

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****WRIT PETITION NO. 2909 OF 2017**

M/s. Acer India (Pvt.) Ltd.

.. Petitioner.

V/s.

Central Bank of India & ors.

.. Respondents.

Mr. Janak Dwarkadas, Senior counsel a/w. Ms. Rishika Harish I/b. Mr. Nilesh Prataprai Parekh, advocate for petitioner.

Mrs. Rathina Maravarman, advocate for respondent No. 1.

Mr. Vakul Sharma I/b. Rajlaxmi Punjabi, advocate for respondent No. 2.

Mr. Prashant Pandurang Jadhav, advocate for respondent No. 3.

CORAM : RANJIT MORE &

SMT. SADHANA S. JADHAV, JJ.

RESERVED ON : MAY 3, 2018.

PRONOUNCED ON : JULY 6, 2018

JUDGMENT (PER SMT. SADHANA S. JADHAV, J)

1 Heard the learned Counsel for the petitioner and the learned Counsel for the respondents.

2 Rule. Rule made returnable forthwith with the consent of the parties.

3 The Petitioner has approached this Court by way of writ

Talwalkar

jurisdiction, thereby challenging the blacklisting of the petitioner's company by respondent No. 1 and as consequence of the same, by respondent No. 2. The petitioner is a private limited company engaged in the business of supplying computer softwares and hardwares to private and government sector.

4 In March, 2011, Central Bank of India (hereinafter referred as respondent No. 1), which is a public sector bank, invited bids for issuance of a Rate Contract for desktops, laptops, printers, scanners etc. The petitioner had participated in the said tender process and also qualified to be a supplier. A letter of Empanelment/Rate Contract dated 28/6/2011 was issued in favour of the petitioner. Pursuant to the said Empanelment letter, various regional and zonal officers of respondent No. 1 had placed their purchase orders upon the petitioner. It was agreed that the petitioner would supply the goods as per the Rate Contract. The demand and supply process was smooth sailing up to 30/11/2011.

5 The Petitioner company gets components for its goods from Thailand as Thailand happens to be the key supplier to the Information Technology Industries. In December, 2011, there were unprecedented floods in Thailand, thereby disturbing the economic infrastructure of the

company. That most of the factories had to be shut down in the affected areas. The global supply chain of Information Technology Hardware was adversely affected. The petitioner had informed respondent No. 1 about the effect of *force majeure* and had further informed that in the given circumstances it was not possible to supply goods at the same rate as per the Rate Contract.

6 The first meeting between the petitioner and respondent No. 1 was on 15/12/2011, wherein the petitioner had informed respondent No. 1 about the difficulties faced by the petitioner company in view of the natural calamities in Thailand. On 16/12/2011 the petitioner had sent a request letter to respondent No. 1, thereby requesting for review of rates. Respondent No. 1 had directed the Petitioner to submit proposal for revised rates. Accordingly, by letter dated 20/12/2011, the petitioner had submitted the demand for revised rates. By a communication dated 24/12/2011 the petitioner was informed that its request for revised rates is turned down. The petitioner was also threatened that the respondent No. 1 would cancel the purchase order and would blacklist the petitioner company. The petitioner by the said letter was directed to deliver the purchase order immediately without any increase in the rate and that it should be confirmed within 24 hours, upon failure it would be construed that the petitioner is no longer interested in executing the order and

that respondent No. 1 would be forced to blacklist the petitioner company from participating in further process. In fact, the petitioner had only requested for revision in rates but had made it clear that it intends to work with respondent No. 1 and execute the order. Accordingly, the petitioner had communicated to the respondent No. 1 by the communication dated 3/1/2012.

7 On 12/1/2012 fresh purchase orders were placed before the petitioner company by respondent No. 1. It was abundantly clear that the letter dated 24/12/2011 was not acted upon.

8 Thereafter, the petitioner had participated in tender process. The petitioner had then received a communication dated 5/1/2012 which read as follows :

“We have received complaints from various Zones/Regions that the orders are not executed by you, due to which customers service is badly affected.”

“Under these circumstances, owing to your inability to fulfill the contractual obligation for supply of Hardware as per Rate Contract, the pending orders are treated as cancelled and we hereby revoke the purchase order. Further the Bank has decided to blacklist you to participate in any future tender process for procurement of Hardware for the period of two years with immediate effect.”

The petitioner challenges the said communication dated 5/1/2012.

9 On 9/1/2012 the petitioner requested the respondent to revoke the letter dated 5/1/2012 and withdraw the decision taken. In reply to the said communication, the respondent No. 1 by communication dated 14/1/2012 informed the petitioner that the request for revoking blacklisting has not been agreed to by the bank. Bank's decision of blacklisting the Petitioner will be in force as already intimated and any review in this regard will be based on the future performance in terms of timely supply of hardware and honouring commitment made to the bank.

10 It is the contention of the learned Counsel for respondent No. 1 that order of blacklisting dated 5/1/2012 is valid order and the same was communicated to respondent No. 2 upon query by respondent No. 2. the said contention is vehemently denied by the learned Senior Counsel for the Petitioner and to substantiate his contention that the order dated 5/1/2012 is never acted upon, implicit reliance is placed on the following material, which is not denied by respondent No. 1.

Sr. No.	Orders received between 05.01.12 & 28.06.12		Orders/New RC's received Post expiry of Rate Contract (28.06.12 to 04.01.14)	
	PO.NO.	Date	PO. NO.	Date
1.	RO: GAD/RCC:2011-12:203	12.01.12	RO/RCC/2013-14/45	11.11.13
2.	RO/RCC/2011-12/86	23.01.12	ZO/ZCC/HARDWARE/2013-14/85	9.12.13
3.	RO/RCC/2011- 12/86	23.01.12	RO/RCC/2013-14/54	11.01.13
4.	MMZO:SCC:2011-12:114	09.02.12	ZO/ZCC/HARDWARE W/2013-14/108	22.02.14
5.	RO/RCC/ZCC/2011-12/01/41	10.02.12	ZO/ZCC/HARDWARE/2014-15/6	04.04.14
6.	RO/RCC/2011-12/139	11.02.12	RO:AURA:RCC:2014-15:11	29.05.14
7.	TRO:RCC:2011-12:217	14.02.12	RO/RCC/AKL/2014-15:2	06.06.14
8.	TRO:RCC:2011-12:218	14.02.12	RO/RCC/2014-15/5	09.06.14
9.	RO/RCC/ZCC/2011-12/01/42	15.02.12	RCC/2014-15/11	25.06.14
10.	TRO:RCC:2011-12:233	19.03.12	ZO/ZCC/2014-15/21	07.07.14
11.	RO:RCC:2011-12:59	20.03.12	RO:RCC:2014-15:24	08.10.14
12.	TRO:RCC:2011-12:234	21.03.12	RO/RCC/2014-15/26	10.11.14
13.	TRO:RCC:2011-12:235	23.03.12	RO/RCC/2014-15/29	25.11.14
14.			RO/RCC/AKAL/2014-15:05	03.12.14
15.			RO/RCC/2014-15/234	04.12.14

11 In the meanwhile, Respondent No.2-Punjab National Bank had floated tenders and invited the companies to bid for supply of the equipments such as personal computers, desktops with Intel processor.

Talwalkar

The petitioner had participated in the tender process and was qualified to supply goods. By purchase order dated 9/12/2013 itself Respondent No. 2-Punjab National Bank had placed orders with the petitioner for execution as per Rate Contract. The petitioner had also received a communication from respondent No. 2. Similar order was placed on 9/12/2013.

12 In the eligibility criteria given to the bidders at the time of participation of the tender process, respondent No. 2 had laid a specific clause i.e. Clause (ix), which reads as follows :

“Bidders, who have not satisfactorily completed any of the earlier contracts with the Bank and/or who have been debarred by the Bank or any other Bank during last three accounting years from participating in future tenders, will not be eligible for this tender. Bidder to submit an undertaking in this regard.”

13 On 28/10/2014 the Regional Business Manager of the Petitioner company had given undertaking to the I.T. Procurement Department of respondent No. 2, which reads as follows :

“We have not been debarred by the bank or any other bank during the last three accounting years from participating in current tender or any future tenders.”

Thereafter, the petitioner company had executed all the purchase orders smoothly. There were no glitches of any kind.

14 In fact, respondent No. 1 had refunded the petitioners earnest money deposit and personal bank guarantee which clearly indicated that respondent No. 1 was satisfied with the execution of purchase order by the petitioner company.

15 On 4/7/2016, respondent No. 2 had given show-cause notice for blacklisting the petitioner. The petitioner informed that despite being advised to give clearance from the Central Bank of India that the petitioner was not actually blacklisted, no such letter was placed on record and therefore, the petitioner was called upon to show cause as to why it should not be blacklisted and debarred from participation in any Request For Proposal(RFP) process of Respondent No. 2-Punjab National Bank. The petitioner was directed to give reply by 15/8/2016. The second notice was sent on 22/12/2016. The petitioner had filed its reply on 4/1/2017 and respondent No. 2 was informed that the order dated 5/1/2012 issued by respondent No. 1 was violative of the principle of natural justice. No notice was served upon the petitioner before blacklisting the company. Respondent No. 2 was informed that the order dated 5/1/2012 was under challenge by way of Writ Petition before

the Bombay High Court and the matter is placed for hearing on 25/1/2017. The petitioner was not permitted to participate in the reverse auction by respondent No. 2 and hence, the petitioner had filed Writ Petition No. 4575 of 2016. The same was decided by a Judgment dated 31/5/2016. The core issue before the Delhi High Court was the denial by respondent No. 2 to participate in the reverse auction on the ground that the bid of the petitioner was violative of clause 2(ix) of the instructions to the bidders.

16 It was the specific contention of the petitioner that debarment order was never acted upon and even after 5/1/2012 the petitioner had continued to supply goods to respondent No. 1. The petitioner had accepted fresh purchase orders from respondent No. 1 and had also executed the same. The Delhi High Court had restricted the judgment to the core issue as to whether the period of debarment was falling in the three accounting years prior to 2015-2016. The Delhi High Court had recorded the finding that -

“period of debarment ended on 4/1/2014, which falls in the accounting year 2013-2014, which is within 3 years prior to the year 2015-16 and therefore, the action taken by the respondent in not permitting the petitioner to participate in reverse auction cannot be faulted.”

17 The Delhi High Court was apprised of the fact that the order dated 5/1/2012 is under challenge before the High Court of Judicature at Bombay and therefore, the Court had made it clear that the Judgment of the Delhi High Court will not come in the way of the petitioner in those proceedings.

18 Rightly so, this court is considering the validity of the communication dated 5/1/2012 by the respondent No. 1 to the petitioner. Needless to say that respondent No. 2 has blacklisted the petitioner only on the ground that the said purported debarment dated 5/1/2012 was not communicated to respondent No. 2, that false undertaking was given and that eligibility criteria was violated. There is no other premise in which the petitioner was blacklisted by respondent No. 2.

19 Heard the respective counsel at length. The first and foremost contention of the learned Senior Counsel for the petitioner is that the purported blacklisting by respondent No. 1 violated the principle of natural justice. It is the specific contention that no notice to that effect was given. Secondly that it was an unilateral decision conveyed to the petitioner. Thirdly that the petitioner was specifically informed that the said proposed blacklisting would be subject to future performance and

till then it shall not be revoked. It is a matter of record that pending decision for revocation, several purchase orders were placed by respondent No. 1 and the same were executed. That earnest money deposit and the personal bank guarantees were returned after completion or execution of the orders which was a clear expression that the petitioner was not blacklisted.

20 The learned Counsel for respondent No. 1 has submitted that there was correspondence between the petitioner and respondent No. 1 and that the said correspondence would indicate that the petitioner was apprised of the opinion of Respondent No. 1. According to the learned counsel, there was exchange of letters and communications between the petitioner and respondent No. 1 prior to 5/1/2012, which establishes beyond any doubt that enough opportunities had been given to the petitioner before blacklisting their company. According to the learned counsel for respondent No. 1, the bank had reiterated their earlier stand by the letter dated 14/1/2012 and there was a reference to the personal meetings held with the representatives of the petitioner on 13/1/2012. The learned Counsel submits that in these circumstances, it can be inferred that the communication to the petitioner by respondent No. 1 was in fact a show cause notice.

21 Learned Senior Counsel for the Petitioner submits that respondent No. 1 had not given any opportunity to the Petitioner before he was blacklisted. To substantiate his contention, the learned Senior Counsel has placed implicit reliance upon the Judgment of the Hon'ble Apex Court in the case of **Vipul Bhai Mansinghbhai Chaudhari v/s. State of Gujarat reported in (2017) 13 SCC 51.** The Hon'ble Apex Court has held :

“where an order passed in exercise of a power conferred by a statute is set aside on the ground that such an order was passed in breach of the principles of natural justice, the power could once again be exercised by complying with the principles of natural justice.”

According to the learned Senior Counsel, when an enquiry was made by respondent No. 2 as to whether the petitioner herein was blacklisted, it was incumbent upon respondent No.1 to call upon the petitioner and to inform the petitioner that there is an enquiry by respondent No. 2 as far as blacklisting is concerned.

22 Learned Senior Counsel then placed reliance upon the Judgment of the Apex Court in the case of **Gorkha Security Services vs Govt. Of Nct Of Delhi & Ors. Reported in (2014) 6 MLJ 1756(SC).** The Hon'ble Apex Court has held as follows :

"We may point out at the outset that there is no quarrel between the parties on the proposition that it is a mandatory requirement to give such a show cause notice before black listing. It is also undisputed that in the present case the show cause notice which was given for alleged failure on the part of the appellant herein to commence/ execute the work that was awarded to the appellant, did not specifically propose the action of blacklisting the appellant firm. The question is as to whether it is a mandatory requirement that there has to be a stipulation contained in the show cause notice that action of blacklisting is proposed? If yes, is it permissible to discern it from the reading of impugned show cause notice, even when not specifically mentioned, that the appellant understood that it was about the proposed action of blacklisting that could be taken against him. 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."

In the present case, after respondent No. 1 had proposed to debar the petitioner, respondent No.1 had continued placement of orders and had received the delivery of the said goods that were ordered. Even if contract was completed, earnest money was returned without any hitch and therefore, the petitioner had presumed that blacklisting is revoked.

23 In case of **Erusian Equipment & Chemicals Ltd vs State Of West Bengal & Anr 1975 1 SCC 70,** the Hon'ble Apex Court has held *Talwalkar*

that :

“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 effect would be to deprive such person to be treated equally with those who are also engaged in similar activities. The Hon'ble Apex Court had further laid down that -

“The blacklisting order does not pertain to any particular contract. The blacklisting order involves civil consequences. It casts a slur. It creates a barrier between the persons blacklisted and the Government in the matter of transactions. The blacklists are "instruments of coercion”.

24 In the case of **Patel Engineering Ltd., v/s. Union of India,** the Hon'ble Apex Court, has followed the Judgment in the case of **M/s. Erusian Equipment & Chemicals Limited v. Union of India and others,** (1975) 1 SCC 70, as under and held as follows :

“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 nature of the authority of State to blacklist persons was considered by this Court in the abovementioned case[1] and took note of the constitutional provision ([Article 298](#))[2], which authorises both

the Union of India and the States to make contracts for any purpose and to carry on any trade or business. It also authorises the acquisition, holding and disposal of property. This Court also took note of the fact that the right to make a contract includes the right not to make a contract. By definition, the said right is inherent in every person capable of entering into a contract. However, such a right either to enter or not to enter into a contract with any person is subject to a constitutional obligation to obey the command of [Article 14](#). Though nobody has any right to compel State to enter into a contract, everybody has a right to be treated equally when State seeks to establish contractual relationships[3]. The effect of excluding a person from entering into a contractual relationship with State would be to deprive such person to be treated equally with those, who are also engaged in similar activity.

25 It is true that the letter dated 5/1/2012 had indicated that the respondent No. 1 had taken an unilateral decision to debar the petitioner. However, on the request of the petitioner by communication dated 9/1/2012, the petitioner was informed that the request for revoking debarring has not been agreed by the bank. Review would be based on the future performance in terms of timely supply of hardware and honouring the commitment made to the bank. It is a matter of record that the petitioner had honoured the schedule of delivery as per the orders and therefore, it was presumed that the decision of debarring

has been revoked.

26 The learned Senior Counsel appearing for the petitioner has submitted that the fact that the decision for blacklisting was taken without issuing any notice and therefore, same is void ab initio. It was a letter which was put into abeyance and made conditional and that the letter was never acted upon. According to the learned Counsel, the fact that the letter dated 5/1/2012 was kept in abeyance and was to be acted upon on Petitioner's failure to comply with the orders within the schedule speaks volumes for itself. In fact, the petitioners had abided by the schedule of supply and thereby prepared a ground for revocation.

27 It is the contention of respondent No. 1 that at the time when the petitioner was supplying the goods, the other shortlisted vendor WIPRO had been supplying the items as per the agreed rates and had not requested the bank for enhancement of rates due to fluctuation in Dollar prices or due to flood in Thailand and other factors of Force Majeure. It is the contention of respondent No. 1 that a mandatory notice was not necessary to be issued or served upon the petitioner as several letters and meetings were referred in the said letter, which establishes beyond any doubt that enough opportunities had been given to the petitioner before blacklisting their company. On 14/1/2012 a

Talwalkar

personal meeting was held with the representative of the petitioner and the same has reference to the meeting held on 13/1/2012. Some of the orders had been cancelled due to ineffectiveness and price hiking by the petitioner. That the petitioner had been given sufficient opportunities before blacklisting of the company for non-compliance of the contract of supply of hardware items to the branches of the respondent bank throughout India and further for hiking rates to the extent of 20% supply price of all items. That the blacklisting of the petitioner company was of 2 years i.e. from 5/1/2012 to 12/1/2014 and the said period had elapsed. However, the petitioner had participated in the tender process of respondent No. 2 within the said period. It is denied by respondent No. 1 that the petitioner had participated in the tender process of respondent No. 1 even during the blacklisting period. It is denied that no new purchase order had been placed by the respondent-bank during the blacklisting period. And that the purchase order dated 12/1/2012 executed by the petitioner is within the contractual period i.e. 28/6/2011 to 27/6/2012. It is in compliance and in continuance to the earlier contract.

28 Respondent No. 1 has submitted that Writ Petition No. 1398 of 2016 was withdrawn on 25/1/2017 and therefore, the contentions of the petitioner in the present petition need not be considered. Upon perusal

of the order dated 25/1/2017, it is clear that the Court had granted liberty to file a fresh petition including therein the claims that the petitioner had made with the other bankers. It therefore, cannot be said that the petition would not be maintainable.

29 As far as respondent No. 2 is concerned, it is specific contention that there has been suppression of facts and violation of one of the conditions contemplated in the tender process. The learned Counsel for respondent No. 2 has submitted that the bidding document makes it amply clear that the bidder should scan and submit on-line, as part of his bid documents establishing the bidder's eligibility, which shall include certificate to the effect that the firm is not blacklisted by any government organisation/DGS&D/NCCF/Kendriya Bhandar/PSU during the preceding three years. The firm must furnish the certificate in the format prescribed by the bank. Whereas, according to Respondent No. 1, it was made clear to the bidder at the time of filing of the tender document that the purchaser reserves the right to blacklist the bidder for a suitable period, in case he fails to honour his bid without sufficient ground. At the same time, it is clear from the bidding document the condition in case of empaneled bidder.

30 As against this, the learned Counsel for the petitioner submits

that in case of empaneled bidder found in breach of any condition of tender of supply order, legal action would be initiated against the bidder and Earnest Money Deposit/Security Deposit shall be forfeited besides debarring. Needless to state that in the present case, Earnest Money Deposit and Personal Bank Guarantee were returned to the petitioner without notice that there has been breach of any condition in the contract or that the petitioner has been blacklisted/debarred.

31 The learned Counsel for respondent No. 2 submits that since the issue of debarment by respondent No. 1 has been considered by the Delhi High Court, it would not be necessary to dwell upon the said issue once again.

32 The learned Counsel for respondent No. 1 has drawn attention of this Court to paragraph-7 of the Judgment of the Delhi High Court in Writ Petition No. 4575 of 2016 which reads as follows :

7. From this, it is clear that the petitioner's stand that the debarment order was not acted upon or was acted upon or was given up by the Central Bank of India, is not correct.

It is also held that -

“the date of debarment(05.01/2012) was beyond the period of three accounting years and if that was the only

consideration to be taken up, then the issue of seeking a clarification from the petitioner or from the Central Bank would not have arisen at all.

8 In the facts of the present case, we find that the period of debarment ended on 4/1/2014 which falls in the accounting year 2013-14, which is within three years prior to the year 2015-16 and, therefore, the action taken by the respondent in not permitting the petitioner to participate in the reverse auction, cannot be faulted.

9. Before we may conclude, we point out that the learned Counsel for the petitioner submitted that the blacklisting order dated 05.01.2012 has been challenged by the Petitioner in the High Court of Judicature at Bombay. We are making it clear that the present decision will not come in the way of the petitioner in those proceedings."

By placing implicit reliance upon the said observations of the Delhi High Court, the learned Senior Counsel has submitted that if this Court comes to the conclusion that the order of blacklisting by respondent No. 1 was unwarranted and unjustified and the said order dated 1/7/2018 is set aside, it would be clear that the same would have effect on the blacklisting by respondent No. 2. It is a matter of record that the petition is filed in this Court on 24/8/2017, whereas the Judgment of the High Court of Delhi is dated 31/5/2016.

33 The learned Senior Counsel for the petitioner has also placed reliance on the Judgment of the Hon'ble Apex Court in the case of **Kulja Industries Limited v/s. Chief General Manager W.T. Proj. BSNL & anr. reported in (2014)14 SCC 731**, wherein the Hon'ble Apex Court has held as follows :

“The freedom to contract or not to contract is unqualified in the case of private parties. But any such decision is subject to judicial review when the same is taken by the State or any of its instrumentalities. This implies that any such decision will be open to scrutiny not only on the touchstone of the principles of natural justice but also on the doctrine of proportionality. A fair hearing to the party being blacklisted thus becomes an essential pre-condition for a proper exercise of the power and a valid order of blacklisting made pursuant thereto. The order itself being reasonable, fair and proportionate to the gravity of the offence is similarly examinable by a writ Court.”

34 In the case of **Nawabkhan Abbaskhan v/s. The State of Gujarat reported in (1974) 2 SCC 121**, the Hon'ble Apex Court has held that -

“the order of an administrative authority charged with the, duty of complying with natural justice in the exercise of power before restricting the fundamental right of a citizen is void ab

initio and of no legal efficacy."

35 The Hon'ble Apex Court in the case of **Union of India and others v/s. Jai Prakash Singh and anr. reported in (2007) 10 SCC 712** has followed the Judgment of Lord Denning, M.R., in Breen v/s. Amalgamated Engg. Union and has observed as follows :

"The giving of reasons is one of the fundamentals of good administration".

"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 a sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance.

36 In the present case, the issue as to whether the order of blacklisting by respondent No. 1 was reasonable, unreasonable, faulty, void ab initio, right or wrong was not involved. The only question that was before the Delhi High Court whether there has been suppression of facts by the Petitioner in respect of blacklisting. The blacklisting by the respondent No. 2 is only a consequential order which flows from the communication dated 5/1/2012. **What has to be examined herein is the core and periphery of the issue of blacklisting. The core issue would be as to whether the communication dated 5/1/2012 is valid or not. The issue before the Court would be whether the presumption and belief of the petitioner that the communication dated 5/1/2012 had never taken effect was bonafide or not in the given circumstances.**

37 Upon examination of the facts of the case and the annexures to the Petition, it is clear that in fact on 11/1/2014, the Deputy Manager, P.D. Thakar, of Central Bank of India, Pune had placed the order. The reference is dated 17/10/2013 which is mentioned in the letter dated 11/1/2013. The delivery was expected to be made within a period of four weeks from the date of purchase order. Similarly on 29/5/2014 the Deputy Regional Manager of Central Bank of India, Aurangabad Branch had placed orders for hardwares of computers to be supplied to

Nanded branch as well as regional office at Aurangabad. Similarly, in reference to the letter dated 17/10/2013, the Regional Manager of Regional Office, Pune vide letter dated 3/6/2014 has placed further order and had expected delivery within a period of 3 weeks from the date of purchase order. The orders vide letter dated 11/1/2014 Hardware was supplied to most of the branches falling within the jurisdiction of Pune Regional Office as well as at Solapur. The deliveries were made on different dates. On 4/10/2013 a request for quotation for supply, installation and commissioning of desk top, P.C. and printers was made by the respondent No. 1. Thereafter, by communication dated 9/12/2013 another request for quotation was made to the petitioner by respondent No. 1 for procurement of computer hardware. The orders were fulfilled. This would show that during the purported term of the alleged blacklisting the petitioner had successfully participated in other tenders issued by respondent No. 1. Respondent No. 1 did not raise any issue of the alleged blacklisting. Evidently, even respondent No. 1 had understood that the alleged blacklisting would have been void ab initio. The petitioner has placed on record the list of orders received between 5/1/2012 and 28/6/2012. The learned Counsel for respondent No. 1 despite all efforts could not deny the orders placed during the blacklisting period and the same having been fulfilled.

38 As on today, respondent No. 1 would be estopped from contending that there was no business transaction between respondent No. 1 and the petitioner after 5/1/2012 and therefore, the said communication being acted upon, it would amount to hot and cold atmosphere in a square of vacuum. The Petitioner would therefore, be right in submitting that the communication dated 5/1/2012 had never taken effect and therefore, upon inference it can be said that respondent No. 2 was misguided by respondent No. 1. The petitioner had not only been deprived of participated in the tender process with the bank for two years in future i.e. after Punjab National Bank's communication dated 5/1/2012 but reputed business company would be left stigmatised and therefore, the prayer is reiterated that the communication dated 5/1/2012 deserves to be quashed and set aside.

39 By communication dated 3/1/2012, the Petitioner had communicated to respondent No. 1 that it intends to work with respondent No. 1 and had requested for revision in rates. By communication dated 12/1/2012 fresh purchase order is placed, to be read with communication dated 4/10/2013.

40 By letter dated 4/1/2017, the Petitioner had informed respondent No. 2 that the order dated 5/1/2012 was challenged before the Bombay High Court and is placed for hearing on 25/1/2017 and therefore, it is clear that even on the date when show cause notice was issued to the Petitioner, the communication dated 5/1/2012 was under challenge.

41 Respondent No. 2 has contended that the issue of blacklisting by respondent No. 2 already been decided by the Delhi High Court. According to the learned Counsel for respondent No. 2, it would not be permissible for the petitioner to reagitate the same subject matter. Since the Delhi High Court has adjudicated the matter substantially between the petitioner and respondent No. 2 and blacklisting order issued by respondent No. 2 is incidental to the said order i.e. dependent on the said order. Implicit reliance is placed upon the Judgment of the Hon'ble Apex Court in the case of **M. Nagabhushana v/s. State of Karnataka & ors. in Civil Appeal No. 1215 of 2011**, wherein the Hon'ble Apex Court has held that -

“an adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had decided as incidental to or essentially connected with subject matter of the litigation and every matter coming into the

legitimate purview of the original action both in respect of the matters of claim and defence. Thus, the principle of constructive res judicata underlying Explanation IV of Section 11 of the Code of Civil Procedure was applied to writ case. We, accordingly hold that the writ case is fit to be dismissed on the ground of res judicata"

42 In reply to the submissions of the learned Counsel for respondent No. 2, it is urged by the petitioner that in fact, the order of blacklisting dated 1/7/2017 passed by respondent No. 2 flows from the communication of respondent No. 1 dated 5/1/2012. Moreover, respondent No. 1 was not a party before the Delhi High Court. It is also submitted that respondent No. 2 had blacklisted the petitioner on the ground that the Petitioner had suppressed the fact that the Petitioner was blacklisted by respondent No. 1. It is submitted that once the Court come to the conclusion that the communication dated 5/1/2012 is void ab initio, it would be incumbent upon respondent No. 2 to withdraw and clarify that the blacklisting of the petitioner does not survive in letter and spirit, since it was incidental to the alleged blacklisting by respondent No. 1.

43 In the facts of the present case, it can be said that respondent No. 1 could not have communicated respondent No. 2 that the Petitioner

herein was blacklisted as they were “estopped” by their own conduct from doing so. “Estoppel” in Black's Law Dictionary is indicated to mean that a party is prevented by his own acts from claiming the right to determine of other party, who was entitled to rely on such conduct and has acted accordingly. The conduct of respondent No. 1 by placing order and entering into transactions with the petitioner after 5th January, 2012 speaks volumes for itself. Section 115 of the Indian Evidence Act reads as follows :

“When one person has, by his declaration, **act or omission**, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing.”

44 In the present case, the petitioner was rather made to believe that the communication dated 5/1/2012 in respect of blacklisting was revoked in view of the fact that the orders were placed and the transactions continued and therefore, the petitioner had informed respondent No. 2 that he was not blacklisted by any company or bank in the preceding 3 years. Therefore, learned Senior Counsel for the petitioner has rightly submitted that the order of blacklisting passed by

respondent No. 2 follows from the communication dated 5/1/2012.

45 In the case of **Oryx Fisheries Private Limited v/s. Union of India and others reported in (2010) 13 SCC 427,** the Hon'ble Apex Court has held as follows :

“A show cause proceeding is meant to give the person proceeded against a reasonable opportunity of making his objection against the proposed charges indicated in the notice. .. at the stage of show cause, the person proceeded against must be told the charges against him so that he can take his defence and prove his innocence. It is obvious that at that stage the authority issuing the charge- sheet, cannot, instead of telling him the charges, confront him with definite conclusions of his alleged guilt. If that is done, as has been done in this instant case, the entire proceeding initiated by the show cause notice gets vitiated by unfairness and bias and the subsequent proceeding become an idle ceremony.”

In the present case, as has been observed earlier, by unilateral communication of respondent No. 1 dated 5/1/2012, they had decided to blacklist the petitioner. Thereafter, they had entertained the prayer that the communication shall be revoked and had informed the petitioner that the issue of revocation would be open through their future performance. Respondent No. 2 had issued show-cause notice, which was an idle formality since the rebuttal demonstrated by the petitioner

was not considered. In fact, it was a prejudged opinion that there was a suppression of fact.

46 Learned Senior Counsel for the petitioner has rightly placed reliance upon the Judgment of the Hon'ble Apex Court in the case of **State of Punjab v/s. K.R. Erry and Sobhag Rai Mehta and State of Punjab v/s. Shri Khaushal Singh, P.A.S. reported in (1973) 1 SCC 120,** wherein the Hon'ble Apex Court has held as follows :

“The question for our consideration now is whether the orders imposing a cut in the pension should be set aside for the reason that the officers were not given reasonable opportunity to show cause. The law on the point is not in doubt. Where a body or authority is judicial or where it has to determine a matter involving rights judicially because of express or implied provision, the principle of natural justice audi alteram partem applies. ... the principle of natural justice is also liable to be invoked if the decision of that body or authority affects individual rights of interests. and having regard to the particular situation it would be unfair for the body or authority not to have allowed a reasonable opportunity to be heard. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made the order is nullity.”

47 In view of the above discussion, we hold that the communication/order dated 5/1/2012 passed by respondent No. 1 deserves to be quashed and set aside.

48 The consequences of setting aside the communication/order dated 5/1/2012 shall flow. The petitioner was not allowed to participate in one bid. In fact, the petitioner was constrained to approach Delhi High Court by filing a Writ Petition, since they were not permitted to participate in a bid and at that stage, it had transpired that the petitioner had allegedly suppressed the fact that they were debarred/blacklisted by respondent No. 1. The Petitioner had not approached the High Court challenging the order of blacklisting and therefore, the natural consequences of setting aside the order dated 5/1/2012 shall take effect.

49 Hence, we pass following order.

ORDER

- (i) The petition is allowed.
- (ii) Rule is made absolute in terms of prayer Clause (A) and (B).

[SMT. SADHANA S. JADHAV, J.]

[RANJIT MORE, J.]

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