

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7782 of 2021

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Espan Infrastructure(I) Limited Earlier known as Espan Infrastructure Ltd. a company registered under the companies Act, having its Registered Office at B-405, Second Floor, Nirman Vihar, Delhi-110092, At present registered at Pocket-E, Mayur Vihar Phase-II, Delhi-110091 through its Authorized Signatory Animesh Verma (aged about 38 years) (Male) son of Shri Pramod Kumar Verma, Resident of 4/444 G-2, Sector 4, Vaishali, Vasundhara, P.S.-Indirapuram, Ghaziabad, Dist-Ghaziabad (Uttar Pradesh)-201010.

... .. Petitioner/s

Versus

1. The State of Bihar Department of Road Construction, Visheshwaria Bhavan, Bihar, Patna-800001 through its Principal Secretary.
2. The Principal Secretary, Department of Road Construction, Government of Bihar, Visheshwaria Bhavan, Bihar, Patna-800001
3. The Engineer-in-Chief -cum- Additional Commissioner -cum- Special Secretary Department of Road Construction, Government of Bihar, Visheshwaria Bhavan, Bihar, Patna-800001
4. The Chief Engineer Department of Road Construction, Government of Bihar, NH Division, Patna-800001.
5. The Executive Engineer Department of Road Construction, Government of Bihar, NH Division, Chapra.
6. The Assistant Engineer Department of Road Construction, Government of Bihar, NH Division, Chapra.
7. The Junior Engineer Department of Road Construction, Government of Bihar, NH Division, Chapra.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Y. V. Giri, Sr. Adv. Mr. Pranav Kumar
For the Respondent/s	:	Mr. Dinesh Maharaj, AC to AAG 11

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

JUDGMENT AND ORDER

C.A.V.

Date : 23-09-2021

The petitioner has filed the present writ application for quashing the order, dated 06.01.2021, as contained in Annexure 25 to the writ application, passed by the Principal Secretary, Road

Construction Department, Government of Bihar, whereby the appeal filed by the petitioner, challenging the order, dated 21.12.2018, passed by the Engineer-in-Chief, Road Construction Department, as contained in Annexure 10 to the writ application, has been dismissed and the decision of the Engineer-in-Chief, dated 21.12.2018, has been affirmed, by which the petitioner company has been blacklisted for ten years.

2. The petitioner has challenged the original order of blacklisting, dated 21.12.2018, passed by the Engineer-in-Chief, Road Construction Department, by way of interlocutory application, being I. A. No. 01 of 2021.

3. The brief facts, giving rise to the present writ application, is that the petitioner company is registered by the Road Construction Department, Government of Bihar, as a Class-I contractor and pursuant to the Notice Inviting Tender (NIT), dated 22.08.2016, issued by the Executive Engineer, Chapra, for periodical repair work in KM 45.00 to KM 65.00 of NH 101 for the year 2016-17 for the estimated cost of Rs. 541.61 lacs, the petitioner company was awarded the aforesaid contract work with condition to complete the same within a period of five months from the date of execution of the agreement. The agreement between the parties was executed on 28.02.2017, in which the date

for starting the contract work was fixed with effect from 16.01.2017.

4. As per Clause 17 (b) of the Special Condition of Contract, the bitumen for the contract work was to be procured only from the Government of India undertaking oil company and since the Barauni Refinery of the Indian Oil Company Limited was having scarcity of bitumen and the contract work was to be completed within a period of five months, therefore, the petitioner requested the Executive Engineer, NH Division, Chapra, vide its letter, dated 21.01.2017, for procurement of bitumen from Mathura Refinery of the Indian Oil Company Limited, stating therein that the petitioner would bear the additional cost of transportation of the bitumen from the Mathura Refinery.

5. Further case of the petitioner is that the work awarded to the petitioner company was completed within the time specified under the agreement and soon thereafter, there was heavy rainfall in the area, due to which the road constructed by the petitioner company got submerged in the flood up to 20 KM. As a result of the same, at some patch of the road, pot holes had developed, for which the respondents issued letter to the petitioner company and in compliance of the same, the petitioner company repaired the entire pot holes and also informed the Executive Engineer, NH

Division, Chapra, vide letter, dated 16.10.2017, that the pot holes were filled up and the damaged portion of the road was also repaired. The Assistant Engineer, State Highway Division, Chapra, vide letter, dated 24.10.2017, informed the Executive Engineer, NH Division, Chapra, that the damaged road, including the pot holes, due to the flood, between KM 45 to KM 65, was repaired by the petitioner company and the same was inspected on 24.10.2017 itself, in presence of the Junior Engineer.

6. It has further been stated that as per Clause 17 (h) of the Special Condition of Contract, in case of any dispute, in either procurement or specification of the bitumen, the decision of the concerned Superintending Engineer shall be final and binding and the Superintending Engineer or the Engineer-in-Charge never raised any dispute with regard to procurement of bitumen from Mathura Refinery or about its specification and in order to deny the payment of the running bill/final bill of the petitioner company, a show cause was issued by the Executive Engineer, NH Division, Chapra, vide letter no. 85, dated 05.02.2018, stating therein that several reminders were issued to the petitioner company for supply of the documents regarding purchase of bitumen and it was informed that out of 31 procurement numbers, only 10 was found correct by the Indian Oil Company Limited, Patna, and rest 21

procurement numbers were false, and, accordingly, asked the petitioner company to submit its explanation regarding the apparent illegality in procurement of bitumen and further to withhold the running account bill no. 3 and to impose penalty.

7. In reply to the said show cause, the petitioner company submitted letter, dated 06.02.2018, stating therein that the 21 procurement numbers, found to be false by the Indian Oil Company Limited, Patna, seems to be erroneous as the Mathura Refinery of the Indian Oil Company Limited, vide letter, dated 01.09.2017, has confirmed the purchase of bitumen by the petitioner company.

8. The petitioner company completed the contract work on 15.06.2017 itself and the final measurement was also done by the respondent authorities. Therefore, the petitioner company, vide letter dated 14.02.2018, requested the Executive Engineer, NH Division, Chapra, for payment of final bill, amounting to Rs. 199.46 lacs and also to pay Rs. 29.87 lacs incurred by the petitioner company over repairing of the road damaged due to flood.

9. Instead of making payment of running account bill/final bill, the Engineer-in-Chief, Road Construction Department, issued a show cause to the petitioner company, vide

letter no. 3290, dated 15.05.2018 (Annexure 17), stating therein that as per the agreement, the petitioner company was required to procure bitumen from the Indian Oil Company Limited, Patna, but the same was procured from Mathura Refinery of the Indian Oil Company Limited, and out of 31 procurement numbers, only 10 procurement numbers were found to be correct and, accordingly, directed the petitioner company to submit its explanation within a period of fifteen days as to why action should not be taken against it in terms of the Bihar Contractor Registration Rules, 2007 (in short, '2007 Rules').

10. The petitioner company submitted its reply to the show cause, vide letter, dated 26.05.2018 (Annexure 18), stating therein that the entire issue had already been replied by the petitioner company previously to the Executive Engineer, who has himself admitted that the Mathura Refinery of the Indian Oil Company Limited has confirmed the purchase of bitumen by the petitioner company, but despite the same, the show cause has been served upon the petitioner company just to harass and delay the payment of final bill. The petitioner company has brought on record by way of Annexure 19, the bank statement showing the payments made by the petitioner company to the Mathura Refinery for procurement of bitumen and stated that many documents,

including the challans, were damaged at the project site due to flood. It is the further case of the petitioner company that the respondents were satisfied with the quality and quantity of bitumen and at no point of time, they had raised any kind of objection regarding the procurement of bitumen.

11. The respondent no. 3, without considering the reply to the show cause filed by the petitioner company, passed the impugned order, vide Memo No. 8878, dated 24.12.2018, by which the petitioner company was blacklisted for a period of ten years, under Clause 11 (ka) of the 2007 Rules.

12. Being aggrieved by the order, dated 24.12.2018, the petitioner company filed CWJC No. 7712 of 2012, challenging the said order of blacklisting and vide order dated 10.12.2020, this Court, taking into account the entire facts, referred the matter to the appellate authority, i.e. the Principal Secretary, Road Construction Department, Government of Bihar, to hear the appeal of the petitioner company against the order of blacklisting and further directed that if the petitioner company files an appeal within a period of fifteen days, the appellate authority shall consider all aspect of the matter keeping the law of blacklisting in mind and shall pass a reasoned order within a period of two

months from the date of filing of the appeal by the petitioner company.

13. Thereafter, the petitioner company, in compliance of the order, dated 10.12.2020, passed by this Court, in CWJC No. 7712 of 2020, filed an appeal on the same date, i.e. on 10.12.2020, before the Principal Secretary, Road Construction Department, Government of Bihar, and on the appointed date of hearing, i.e. on 06.01.2021, the representative of the petitioner company requested for time on the ground of illness of the director of the petitioner company and prayed that any other date may be fixed so that the director of the petitioner company may represent with all the relevant facts and documents. However, the said request was rejected and on 06.01.2021, the Principal Secretary, Road Construction Department, Government of Bihar, passed the impugned order, rejecting the appeal and issued the copy of the said order through memo No. 394, dated 19.01.2021, under the signature of the Engineer-in-chief. While passing the impugned order, none of the grounds, raised in the appeal, has been considered or discussed and the appellate authority dismissed the appeal without giving an opportunity of hearing to the petitioner company.

14. A counter affidavit has been filed by the respondent-State, stating therein that in order to verify the challans, the Executive Engineer, NH Division, Chapra, vide letter no. 896, dated 04.12.2017, made a request to the Regional Manager, Marketing Division, Patna Divisional Office, Indian Oil Company Limited, Patna, stating therein that the petitioner company had submitted 31 challans, issued from the Mathura Refinery of the Indian Oil Company Limited and had requested for verification of the said challans and in response to the said request, the Deputy General Manager, Marketing Division, Patna Divisional Office, Indian Oil Company Limited, Patna, vide letter, dated 08.12.2017, informed that out of 31 challans, 21 challans were not issued by the Mathura Refinery of the Indian Oil Company Limited, which is contrary to the claim of the petitioner company. It has further been stated that the Engineer-in-chief, Road Construction Department, Government of Bihar, vide letter no. 2173, dated 04.03.2020, directed the Executive Engineer, NH Division, Chapra, to lodge First Information Report against the petitioner company for the submission of forged challans to claim payment of bill and, accordingly, First Information Report was lodged against the petitioner company, being Town Police Station Case No. 235 of 2020, for the offences punishable under Sections

420/467/468/471 of the Indian Penal Code. It has further been stated that a show cause was issued to the petitioner company on 15.05.2018 and after taking into consideration the reply to the show cause, the respondent no. 3 passed the impugned order, dated, 06.01.2021. It has further been stated that vide letter dated 31.12.2020, the petitioner company was given ample time of six days to appear and present his case, but no communication was made between 31.12.2020 and 06.01.2021, from the side of the petitioner company for adjournment and accordingly, on 06.01.2021, the impugned order was passed.

15. Rejoinder to the counter affidavit has been filed by the petitioner denying the statement made by the respondents in its counter affidavit and further reiterated its stand taken in the writ application.

16. Learned Senior Counsel appearing on behalf of the petitioner company, in support of the writ application, argued that in the show cause, the proposed punishment to be taken against the petitioner company has not been mentioned inasmuch as various punishments are prescribed in the 2007 Rules and which punishment the authority proposes to impose upon the petitioner company is required to be indicated in the show cause. He further submits that from the plain reading of the show cause, it is evident

that the action of blacklisting has neither been proposed nor it could be inferred from the language of the show cause. He relies upon the judgment of the Supreme Court, in the case of **UMC Technologies Private Limited v. Food Corporation of India and Another**, reported in **(2021) 2 SCC 551**, in support of his argument that the proposed action must be mentioned in the show cause in the case of blacklisting. He also relies on the judgment of the Supreme Court, in the case of **Gorkha Securities Services v. Stawte (NCT of Delhi)**, reported in **(2014) 9 SCC 105**, and submitted that the purpose of the show cause is primarily to enable the noticee to meet the ground of which the action is proposed against the petitioner company.

17. Referring to the show cause, learned Senior Counsel submitted that the show cause does not state that he challans were forged and also does not allege that the work executed by the petitioner company was sub-standard; whereas, the impugned order has been passed on the ground that forged challans were submitted by the petitioner company and the quality of the work executed by the petitioner company was found to be sub-standard/very bad. He further submitted that the Assistant Engineer, vide letter dated 20.10.2017, has confirmed that the pit holes has been rectified by the petitioner company. He also

submitted that the impugned order is in violation of principle of natural justice, cryptic, non-speaking and has been passed in contravention of the direction of this Court, passed, on 10.12.2020, in CWJC No. 7712 of 2020 and without considering the reply to the show cause submitted by the petitioner company. He relies upon paragraphs 14 and 19, along with other paragraphs of the order dated 10.12.2020, passed in CWJC No. 7712 of 2020. He also submitted that the appellate authority, i.e. respondent no. 2, has failed to consider the fact that the blacklisting for a period of ten years is disproportionate and the same is not supported by any reasoning. He relied on the decisions of the Supreme Court, in the cases of **UMC Technologies Private Limited** (supra), **State of Rajasthan and Others v. Ramesh Chandra Mundra and Others**, reported in **2019 ONLINE SCC 1670**, **Kulja Industries Limited v. Chief General Manager, Western Telecom Project, Bharat Sanchar Nigam Limited and Others**, reported in **(2014) 14 SCC 231** and **M/s Cobra Industrial Security Forces (India) Ltd. v. State of Bihar and Other**, reported in **2020 BLJ 4 487**.

18. Per contra, learned Counsel for the State argued that after the work period for the construction of the road was over, the Superintending Engineer, NH Circle, Muzaffarpur, along with others, had inspected the road on 08.06.2017, wherein he had

found certain defects in the construction work, which were reported and in support of his argument, he referred the inspection report of the Superintending Engineer, at page 338 of this writ application (part of counter affidavit filed by the respondents).

19. On query made by this Court, learned Counsel for the State submitted that the inspection report was not part of the show cause served upon the petitioner company.

20. I have heard learned Counsel for the parties concerned and have carefully gone through the materials available on record.

21. The petitioner company had earlier approached this Court by way of filing CWJC No. 7712 of 2020, challenging the order of blacklisting for ten years, dated 24.12.2018 and this Court, by order, dated 10.12.2020, directed the appellate authority to consider all aspect of the matter keeping the law of blacklisting in mind and to pass a final reasoned order. This Court has observed and held, in paragraphs 10, 14, 18, 19, 20, 24 to 28, as follows:

“10. In response to the aforesaid charge, the petitioner clearly intimated that since the Bitumen was procured from Mathura Refinery, which had confirmed the supply of Bitumen, any statement issued by the Patna IOCL regarding some of the challans being fake, cannot be accepted. In support of the claim of the petitioner that the Bitumen was

procured from Mathura Refinery, the authorities were made known and were provided with the bank statement regarding payment by the petitioner to the Mathura Refinery for procurement of Bitumen. This, in the estimation of the petitioner, clinched the issue with respect to procurement of Bitumen and the issue ought to have been set at rest at that point. But without considering the aforesaid issues, by the impugned order dated 24.12.2018 issued by the Engineer in Chief, the petitioner company has been blacklisted for a period of ten year under clause 11(Ka) of Bihar Contractor Registration Rules, 2007 (hereinafter referred to as the “rules”).

14. However, there is no reply/response with respect to the assertion of the petitioner that Mathura Refinery was paid by the petitioner, which payment was confirmed by the bank statement and that the Patna IOCL office would not be in a position to comment on the genuineness of the challans issued by the Mathura Refinery.

18. However, lodging of the F.I.R or conclusion of investigation would be a different matter but the issue here is with respect to blacklisting the petitioner company for ten years.

19. The penalty of blacklisting and its consequences have been very aptly formulated in **Erusian Equipment & Chemicals Ltd. Vs. State of West Bengal and Anr. (1975) 1 SCC 70**. In the aforesaid case, it was held that the order of blacklisting has the effect of depriving a person of

equality of opportunity in the matter of public contract. Nobody may have a right to enter into contract with the Government or Government Agencies but everyone is entitled to equal treatment with others, who offer tender or quotations for the work. The State has complete freedom to enter into any contract with anyone but if it does so, it must do so fairly, without discrimination and without unfair procedure. The reputation is a part of person's character and personality. Blacklisting tarnishes one's reputation. It has the effect of preventing a person/company from the privilege and advantage of entering into lawful relationship with the Government for the purposes of gains. The fact that the disability is created by the order of blacklisting indicates that the relevant authority is to have an objective satisfaction. Fundamentals of fair play would require that a person concerned should be given an opportunity to represent his case before he is put on blacklist (also refer to **Patel Engineering Ltd. Vs. Union of India 2012 (11) SCC 257; Kulja Industries Ltd. Vs. Chief General Manager, Western Telecom Project, BSNL 2014 (14) SCC 731; Southern Painters vs. Fertilizers and Chemicals Travancore Ltd. 1994 Supl. (2) SCC 699; B.S.N. Joshi & Sons vs. Nair Cole Services Ltd. 2006 (11) SCC 548**) etc.

20. In **Daffodils Pharmaceuticals Ltd. & Anr. vs. State of U.P. & Anr 2019 (12) JT 283; UMC Technologies Pvt. Ltd. vs. Food Corporation of India, Civil Appeal No. 3687 of 2020; Raghunath**

Thakur vs. State of Bihar 1989 (1) SCC 229; Gorkha Securities Services vs. NCT of Delhi 2014 (9) SCC 105 also, the same principle has been reiterated.

24. It is also required to be noted that in Daffodils Pharmaceuticals (supra), the Supreme Court has observed that an order of blacklisting beyond three years or maximum of five years is disproportionate.

25. In this background of legal position, the debarment /blacklisting of the petitioner company for ten years appears to be rather harsh, vindictive and does reflect malafides.

26. There is no explanation whatsoever regarding the justification of accepting the report of the Patna IOCL regarding the genuineness of challans issued by the Mathura Refinery.

27. Normally, this Court would have quashed the order of blacklisting of ten years for the alleged misdemeanor of furnishing fake challans, which allegation does not seem to have been proved even reasonably, but regard being had to the fact that an F.I.R. has been registered against the petitioner company with respect to such procurement, I am not inclined to remit the matter to the authority which has blacklisted the petitioner company for reconsideration.

28. The interest of justice and of the petitioner would be better sub-served if a direction is issued to the Appellate Authority, namely, the

Departmental Secretary to hear the appeal against the order of blacklisting, should such an appeal be filed within a period of fifteen days and if need be, a personal hearing be given to the petitioner and only after taking the entire circumstances to be put forth by the petitioner and taking into account the position of law as adumbrated above, a reasoned order be passed within a limited time frame, say two months from the date of receipt of such appeal, without raising any objection with respect to delay in preferring the appeal and communicating the same to the petitioner.”

22. In UMC Technologies Private Limited (supra), the Supreme Court has held, in paragraphs 13, 14, 19, 20, 21 and 25, as follows:

“13. At the outset, it must be noted that it is the first principle of civilised jurisprudence that a person against whom any action is sought to be taken or whose right or interests are being affected should be given a reasonable opportunity to defend himself. The basic principle of natural justice is that before adjudication starts, the authority concerned should give to the affected party a notice of the case against him so that he can defend himself. Such notice should be adequate and the grounds necessitating action and the penalty/action proposed should be mentioned specifically and unambiguously. An order travelling beyond the bounds of notice is impermissible and without jurisdiction to that extent. This Court in Nasir

Ahmad v. Assistant Custodian General, Evacuee Property, Lucknow and Anr., reported in (1980) 3 SCC 1, has held that it is essential for the notice to specify the particular grounds on the basis of which an action is proposed to be taken so as to enable the noticee to answer the case against him. If these conditions are not satisfied, the person cannot be said to have been granted any reasonable opportunity of being heard.

14. Specifically, in the context of blacklisting of a person or an entity by the state or a state corporation, the requirement of a valid, particularized and unambiguous show cause notice is particularly crucial due to the severe consequences of blacklisting and the stigmatization that accrues to the person/entity being blacklisted. Here, it may be gainful to describe the concept of blacklisting and the graveness of the consequences occasioned by it. Blacklisting has the effect of denying a person or an entity the privileged opportunity of entering into government contracts. This privilege arises because it is the State who is the counterparty in government contracts and as such, every eligible person is to be afforded an equal opportunity to participate in such contracts, without arbitrariness and discrimination. Not only does blacklisting takes away this privilege, it also tarnishes the blacklisted person's reputation and brings the person's character into question. Blacklisting also has long-lasting civil consequences

for the future business prospects of the blacklisted person.

19. In light of the above decisions, it is clear that a prior show cause notice granting a reasonable opportunity of being heard is an essential element of all administrative decision-making and particularly so in decisions pertaining to blacklisting which entail grave consequences for the entity being blacklisted. In these cases, furnishing of a valid show cause notice is critical and a failure to do so would be fatal to any order of blacklisting pursuant thereto.

20. In the present case, the factum of service of the show cause notice dated 10.04.2018 by the Corporation upon the appellant is not in dispute. Rather, what Shri Banerji has argued on behalf of the appellant is that the contents of the said show cause notice were not such that the appellant could have anticipated that an order of blacklisting was being contemplated by the Corporation. Gorkha Security Services (supra) is a case where this Court had to decide whether the action of blacklisting could have been taken without specifically proposing/contemplating such an action in the show-cause notice. For this purpose, this Court laid down the below guidelines as to the contents of a show cause notice pursuant to which adverse action such as blacklisting may be adopted:

“Contents of the show-cause notice

21. The central issue, however, pertains to the requirement of stating the

action which is proposed to be taken. The fundamental purpose behind the serving of show-cause notice is to make the noticee understand the precise case set up against him which he has to meet. This would require the statement of imputations detailing out the alleged breaches and defaults he has committed, so that he gets an opportunity to rebut the same. Another requirement, according to us, is the nature of action which is proposed to be taken for such a breach. That should also be stated so that the noticee is able to point out that proposed action is not warranted in the given case, even if the defaults/breaches complained of are not satisfactorily explained. When it comes to blacklisting, this requirement becomes all the more imperative, having regard to the fact that it is harshest possible action.

22. The High Court has simply stated that the purpose of show-cause notice is primarily to enable the noticee to meet the grounds on which the action is proposed against him. No doubt, the High Court is justified to this extent, However, it is equally important to mention as to what would be the consequence if the noticee does not satisfactorily meet the grounds on which an action is proposed. To put it otherwise, we are of the opinion that in order fulfil the

requirements of principles of natural justice, a show-cause notice should meet the following two requirements viz:

(i) The material/grounds to be stated which according to the department necessitates an action;

(ii) Particular penalty/action which is proposed to be taken. It is this second requirement which the High Court has failed to omit.

We may hasten to add that even if it is not specifically mentioned in the show-cause notice but it can clearly and safely be discerned from the reading thereof, that would be sufficient to meet this requirement.”

21. Thus, from the above discussion, a clear legal position emerges that for a show cause notice to constitute the valid basis of a blacklisting order, such notice must spell out clearly, or its contents be such that it can be clearly inferred therefrom, that there is intention on the part of the issuer of the notice to blacklist the noticee. Such a clear notice is essential for ensuring that the person against whom the penalty of blacklisting is intended to be imposed, has an adequate, informed and meaningful opportunity to show cause against his possible blacklisting.

25. The mere existence of a clause in the Bid Document, which mentions blacklisting as a bar against eligibility, cannot satisfy the mandatory requirement of a clear mention of the proposed action

in the show cause notice. The Corporation's notice is completely silent about blacklisting and as such, it could not have led the appellant to infer that such an action could be taken by the Corporation in pursuance of this notice. Had the Corporation expressed its mind in the show cause notice to black list, the appellant could have filed a suitable reply for the same. Therefore, we are of the opinion that the show cause notice dated 10.04.2018 does not fulfill the requirements of a valid show cause notice for blacklisting. In our view, the order of blacklisting the appellant clearly traversed beyond the bounds of the show cause notice which is impermissible in law. As a result, the consequent blacklisting order dated 09.01.2019 cannot be sustained.”

23. In the case of **Tarlochan Dev Sharma v. The State of Punjab**, reported in **(2001) 6 SCC 260**, the Supreme Court, in paragraphs 12 and 13, has held as under:

“12. One of the requirements of the principles of natural justice, as incorporated in second proviso to Section 22, is that the reasons for the proposed removal have to be communicated to the person proceeded against. The purpose of such communication is to enable him to furnish an explanation of his conduct or his act or omission which is likely to be construed as an abuse of power. It is clear that the facts constituting gravamen of the charge have to be communicated. It follows as a

necessary corollary therefrom that what has not been communicated or not relied on in the show cause notice as a ground providing reason for the proposed removal cannot be relied upon as furnishing basis for the order of removal. The person proceeded against under Section 22 of the Act has to be made aware of the precise charge which he is required to meet and therefore he must be apprised of the exact content of the abuse of power attributed to him. The authority taking decision must apply its mind also to the explanation furnished by the person proceeded against and this must appear from the order passed under Section 22.

13. The show cause notice alleged only this much that the Municipal Council had purchased a fogging machine of which payment was to be made but the appellant (as President of the Municipality) instructed the Executive Officer not to make the payment and this resulted in the working of the Municipal Council having been obstructed. The finding arrived at in the impugned order dated 1.10.1999 is different. There is no finding arrived at that the working of the Municipal Council was in any manner obstructed by the appellant having instructed the Executive Officer not to make the payment. The specific stand taken by the appellant in his reply was that the machine had certain inherent defects and was not working properly and hence it was on the advice of the Municipal Council that the appellant had desired the payment not to be made. The finding as to

abuse of power is based mainly on the fact that the Executive Officer had prepared a cheque and signed the same on 20.11.1998 and yet the cheque was not presented to the bank resulting in delayed payment to the supplier of the fogging machine. The impugned order also states that the cheque was kept by the appellant in his custody for over two months. These events are subsequent to the date of the show cause notice, i.e. 19.8.1998 as also to the date of appellants reply i.e. 8.9.1998. Thus, briefly stated, the content of abuse of power, as stated in the notice dated 19.8.1998 was-asking the Executive Officer not to make payment while the order dated 1.10.1999 is founded on a subsequent event that in spite of the Executive Officer having prepared and signed the cheque on 20.11.1998, the appellant detained the cheque in his custody for about two months resulting payment being delayed and this amounted to abuse of power. There is no finding recorded in the impugned order that the explanation furnished by the appellant was factually incorrect. A President is supposed to act in the best interests of the Municipality which he is heading. In spite of fogging machine worth lakhs having been found by the Executive Officer to be okay in its trial run, if the President was informed of the machine having certain inherent defects, there was nothing wrong in his asking the Executive Officer not to make the payment unless he was satisfied that the machine was fit for the purpose for which it was being purchased, all the more, when the

funds for purchasing the machine were made available to the Municipality by the District Planning Board. Even accepting the allegations made against the appellant, as contained in the show cause notice, to be correct, his decision to withhold the payment may be said to be an erroneous or unjust decision. For this reason alone the appellant cannot be said to be guilty of an abuse of his powers. If anyone suffered by delay in payment it was the supplier and not the Municipality. There is nothing in the show cause notice or the ultimate order to hold how the act of appellant had obstructed the working of Municipal Council or was against the interest of council. We are, therefore, clearly of the opinion that not only the principles of natural justice were violated by the factum of the impugned order having been founded on grounds at variance from the one in the show cause notice, of which appellant was not even made aware of let alone provided an opportunity to offer his explanation, the allegations made against the appellant did not even prima facie make out a case of abuse of powers of President. The High Court was not right in forming an opinion that the appellant was persuading the High Court to judicially review like an appellate court the finding arrived at by the competent authority. The present one is a case where the impugned order is vitiated by perversity. A conclusion of abuse of powers has been drawn from such facts wherefrom such conclusion does not even prima facie flow. The impugned order is based on

non-existent grounds. It is vitiated by colourable exercise of power and hence liable to be struck down within the well settled parameters of judicial review of administrative action.”

(Emphasis is mine)

24. It is settled principle of natural justice that before passing the order of blacklisting, which entails severe civil consequences, the person concerned against whom the action is proposed is required to be given the reasonable opportunity to defend himself and as held in **UMC Technologies Private Limited** (supra), the notice/show cause must contain, particularly the penalty/action, which is proposed to be taken should be mentioned specifically and unambiguously.

25. From perusal of the show cause issued to the petitioner company, it appears that it required the petitioner company to submit his explanation/reply as to why the disciplinary action be not taken against it for submitting forged documents in execution of the contract work under the provisions of the 2007 Rules and under the relevant clauses of the agreement.

26. In the said show cause, the exact provisions of the 2007 Rules and/or relevant clause(s) of the agreement, relating to the blacklisting has not been mentioned and upon bare reading of the show cause, it is evident that the action of blacklisting was

neither proposed nor could have been inferred from the language implied by the respondents in show cause inasmuch as various other punishments and action is prescribed in the 2007 Rules. Since the blacklisting has the effect of denying a person the opportunity of entering into Government contracts and also has civil consequences, as such, the respondents are obliged under the law to serve an unambiguous show cause, clearly expressing the proposed intention of blacklisting. Further, I find that the show cause does not talk about any allegation against the petitioner company that the work executed by it was sub-standard or the quality was very bad, but the impugned order passed by respondent no. 2 has travelled beyond the show cause and the same is based on the ground at variance from the ground mentioned in the show cause inasmuch as the appellate authority while rejecting the appeal of the petitioner company, has come to the conclusion that the work executed by it was also found to be sub-standard.

27. This Court, in CWJC No. 7712 of 2020, while observing that there is no explanation whatsoever regarding the justification of accepting the report of the Deputy General Manager, Marketing Division, Indian Oil Company Limited, Patna, to the genuineness of the challans, issued by the Mathura

Refinery of the Indian Oil Company Limited and this Court would have quashed the order of blacklisting of ten years for alleged misdemeanors of fake challans, which allegation does not seem to have been proven even reasonably, but regard being had to the fact that the First Information Report has been registered against the petitioner company with respect to such procurement, directed the appellate authority, i.e. respondent no. 2 to hear the appeal against the order of blacklisting and to decide the same after taking the entire circumstances to be put forth by the petitioner and taking into account the position of law as adumbrated in the said order and to pass a reasoned order within a limited time frame. Despite the clear cut mandate given to the appellate authority by this Court, in CWJC No. 7712 of 2020, for deciding the appeal by a reasoned order, the appellate authority passed the impugned order giving a one-liner reason that in course of hearing, it has been proved that during the execution of work, the forged challans were submitted relating to the procurement of bitumen from the Mathura Refinery of the Indian Oil Company Limited and further the quality of the work was very bad, and accordingly dismissed the appeal.

28. From perusal of the impugned order, it is clear that before arriving at the aforesaid finding, the appellate authority

failed to take into consideration the reply to the show cause submitted by the petitioner company and further the grounds taken by it in the appeal and also did not furnish any reason in support of the finding arrived at by him. It is well settled by now that administrative/quasi-judicial authority must record reasons for its decision.

29. Furthermore, I find that in the show cause issued by the respondents, it has specifically been mentioned at paragraph 2 that at the beginning for the purpose of procurement of bitumen, a letter was issued to procure the same from the authorized oil company of the Government, at Patna, but the petitioner company, taking the plea of shortage of bitumen, procured the bitumen from the Mathura Refinery in the interest of work and completed the same. However, without taking into consideration the defence of the petitioner company in its reply to the show cause, the memo of appeal and the bank statement produced by the petitioner company, in order to show that payments were made to the Mathura Refinery at the time of procurement of bitumen, the respondent no. 2 passed a non-speaking, cryptic one liner order.

30. Accordingly, I have no hesitation in holding that the impugned order reflects a complete non-application of mind to the facts and the relevant law on the point, which this Court, while

referring the matter to the Principal Secretary, Road Construction Department, Government of Bihar, had directed him to consider. To say the least, the manner in which the impugned order has been passed is not what is expected to be done by a senior officer, in the present case, the Principal Secretary, Road Construction Department, Government of Bihar.

31. From the above discussion, on facts as well as on law, I come to the conclusion that the show cause issued by the respondents did not mention clearly about its intention to blacklist the petitioner company, and as such, the said show cause cannot be considered to be a show cause as per law and accordingly cannot constitute a valid basis of blacklisting order. I also come to the conclusion that the ground taken in the impugned order passed by the appellate authority is at variance from the one mentioned in the show cause and, as such, the same is impermissible in law and is violative of principle of natural justice. The order impugned is also not sustainable on the ground that the same is cryptic, non-speaking and is not a reasoned order.

32. Accordingly, the impugned orders, passed by the appellate authority-respondent no. 2, dated 06.01.2021 and the respondent no. 3, dated 24.12.2018, respectively, blacklisting the

petitioner company for ten years, are unsustainable in law and the same are hereby quashed.

33. This writ application is allowed.

34. However, there shall be no order as to costs.

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

AFR/NAFR	AFR
CAV DATE	24-08-2021
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