

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 51 of 2019**

- Chhattisgarh Gadiwan Hamal Reza Mazdoor Mahasangh A Registered Trade Union, Reg No. - 3314, Through Its President, Head Officer - At Station Road, Mahasamund, District Mahasamund

---- Petitioner**Versus**

1. Food Corporation Of India Through Its General Manager (Region), Regional Office - Vidhan Sabha Road, Post - Pandri Raipur Chhattisgarh
2. Superintendent Of Police Central Bureau Of Investigation ACB, Vip Road, Near PTS Chowk, Raipur Chhattisgarh

---- Respondents

For Petitioner	:	Shri H.S. Ahluwalia, Advocate
For Respondent No.1	:	Shri B.P. Gupta, Advocate
For Respondent No.2	:	Shri B. Gopa Kumar, ASG for the Union of India

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****29/04/2019**

1. Heard.
2. The present petition is against the order dated 26.10.2018 whereby the petitioner Trade Union named & styled as Chhattisgarh Gadiwan Hamal Reza Mazdoor Mahasangh, has been blacklisted.
3. Facts of this case are that the petitioner, which is a registered trade union was given a contract by the Food Corporation of India (FCI) for a period of 01.10.2010 to 30.09.2012 to handle the goods for transportation at

Mahasamund. The FCI used to store the food grains procured by it in the godown of civil supplies of State Warehousing Corporation (for short the SWC). For movement of good grains from FCI godown for the warehouse corporation godown, the petitioner trade union through its labourers was carrying out the transportation and handling in the said godowns. The SWC, which was owning the godown had also engaged separate transporter namely M/s Chawla Road Carriers for handling the transportation of food grains stored by FCI during the aforesaid period. It was stated that the petitioner union in conspiracy with the said transporter engaged by the SWC prepared different forged bills and had managed to get the money from FCI, which in turn caused financial loss to them. The matter when was reported, investigation was carried out by the Central Bureau of Investigation (CBI) and after detail investigation charge-sheet was filed against one Narayan Lal Chandrakar, who was alleged to have been engaged by the petitioner trade union to handle the work of account and billing. Subsequently show-cause notice was served to the petitioner on the basis of a confidential report issued by the CBI dated 16.12.2017 suggesting that why they should not be blacklisted. During such enquiry document which was the basis for issuance of show-cause notice was asked for by the petitioner union. Despite the requisition, the said document was not supplied on the ground that it was a confidential one and eventually the impugned order was passed.

4. Learned counsel for the petitioner would submit that the charge-sheet which is filed in this case would show that the entire allegations were on Narayan Lal Chandrakar, who was engaged by the petitioner trade union to prepare the bill and carry out the banking transaction, inasmuch as, the petitioner members are the labourers who are illiterate. It is further contended that after investigation this fact was established that the entire fraud was committed by one Narayan

Lal Chandrakar along with few of the officers of FCI and contractor M/s Chawla Road Carriers, therefore, if the allegations were confined in personem, the union which is being run by the labourers, they could not have been blacklisted. It is further submitted that the report on which the blacklisting was carried out was not supplied to the petitioner, therefore, the actual reason for blacklisting was unknown to the petitioner. It is further stated that in the show-cause notice to blacklist, the verbatim charge-sheet wordings were reproduced which would show that the allegation was against the person Narayan Lal Chandrakar who was authorized to discharge the duty of preparation of bills & conduct banking transaction with per-determination to declare the petitioner union as blacklisted, therefore, there was serious flaw to follow the Rules of natural justice and the order was contrary & illegal. It is further stated that when the charge-sheet having been filed against a person, even if before blacklisting the union, the FCI should have waited for the out come of the criminal case and the action so taken was in a haste and with a predetermined mind, therefore, is illegal and is required to be quashed.

5. Shri B.P. Gupta, learned counsel for the respondent FCI on the other hand would submit that after investigation of criminal case a separate report was submitted by the CBI which was dated 16.12.2017. It is contended that in the said report/investigation huge conspiracy was reflected including role of the officers of FCI, as such was made confidential. It is stated that for the reasons stated in such report it could not be given to the petitioner union. He would further submit that the petitioner union after the service of notice instead of filing reply, asked for the report dated 16.12.2017 and reply of the show-cause notice was never filed. It is stated that the order impugned would show that the officer-in-charge, who blacklisted the petitioner has applied his mind and after

due application, the orders have been passed, therefore, it should not be interfered by this Court.

6. Learned counsel for the CBI adopts the arguments advanced by learned counsel for the FCI.
7. I have heard learned counsel for the parties.
8. It is not in dispute that the Chhattisgarh Gadiwan Hamal Reza Mazdoor Mahasangh is a Registered Trade Union, was given the contract for handling the food grains which were to be kept in the godown of SWC as such they were predominantly doing the job of labourers. The allegation is that the petitioner union in connivance with one Jasbir Singh Makkad @ Judy Papu, who was authorized representative of Ms. Chawla Road Carrier conspired with each other and agreed to do the transportation work of FCI at SWC jointly during the period of 2011-2012 by arranging vehicles/bullock carts etc. and for the purpose forged bills were prepared. The report having been made, the investigation was carried out. After the investigation, the final charge-sheet was filed. The reading of final charge-sheet purports that during investigation it was established that one Sonsay Vishwakarma, who was the President of the petitioner trade union is an illiterate person. It further shows that petitioner union after getting the contract from the FCI appointed one Narayan Lal Chandrakar to look after the bill/accounts related work of the firm with FCI. The report also shows that Narayan Lal Chandrakar was associated with the petitioner union as an authorized representative and was doing all the managerial works and agreement was entered in between Narayan Lal Chandrakar and the petitioner union which was submitted to the FCI. The final report stated that the entire work of the petitioner union was attended/managed

by Narayan Lal Chandrakar, who used to sign all the work-slips and bills on behalf of the petitioner union and used to present the same to FCI for release of payment. He was also authorized to operate and carry out the transaction with the Bank and the FCI pursuant to such agreement dated 07.10.2010.

9. The final charge-sheet further reveals that the investigation shows that Narayan Lal Chandrakar was getting a salary of Rs.7000/- from the petitioner union and the amount from the petitioner bank account was withdrawn under his signature and after withdrawal of money, he had deposited huge some of money in the ICICI Bank, Dena Bank, Mahila Nagrik Sahakari Bank, Punjab National Bank, Chhattisgarh Rajya Gramin Bank at Mahasamund of his own personal account. The final charge sheet further purports that being a low paid employee Narayan Lal Chandrakar had siphoned off money from the account of the petitioner union and further the cash and amount was routing through one Jasbir Singh Makkad, who was working on behalf of Ms. Chawla Road Carrier. In the final report, only Narayan Lal Chandrakar has been arrayed as an accused which is dated 31.12.2017 and the FIR bears number RC1242016A0005 of the year 2016 filed under Sections 120B, 420, 471-A IPC read with Section 13 (2) & 13 (1) (d) of Prevention of Corruption Act, 1988.
10. Now reverting to the impugned order dated 26.10.2018 it talks of a report by the CBI dated 16.12.2017. The reading of the order would acknowledge this fact of final charge-sheet filed by the CBI in respect of the criminal case. In the final charge-sheet of the CBI, only one person namely Narayan Lal Chandrakar was arrayed as an accused. The final report also acknowledges the fact that the petitioner union members are illiterate and are labourers. It also acknowledges the fact that the entire work of petitioner union was done through Narayan Lal

Chandrakar who was discharging the work under an agreement on behalf of the Union.

11. The filing of charge-sheet only against Narayan Lal Chandrakar confines the criminality to him individually and not attributed to the petitioner union. Whereas in the show-cause notice, on the basis of one report dated 16.12.2017 the scope has been enlarged by the FCI so as to envelop the criminal liability of the trade union too. The report dated 16.12.2017 is not before the Court. If the entire emphasis and decision was taken on the basis of report dated 16.12.2017, the petitioner should have been made known the reasons of doing so. If the ground to eliminate or blacklist the petitioner was the basis of the report dated 16.12.2017 then it should have been supplied to the petitioner so the reasons could be made known to the union so as to reply to it. Instead the ratio of the criminality in charge-sheet was reproduced in the show-cause. The CBI after investigation itself found that Narayan Lal Chandrakar was sole responsible accused, conspired with the FCI in connivance with Ms. Chawla Road Carrier to prepare the forged bills etc. If the criminality was confined to one individual then in such case vicarious criminal liability could not have been extended to the petitioner union. The Court also cannot lose sight of the fact that the petitioner union according to the charge-sheet itself was maintained by the labourers, who were illiterate, therefore, the conduct of Narayan Lal Chandrakar came to fore. The union or any office bearer have not been made an accused by the CBI after investigation. Consequently, the criminal vicarious liability could not have been extended on the basis of a report dated 16.12.2017, which never saw the light of the day.

12. The show-cause notice dated 12.07.2018 when was served was replied vide

Annexure P-2 by the petitioner on 26.07.2018, wherein the petitioner union asked the copy of the report dated 16.12.2017, which was made basis of the issuance of show-cause. The said report dated 16.12.2017 was not supplied, eventually the order dated 26.10.2018 was passed which is Annexure P-3. Taking the facts together it would show that the FCI while issuing the show-cause notice had already decided the course of result. It appears that the opinion was already formed by the officer of the FCI, in the facts of this case the ratio laid down by the Supreme Court in the case of ***M/s. Siemens Ltd. Versus State of Maharashtra & ors {(2006) 12 SCC 33}*** would guide the course of action wherein at 9, 10, 11 & 12 the Supreme Court has held that when a notice is issued with pre-meditation, a writ petition would be maintainable, which are reproduced hereunder:-

“9. Although ordinarily a writ court may not exercise its discretionary jurisdiction in entertaining a writ petition questioning a notice to show cause unless the same inter alia appears to have been without jurisdiction as has been held by this Court in some decisions including [State of Uttar Pradesh v. Brahm Datt Sharma and Anr.](#) AIR 1987 SC 943, [Special Director and Another v. Mohd. Ghulam Ghouse and Another](#), (2004) 3 SCC 440 and [Union of India and Another v. Kunisetty Satyanarayana](#), 2006 (12) SCALE 262], but the question herein has to be considered from a different angle, viz, when a notice is issued with pre-meditation, a writ petition would be maintainable. In such an event, even if the courts directs the statutory authority to hear the matter afresh, ordinarily such hearing would not yield any fruitful purpose [See [K.I. Shephard and Others v. Union of India and Others](#) (1987) 4 SCC 431 : AIR 1988 SC 686]. It is evident in the instant case that the respondent has clearly made up its mind. It explicitly said so both in the counter affidavit as also in its purported show cause.

10. The said principle has been followed by this Court in [V.C. Banaras Hindu University and Ors. v. Shrikant](#) [2006 (6) SCALE 66], stating:

"The Vice Chancellor appears to have made up his mind to impose the punishment of dismissal on the Respondent herein. A post decisional hearing given by the High Court was illusory in this case.

In K.I. Shephard & Ors. etc. v. Union of India & Ors. [AIR 1988 SC 686], this Court held :

".....It is common experience that once a decision has been taken, there is tendency to uphold it and a representation may not really yield any fruitful purpose."

11. [See also [Shri Shekhar Ghosh v. Union of India & Anr.](#) 2006 (11) SCALE 363 and [Rajesh Kumar & Ors. v. D.C.I.T. & Ors.](#) 2006 (11) SCALE 409]

12. A bare perusal of the order impugned before the High Court as also the statements made before us in the counter affidavit filed by the respondents, we are satisfied that the statutory authority has already applied its mind and has formed an opinion as regards the liability or otherwise of the appellant. If in passing the order the respondent has already determined the liability of the appellant and the only question which remains for its consideration is quantification thereof, the same does not remain in the realm of a show cause notice. The writ petition, in our opinion, was maintainable."

13. In the case in hand, the basis of which the blacklisting was carried out the report dated 16.12.2017 was never supplied which finds reference in the show-cause notice. In the result, it is held that the rules of natural justice were defeated while not supplying the communication which was made basis of the order to put the petitioner in the blacklist beside FCI was predetermined to blacklist the petitioner union.

14. In the result, the petition succeeds and the impugned order dated 26.10.2018 is hereby quashed.

Sd/-

Goutam Bhaduri
Judge

Ashu