal with it. The consequences for the person blacklisted undoubtedly are serious. It has also been described as a civil death which actively hinders participation by the aggrieved in the commercial world and generally affects its commercial reputation having repercussions far beyond the immediate parties. It affects the credibility of the person blacklisted in the market and may even have the effect of driving it out of the market and business as others may be hesitant to deal with it. Having said so, the exercise of jurisdiction under Article 226 of the Constitution with an order for blacklisting, will primarily have to An order of blacklisting primarily pertains to the commercial world. In view of the conduct of a party to the contract, another does not desire to deal with it. The consequences for the person blacklisted undoubtedly are serious. It has also been described as a civil death which actively hinders participation by the aggrieved in the commercial world and generally affects its commercial reputation having repercussions far beyond the immediate parties. It affects the credibility of the person blacklisted in the market and may even have the effect of driving it out of the market and business as others may be hesitant to deal with it. Having said so, the exercise of jurisdiction under Article 226 of the Constitution with an order for

6 2015 SCC OnLine Chh 1347

blacklisting, will primarily have to be confined to errors in the decision making process and not the decision itself. It shall not be the jurisdiction of the Court to sit as an appellate authority over the decision taken for blacklisting. But the mere giving of a show cause notice is not an empty formality. The submission of a reply will not suffice for compliance with the principles of natural justice. The final order of blacklisting must be reasoned indicating why the cause shown was not acceptable and the authorities satisfied to blacklist.

6. Reasons in an order passed in exercise of administrative powers has always been considered necessary to control arbitrariness. It ensures that the decision making authority remains within the bounds of its powers, does not take into consideration any extraneous materials and simultaneously does not leave out relevant materials from consideration. If reasons are to be excluded, and mere recital that the cause shown was not acceptable was to suffice, it will become convenient for the authorities where they are unable to meet the cause shown to avoid the same even when they may have no answer to it. Rampant arbitrariness would make a mockery of the rule of law. Though the principle is well settled by numerous judicial precedents we may fruitfully refer to one such decision in (2004) 7 SCC 431 (Cyril Lasrado v. Juliana Maria Lasrado) observing as follows :-

"12. Even in respect of administrative orders Lord Denning, M.R. in Breen v. Amalgamated Engg. Union observed: "The giving of reasons is one of the fundamentals of good administration." In Alexander Machinery (Dudley) Ltd. v. Crabtree it was observed: "Failure to give reasons amounts to denial of justice. Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at." Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for

the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking out. The "inscrutable face of the sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance."

- 13.** Reverting to the facts of the present case, it is quite vivid that though the petitioner was served with notice to show-cause as to why he should not be blacklisted, but the petitioner sent three applications through e-mail on 22.12.2017, 6.1.2018 and 29.1.2018 seeking extension of time. However, time was neither granted nor application for extension of time was rejected by the respondents.
- 14.** Blacklisting a person involves civil consequence as a person blacklisted is deprived of his opportunity to enter into business transaction, therefore, in all fairness, the respondent-CSPDCL could have considered the applications made by the petitioner for extension of time and if it was not possible to extend the time the respondent-CSPDCL could have communicated to the petitioner to file reply on or before a particular date and by not doing so, the respondent-CSPDCL has failed to act fairly and objectively by which the petitioner has been

deprived of reasonable opportunity to defend himself and that lead to suffer the order of blacklisting.

15. Order of blacklisting the petitioner firm is blissfully silent as no reasons are recorded for blacklisting. The respondent-authority has simply enumerated the defaults alleged to have been committed by the petitioner and thereafter proceeded to hold that since some defaults have been committed and no reply to show-cause has been filed, therefore, he is blacklisted and debarred, which is in teeth of the judgment rendered by this Court in **D.K. Laboratories** (supra) and noticed herein-above. Sufficient and valid reasons ought to have been recorded by the authorities in order to blacklist the petitioner.

16. As a fallout and consequence of the above-stated discussion, the impugned order dated 16.2.2018 (Annexure P/1) passed by respondent No.2 is hereby quashed. However, the respondents are at liberty to proceed further against the petitioner after giving him an opportunity to file reply in accordance with law.

17. The writ petition is allowed to the extent sketched herein-above. No cost(s).

Sd/-

(Sanjay K. Agrawal)
JUDGE

B/-