

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8934 OF 2018

Rishi Kichu Industries Pvt. Ltd.

Petitioner

Versus

The State of Maharashtra & others

Respondents

Mr. P. R. Katneshawarkar, Advocate for the petitioner.
Mr. A. R. Kale, AGP for respondents No. 1 and 2.

WITH
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**CORAM : RAVINDRA V. GHUGE &
ANIL L. PANSARE, JJ.**

DATE : 16th JUNE, 2022.

PER COURT :

1. The petitioner has put forth prayer clauses 'B' to 'F' in
Writ Petition No. 8934/2018 as under :-

*B} By issuing an appropriate writ, order or
direction, in the nature of writ, the communication*

dated 24th March, 2018 issued by respondent No.2 to respondent No.3 be quashed and set aside, qua the petitioner;

C} By issuing an appropriate writ, order or direction, in the nature of writ, the decision of respondent No.3 rejecting the offer of the petitioner submitted pursuant to E-Tender Notice No.30/2017-18 for 4 (Four) works may also be quashed and set aside;

D} By issuing an appropriate writ, order or direction, in the nature of writ, it should be held that the action of respondents is against the principles of natural justice and without offering the reasonable opportunity of hearing to the petitioner, the same should be ordered to be followed;

E} By issuing an appropriate writ, order or direction, in the nature of writ, the respondents be directed to refund the security deposit, deposited with respondent No. 3 in view of the E-Tender No.8, Agricultural Department-2015/16 for 3 (three) works allotted to the petitioner and as per Annexure-("C" Colly) to this petition along with further deductions, if any amount, in the running bills paid to the petitioner.

F} Pending hearing and final disposal of this writ petition, the respondents be directed not to reject the offers of the petitioner if submitted in future for the works tendered for by the respondents on the basis of communication dated 24th March, 2018 issued by respondent No.2;

2. By way of amendment, the petitioner has put forth prayer clauses 'J' and 'K' which read as under :-

J} This Hon'ble Court may be pleased to quash and set aside the impugned order dated 10.03.2021 bearing JaiUshi/Jiakraa/Blacklist/Kavi/2021 passed by President, Jalyukta Shivar Committee/Collector, Beed, produced at Exhibit-AM-1.

K} Pending hearing and final disposal of this writ petition, this Hon'ble Court may be pleased to stay the effect, implementation and execution of the impugned order dated 10.03.2021 bearing JaiUshi/Jiakraa/Blacklist/Kavi/2021 passed by President Jalyukta Shivar Committee/Collector, Beed produced at Exhibit-AM-1.

3. We have considered the strenuous submissions of the learned Advocate for the petitioner and the learned AGP on behalf of

the respondents-authorities. With their assistance, we have gone through the petition paper book and have perused the report of the Vigilance department and the impugned order of blacklisting the petitioner.

4. Though the petition paper book is a voluminous record running into 195 pages, there is no dispute on the basis of the record as under :-

(a) That the Vigilance department conducted an investigation into several public works which were completed by 129 contractors.

(b) This list is available in the order passed by respondent no. 4, which indicates that the only charge against the petitioner is that it has not accounted for Rs. 2406/-.

(c) This is the amount that is sought to be recovered from the petitioner and this is the only irregularity committed by the petitioner.

(d) There is no other charge against it.

(e) No opportunity of hearing was ever given to the petitioner.

5. The first order impugned by the petitioner in prayer clause 'B' is dated 24th March, 2018 by which, the second and the third respondent tentatively decided not to allot any public project/work to the petitioner, which is a part of Jalyukta Shivar (Project initiated for conservation of water and water bodies). By the subsequent order dated 10th March, 2021, the petitioner has been blacklisted. Actually, the said order black lists 129 contractors.

6. There is no dispute that the Vigilance department prepared the report as regards the irregularities committed by the contractors. The petitioner was not heard. No notice to show cause or submit an explanation or for hearing was issued to the petitioner. Based on the perusal of the record, the authorities came to the conclusion that the petitioner has committed an irregularity of not accounting for Rs.2460/- and the said amount needs to be recovered from it.

7. On this premise and on this undisputed background, it is apparent that the decision of the authorities in concluding that no work in the Jalyukta Shivar should be allotted to the petitioner with effect from 24th March, 2018, appears to be a disproportionate

penalty. Nevertheless, the petitioner has not been allotted any work since 24th March, 2018 till today. We are aware that this order has been passed by the authorities without granting an opportunity of hearing to the petitioner. However, as the clock cannot be reversed to the extent of allotment of public project to the petitioner from March, 2018 till June, 2022, the act of the respondents can be notionally set aside without any further relief to the petitioner. Hence, the impugned order dated 24th March, 2018 is quashed and set aside.

8. Insofar as the subsequent order dated 10th March, 2021 of blacklisting the petitioner firm forever, we find from the record that the principles of natural justice were not followed and no opportunity of hearing was given to the petitioner. The respondents are unable to point out a show cause notice or a notice of hearing having been issued to the petitioner before arriving at a decision of blacklisting the petitioner forever.

9. The petitioner relies upon a judgment delivered by the Hon'ble Apex Court in UMC Technologies Private Limited vs. Food Corporation of India and others, reported in AIR 2021 SC 166

wherein the Hon'ble Apex Court has held in paragraphs No. 13 to 27 which read thus :-

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.](#),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.

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 observance 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 West Bengal](#)² in the following terms:

“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 expectation. When the State acts to the prejudice of a person it has to be supported by legality.

XXX XXX XXX

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 black lists are instruments of coercion.

XXX XXX XXX

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 satisfaction. Fundamentals of fair play require that the person concerned 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](#),³ 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 judgement in that case is as follows:

“4. ... [I]t 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 natural 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. Government \(NCT of Delhi\) and Ors.](#) MANU/SC/0657/2014 : (2014) 9 SCC 105 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:

“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 natural 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 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.

22. To test whether the above stipulations as to the contents of the show cause have been satisfied in the present case, it may be useful to extract the relevant portion of the said show cause notice dated 10.04.2018 wherein the Corporation specified the actions that it might adopt against the appellant:

“Whereas, the above cited clauses are only indicative & not exhaustive.

Whereas, it is quite evident from the sequence of events that M/s U.MC Technologies Pvt. Ltd, Kolkata has violated the condition/clauses governing the contract due to its abject failure & clear negligence in ensuring smooth conduct of examination. As it was the sole responsibility of the agency to keep the process of preparation & distribution of question paper and conducting of exam in highly confidential manner, the apparent leak point towards, acts of omission & commission on the part of M/S UMC Technologies Ltd. Kolkata.

Whereas, M/S UMC Technologies Pvt. Ltd. Kolkata is hereby provided an opportunity to explain its Position in the matter before suitable decision is taken as per T&C of MTF. The explanation if any should reach this office within a period of 15 days of receipt of this notice falling which appropriate decision shall be taken. ex-parte as per terms and conditions

mentioned in MTF without prejudice to any other legal rights & remedies available with the corporation.”

23. It is also necessary to highlight the order dated 09.01.2019 passed by the Corporation in pursuant to the aforesaid notice, the operative portion of which reads as under:

“After having examined the entire matter in detail, the shortcomings/negligence on the part of M/s UMC Technologies Pvt. Ltd. stands established beyond any reasonable doubt. Now, therefore in accordance with clause 42.1(II) of the governing MTF, the competent authority hereby terminates the contract at the risk and cost of the Agency. As per Clause No. 10.1 & 10.2 the said M/s UMC Technologies Pvt. Ltd. is hereby debarred from participating in any future tenders of the corporation for a period of Five years. Further, the Security Deposit too stands forfeited as per clause 15.6 of MTF. This order is issued without prejudice to any other legal remedy available with FCI to safeguard its interest.”

24. A plain reading of the notice makes it clear that the action of blacklisting was neither expressly proposed nor could it have been inferred from the language employed by

the Corporation in its show cause notice. After listing 12 clauses of the “Instruction to Bidders”, which were part of the Corporation’s Bid Document dated 25.11.2016, the notice merely contains a vague statement that in light of the alleged leakage of question papers by the appellant, an appropriate decision will be taken by the Corporation. In fact, Clause 10 of the same Instruction to Bidders section of the Bid Document, which the Corporation has argued to be the source of its power to blacklist the appellant, is not even mentioned in the show cause notice. While the notice clarified that the 12 clauses specified in the notice were only indicative and not exhaustive, there was nothing in the notice which could have given the appellant the impression that the action of blacklisting was being proposed. This is especially true since the appellant was under the belief that the Corporation was not even empowered to take such an action against it and since the only clause which mentioned blacklisting was not referred to by the Corporation in its show cause notice. While the following paragraphs deal with whether or not the appellant’s said belief was well-founded, there can be no question that it was incumbent on the part of the Corporation to clarify in the show cause notice that it intended to blacklist the appellant, so as to provide adequate and meaningful opportunity to the appellant to show cause against the same.

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 fulfil 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.

26. In view of our conclusion that the blacklisting order dated 09.01.2019 passed by the Corporation is contrary to the principles of natural justice, it is unnecessary for us to consider the other contentions of the learned counsel for the appellant. Having regard to the peculiar facts and circumstances of the present case, we deem it appropriate not to remit the matter to the Corporation for fresh consideration.

27. For the foregoing reasons, the appeal succeeds and it is accordingly allowed. The order dated 13.02.2019 passed by the High Court is set aside. The Corporation's order dated 09.01.2019 is hereby quashed only so far as it blacklists the appellant from participating in future tenders. The parties will bear their own costs.

10. We do not wish to refer to all the judgments cited before us. Suffice it to say that the Hon'ble Apex Court has concluded that an order of blacklisting a firm without an opportunity of hearing is unsustainable.

11. In view of the above, the impugned order dated 10th March, 2021, passed by respondent No. 4 stands quashed and set aside to the extent of the petitioner. As such, Writ Petition No. 8934/2018 is allowed in terms of prayer clauses 'B' and 'J' only to the extent of the petitioner since there are 129 contractors who have been blacklisted by the impugned order and the others are not before us.

12. Insofar as Writ Petition No. 2347/2022 is concerned, the learned Advocate for the petitioner submits that this petition was filed to seek indulgence of this Court to the extent of grant of

contract to the petitioner. The said petition would now not survive since several contracts have already been granted to other contractors by the respondents and the clock cannot be reversed with reference to the same. The learned Advocate for the petitioner submits that this petition can be disposed off.

13. Accordingly, Writ Petition No. 2347/2022 is disposed off.

(ANIL L. PANSARE)
Judge

(RAVINDRA V. GHUGE)
Judge

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