

3.11.2022

**MAT 829 of 2022
With
CAN 1 of 2022
With
CAN 2 of 2022**

**Jamal and Malek Company & Anr.
Vs.
Eastern Coalfields Limited & Ors.**

Mr. Sourabh Guhathakurata
Mr. Jayanta Kumar Biswas
Ms. Taniya Sarkar

... ... for the appellants

Mr. Syed Nurul Arefin
Mr. Rahul Singh

... ... for the respondent nos.1 to 4

This intra-court writ appeal is at the instance of the writ petitioners challenging the order of the learned Single Judge dated 10th March, 2022 whereby WPA 805 of 2022 has been dismissed.

The appellants had approached the Writ Court with the plea that he had submitted tender in response to the e-Tender Notice for works of transportation, installation, commissioning necessary fabrication and trial run including civil work to the Jhanjra Project Colliery.

Further case of the appellants was that due to inadvertent mistake by the staff of the appellants the Bid Securing Declaration (BSD) could not be uploaded. Consequently on 15.12.2021 the Tender Committee though found the appellants to be L-1 but the candidature of the appellant was rejected on the ground of non-deposit of the BSD document and a proposal was

made to ban the appellants for two years from being eligible to submit bids in Coal India and its subsidiaries.

Before the learned Single Judge the appellants had raised the plea that in terms of Clause 13(b) of the NIT the appellants ought to have been notified of any deficiency or default in the bid by the Tender Inviting Authority. Learned Single Judge has rejected the said submission and has dismissed the petition.

During the course of argument on 11th August, 2022, learned counsel for the appellants had confined the appeal to the banning of the appellants for a period of two years without issuing any show cause notice and without giving any opportunity of hearing and had questioned the banning order dated 7th April, 2022.

Learned counsel for the appellants has submitted that since the order of banning has serious civil consequences, therefore an opportunity of hearing is necessary and that in the writ petition the requisite plea was taken.

Learned counsel for the respondents has raised the submission that the requisite Clauses of the NIT do not require any opportunity of hearing before passing the order of banning and that no such relief was claimed in the writ petition.

Undisputedly no show cause notice was issued to the appellants nor any opportunity of hearing was given before passing the banning order dated 7th April, 2022.

The law in regard to the granting of opportunity of hearing before passing an order of black listing is well-settled. Supreme Court in the matter of UMC Technologies Private Limited versus Food Corporation of India and another (2021) 2 SCC 551 after taking note of the earlier judgments and also judgment in the matter of Gorkha Security Services versus Government (NCT of Delhi) and others (2014) 9 SCC 105 has settled that an unambiguous show cause notice is crucial before passing the order of black listing as the black listing has severe consequences and it stigmatizes the entity concern. In this regard Hon'ble Supreme Court in the matter of UMC Technologies (supra) has held that :

14. Specifically, in the context of blacklisting of a person or an entity by the State of a State Corporation, the requirement of a valid, particularised and unambiguous show-cause notice is particularly crucial due to the severe consequences of blacklisting and the stigmatisation 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 take 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 persons.

15. In the present case as well, the appellant has submitted that serious prejudice has been caused

to it due to the Corporation's order of blacklisting as several other government corporations have now terminated their contracts with the appellant and/or prevented the appellant from participating in future tenders even though the impugned blacklisting order was, in fact, limited to the Corporation's Madhya Pradesh regional office. This domino effect, which can effectively lead to the civil death of a person, shows that the consequences of blacklisting travel far beyond the dealings of the blacklisted person with one particular government corporation and in view thereof, this Court has consistently prescribed strict adherence to principles of natural justice whenever an entity is sought to be blacklisted.

16. The severity of the effects of blacklisting and the resultant need for strict observation of the principles of natural justice before passing an order of blacklisting were highlighted by this Court in *Erusian Equipment & Chemicals Ltd. v. State of W.B.* in the following terms: (SCC PP.74-75, paras 12, 15 & 20)

“12. ... The order of blacklisting has the effect of depriving a person of equality of opportunity in the matter of public contract. A person who is on the approved list is unable to enter into advantageous relations with the Government because of the order of blacklisting. A person who has been dealing with the Government in the matter of sale and purchase of materials has a legitimate interest or exception. When the State acts to the prejudice of a person it has to be supported by legality.

* * *

15. ... 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”.

* * *

20. Blacklisting has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for purposes of gains. The fact that a disability is created by the order of blacklisting indicates that the relevant

authority is to have an objective should be given an opportunity to represent his case before he is put on the blacklist.”

17. Similarly, this Court in *Raghunath Thakur v. State of Bihar* struck down an order of blacklisting for future contracts on the ground of non-observance of the principles of natural justice. The relevant extract of the judgment in that case is as follows: (SCC p.230, para 4)

“4. ... It is an implied principle of the rule of law that any order having civil consequences should be passed only after following the principles of natural justice. It has to be realised that blacklisting any person in respect of business ventures has civil consequence for the future business of the person concerned in any event. Even if the rules do not express so, it is an elementary principle of nature justice that parties affected by any order should have right of being heard and making representations against the order.”

18. This Court in *Gorkha Security Services v. State (NCT of Delhi)* has described blacklisting as being equivalent to the civil death of a person because blacklisting is stigmatic in nature and debars a person from participating in government tenders thereby precluding him from the award of government contracts. It has been held thus : (SCC p. 115, para 16)

“16. It is a common case of the parties that the blacklisting has to be preceded by a show-cause notice. Law in this regard is firmly grounded and does not even demand much amplification. The necessity of compliance with the principles of nature justice by giving the opportunity to the person against whom action of blacklisting is sought to be taken has a valid and solid rationale behind it. With blacklisting, many civil and/or evil consequences follow. It is described as “civil death” of a person who is foisted with the order of blacklisting. Such an order is stigmatic in nature and debars such a person from participating in government tenders which means precluding him from the award of government contracts.”

19. In light of the above decision, 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.

In view of the above settled legal position it is not open to the respondent to contend that in the absence of any clause in the NIT providing for opportunity of hearing, no opportunity of hearing is required to be given before passing the banning order.

Hence, the action of banning the appellants taken by the respondents without complying with the principles of natural justice and without giving show cause notice cannot be given a seal of approval by this Court.

So far as the technical issue raised by the learned counsel for the respondents about the not claiming requisite relief in the writ petition, we find that in prayer Clause B the appellants has questioned the banning of two years and therefore due relief was already prayed in the writ petition. The objection that banning order has been passed subsequently is not relevant because banning order otherwise is contrary to law.

At this stage learned counsel for the respondents has sought liberty to serve a show cause notice to the appellants and pass a fresh order.

Hence, we allowed the appeal and set aside the order of banning by granting liberty to the respondents to issue a show cause notice to the appellant and therefore take an appropriate decision in respect of banning after due compliance of the principles of natural justice.

The appeal is accordingly allowed.

Connected applications are also disposed of.

(Prakash Shrivastava, C.J.)

(Rajarshi Bharadwaj, J.)