

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 303 of 2020****Judgment reserved on 17.03.2020****Judgment delivered on 18.06.2020**

- M/s CSK Technologies, through its Proprietor Laxman Soma, S/o Shri Bhikshamaiah Soma, aged about 61 years, having its registered office at- 1st Floor, S.A. Towers, H-No. 3-5-885/1, Himayath Nagar, Near Old M.L.A. Qts, Hyderabad (Telangana) 500029

-----Petitioner**VERSUS**

1. South Eastern Coalfields Limited, Through-General Manager (M.M.), Post Box No. 60 Seepat Road, Bilaspur Chhattisgarh
2. M/s Exide Industries Limited, through its Managing Partner-Gautam Chatterjee Having its corporate office at- Exide House, 59-E, Chowringhee Road, Kolkata (West Bengal) 700020.

-----Respondents

For Petitioner	:	Mr. Palash Tiwari, Advocate
For Respondent-1	:	Mr. H.B. Agrawal, Sr. Advocate assisted by Mr. Vivek Chopra, Advocate
For Respondent-2	:	Mr. Raza Ali, Advocate.

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

CAV Order**Per Parth Prateem Sahu, J.**

1. This petition under Article 226 of the Constitution of India has been filed challenging the order dated 09-01-2020 issued by the 1st respondent for banning the business dealing with the petitioner for a period of 3 years in terms of Clause 4.7.7 of Purchase Manual of Coal India Limited.
2. Facts of the case in brief are that, the petitioner who has been shown as a sole proprietorship firm engaged in manufacturing multiple products including Tensile Plastic and LED Lights etc. and registered with National Small Industries Corporation Limited (for short " NSIC"). Respondent 1 floated a Notification Inviting Tender (NIT) No. SECL/BSP/MMW/APS/ SnR/TPN/ 05 dated 26-05-2018 for purchase of Tensile Plastic Net. In the aforementioned Tender proceedings,

the petitioner also participated but the said Tender was called off by the 1st respondent. The petitioner received an e-mail on 30-08-2018 consisting that the 1st respondent is sending 3 officials for inspecting the manufacturing unit of Tensile Plastic. The officials of 1st respondent on the scheduled date inspected the factory of which address has been shown in the tender document submitted by the petitioner's proprietor and found that the petitioner's proprietor was not having the manufacturing unit of Tensile Plastic, thereafter, show-cause notice was issued to him on 10-05-2019, asking him to explain as to why he should not be banned for wilful suppression of facts and furnishing wrong information for unlawful gains including suspension of entire business dealings and subsisting the present contracts/supplies for a period of 6 (six) months. Reply was submitted by the petitioner's proprietor on 22-05-2019, answering that on the date of visit of the officials of 1st respondent for manufacturing unit of Tensile Plastic, he was not available, he was out of the country, the petitioner is duly certified by NSIC as a manufacturer of Tensile Plastic and other products. The Respondent-SECL floated new tender notification on 03-12-2019 through which bids were called for "LED Portable Miner's Cap Lamp (LED Lamp)". The petitioner again participated in the said tender proceedings in which the petitioner was disqualified, against which the petitioner made representation to Chairman-cum-Managing Director of Respondent-SECL. Respondent 1, instead of replying to the representation made by the petitioner, issued an order/ letter banning the petitioner for a period of 3 years; the action taken by the 1st respondent is under challenge stating it to be arbitrary and in-violation of principle of natural justice.

3. The 1st respondent submitted reply to the writ petition and pleaded that the show-cause notice dated 22-05-2019 wherein the business dealings with the petitioner were suspended including the existing contract too; but said notice was not put to challenge by the petitioner till the expiry of period mentioned in the notice. The conduct of the petitioner in not challenging the show-cause notice wherein the explanation was sought as to why the petitioner should not be banned for *wilful suppression of facts* including suspension of all the business dealings with the

petitioner as well as subsisting contract/ supply order for a period of 6 months shows that the petitioner has accepted the action taken against him on the complaint received by the 1st respondent. To verify the veracity of complaint, a Committee of 3 officials was constituted for inspecting the factory premises of petitioner, which inspected the factory premises on 30-08-2018, upon which, it was found that the tendered item (Tensile Plastic) was not manufactured on the address supplied.

4. On the basis of the report submitted by the inspection committee, clarifications were sought for by the 1st respondent from the petitioner's proprietor. After considering the reply/ defence submitted and taking approval from the competent authority for banning business with the petitioner, order Annexure P-1 dated 09-01-2020 was passed. The order was passed after affording proper opportunity of hearing to the petitioner and looking to the seriousness of the issue, appropriate action was taken. The aforementioned facts have been mentioned by the 1st respondent in their application for appropriate orders.
5. The learned counsel for the petitioner submits that issuance of show-cause notice itself is arbitrary and pre-determined to ban the petitioner from business. He pointed out that the petitioner is in the field of manufacturing for past two decades and supplying materials to the Respondent-SECL including Tensile Plastic and LED Lamps. Respondent 1 has purchased similar products from the petitioner and now on spurious grounds/ reason, impugned order Annexure P-1 has been passed. The petitioner's proprietor was out of country when e-mail was sent to him by the 1st Respondent and the request of the petitioner's proprietor to visit the factory premises some other day has been arbitrarily turned down which shows that the 1st Respondent was adamant to act against the petitioner. It was argued that the petitioner is recognised by NSIC to be a manufacturer of Tensile Plastic and other products/ goods. Respondent 1 has not passed any order upon the show-cause notice dated 10-05-2019, though reply to the show-cause notice was submitted by the petitioner on the earliest on 22-05-2019. Respondent 1

issued another Tender notification in which petitioner also participated where the petitioner has been shown to be disqualified without there being any order against him till that date and the order Annexure P-1 dated 09-01-2020 banning the business dealings with the petitioner came only after petitioner made representation against disqualifying him from the other Tender proceedings. These actions/ act of Respondent 1 are arbitrary and discriminatory. It is contended that once the period of suspension mentioned in the show-cause notice had already expired in the month of November, 2019, there was no occasion for Respondent 1 to disqualify the petitioner from participating in the another Tender proceedings. Learned counsel contended that the contents of show-cause notice itself show that the 1st Respondent had already made up his mind and was pre-determined to pass orders against the interest of petitioner and show-cause notice issued was only a formality, there is violation of principle of natural justice while passing order Annexure P-1. He places his reliance upon the judgments passed by the Supreme Court in the matter of **Oryx Fisheries Private Limited v. Union of India and others** reported in (2010) 13 SCC 427, **Kulja Industries Limited v. Chief General Manager, Western Telecom Project Bharat Sanchar Nigam Limited and others** reported in (2014) 14 SCC 731, **Mahabir Auto Stores and others v. Indian Oil Corporation and others** reported in (1990) 3 SCC 752 and **Ramana Dayaram Shetty v. Internation Airport Authority of India and another** reported in (1979) 3 SCC 489. Learned counsel for the petitioner also referred to the additional document issued by NSIC, signifies that the certificate issued by NSIC has also been renewed, distincting manufacturing of tendered item. Learned counsel also submits that as per the direction of this Court, he has placed on record the document showing the manufacturing of the Tensile Plastic which is evident from the certificate issued by the NSIC.

6. Per contra, learned Senior counsel appearing on behalf of the 1st Respondent submits that no specific relief has been sought for quashing the second tender proceedings as also no interim relief has been sought with respect to the second

tender proceedings in an application for interim relief/ stay. The petitioner has not challenged the show-cause notice, in fact, he accepted the suspension period of 6 months as mentioned in the show-cause notice and the petition has been filed only after passing an order of banning from further business dealings on 09-01-2020. It is also pointed out that from the documents enclosed by the petitioner i.e. the Factory License showing only 20 persons working in the factory whereas the claim of the petitioner is of manufacturing multiple products and looking to the products mentioned in the documents itself, it is apparent that the petitioner could not able to manage the manufacturing unit of the products mentioned in the certificate Annexure P-11. One anonymous complaint was received by the 1st Respondent and to check the veracity of complaint, the 1st Respondent thought it proper to held the inspection of the factory premises of petitioner. Respondent 1 constituted a committee of 3 high rank officials to inspect the factory premises on the address mentioned in the Tender document and the committee upon inspection found that there was no such manufacturing unit of Tensile Plastic. It is also pointed out that in the document Annexure P-11, the word 'Manufacturing' is mentioned only for the first item in the list and in the heading of the list, it is mentioned as Store(s)/ Service(s). There is no mention of word 'Manufacturing' to show that the petitioner is engaged as manufacturer of Tensile Plastic also. Learned Senior counsel submits that Annexure P-1 has been issued/ passed after giving proper opportunity of hearing after following the principle of natural justice and the order/ letter is a reasoned order. It is also pointed out that the work order has been issued to the 2nd Respondent against the Tender notification No. GEM/2019/RA-26901 dated 03-12-2019 for LED Portable Miner's Cap Lamp and work order has also been issued. The petitioner has approached the Independent External Monitor by making representation.

7. Respondent 2 submitted that the show-cause notice was issued for the year 2020 referring to the Tender of the year 2018. He submits that *vide* Annexure P-8, Tender No. GEM/2019/RA-26901 dated 03-12-2019 was finalized and the 2nd Respondent has been awarded as L-1, which is not put to challenge. The

grievance of the petitioner is much with regard to banning of business for a period of 3 years. The document on which the petitioner has placed reliance bears the disclaimer clause mentioning that '*the purchasing agencies are advised to satisfy themselves*' which means that the description mentioned in the documents issued by the NSIC cannot be said that once the certificate is issued mentioning the item (Tensile Plastic) then that has to be accepted. No other document of running of a factory/ manufacturing unit of Tensile Plastic has been placed on record. The petitioner has been issued show-cause notice so as to seeking explanation/ reply from him wherein propounding him that inspecting team did not find the manufacturing unit of Tensile Plastic on the address mentioned in the Tender document.

8. We have heard learned counsel for the respective parties and also perused the record.
9. The case of the petitioner itself is that the officials of the 1st Respondent reached to the office/ address shown in the Tender document for inspecting the manufacturing unit of Tensile Plastic, pre-notice was also sent to the petitioner firm through e-mail. From the above, it is apparent that there was no surprise check/ visit, the officials of 1st Respondent inspected/ visited the manufacturing unit, as claimed by the petitioner, only after giving prior notice to the petitioner. The submission made by the learned counsel for the petitioner that the petitioner's proprietor was out of country and to get the manufacturing unit inspected, his presence was necessary, does not appeal us because it is not an office room but a factory running which is required to be managed by more than one person and its operation cannot be stopped during unavailability of the proprietor of the firm. It is not the case of the petitioner that on the date of inspection, the officials/ team of officials constituted by the 1st Respondent have visited some other place instead of the address mentioned in the Tender document, the factory was closed and the officials have not inspected the same but the only defence taken is he was not available on that day and the time was

sought for by him for inspecting the manufacturing unit of Tensile Plastic some other day but the request was denied by the inspecting team on the ground that they had to inspect some other factory at Kolkata. Even no allegation of *malafide* has been levelled in the reply to the notice or in the writ petition against the three officials of high rank of the inspecting team constituted by the 1st Respondent. In view of the above, the inspection report prepared by the inspecting committee constituted by the 1st Respondent cannot be doubted and as such its correctness also cannot be doubted. Further, the 1st Respondent has filed the inspection report along with the application for appropriate orders as Annexure RD/1 alongwith the covering letter dated 24-09-2018. Perusal of the report would show that the committee constituted by the 1st Respondent has inspected the petitioner factory as well as the factory of M/s Sanskriti Composites Pvt. Ltd., Kolkata on 30-08-2018 and 31-08-2018 respectively, which shows that the reason stated by the inspecting committee that they could not wait for the next day to be correct as after inspecting the factory premises of the petitioner, the inspecting committee inspected the factory of one M/s Sanskriti Composites Pvt. Ltd., Kolkata. The documents annexed along with the writ petition and the document placed on record upon the direction issued by this Court are the documents issued by the NSIC. The certificate mentions about the store details, the headings in the column have been divided into four columns i.e. Serial no., Store(s)/ Service(s) Name; Specification(s); Qualitative Capacity; and Quantitative Capacity PA, where the word 'Manufacturing' has been imparted at Serial no. 1 only and not within the column 2 of Store(s)/ Service(s) Name showing the manufacturing also. The document forming part of Annexure P-11 bears the disclaimer clause which reads as under:

“Disclaimer:- the purchasing agencies are advised to satisfy themselves with the store details in the certificate while doing the Technical Evaluation stage before placing the tender/order on the units, certified by NSIC.”

10. Upon the direction issued by this Court, the petitioner has also enclosed the copy

of 'Licence To Work A Factory' which shows the employment of 20 workers maximum. The document issued by the Regional Provident Fund Commissioner showing only 27 employees registered for the purpose of Provident Fund. Considering the document Annexure P-11 alongwith the document copy of the Licence To Work A Factory and document issued by the Office of the Regional Provident Fund Commissioner, we are unable to accept the submission made by the learned counsel for the petitioner that the petitioner's proprietor is running a manufacturing unit of Tensile Plastic including the other manufacturing activities and demonstrating itself to be engaged in manufacturing of multiple products by only 27 employees. We have put specific question to the learned counsel for the petitioner but he could not able to convince us on the issue by producing other document with regard to the manufacturing unit of 'Tensile Plastic'.

11. The ground raised by the learned counsel for the petitioner that the contents of the notice itself would show that the notice has not been issued with an open mind is concerned; though the terminology used in the notice mentions about the act of the petitioner based on the inspection report submitted by the team of high officials under 1st Respondent, but at the same time, the petitioner was afforded an opportunity to take his defence. It is submitted that the requirement of show-cause notice is that, there should be specific allegations for imposing proposed actions against the notice.
12. Perusal of contents of notice would show that specific allegations/ charges have been mentioned that the petitioner was not having the manufacturing unit of Tensile Plastic was the reason for the proposed action. The action of banning the business of the petitioner is in consonance with Clause 4.7 of the Purchase Manual of Coal India Ltd.; 4.7.1 deals with 'Suspension of Business'. The action taken under clause 4.7.1 was never challenged by the petitioner, thereafter, considering the reply submitted by the petitioner, orders have been passed under Clause 4.7.7 (iv). Reading of show-cause notice alongwith the Clauses of Purchase Manual of Coal India Limited, we do not find any error on the part of the

1st Respondent in issuing the show-cause notice and taking action under Clause 4.7.7 (iv) for banning business with the petitioner's firm by the 1st Respondent. The reason assigned in Annexure P-1 is falling under the Clause of Purchase Manual mentioned in the show-cause notice. The charges/ allegations made in the show-cause notice have not been satisfied by the petitioner by producing any reliable documents, particularly, when the petitioner failed to produce certificate/ licence to run a manufacturing unit of Tensile Plastic Net.

13. Taking into consideration the grounds raised by the learned counsel for the petitioner, we have afforded an opportunity to him to satisfy and make out the ground that the petitioner was engaged in the manufacturing process of Tensile Plastic Net, but, in our opinion, petitioner failed to produce any acceptable document showing his engagement of manufacturing of Tensile Plastic, particularly, in the light of the inspection report. The petitioner has mentioned in its reply dated 22-05-2019 (Annexure P-5) with regard to issuance of the letter by NSIC elucidating the status of manufacturer of Tensile Plastic Net, but the said letter has not been placed on record in the writ petition. The action under Annexure P-1 for banning the petitioner from all the business dealings has been issued after issuing show-cause notice in detail. The challenge/ allegation and also the proposed action to be taken against him, the order has been passed after affording opportunity of hearing to the petitioner making the allegations in detail with the relevant provisions of Purchase Manual, based on the area committee report submitted after physical verification of the factory could not be said that the notice was issued with a closed mind, particularly, when the visit of the committee of high officials to the factory was not disputed and no allegation of malafide has been levelled against them.

14. The case law of the Hon'ble Supreme Court relied upon by the learned counsel for the petitioner is concerned, it is the law on the facts of those cases. The only thing is whether it applies squarely in the facts of the case or not? In the case at hand, facts are that the petitioner shown himself to be manufacturer of Tensile

Plastic. Complaint received against two of giving false information. The information of the petitioner that he is manufacturer of Tensile Plastic was enquired by High Rank Officials by inspecting the factory site address supplied by the petitioner and it was found that there was no Manufacturing Unit available. The petitioner has not said that the site visited or inspected is of some other factory address and no allegation of malafide is made against the members of the inspecting team. True it is that the employer should keep open his mind and to decide it only after reply of the bidder/ noticee. Show-cause notice was issued calling explanation. After considering the reply, respondents passed impugned order. We, at the time of hearing, gave time to substantiate the ground raised by learned counsel for the petitioner to show this Court that they are manufacturer and having manufacturing unit of Tensile Plastic. But in the facts of the case petitioner failed to place any convincing material before us that there is some confusion on the report of the inspecting committee/team or it is not correct. We are not inclined to interfere with the decision taken by the respondents, in an extraordinary writ jurisdiction.

15. In the aforementioned facts and circumstances of the case, we are of the view that the case law relied upon by the learned counsel for the petitioner is not of any help to him.

16. In view of the above discussions, we do not find any substance in the writ petition which is liable to be and is hereby dismissed accordingly.

Sd/-
(P.R. Ramachandra Menon)
 Chief Justice

Sd/-
(Parth Prateem Sahu)
 Judge