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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 22.03.2018

Delivered on : 28.04.2018

CORAM

THE HON'BLE Mr. JUSTICE M.SATHYANARAYANAN
AND
THE HON'BLE MRS.JUSTICE R.THARANI

W.A.(MD)No.958 of 2017

against

WP(MD)No.18576 of 2014

and

C.M.P.(MD)No.6449 of 2017

The South India Road Milk Transport
Represented by its Proprietor,
N.Vaidhyanathan.

.. Appellant/Petitioner

Vs.

1.The General Manger,
Dindigul District Co-operative
Milk Producers Union Ltd., DD 160,
No.9, East Govindapuram,
Dindigul-624 001.

2.The Managing Director,
Tamil Nadu Co-operative Milk Producers
Federation Ltd., Madhavaram,
Chennai-600 051.

3.The Secretary,
Government of Tamil Nadu,
Animal Husbandry and Fisheries Department,
Fort St.George,
Chennai-600 009.

..Respondents/Respondents

Appeal filed under under Clause 15 of the Letters Patent,
against the order dated 21.10.2016 made in W.P.(MD).No.18576 of
2014.

Prayer in WP(MD). 18576/ 2014 :

Writ Petition is filed under Article 226 of the
Constitution of India, praying this Court to issue a Writ of
Certiorari, by calling for the records relating to the Impugned
Order dated 04.10.2014 and made in Ref. No. 2211/P&1/12 by the 1st
respondent and quash the same.



For Appellant

: Mr.V.Raghavachari
for Mr.P.Athimoolapandian

For Respondents

: Mr.B.Pugalendhi,
Additional Advocate General
assisted by
Mr.D.Muruganantham,
Additional Government Pleader

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JUDGMENT

M.SATHYANARAYANAN, J.

The appellant is the writ petitioner and he made a challenge to the impugned proceedings dated 04.10.2014, in and by which, he being the proprietor of M/s.South India Road Milk Transport, was blacklisted for a period of three years and also reserving their right to claim damages and loss caused by his act, by filing W.P. (MD)No.18576 of 2014. A learned Single Judge of this Court, vide order dated 21.10.2016, has dismissed the said writ petition and challenging the legality of the same, the present writ appeal is filed.

2. Facts leading to the filing of this writ appeal, relevant and necessary for disposal and briefly narrated are as follows:

2.1. The petitioner is the proprietor of M/s.South India Road Milk Transport and according to him, he has been operating milk tanker lorries on hire basis by participating in tenders floated by different Unions of District Cooperative Milk Producers Union Ltd., and further claim that he is in the said field for the past 20 years. The petitioner would further state that he is running the business meticulously by following all the rules and regulations and also emphasize the authorities to follow the rules and regulations scrupulously and on account of the same, some of the officials developed dislikes and misunderstandings and in this regard, the petitioner has to approach the Courts of law seeking remedies at appropriate stages and also filed various cases against the Cooperative Milk Producers Union.

2.2. It is further averred by the petitioner that on 19.08.2014, police personnel attached to Vellimedupettai Police Station, Villupuram District, had arrested one Suresh and others and stated to have been confiscated 2 motorcycles and one of the accused said to have confessed with regard to theft of milk from tanker lorry of M/s.Deepika Transports, owned by his wife. According to the alleged confession of the accused, after stealing portion of the milk from the tanker lorry, it will be substituted with equal quantity of water. News items also appeared in the newspaper and on behalf of M/s.Deepika Transport, a detailed representation was sent on 21.08.2014 denying the same.

2.3. The appellant/writ petitioner was awarded contract for transportation of milk from Dindigul District Cooperative Milk



Producers Union Limited and other District dairies on 30.08.2012 and the contract was for a period of two years upto 29.08.2014. The allegation against the appellant/writ petitioner is that on 27.06.2014, the first respondent Union had dispatched 20,000 litres of milk with 4.2% Fat and 8.2% SNF from Dindigul Dairy to Ambattur Dairy through Road Milk Tanker lorry owned by the appellant/writ petitioner bearing Reg.No.TN19 H 2286. However, at the point of delivery it was found that the quantity of milk was 20,015 litres with 4.2% Fat and 7.7% SNF. In this regard, a show cause notice dated 10.09.2014 was issued by the first respondent to the appellant pointing out the said fact and it was also indicated that adulteration of the milk is a serious offence as per Food Safety and Standards Act, 2006 and if the adulteration is proved, the Union is liable for penal consequences.

2.4. It is pointed in the said show cause notice that "Aavin" milk is being consumed by common public from children to old age and it is having own image on purity and quality among the general public and the act of misdeed of adulteration of milk has brought deliberate stain on the image of Aavin. It was also committed to provide hygienic and quality milk at reasonable price to the public and however, on account of the misdeed on the part of the appellant/writ petitioner in causing adulteration of the milk, goodwill of the Union is damaged by unethical act. It is also indicated in the show cause notice that the first respondent has also reserved their right to claim damages for the above misdeed and therefore, he was asked to explain why his firm should not be blacklisted for three months and his explanation to the said notice should reach them within 7 days from the date of receipt of the letter, failing which it will be presumed that he has nothing to say against blacklisting and appropriate orders will be issued.

2.5. According to the petitioner, the said notice sent by Registered Post Acknowledgment Due [RPAD] was returned undelivered and substituted service by means of affixture was resorted to, which was pasted on the wall of his office on 22.09.2014 and since no reply was received to the said show cause notice dated 10.09.2014, the impugned order, blacklisting the petitioner for a period of three years came to be passed on 04.10.2014.

2.6. It is the stand of the appellant/writ petitioner that the first respondent has no jurisdiction to issue the show cause notice and in connection with registration of a criminal case with regard to the very same act, he filed a petition for anticipatory bail in CrI.O.P.No.24582 of 2014, on the file of this Court along with his wife and it was dismissed on 15.09.2014 and he voluntarily surrendered and got arrested on 19.09.2014 and on that ground also, he was not able to receive the show cause notice.

2.7. The appellant/writ petitioner would further aver that he is in the business of running milk tanker lorries for transporting milk for the past 20 years and no complaint has emanated against him

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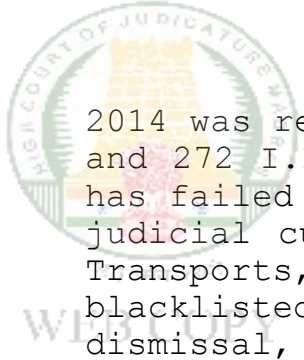


for very many years and since he submitted representations and instituted litigations pointing out the misdeeds on the part of the officials, he has been targeted. The appellant/writ petitioner also took a stand that the impugned show cause notice as well as the order blacklisting him is not in consonance with the terms and conditions of the agreement dated 30.08.2012, in and by which he has been awarded contract and therefore, came forward to file writ petition challenging the said order.

2.8. It is to be noted at this juncture that the petitioner, after his surrender and arrest, moved an application for bail and it was dismissed. Challenging the same he filed S.L.P.No.14/2015 and it was admitted and numbered as C.A.No.359 of 2015 and the Hon'ble Supreme Court of India, vide order dated 23.02.2015 has enlarged him on bail, subject to certain conditions.

2.9. The first respondent has filed a counter affidavit stating among other things that the appellant/writ petitioner is one of the largest transport contractors holding contracts from various District Cooperative Milk Producers Union for transporting milk. The said official would further aver that on 27.06.2014, the respondent Union dispatched 20,000 litres of milk with 4.2% Fat and 8.2% SNF from Dindigul District Cooperative Milk Producers Union Ltd., to Ambattur Dairy through the petitioner's road tanker lorry bearing Reg.No.TN19H 2286 and at the point of delivery at Ambattur Dairy on 28.06.2014, the quantity measured 20015 litres with 4.2% Fat and 7.7% SNF and it is an act of adulteration of milk during transportation and it is also a serious offence under the Food Safety and Standards Act, 2006 and thus the appellant/writ petitioner has violated the essence of contractual terms and caused damages to the first respondent Union. It is further stated by the first respondent that with regard to the said Act, a show cause notice dated 10.09.2014 was sent through registered post acknowledgment due and it was returned undelivered and therefore, substituted service in the form of affixture was resorted to and it was pasted at the wall of his office premises and despite that no reply has been received and therefore, the impugned order dated 04.10.2014, blacklisting the petitioner, came to be passed by the first respondent.

2.10. Insofar as the allegation that the petitioner has all along having good reputation, it is averred by the first respondent that on very many occasions, the entity of the petitioner and his wife came to adverse notice and he used to file frivolous and vexatious cases against the officials and also against the first respondent Union. It was pointed out by the first respondent that on 19.08.2014 at about 11.00 p.m., the Sub-Inspector of Police attached to Vellimedupatti Police Station intercepted a TATA Ace vehicle and seized 45 milk cans filled with milk and they arrested two accused, who confessed about the connivance of the appellant/writ petitioner and his wife for stealing the milk and substituting them with water. In this connection, Crime No.122 of



2014 was registered for the offences under Sections 120(b), 379, 407 and 272 I.P.C. and the efforts made by the petitioner and his wife has failed and later on, the petitioner was arrested and remanded to judicial custody. Therefore, the contract awarded to M/s. Deepika Transports, owned by his wife, was also cancelled and it was also blacklisted and challenge made to the said order had also ended in dismissal, vide order dated 17.11.2014 passed in W.P.Nos.24501 and 28029 of 2014.

2.11. It is also averred by the first respondent that termination of the said contract was done in accordance with Clauses 28(a) and 35(e) of the Bye-Laws of the Union and also took a stand that the impugned order came to be passed based on records and the order of blacklisting has been done in the larger public interest and also to avoid further offences of adulteration and theft of milk.

2.12. The appellant/writ petitioner filed a detailed reply to the counter affidavit reiterating his earlier stand and also enumerated checking procedures at Para 6 and it is relevant to extract the same:

- After reaching the destination, the intactness of the seal will be checked by the security agency. If the seal is found to be intact, the vehicle will be allowed to go to next stage.
- If the seal is found to be intact, the vehicle will be allowed to go in for weighing. After confirmation of the weight, it is allowed to go for the third test.
- Here the intactness of the seal will be checked once again. After checking, sample milk will be taken for test. Quality of the milk, Fat and SNF content checked. If all the quality tests is proved to be good, the milk will be allowed to be unloaded.
- Even during the process of unloading period samples will be collected for checking. Sample and random checking will be done until entire load is downloaded.
- If the quality of the milk not found satisfactory and the seal found broken, the milk will be rejected with notice to both contractor and Union which sold milk to Federation.
- The milk is chilled at 4 degree centigrade to avoid deterioration. The temperature is recorded at regular intervals by the dairy officials based on requirement. The purchased milk is standardised to match the required quantity of toned milk (3% fat and 8.5% SNF), standardised milk (4.5% fat and 8.5% SNF), full cream milk (6% fat and 9% SNF) etc. Since the purchased milk is of substandard quality compared the prescribed value by the government, various processes like homogenizing, pasteurizing are done for standardization, it should be packed at temp less than 6 degree centigrade. Then it

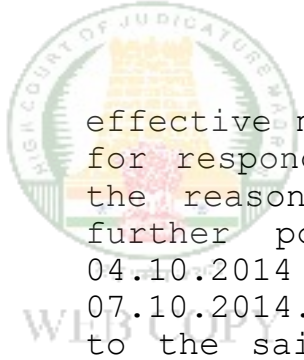


is stored in cold storage room to maintain the temperature less than 4 degree centigrade. As per the government norms the temperature of milk should not exceed 8 degree centigrade till it reaches the consumer. Hence it is put through a lot of stringent tests like microbiological, adulterant analysis before it reaches the hands of the public.

- Once the transported milk is admitted into Silo (a tank), it is a proven fact that the milk is in order.
- Once milk is unloaded from the vehicle, the contractor job is over and he is not associated with any of the activities said above. All the above said work are done by the Aavin people until its distribution to the public.
- Once the transported milk is admitted into the SILO (as tank), it is a proven fact the milk is in order.
- The milk consumed by public is supplied by Aavin after proper processing and the petitioner is nothing to do with sale of milk to the public.
- In case of any problem detected in the milk, the milk will be stored in sealed condition with preservatives added in and will be sent for testing.
- The milk undergoes a stringent 19 types of tests before it reaches the consumers (for eg-FAT and SNF, MBRT, Acidity, density, COB, cryometer tests). The milk is tested for every one hour before dispatch to consumers."

2.13. The appellant/writ petitioner, in his reply affidavit, also took a stand that if there is any deficit in quality or quantity occurred in the said tanker, the first respondent would not have allowed to unload the milk, but the first respondent has settled the bill for transport, that is also one of the important factor evidencing the fact that the appellant is not at all guilty. The appellant/writ petitioner also took a stand that on the date of the alleged incident, he was at Sabarimala Temple and further pointed out that while the vehicle entered Ambattur Dairy, the seal was intact and it was also noted by the Security Official and stringent testing has been done by the quality control department and the alleged accusation of adulteration is per se false and made with oblique motive.

2.14. The petitioner has also pointed out that he has also made complaints against the Managing Director of Aavin as well as yet another I.A.S. Officer, who is the Home Secretary and further pointed out that after his arrest, he was enquired on 22.09.2014 and the first respondent also attended the same and therefore, the said official was very well aware of his incapacity to respond to the show cause notice and to participate in the proceedings in an



effective manner. It is also stated that the time limit of 7 days for responding to the show cause notice is also unsustainable for the reason that minimum 15 days notice ought to have been and further pointed out that curiously the impugned order dated 04.10.2014 passed by the first respondent was delivered by hand on 07.10.2014. It is reiterated by him that higher charges pertaining to the said trip has been passed and final payment amounting to Rs.6,97,919/- was also released on 12.03.2015 and the said fact has been deliberately overlooked, though it was pointed out.

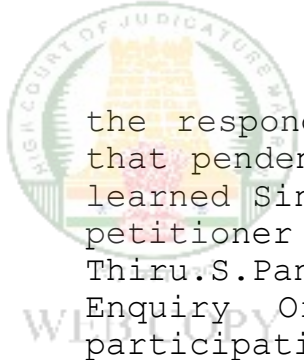
2.15. The appellant/writ petitioner in para 36 of the reply affidavit also projected the technical details with regard to analysis of the milk transported through transport contractors and on inspection found that it contains less Fat and SNF % and whereas, the petitioner alone has been targeted.

2.16. The learned Judge, after taking note of the materials, found that the show cause notice was sent through registered post on 10.09.2014 and it was returned as "Door Closed" on 12.09.2014 on 13.09.2014 and thereafter, the first respondent resorted to serve notice by affixure on the wall of the office of the appellant/writ petitioner on 22.09.2014. The learned Judge has observed that when the Registered Post was sent, the petitioner was very much available and he surrendered on 19.09.2014 and as such, it is not open to him to contend that he has not received the notice and that no opportunity has been afforded to respond to the same.

2.17. The learned Single Judge also has taken note of the fact that similar order blacklisting another transport company, namely M/s.Deepika Transport Company owned by the wife of the petitioner was put to challenge in W.P.Nos.24501 and 28029 of 2014 and vide order dated 17.11.2014, the said writ petitions were dismissed. The learned Single Judge also has considered the plea made by the petitioner that in the absence of any specific clause in the agreement, blacklisting cannot be ordered and by placing reliance upon the judgment of the Hon'ble Supreme Court in M/s.Kulja Industries Ltd., v. Chief General Manager, W.T.Proj, BSNL and Others made in C.A.No.8944 of 2013 dated 04.10.2013, found that the points urged by the appellant lacks merit and substance.

2.18. The appellant/writ petitioner also made a petition to amend the prayer so as to challenge the order of termination of contract dated 01.09.2014 and it was rejected on the ground that it came to be filed 2 years after the termination and if at all the petitioner was aggrieved by the order of termination of contract, he would have filed a separate writ petition. The learned Judge, by assigning the said reasons, has dismissed the said writ petition, vide impugned order dated 21.10.2016. Challenging the same, the present Writ Appeal is filed.

3. The Writ Appeal was moved on 20.07.2017 and notices were ordered and accepted by the respective learned counsel appearing for



the respondents. It is also brought to the notice of this Court that pendency of the writ petition, an order came to be passed by a learned Single Judge to consider the representation submitted by the petitioner and accordingly, the first respondent Union appointed Thiru.S.Pannirselvam, Selection Grade AGM (Admin.-Retired), as the Enquiry Officer and he has conducted the enquiry with the participation of Thiru.P.Elamaran, Manager (M.P.)/Dairy Manager, Dindigul Dairy, Thiru.R.P.Sivasubramanian, Manager (M.P)/Shift Officer, Dindigul Dairy, Retired on 30.04.2016 and after concluding the enquiry, he has submitted a report dated 03.07.2017.

4. Mr.V.Raghavachari, learned counsel appearing for the appellant would submit that the case in Crime No.122 of 2014 was registered on 20.08.2014 by Vellimedupatti Police Station against some other accused and later on, the petitioner and his wife were also arrayed as accused and a news item was also published in Dinamalar News daily on 21.08.2014 and the petitioner and his wife had submitted representations dated 08.09.2014 to the Hon'ble Chief Minister Grievance Cell, Chief Secretary to the Government of Tamil Nadu, Home Secretary, Secretary to Government of Tamil Nadu, Animal Husbandry and Fisheries Department as well as the Director General of Police, Mylapore, Chennai and Additional Director General of Police, CBCID, Chennai stating among other things that they have nothing to do with the alleged commission of offences with a request to reinstate the contract and to verify the antecedents of the officials pointed out in the representation.

5. The learned counsel appearing for the appellant pointed out that the petitioner, apprehending arrest, was unable to be present in his office and the show cause notice dated 10.09.2014 was sent to his office and on account of the said reason, he could not be present and yet another notice said to have been affixed on 22.09.2014 and in the interregnum, he has filed Anticipatory Bail Petition along with his wife and since it was dismissed, he surrendered and got arrested on 19.09.2014 and during custody, he was interrogated wherein the first respondent himself was very much available and he was also very much aware of the incarceration of the petitioner and therefore, the first respondent ought to have dispatched the notice through the jurisdictional police or through the Superintendent of Jail, but they have deliberately failed to so do. The learned counsel appearing for the appellant, on the merits of the matter, has invited the attention of this Court to the additional typed set of documents and would submit that the manager of the first respondent has sent a communication dated 22.07.2014, pointing out the Milk Despatch Note, Dindigul Dairy dated 28.06.2014, as per which the milk dispatched through the lorry of the petitioner at 27.06.2014 at 11.00 a.m., has reached the Ambattur Dairy on 28.06.2014 at 16.50 hours and thereafter sample was taken and the petitioner left the Dairy and has pointed out that if immediately on reaching Ambattur Dairy, sample was taken and tested, there is possibility of change of necessary parameters and further stated that, if sample is taken after 2 hours after reaching the



spot, there is possibility of increase in fat and reduction in SNF content.

6. The learned counsel appearing for the appellant has invited the attention of this Court to the Mill Despatch Note maintained by the first respondent bearing No.0632 dated 28.06.2014 pertains to vehicle bearing Reg.No.TN19H 2286 relating to the present transaction and pointed out that the said note contains seven columns and the second column pertains to quantity of milk and after noting 20,000 Litres, below that it was written as 20015 litres and column pertaining to quality of milk contains the sub-column Fat%, SNF%, Acidity, Temperature and remarks. Specific attention of this Court was also drawn to entries relating to the said despatch note wherein in Fat % it is written as 4.2 and in SNF % it is written as 8.2. and it was altered as 7.7%. It is further pointed out by the learned counsel appearing for the appellant that the said Despatch Note was signed by the driver of the vehicle bearing Reg.No.TN19H 2286 and and Shift In-charge and that curiously the Assistant Dairy Chemist/Lab Assistant, who was supposed to test the sample, have not subscribed his signature. The Milk Bill (Metro) maintained by Ambattur Dairy is available at Page No.63 wherein the fact contained is 4.0 and SNF is 7.7.

7. As already pointed out, Thiru.S.Pannirselvam, former official was appointed as Enquiry Officer by the first respondent in pursuant to the directions issued by this Court and he conducted enquiry, wherein the Manager of the first respondent, namely P.Elamaran was examined as MW1 and it is relevant to extract the questions put to him:

"Question :3) As per your milk despatch note quality of the milk despatched on 27.06.2014 (Night) was FAT 4.2%/ SNF 8.2% whereas in the Milk bill advice computer statement, received from Ambathur Dairy the quality and quantity of the milk dispatched as above has been mentioned as 4.0% and 7.7%. Do you have any idea of the difference shown in the above statement in respect of FAT?

Answer: May be, in order to correlate the degrees in SNF that is 7.7 SNF the FAT % has been mentioned as 4.0%.

Question 4) In case, any adulteration was made in the tanker milk dispatched on 27.06.2014 in milk despatch note no.0632, was there any chance of Reduction in FAT %?

Answer: There are definite chances of reduction in 0.1% of FAT for every 0.2% of SNF.

Question:5) Did the Management communicate any references for the alleged adulteration of milk in the milk dispatched to Ambathur dairy on 27.06.2014 through tanker No.TN19H 2286 to the Contractor?



Answer: No such communication was sent to the contractor.

Question : 6) Was there any message or communication from Ambathur Dairy to Dindigul Union about the tampering of Seal if any found in the Tanker No.TN19H 2286 on 27.06.2014 (Night), received there on 28.06.2014?

Answer: We have not received any message or communication from Ambathur Dairy about the tampering of seal if any noticed.

Question: 7) In the block listing order (M.Ex.2) in Page No.2 it has been mentioned as follows "This is an act of adulteration of milk during transportation and it is a serious offence, punishable under the Food Safety and Standards Act, 2006". Did you follow the Food Safety and Standards Act, 2006 before concluding that there was adulteration in the milk Tanker No.TN19 H 2286 on 27.6.2014 (Night), received there on 28.06.2014?

Answer: No such procedure and formalities was observed before terminating your transport contract.

Question 8) In the termination of Contract order issued to me (M.Ex.1) in Page 2 it has been mentioned as both South India Transport, Chennai and the Deepika Transport, Chennai are the same owner. Do you accept above version?

Answer: I don't have any idea about it."

The said official would state that the management of the first respondent did not sent any communication as to adulteration of the milk despatched to Ambattur Dairy on 27.06.2014 through the tanker lorry belonging to the appellant/writ petitioner and they have not received any communication from the Ambattur Dairy about the tampering of seal.

8. The primordial submission made by the learned counsel appearing for the appellant/writ petitioner is that admittedly in Ambattur Dairy, no tampering or breaking of the seal at the time of despatch of the milk has been noted by the first respondent and the evidence/statement of the official attached to the first respondent, during the enquiry conducted by Thiru.S.Pannirselvam, has also evidenced the said fact. Therefore, it is the submission of the learned counsel appearing for the appellant/writ petitioner that if sufficient and reasonable opportunity had been afforded to respond to the show cause notice, he would have brought forth the said material fact and in that event, the position would have been altogether different.



9. The learned counsel appearing for the appellant/writ petitioner also advanced arguments as to how the milk to be tested and also invited the attention of this Court to the brochures/materials. However, this Court is not inclined to consider the same for the reason that the materials placed are highly technical in nature and this Court does not have enough expertise to analyze the same and even otherwise, it touches upon the merits of the allegation and therefore, in exercise of its appellate jurisdiction, this Court cannot give any finding on the same.

10. The learned counsel appearing for the appellant/writ petitioner, in support of his submissions, placed reliance upon the following decisions:

- (i) Sri Sai Caterers v. The Station Director, Nuclear Power Corporation of India Ltd., Kalpakkam and Others [Order dated 18.03.2015 made in W.A.Nos.291 and 292 of 2015]
- (ii) Gorkha Security Services v. Government (NCT of Delhi) and Others [(2014) 9 SCC 105]
- (iii) Oryx Fisheries Private Limited v. Union of India and Others [(2010) 13 SCC 427]

11. Per contra, Mr.B.Pugalendhi, learned Additional Advocate General assisted by Mr.D.Muruganandham, learned Additional Government Pleader appearing for the respondents would submit that admittedly the show cause notice was sent to the address of the appellant/writ petitioner shown in the agreement and it was dispatched by RPAD and once notice was sent to correct address of the appellant/writ petitioner by RPAD, it is deemed to be served in terms of the provisions of the General Clauses Act and admittedly, the appellant/writ petitioner was very much available and he deliberately evaded the receipt of the show cause notice. The learned Additional Advocate General appearing for the respondents would further submit that the first respondent, in order to give one more opportunity to the appellant, again sent a notice and it was affixed on the wall of the office premises of the appellant and despite providing fair and reasonable opportunity, the appellant/writ petitioner did not respond and the first respondent, taking into consideration all the materials, has rightly passed the order of blacklisting. It is the further submission of the learned Additional Advocate General that milk is an essential quantity needed by both poor and rich and if anything is done on quality of the milk products supplied by Aavin, it would definitely reflect upon the said person concern and the respondents are also under obligation to maintain the standard of quality and purity of their produce and since the appellant/writ petitioner has deliberately done the said misdeed of adulteration, which is also an unpardonable act, action has been taken strictly in accordance with law and it cannot be faulted with.

12. The learned Additional Advocate General appearing for the respondents would further submit that the criminal case registered



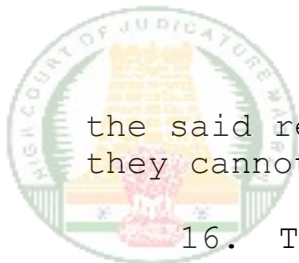
against the accused which includes the appellant and his wife, has culminated into a charge sheet and also invited the attention of this Court to the statements recorded during investigation and would submit that they were very categorical about the role played by the appellant and his wife and would further submit that even on an earlier occasion, some deficiencies were noted in the transportation of milk through the tanker lorry of the appellant/writ petitioner, for which, penalties have been levied and therefore, it is not correct to state that the track record of the appellant was clean for over 20 years. It is pointed out by the learned Additional Advocate General that the period of blacklisting was also over and since the impugned order has worked out itself, nothing remains for further adjudication in this writ appeal and prays for dismissal of this Writ Appeal.

13. The learned Additional Advocate General, in support of his submissions, placed reliance upon the following decisions:

- (i) Patel Engineering Limited v. Union of India and Another [(2012) 11 SCC 257]
- (ii) Kulja Industries Limited v. Chief General Manager, Western Telecom Project Bharat Sanchar Nigam Limited and Others [(2014) 14 SCC 731.
- (iii) TYD, 1379 Co-operative Milk Producers Society, Pandavamangalam v. The Secretary to Government, Animal Husbandry, Dairy and Fisheries Development Department, Chennai [Order dated 25.10.2017 made in W.P.[MD].No.19960 of 2015.

14. This Court paid it's anxious consideration and best attention to the rival submissions and also perused the entire materials placed before it.

15. The first respondent, vide proceedings dated 01.09.2014, has pointed out the above act of misdeed and cancelled the award of contract to the appellant/writ petitioner, vide agreement dated 30.08.2012. A perusal of the said communication would disclose that the said contract expired on 29.08.2014 and it was extended for a period of six months upto 28.02.2015 or till the finalization of Road Milk Tanker Tender Contract, 2014-16, whichever is earlier. The first respondent, pointing out the said misdeed, has observed that the said incident clearly indicates that there is a suspicion of theft of milk that led to adulteration of milk by South India Road Milk Transport, Chennai/appellant and by the said act, they have not only violated the terms and conditions of the Tender Contract executed in his favour, but also caused huge loss to the Union which ultimately force them to face severe financial crunch in making milk procurement payment to the farmer members, besides damaging their reputation. The first respondent has further stated that the above said stigmatic and obscene act forced them to initiate severe action against the appellant/writ petitioner besides cessation of Road Milk Transport Contract and the petitioner alone shall shoulder the sole responsibility for the entire financial loss that would be noted and pointed out by audit officials and citing



the said reasons, has terminated the contact and also indicated that they cannot send any of the Road Milk Tankers to their dairies.

16. The appellant/writ petitioner and his wife has sent a response to the said notice on 08.09.2014 pointing out certain aspects with a request to reinstate their contract. The first respondent has sent the show cause notice dated 10.09.2014 to the address of the appellant concern and it is relevant to extract the same:

"Sir,

Sub: Road Milk Tanker Contract with Thiru N.Vaithiyanathan, Proprietor M/s.South India Road Milk Transport - Adulteration of milk and Termination of contract - Blacklisting proposed - Issue of Show Cause notice against blacklisting - regarding.

Ref: 1. This office even No.Phonogram datd 26.08.2014.

2. This office Lr.No.2211/P&I/2012 dt.01.09.2014.

1.Dindigul District Cooperative Milk Producers Union has made a contractual agreement with you for hiring Road Milk Tankers on 30th August, 2012. The Contract is extended upto 28.02.2015 or till the finalization of Road Milk Contract 2014-16 whichever is earlier.

2. On 27.06.2014, we have despatched 20,000 litres of milk with 4.2% FAT and 8.2% SNF from Dindigul DCMPU to Ambattur Dairy through your Road Milk Tanker (Regn. TN19H 2286) owned by South India Road Milk Transport, Chennai as per the acknowledgment.

3. The contract has been terminated by order No.2211/P&I/2012 dt. 01.09.2014 for the above misdeed of adulteration of milk.

4.Adulteration of milk during transportation is a serious offence as per the Food Safety and Standards Act, 2006. If the adulteration is proved, the Union is liable for penal consequences as per law.

5.Aavin milk is being consumed by the common public law from children, old age people and Aavin has its own image on purity and quality among the general public. Your misdeed of adulteration of milk has brought deliberate stain on the image of Aavin.

6.It is well known fact that this Union is registered under Cooperative Societies Act, the main objective of the Union is to help the farmers by improving the economic development of milk producers by procuring, processing and marketing of milk and milk products. At the same time, the Union is committed to provide hygienic and quality milk at reasonable price to the



public. Thus the goodwill of Union is damaged by your unethical act.

7. We reserve our right to claim damages for the above misdeed in violation of the contract.

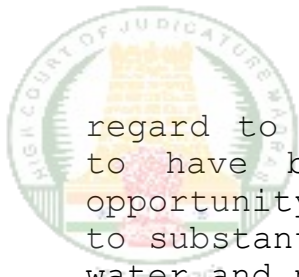
8. So explain why you, Thiru.N.Vaidyanathan, Proprietor, M/s.South India Road Milk Transport and your South India Road Milk Transport should not be blacklisted for 3 years. Your written explanation should reach us within 7 days from the date of receipt of this letter, failing which it will be presumed that you have nothing to say against blacklisting as suggested above and accordingly appropriate orders will be issued.

Sd/- S.Thillai Natarajan,
General Manager."

17. The primordial submission made by the learned counsel appearing for the appellant/writ petitioner is that on account of registration of criminal case where the appellant and his wife were also arrayed as accused, apprehending arrest, they were not available and both of them filed petitions for anticipatory bail in CrI.O.P.No.24582 of 2014 before this Court and it was dismissed on 15.09.2014 and thereafter, the appellant surrendered and was arrested on 19.09.2014 and on account of the said fact, he could not receive the show cause notice and respond to the same. It is also the submission of the learned counsel appearing for the appellant by pointing out the contents of the show cause notice that the conclusion/finding has already been reached against the appellant and thus it exhibited predetermination of mind to blacklist the appellant/writ petitioner and even if he could have responded to the same, it would not have made any difference. It is further pointed out by the learned counsel appearing for the appellant/writ petitioner that the said notice was returned unserved and another notice was served by affixture on the wall of the premises of the appellant and by that time, admittedly he was under incarceration and as such, he could not respond to the same and even otherwise, during police custody when he was interrogated, the first respondent was very much aware of the same.

18. The learned counsel appearing for the appellant/writ petitioner has also submitted that in pursuance to the directions given by this Court, Thiru.S.Pannirselvam was appointed as the Enquiry Officer by the first respondent wherein he has examined two officials of the first respondent and the appellant has also submitted a representation dated 03.07.2014 pointing out the issuance of blacklisting order and termination order and that it was not verified by the Quality Assistant/Lab Assistant and also pointed out other deficiencies.

19. Heavy reliance was also placed by the learned counsel appearing for the appellant to the Milk Despatch Note bearing No.0632 dated 28.06.2014 prepared by the first respondent with



regard to the present transaction wherein certain alterations said to have been done while recording the Fat and SNF % and if opportunity is afforded to the appellant, he would be in a position to substantiate that he is not guilty of substituting the milk with water and not guilty of adulteration.

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20. Let this Court considers the decision relied on by the learned counsel appearing for the appellant and the learned Additional Advocate General appearing for the respondents.

21. In M/s.Sri Sai Caterers v. The Station House Officer, Nuclear Power Corporation of India Ltd., Kalpakkam [Order dated 18.03.2015 in W.A.Nos.291 & 292 of 2015], the matter pertains to imposition of penalty and the scope of show cause notice came up for consideration and the Division Bench of this Court has placed reliance upon the decision of the Hon'ble Supreme Court in Oryx Fisheries Private Limited v. Union of India [(2010) 3 SCC 427], wherein in paras 27 to 29, it was observed and held as follows:

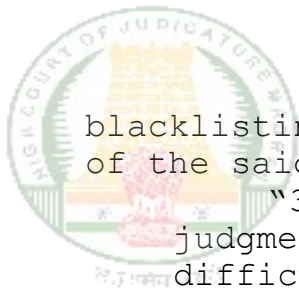
"27. It is no doubt true that at the stage of show cause, the person proceeded against must be told the charges against him so that he can take his defence and prove his innocence. It is obvious that at that stage the authority issuing the charge sheet, cannot, instead of telling him the charges, confront him with definite conclusions of his alleged guilt. If that is done, as has been done in this instant case, the entire proceedings initiated by the show cause notice vitiated by unfairness and bias and the subsequent proceeding become an idle ceremony.

28. Justice is rooted in confidence and justice is the goal of a quasi-judicial proceeding also. If the functioning of a quasi-judicial authority has to inspire confidence in the minds of those subjected to its jurisdiction, such authority must act with utmost fairness. Its fairness is obviously to be manifested by the language in which charges are couched and conveyed to the person proceeded against.

29. In the instant case from the underlined portion of the show cause notice it is clear that the third respondent has demonstrated a totally close mind at the stage of show cause notice itself. Such a close mind is inconsistent with the scheme of Rule 43 which is set out below. The aforesaid rule has been framed in exercise of the power conferred under Section 33 of The Marine Products Export Development Authority Act, 1947 and as such that Rule is statutory in nature. "

The Division Bench of this Court, in the said decision, has granted opportunity to the appellant to take part in future contracts.

22. In Gorkha Security Services v. Government (NCT of Delhi) and Others [(2014) 9 SCC 105], the matter in issue pertains to



blacklisting of a contractor and it is relevant to extract para 33 of the said judgment:

"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 ASG. 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."

23. In *Tarakeshwar Dubey v. Union of India and Others* [2012 SCC Online Cal 10518], challenge was made to the order of retirement. Facts of the case would disclose that at the time of issuance of the show cause notice, the petitioner was in custody and having found that he was not given opportunity, the impugned order was set aside.

24. In *Patel Engineering Limited v. Union of India and Another* [(2012) 11 SCC 257], relied on by the learned Additional Advocate General, tenability of blacklisting came up for consideration and it is relevant to extract the following portion of the said judgment:

"15. It follows from the above Judgment in *Erusaian Equipment case* [(1975) 1 SCC 70] that the decision of State or its instrumentalities not to deal with certain persons or class of persons on account of the undesirability of entering into contractual relationship with such persons is called blacklisting. State can decline to enter into a contractual relationship with a person or a class of persons for a legitimate purpose. The authority of State to blacklist a person is a necessary concomitant to the executive power of the State to carry on the trade or the business and making of contracts for any purpose, etc. There need not be any statutory grant of such power. The only legal limitation upon the exercise of such an authority is that State is



to act fairly and rationally without in any way being arbitrary - thereby such a decision can be taken for some legitimate purpose. What is the legitimate purpose that is sought to be achieved by the State in a given case can vary depending upon various factors.

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33. From the impugned order it appears that the 2nd respondent came to the conclusion that; (1) the petitioner is not reliable and trustworthy in the context of a commercial transaction; (2) by virtue of the dereliction of the petitioner, the 2nd respondent suffered a huge financial loss; and (3) the dereliction on the part of the petitioner warrants exemplary action to "curb any practice of 'pooling' and 'mala fide' in future".

34. We do not find any illegality or irrationality in the conclusion reached by the 2nd respondent that the petitioner is not (commercially) reliable and trustworthy in the light of its conduct in the context of the transaction in question. We cannot find fault with the 2nd respondent's conclusion because the petitioner chose to go back on its offer of paying a premium of Rs.190.53 crores per annum, after realising that the next bidder quoted a much lower amount. Whether the decision of the petitioner is bona fide or mala fide, requires a further probe into the matter, but, the explanation offered by the petitioner does not appear to be a rational explanation.

36. We cannot say the reasoning adopted by the 2nd respondent either irrational or perverse. The dereliction, such as the one indulged in by the petitioner, if not handled firmly, is likely to result in recurrence of such activity not only on the part of the petitioner, but others also, who deal with public bodies, such as the 2nd respondent giving scope for unwholesome practices. No doubt, the fact that the petitioner is blacklisted (for some period) by the 2nd respondent is likely to have some adverse effect on its business prospects, but, as pointed out by this Court in Jagdish Mandal v. State of Orissa and others, (2007) 14 SCC 517:

"Power of judicial review will not be invoked to protect private interest at the cost of public interest, or to decide contractual disputes."

25. In Kulja Industries Limited v. Chief General Manager, Western Telecom Project Bharat Sanchar Nigam Limited and Others [(2014) 14 SCC 721], the scope of blacklisting of a contract came up for consideration and it is relevant to extract paras 17, 20 and 25 of the said judgment:

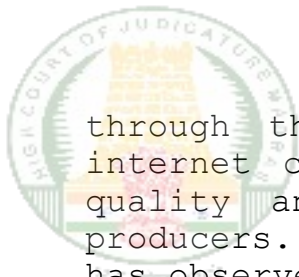


"17. The power to blacklist a contractor whether the contract be for supply of material or equipment or for the execution of any other work whatsoever is in our opinion inherent in the party allotting the contract. There is no need for any such power being specifically conferred by statute or reserved by contractor. That is because 'blacklisting' simply signifies a business decision by which the party affected by the breach decides not to enter into any contractual relationship with the party committing the breach. Between two private parties the right to take any such decision is absolute and untrammelled by any constraints whatsoever. 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.

20. It is also well settled that even though the right of the writ petitioner is in the nature of a contractual right, the manner, the method and the motive behind the decision of the authority whether or not to enter into a contract is subject to judicial review on the touchstone of fairness, relevance, natural justice, non-discrimination, equality and proportionality.

25. Suffice it to say that 'debarment' is recognised and often used as an effective method for disciplining deviant suppliers/contractors who may have committed acts of omission and commission or frauds including misrepresentations, falsification of records and other breaches of the regulations under which such contracts were allotted. What is notable is that the 'debarment' is never permanent and the period of debarment would invariably depend upon the nature of the offence committed by the erring contractor."

26. In TYD, 1379, Cooperative Milk Producers Society, Pandavamangalam, Turicorin District v. The Secretary to Government, Animal Husbandry, Dairy and Fisheries Development Department, Secretariat, Chennai and others [Order dated 25.10.2017 made in W.P. (MD).No.19960 of 2015], the writ petition was filed in public interest seeking a direction to the respondents 1 to 3 therein to ensure transparency procedure in Society wise milk collection



through the installation of milk scanner, weighing machine and internet connection in the milk van for testing on the spot the quality and quantity of milk, which is supplied by the milk producers. The Division Bench of this Court, in the said decision, has observed in paras 8 and 9 as under:

"8. Milk is an essential commodity. The ultimate consumers are primarily children, apart from the sick, the convalescent and others in need of nutrition. The consumers have a right to be supplied with of requisite standard.

9. The pinpoint, the source of adulteration and manipulation, it is imperative that the quality and quantity of the milk be checked at the first point and thereafter again before packaging."

27. The principles summarized in the above cited decisions are that blacklisting of a contract is having civil consequences and dehors the contents of the agreement, the entity/person awarding the contract can resort to blacklisting of a contractor, if placed before it would unerringly point out misdeed/misconduct on the part of such a person/entity.

28. Insofar as the principle of law with regard to show cause notice is concerned, the Hon'ble Supreme Court of India in K.I.Shephard v. Union of India [(1987) 4 SCC 431], has observed that "when a notice is issued with premeditation, a writ petition would be maintainable. In such an event, even if the Court directs the statutory authority to hear the matter afresh, ordinarily such hearing would not yield any fruitful purpose. It explicitly said so both in the counter-affidavit as also in its purported show-cause notice."

29. A perusal of the materials placed before this Court would disclose that on account of registration of criminal case, the appellant/writ petitioner and his wife could not be available at the time of serving the show cause notice and it was returned undelivered and the second show cause notice was served by affixture on 22.09.2014 and by that time, the appellant/writ petitioner had surrendered and got arrested and he came out on bail pursuant to the order passed by the Hon'ble Supreme Court of India dated 23.02.2015 in Criminal Appeal No.359 of 2015.

30. As already pointed out in the earlier paragraphs, in pursuant to the directions given in the present writ appeal, the first respondent appointed their former employee, namely Thiru.S.Pannirselvam as the Enquiry Officer with regard to blacklisting of the appellant firm and the Enquiry Officer, after examining two other officials including the appellant herein, has submitted a report running to 19 pages and it is relevant to extract the conclusion portion of the said report:

"The promptness in issuing the termination order on 01.09.2014 and the blacklisting order on a Saturday do not support the action of the Management especially the

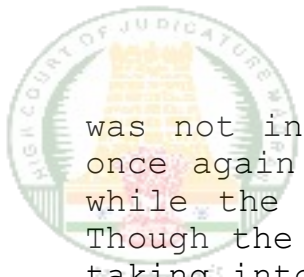


content of the blacklisting order which is for an incident of 27/28-06-2014 remaining inactive for two months at a stretch, and becoming proactive on 01.09.2014 the day on which Vellore Union issued termination order against M/s.Deepika Transports, do not seem to be a matter of coincidence but only matter of a concerted action. Therefore, this finding is based upon the documents furnished before me and not with reference to any Court Order. I find the issuance of the termination and blacklisting order is not proper. Besides the tests were not performed by qualified lab technicians / Asst. Dairy Chemist / Lab Asst. not present at the time of testing process and at the time of Dispatch, there were correction noticed in the quality reports. No test report has been mentioned in the blacklisting order to substantiate that substandard quality in terms of fat was acknowledged to that of the dispatched quantity. No such provisions have been found in the agreement to terminate or blacklist the Contractor. Hence the prayer of Mr.N.Vaidyanadhan, Proprietor representing M/s.South India Road Milk Transport does have justification for relief. This finding is based upon the documents furnished before me and not with reference to any Court Order."

31. It is the vehement and forceful submission of the learned Additional Advocate General that the said report has no statutory status and therefore, the contents of the same have to be ignored and though fair and adequate opportunity has been afforded to the appellant, he failed to avail the same and considering the nature and gravity of the misdeeds done, he has been rightly blacklisted for a period of three years, which also came to an end and his contract has also been terminated, nothing remains to be adjudicated in this writ appeal.

32. In the considered opinion of this Court, the show cause notice issued by the first respondent would prima facie indicate that some conclusion has been reached and of course, show cause notice should also contain as to the reason why it is issued. It is very pertinent to point out at this juncture that the Milk Despatch Note of the first respondent bearing No.0632 dated 28.06.2014 would prima facie indicate as to the adulteration with regard to Fat % and SNF % and however, this Court is not expressing any opinion with regard to contents of the same for the reason that criminal case/prosecution is also pending against the appellant/writ petitioner. It is brought to the knowledge of this Court that the prosecution launched against his wife has been quashed by this Court and it is the submission of the learned Advocate General that as soon as order copy is received, further decision would be taken to file an appeal.

33. Since the appellant/writ petitioner was not available apprehending arrest in pursuant to registration of criminal case, he



was not in a position to receive the show cause notice and it was once again despatched and served by way of affixture on 22.09.2014, while the appellant/writ petitioner was in the custody of police. Though the period of blacklisting has already been over, this Court, taking into consideration the submission made by the learned counsel appearing for the appellant/writ petitioner that it will be suffice either to prevent him from participating in future tender or will be cited as a reason to reject the tender/bid and thereby affecting his civil right to carry on their trade/profession. This Court is of the considered view that liberty shall be provided to the appellant/writ petitioner to respond to the show cause notice dated 10.09.2014 issued by the first respondent by enclosing relevant and authenticated documents with a further direction to the first respondent to consider the same on merits and in accordance with law within a stipulated time.

34. In the light of the above facts and circumstances and the reasons assigned above, this Writ Appeal is disposed of and the appellant/writ petitioner is at liberty to submit his reply/response to the show cause notice dated 10.09.2014 by enclosing relevant and authenticated documents within a period of four weeks from the date of receipt of a copy of this order to the first respondent, who, upon receipt of the same, is directed to consider the said representation on merits and in accordance with law and pass appropriate orders within a further period of ten weeks thereafter and to communicate the decision taken, to the appellant/writ petitioner. It is made clear that this Court, for the purpose of disposal of this writ appeal and in the light of attention being drawn to documents, made certain observations and it cannot be taken as a positive finding in respect of the contentions put forward by respective learned counsel for the parties and it is for the first respondent to consider and dispose of the reply/response to be submitted by the appellant/writ petitioner based on it's own merits. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(C.O.)

/True Copy/

Sub Assistant Registrar

To

- 1.The General Manger, Dindigul District Co-operative Milk Producers Union Ltd., DD 160, No.9, East Govindapuram, Dindigul-642 001.
 - 2.The Managing Director, Tamil Nadu Co-operative Milk Producers Federation Ltd., Madhavaram, Chennai-600 051.
 - 3.The Secretary, Government of Tamil Nadu, Animal Husbandry and Fisheries Department, Fort St.George, Chennai-600 009.
- +1CC to Mr.P.Athimoolapandian, Advocate, SR.No. 64653

Judgment in W.A.(MD)No.958 of 2017

28.04.2018