

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 2542 of 2021

- Navneet Rahul Shukla S/o Shri Gendlal Shukla, Aged About 30 Years, R/o C-402, C Block, Anant Imagine Society, Old Bus Stand Korba, Chhattisgarh., District : Korba, Chhattisgarh

---- Petitioner

Versus

1. Commissioner, Municipal Corporation, Korba, Chhattisgarh., District : Korba, Chhattisgarh
2. Mayor Municipal Corporation, Korba, District- Korba, Chhattisgarh., District : Korba, Chhattisgarh

---- Respondents

For Petitioner – Mr. Anshul Tiwari, Advocate.

For Respondents – Mr. P. Acharya, Advocate.

For State – Ms. Astha Shukla, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

29-11-2021

1. The petitioner is before this Court challenging the impugned order dated 05-09-2018 (Annexure-P/1) by which the petitioner has been permanently blacklisted by the respondents.

2. It is submitted that the petitioner is a contractor as well as general order supplier. The petitioner participated in the tender process for construction of graveyard and his bid being lowest, a letter of intent was issued to him on 29-01-2018 (Annexure-P/3). The petitioner was served with notices to complete the formalities for execution of agreement and thereafter, by the impugned order dated 05-09-2018 he has been permanently barred from participating in tender processes in future.

It is submitted that the order of the respondent authorities is discriminatory as other contractors who were similarly placed and who failed to comply the formalities for execution of agreement, they have not been debarred. It is further submitted that the impugned order by which the petitioner has been blacklisted is discriminatory as compared to the order passed by the respondent authorities vide Annexure-P/9 for another contractor Shri Dilip

Kumar Dash. The petitioner was never granted any opportunity of hearing. Therefore, the order is unsustainable which may be quashed.

3. Learned counsel for the respondents opposes the submission and submits that the petitioner was aware of all the circumstances present and the petitioner is habitual in such activities. The respondents have acted exercising the authority available to them. Therefore, there is no error in passing the impugned order.

4. Heard learned counsel for the parties and perused the documents.

5. Considered on the submissions. There is no such statement or any averment from the respondent side that the petitioner was granted any opportunity of hearing before the order of permanent blacklisting was passed against him vide Annexure-P/1. In the case of **Gorkha Security Services Vs. Government (NCT of Delhi) and others**, (2014) 9 SCC 105 Hon'ble the Supreme Court has held in paragraph No.30 that :-

“30 We are conscious of the following words of wisdom expressed by this Court through the pen of Krishna Iyer, J. in Board of Mining Examination v. Ramjee, (1977) 2 SCC 256 : (SCC pp. 258 & 262, paras 1, 13 & 14)

“1. If the jurisprudence of remedies were understood and applied from the perspective of social efficaciousness, the problem raised in this appeal would not have ended the erroneous way it did in the High Court. Judges must never forget that every law has a social purpose and engineering process without appreciating which justice to the law cannot be done. Here, the socio-legal situation we are faced with is a colliery, an explosive, an accident, luckily not lethal, caused by violation of a regulation and consequential cancellation of the certificate of the delinquent shot-firer, eventually quashed by the High Court, for processual solecisms, by a writ of certiorari.

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13. Natural justice is no unruly horse, no lurking landmine, nor a judicial cure-all. If fairness is shown by the decision-maker

to the man proceeded against, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice, without reference to the administrative realities and other factors of a given case, can be exasperating. We can neither be finical nor fanatical but should be flexible yet firm in this jurisdiction. No man shall be hit below the belt – that is the conscience of the matter.

14.we cannot look at law in the abstract or natural justice as a mere artefact. Nor can we fit into a rigid mould the concept of reasonable opportunity.”

31. When it comes to the action of blacklisting which is termed as “civil death” it would be difficult to accept the proposition that without even putting the noticee to such a contemplated action and giving him a chance to show cause as to why such an action be not taken, final order can be passed blacklisting such a person only on the premise that this is one of the actions so stated in the provisions of NIT.”

6. Further, in the case of **Erusian Equipment & Chemicals Ltd. and Ors. Vs. State of West Bengal and Ors.**, (1975) 1 SCC 70, it was held that the blacklisting order involves civil consequences. It casts a slur. It creates; a barrier between the persons blacklisted and the Government in the matter of transactions. The blacklists are “instruments of coercion”. Therefore, in such a matter fundamentals of fair play require that the person concerned should be given an opportunity to represent his case before he is put to the blacklist.

7. In view of the ratio laid down by Hon'ble the Supreme Court and also the circumstances present that the petitioner never had any opportunity of hearing before passing the impugned order, the order passed is totally unsustainable. Hence, the petition is allowed at motion stage. The impugned order of blacklisting passed against the petitioner is quashed.

Sd/-

(Rajendra Chandra Singh Samant)
Judge