

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR
WRIT PETITION NO.1900 OF 2021

M/s Balaji Travels, a proprietary firm,
through its Proprietor Shri Sandeep Gupta,
Aged about 48 years, Occ: Business,
Resident of - Opp. Kastur Hotel,
Rail Toli, Gondia,
District Gondia, Maharashtra

....PETITIONER

...V E R S U S...

1. Western Coalfields Limited,
Majri Area, Office of the Area General
Manager, Majri Area, Department of E&M
having registered office at Post Office Kuchana,
Tahsil Bhadravati, District Chandrapur
Through its Area General Manager.
2. Western Coalfields Limited,
Yekona Sub Area, Office of the Sub Area
Manager, Majri Area, Department of E&M
having registered office at Post Office Kuchana,
Tahsil Bhadravati, District Chandrapur
Through its Sub Area Manager. ... RESPONDENTS

Shri Narayan C. Phadnis, Advocate for petitioner.
Smt. Sushma, Advocate for respondents.

CORAM:- A.S. CHANDURKAR AND
PUSHPA V. GANEDIWALA, JJ.
DATED :- 19th JANUARY, 2022.

ORAL JUDGMENT : (PER : PUSHPA V. GANEDIWALA, J)

Heard Shri Naryan Phadnis, learned counsel for
the petitioner and Smt. Sushma, learned counsel for the
respondents.

2. Rule. Rule made returnable forthwith. The matter is heard finally with the consent of the learned counsel for the parties.

3. The petitioner – M/s Shri Balaji Travels is a proprietary concern engaged in the business of transportation and hiring of buses. In pursuance of a tender floated by respondents-WCL for hiring of one Mini-Bus for transportation of manpower at Yekona Open Cast Mine, the petitioner submitted its bid.

4. The petitioner has been awarded a work order dated 14/17.10.2019 for a period of 341 days in two years. Accordingly, the petitioner deployed bus of Tata Winger having RTO registration No. MH35-AJ-0196. The vehicle started running as per the contract in November-December – 2020. The vehicle started giving trouble and ultimately on 03.01.2021 it broke down. It is the case of the petitioner that the petitioner deployed two different alternate vehicles as per

the terms and conditions of the work order. However, the respondent no.2 rejected both the vehicles for no reason.

5. The respondents issued a show-cause notice on 15.01.2021 calling upon the petitioner as to why the work order should not be cancelled and the petitioner should not be black listed for one year with forfeiture of earnest money amount. The petitioner was called upon to submit the reply within 5 days. The petitioner submitted its reply on 21.01.2021 but the same was not considered as it was received beyond the stipulated period of 5 days. Ultimately, the respondents passed the impugned order dated 02.04.2021, which was forwarded to the petitioner on 23.04.2021 and was received by the petitioner on 01.05.2021.

6. Learned counsel Shri Phadnis appearing for the petitioner submitted that the impugned order dated 02.04.2021 is arbitrary, illegal and shockingly disproportionate because the work order itself provides penalty upon any failure by the petitioner. It is submitted that without resorting to the same, the harsh decision of banning

has been taken by the respondents resulting into spoiling of the entire business career of the petitioner and that too without giving opportunity of hearing to the petitioner. It is submitted that the impugned communication/order is arbitrary, illegal and unwarranted and uncalled for, which is contrary to respondents own terms and conditions and also in breach of principles of natural justice.

7. The respondents in their affidavit-in-reply at the first place submitted that the provision of opportunity of hearing to the petitioner is nowhere mentioned in the terms and conditions of the work order. It is further submitted that on 22.11.2020 the vehicle went under major maintenance and since no alternate vehicle was deployed, the service remained unavailable for many days. It is the contention of respondents that the petitioner has utterly failed to response to their letter dated 08.01.2021 and therefore on 15.01.2021 a show-cause notice was issued to the petitioner, seeking explanation for non-compliance of the terms and conditions of the contract. The petitioner was asked to reply within 5 days of the receipt of the show-cause notice. It is further

submitted that on 21.01.2021, one representative of the petitioner arrived at Yekona Mine with Force Traveller (seat capacity 31+ 1) Mini bus with registration No. MH-35-K-3826 and registration date 21.04.2014 with letter dated 21.01.2021 for permitting to deploy the alternate vehicle. It is the grievance of the respondents that the said vehicle was completely worn out and in shabby condition and had many mechanical flaws, due to which it was unfit for running at Mine. Learned counsel Smt. Sushma appearing for the respondents submitted that WCL rejected the petitioner's application for allowing unfit alternate vehicle by letter dated 23.01.2021. Learned counsel further submitted that even the petitioner's request on 06.02.2021 to permit the petitioner to deploy original vehicle was rejected by the management since the petitioner had failed to reply show-cause notice within stipulated period of 5 days. Learned counsel submitted that in compliance with the terms and conditions of the contract, the respondents have rightly cancelled work order and banned the petitioner for one year.

8. We have considered the submissions advanced on behalf of both sides.

9. At the outset, the learned counsel Shri. Phadnis has not seriously contested the issue of cancellation of the contract since the period during which the contract was to be performed has already been lapsed. The main grievance of the petitioner is that without considering the case of the petitioner and without giving the petitioner an opportunity of hearing, the petitioner has been banned/black listed for a period of one year. Learned counsel Shri Phadnis invited our attention to Clause 17(1) of General Terms and Conditions with regard to banning of business and submitted that the terms and condition of the contract itself provide for observance of principles of natural justice before banning the business dealing with any contracting entity. For ready reference, Clause 17(1) of General Terms and Conditions reads thus:

“17. Banning of Business

WCL shall follow the following guidelines of effecting ‘Banning of Business’ with a contracting entity in respect of Works and Services Contracts.

1. Observance of Principles of Natural Justice before banning the business dealings with any contracting entity.

xxxxx.”

10. It is not disputed that communication of the impugned order of cancellation of the contract and banning the business dealing with the petitioner for one year, the petitioner had at least sent reply/communications dated 16.01.2021, 21.01.2021, 23.01.2021, 06.02.2021 and 13.02.2021 to the respondents. In these communications, the persistent stand of the petitioner is that the alternate vehicles i.e. MH-35-K-3856 (vide letter dated 16.01.2021) and MH-35-K-5146 (vide letter dated 23.01.2021) were arranged by the petitioner and the permission was sought to deploy the same, however, each time the same was rejected by the respondents.

11. A perusal of the impugned communication/order would reveal that the respondents have not considered at all the contention of the petitioner in the aforesaid letters. The respondents in the impugned communication/order referred to all the letters sent by them and thereafter referred to the NIT General Terms and Conditions for cancellation of

contract and forfeiture of security deposit. The response of the petitioner was received to the respondents on the 6th day of the receipt of notice to the petitioner. Heavens would not have fallen if the respondents have considered the response of the petitioner to the show-cause notice. Had the respondents passed the impugned communication/order prior to receipt of the aforesaid letters from the petitioner, the case would have been different. In that case, the petitioner would not have any say. However, in the case in hands, it is clearly seen that despite the availability of the response of the petitioner to the show-cause notice dated 15.01.2021 issued by the respondents, non-consideration of the same while passing the impugned order of black-listing, is nothing but an arbitrary exercise of power by the respondents without observing the principles of natural justice, which is pre-requisite for passing any banning/black listing order. The contention of the respondents in their reply with regard absence of any provision for observing principles of natural justice in the terms and conditions of the contract is utterly incorrect.

12. Shri Phadnis, learned counsel for the petitioner has rightly pointed out the basic judgment of the Hon'ble Apex Court in **M/s Erusian Equipment & Chemicals Ltd. Vs. State of West Bengal and another** reported in (1975) 1 SCC 70, which was followed in subsequent decisions, wherein Their Lordships have held that the black listing orders involve civil consequences and it casts a slur. It is further observed that the black listing order creates a barrier between persons blacklisted and the Government in the matter of transactions and the black lists are "instruments of coercion".

The ratio as settled in the case of **M/s Erusian Equipment (supra)** has further been followed in **Raghunath Thakur Vs. State of Bihar and others** reported in (1989) 1 SCC 229 and in **Kulja Industries Limited Vs. Chief General Manager, Western Telecom Project Bharat Sanchar Nigam Limited and others** reported in (2014) 14 SCC 731, wherein it is held that if State or its instrumentality takes decision on blacklisting then such decision is subject to judicial review on grounds of principles of natural justice, doctrine of proportionality, arbitrariness and discrimination.

13. The contention of Smt. Shushma, learned counsel, for the respondents is that the alternative remedy is available as the agreement provides for arbitration clause and the petitioner must be relegated to the alternate remedy. To this, Shri Phadnis, learned counsel has rightly pointed out the decision of this Court in Writ Petition No.3857 of 2021 (M/s Aai Tuljabhawani Transport Vs. Union of India and another), wherein this Court has relied on the judgment of the Hon'ble Apex Court in **Harbanslal Sahnia and another Vs. Indian Oil Corporation Ltd. and others** reported in (2003) 2 SCC 107, wherein it is held that in an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: such as, where the relief claimed is for enforcement of any of the Fundamental Rights; or where there is a failure to follow the principles of natural justice, or where the orders or proceedings which are impugned in the petition are wholly without jurisdiction or where the vires of an Act are challenged.

14. Smt. Sushma, learned counsel further harped on the point that the alternate vehicle which was provided was not fit to deploy at the mine and petitioner has repeatedly failed to respond to the letters issued by the respondents complaining of break-down of the contract vehicle and the difficulties, which the respondents were being faced.

15. In any case what is more important in this case is to perceive as to whether the principles of natural justice has been observed by the respondents before taking such harsh step of banning the business dealings. In this case, as demonstrated above, the respondents have clearly failed to consider in the impugned communication/order, the stand of the petitioner in the letters dated 16.01.2021, 21.01.2021, 23.01.2021 and 06.02.2021. As such, considering Clause 17.1 in the NIT General Terms and Conditions and considering the effect of banning/black listing on any business entity as observed by the Hon'ble Apex Court in the case **M/s Erusian Equipment** (supra), in our considered opinion, it is necessary to quash and set aside the impugned banning order dated 02.04.2021 with liberty to the respondents, if they desires, to

pass afresh order after giving an opportunity of hearing to the petitioner.

16. The petition accordingly is partly allowed. The impugned order to the extent of banning the business dealing of the petitioner with the respondents for one year is hereby quashed and set aside. The petitioner, however, is at liberty to challenge the cancellation of contract and forfeiture of security deposit by taking appropriate course of law, if the petitioner so desires.

Rule accordingly. No order as to costs.

JUDGE

JUDGE

Wagh