

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 3639 OF 2021

M/s Bhagwati Builders,
through its proprietor,
Vijay S/o Vishnuprasad Agrawal,
Aged about 54 years, having its
office at 02, Kamla Complex,
Gurunanak Ward, Gondia.

.... **PETITIONER**

// VERSUS //

- 1) Maharashtra State Warehousing Corporation, Pune, Having its office at Gull Tekdi, Market yard Pune 411037.
- 2) Bajaj Steel Industries Limited, having its office at C-108, Hingna Road, MIDC Industrial Area, Hingna, Nagpur – 440028.

.... **RESPONDENTS**

Mr. Kaustubh Deogade, Advocate for the Petitioner.
Mr. N.R. Saboo, Advocate for Respondent No.1.

**CORAM : SUNIL B. SHUKRE AND
SMT. M.S. JAWALKAR, JJ.**

JUDGMENT RESERVED ON : 28.04.2022
JUDGMENT PRONOUNCED ON : 17.06.2022

ORAL JUDGMENT : (Per Sunil B. Shukre, J.)

1. Heard. **Rule.** Rule made returnable forthwith. Heard finally by consent of the learned counsel appearing for the parties.

2. Respondent No.1 by tender notice No.18 had invited bids of eligible contractors for execution of the work of construction of 1/3000 Mt Cap. Pre Engineered Wh Bldg with Ancillary Works at Amgaon, District Gondia. Various bidders including the Petitioner had submitted their bids in response to the tender notice No.18 and upon due evaluation of the bids, submitted by the bidders, bid of the Petitioner was found to be lowest and it was decided to award the contract to the Petitioner. The petitioner was informed accordingly and was called upon to deposit Rs.70,91,948/- as a security performance amount before 05.03.2021, by letter dated 26.02.2021 issued to it by the Respondent No.1. The Petitioner was informed that upon it's failure to deposit the said amount within the time given, the work shall be awarded to second lowest bidder. The Petitioner was also requested to give it's explanation as well as rate analysis showing the ability of the Petitioner to perform the awarded work at the rate submitted by it, which was 24.28% below estimated cost, by maintaining the quality.

3. In response to the said letter dated 26.02.2021, the Petitioner deposited the security performance amount by a Demand Draft on 05.03.2021 and gave it's explanation by it's letter dated

05.03.2021 that since it had already purchased requisite material, quality of work will not be affected, despite it's lower quote. The Petitioner did not however, submit any rate analysis along with letter dated 05.03.2021. The Petitioner submitted it's rate-analysis with further explanation by it's letter dated 22.03.2021 and assured that in spite of huge deficit in the estimated rate and the rate quoted by the Petitioner, the Petitioner would not compromise on quality and would complete his work as per the guidance of Respondent No.1. By this letter, the Petitioner also requested Respondent No.1 to execute the work agreement and issue work order in it's favour.

4. By a letter dated 16.04.2021, the Petitioner was informed by Respondent No.1 that the explanation given by the Petitioner and the rate analysis submitted by it were vague and unsatisfactory and, therefore, the Petitioner was again requested to submit proper rate analysis justifying the huge below quote of the Petitioner. By that time second wave of Covid-19 Pandemic had hit the region and the market was closed and therefore, by letter dated 23.04.2021, the Petitioner expressed it's inability to submit the explanation and the rate analysis as required and requested for grant of further time of one months for submitting it's rate analysis. On 09.07.2021, the Petitioner informed the Respondent No.1 that as Respondent No.1 did not execute the work agreement in spite of the rate analysis submitted by it and as there

was escalation in rates of commodities such as steel, cement and so on, it was not possible for it to execute the work at the rate quoted by it, which was below 24.28% of the estimated cost. The Petitioner also requested the Respondent No.1 to allow it to execute the work at the escalated price and to execute the agreement at higher rate.

5. The Petitioner submits that it did not receive any reply to its letter dated 09.07.2021 and suddenly, on 09.08.2021, the Petitioner came across another e-tender notice-18 and it was a IInd call notice for short period. The Petitioner without making any enquiry about the IInd call tender notice for the same work, submitted its fresh bid and was surprised to receive an e-mail dated 02.05.2021, informing it that its fresh bid was rejected during technical evaluation for the reason that it was blacklisted and debarred. Thereafter, the Petitioner received another e-mail on 07.09.2021 informing it that as the Petitioner expressed its inability to execute the work at the rate quoted by it, the Petitioner was blacklisted for a period of one year and its earnest money deposit of Rs.1.50 Lacks was forfeited. The mail which was received by the Petitioner on 07.09.2021, had the date of 30.07.2021 but, it was uploaded on 07.09.2021. This action of Respondent No.1 has been questioned by the Petitioner as being arbitrary.

6. Mr. Deogade, learned counsel for the Petitioner submits that blacklisting of the Petitioner by Respondent No.1 is arbitrary, unfair and is in violation of principles of natural justice. He submits that the Petitioner was not issued any show cause notice nor was given any opportunity of hearing before being blacklisted. He further submits that adherence to the principles of natural justice is a *sine qua non* for prohibiting a contractor like the Petitioner from participating in the future tender works of Corporation which is a State within the meaning of Article 12 of the Constitution of India as it has civil consequences and is a virtual 'civil death' for the contractor. He relies upon the cases of *Gorkha Security Services Vs. Government (NCT of Delhi) & Others, (2014) 9 SCC 105* and *Vetindia Pharmaceuticals Limited Vs. State of Uttar Pradesh & Another, (2021) 1 SCC 804*.

7. Mr. Saboo, learned counsel for Respondent No.1 submits that the Petitioner itself was responsible for inviting the order of blacklisting. He points out that by a letter dated 15.06.2021, the Petitioner had expressed its inability to execute the work awarded to it at the rate quoted by it on account of price escalation and therefore, the Petitioner made a request for refund of earnest money and also security performance amount deposited by it. He further submits that the letter dated 15.06.2021 has been suppressed from the Court by the

Petitioner and this letter, reflecting upon the conduct of the Petitioner, has a material bearing upon the facts of the present case and therefore, on this very ground, the ground of suppression of a material fact, this Petition deserves to be dismissed.

8. Mr. Saboo, learned counsel for Respondent No.1 further submits that as per the Condition No. xviii of Clause 'A' of the tender document, the Petitioner already knew that upon it's failure to execute the agreement, the Petitioner would be blacklisted and debarred from participating in the future works of Respondent No.1 for one year. He further submits that when consequence of certain act or particular conduct of a contractor is stated in clear terms in the tender document and because of the act committed or conduct exhibited by the contractor, the consequence visits the contractor, it cannot be said that any principles of natural justice are violated.

9. According to learned counsel for Respondent No.1, this is a case wherein the Petitioner was already aware of what was going to happen upon it's failure to withdraw itself from the awarded contract and therefore, neither any show cause notice nor any opportunity of hearing was necessary. Thus, Mr. Saboo, learned counsel for Respondent No.1 submits that there is no merit in the Petition and the Petition deserves to be dismissed with costs.

10. The rival contentions of the parties raise before us following questions :-

- (1) Whether the Petitioner has suppressed a material fact from this Court and is, therefore, guilty of not approaching this Court with clean hands ?
- (2) Blacklisting of the Petitioner being only a consequence of breach of condition of the tender document, whether any show cause notice and opportunity of hearing to the Petitioner before its blacklisting was necessary ?

11. **As to question No.1 :-**

A few relevant facts are necessary to consider to answer this question. Respondent No.1 informed the Petitioner by its letter dated 26.02.2021 about the Petitioner having been selected for awarding the work, the Petitioner being lowest bidder. The Petitioner was, therefore, called upon to deposit security performance amount and justify its quoted rate by giving proper rate analysis, so that quality of the work to be executed by the Petitioner was not affected. The Petitioner deposited the security performance amount on 03.03.2021, well before the deadline of 05.03.2021, stated in the letter dated 26.02.2021. While the Petitioner by its letter dated 05.03.2021, gave its explanation as to how quality would not be affected, it did not offer any rate analysis. By its subsequent letter dated 22.03.2021, the Petitioner, however, gave a detailed rate analysis and again assured

that quality would not be compromised. The Respondent No.1 issued another letter on 16.04.2021 informing the Petitioner that the explanation and the rate analysis submitted by the Petitioner were vague and the Petitioner was requested to submit a proper rate analysis in order to justify the huge below quote submitted by the Petitioner. The Respondent No.1, it appears, did not consider the explanation and the rate analysis given by the Petitioner vide its letter dated 22.03.2021 and simply referred to the letter dated 05.03.2021 sent by the Petitioner to the Respondent No.1, whereby the Petitioner had informed the Respondent No.1 about depositing the security performance amount and asserting that at the rate quoted by the Petitioner, it would be able to execute the work without letting the quality of the work affected. Probably that was the reason why the Respondent No.1 wrote to the Petitioner in the manner stated earlier. It is not known as to why the Respondent No.1 did not take into account the explanation and the rate analysis submitted by the Petitioner. But, such non consideration of the explanation and the rate analysis of the Petitioner, by the Respondent No.1 did not affect much the position of the Petitioner as can be seen from the events that took place later on.

12. The later events disclose that the Petitioner had accepted the opinion of the Respondent No.1 about inadequacy of the explanation and rate analysis submitted by it and, therefore, by its

letter dated 23.04.2021, the Petitioner sought for further time of one month's for submitting the rate analysis. The Petitioner had informed the Respondent No.1 that due to rise in Covid-19 cases and closure of the market since 15.04.2021, it had become impossible for it to obtain rate of each of the commodities. It appears that after receipt of the letter dated 23.04.2021 by the Respondent No.1, no action whatsoever was taken by the Respondent No.1 against the Petitioner. After the letter dated 23.04.2021, the Petitioner, by its letter dated 15.06.2021, suddenly informed the Respondent No.1 that the Respondent No.1 delayed execution of the security agreement and just kept on asking for justification with rate analysis for the quality of the work awarded to the Petitioner at the rate which was below 24.28% of the estimated cost. The Petitioner further informed the Respondent No.1 that since there was great escalation in the prices of several commodities, it was not possible for it to execute the work at the rate quoted by it and accepted by Respondent No.1 and, therefore, the Petitioner also made a request for refund of earnest money and security performance amount deposited by it.

13. It appears that even after receipt of this letter dated 15.06.2021, the Respondent No.1 did not take any action although it could have taken the action of blacklisting the Petitioner in view of Condition No. xviii of Clause 'A' of the tender document.

14. After expressing inability to execute the work, the Petitioner again informed the Respondent No.1 by its letter dated 09.07.2021 that it was not possible for it to execute the work at the rate quoted by it and accepted by the Respondent No.1 and the Petitioner also made a request for allowing escalated prices to be incorporated in the work agreement to be executed with the Petitioner. In this letter, the Petitioner did not make any request that the earnest money and security performance amount be refunded to it.

15. In the month of August 2021, another important event took place. The Respondent No.1 issued a IInd call tender notice for the same work and it was for a short period and the Petitioner, without making any effort to know the reason for issuance of IInd call notice, submitted its fresh tender. It was then that the Petitioner was informed that its fresh bid was rejected during technical evaluation round on the ground that it was blacklisted and debarred. The Petitioner received a proper mail on 07.09.2021 informing it that in terms of the relevant clause of the tender document, the Petitioner had been blacklisted for a period of one year on account of inability shown by the Petitioner to execute the work at the rate quoted by it and accepted by the Respondent No.1. From out of the afore-stated events, the Petitioner's informing the Respondent No.1 of its inability to execute the work awarded to it is most important. This event took

place for the first time on 15.06.2021 when the Petitioner suddenly informed the Respondent No.1 that it could not execute the work at the rate quoted by it and accepted by the Respondent No.1 on account of rise in prices of the materials required for execution of the contract. The Petitioner, by the letter dated 15.06.2021, did not make any request for execution of the work agreement at higher price on account of cost escalation. The request for execution of the work agreement at higher price came from the Petitioner much later; it was on 09.07.2021. But, even in the letter dated 09.07.2021, the Petitioner stuck to its stand that it would not complete the contract at the rate quoted by it and accepted by the Respondent No.1, on account of high rise in prices of materials. This conduct of the Petitioner ultimately led to its blacklisting for a period of one year by the Respondent No.1.

16. Now, if one carefully considers the above referred events, one would find that among all those happenings, the letter dated 15.06.2021 was most important. After all, by this letter, the Petitioner had unilaterally withdrawn its bid and simply asked for refund of earnest money and security performance amount. We may add here that this letter is not disputed by the Petitioner. Therefore, it was necessary for the Petitioner to make an averment in respect of this letter in the Petition and also include it in the annexures that were filed by the Petitioner. The Petitioner perhaps could have given some

explanation about this letter dated 15.06.2021 as well. This letter had a material bearing upon the fate of the work agreement that was to be executed between the parties. Condition No.xviii of Clause 'A' of the tender document was very clear in this regard. According to it, if the lowest agency fails to execute agreement and deposit security amount, it will be blacklisted and debarred from participation in future works of the Respondent No.1 for one year. By this letter dated 15.06.2021, the Petitioner had unilaterally withdrawn its bid and therefore, the failure on the part of the Petitioner to perform its part of the contract i.e. failure to execute the agreement was writ large. But, the Petitioner suppressed this letter dated 15.06.2021 containing an important fact having a material bearing upon the fate of the Petitioner in the present contract and thus it can be said that the Petitioner has approached this Court not with any clean hands. By suppressing this material fact from the Court, the Petitioner also succeeded in obtaining interim relief from this Court which was in the nature of interim stay to the order of blacklisting.

17. Suppression of relevant material facts before a writ Court, like the present, which is also a Court of equity, may result in dismissal of the Petition. Referring to several cases such as *Prestige Lights Ltd. Vs. State Bank of India*, (2007) 8 SCC 449, *Udyami Evam Khadi Gramodyog Welfare Sanstha & another Vs. State of Uttar Pradesh &*

Others, 2008(1) SCC 560, K.D. Sharma Vs. Steel Authority of India Ltd. & Others, (2008) 12 SCC 481 and R. v. Kensington Income Tax Commrs. - (1917) 1 KB 486, the Supreme Court in the case of *Shri K. Jairam & Others Vs. Bangalore Development Authority & Others, Civil Appeal Nos.7550-7553 of 2021*, decided on 08.12.2021, held that jurisdiction exercised by the High Court under Article 226 of the Constitution of India being extraordinary, equitable and discretionary, it is necessary that a Petitioner approaching a writ Court must come with clean hands and must disclose all the relevant facts. The Supreme Court held that approaching a writ Court with 'soiled hands' would result in dismissal of the Petition and the Petitioner would not be entitled for the extraordinary, equitable and discretionary relief. The relevant observations of the Apex Court appear in paragraph Nos.12 and 17, and they are reproduced as under :-

“12. It is well-settled that the jurisdiction exercised by the High Court under Article 226 of the Constitution of India is extraordinary, equitable and discretionary and it is imperative that the petitioner approaching the writ court must come with clean hands and put forward all facts before the Court without concealing or suppressing anything. A litigant is bound to state all facts which are relevant to the litigation. If he withholds some vital or relevant material in order to gain advantage over the other side then he would be guilty of playing fraud with the court as well as with the opposite parties which cannot be countenanced.

17. In the instant case, since the Appellants have not disclosed the filing of the suit and its dismissal and also the dismissal of the appeal against the judgment of the civil court, the Appellants have to be non-suited on the ground of suppression of material facts. They have not come to the court with clean hands and they have also abused the process of law. Therefore, they are not entitled for the extraordinary, equitable and discretionary relief.”

18. As stated earlier, the Petitioner has suppressed one of the most relevant facts pertaining to this case and in our view, such suppression from a writ Court like the present is not mere inadvertence, not just impertinence but plain perfidy. It is an attempt to seek sympathy and obtain an equitable relief by beguiling the Court, and in fact, the Petitioner did succeed in doing so in a limited way on 22.09.2021, when this Petition came up before us for the first time and this Court granted interim relief to the Petitioner. We are of the view that the Petitioner, which has suppressed from this Court the relevant fact having a material bearing upon the position of the Petitioner in the contractual relationship, has approached this Court with begrimed hands and as such is not entitled for any equitable and discretionary relief from this Court. This ground alone is, therefore, sufficient to dismiss the Petition.

19. The question No.1 is answered accordingly.

20. **As to question No.2 :-**

Since the learned counsel for the Petitioner, relying upon the law laid down by the Apex Court in the case of ***Gorkha Security Services*** (supra) and ***Vetindia Pharmaceuticals Limited*** (supra), has asserted about the importance and necessity of the show cause notice and an opportunity of hearing being given in all cases to a contractor before he or it is blacklisted, we deem it necessary to consider the second question.

21. Law on the point of blacklisting of a contractor by the State or its instrumentality is now well settled. A deeper consideration of the law on this subject, should help us in resolving the issue. Let us, therefore, make an attempt to understand what the law is.

22. In the case of ***M/s. Erusian Equipment & Chemicals Limited Vs. State of West Bengal & Another, (1975) 1 SCC 70***, the Apex Court, considering the nature and extent of the executive power of the Union and the State under Article 298 of the Constitution of India which extends to carrying on of any trade and to the acquisition, holding and disposal of property and making of contracts for any purpose, held that the State can carry on its executive function by making a law or without making a law. It further held that the exercise of such powers and functions in trade by the State is subject to Part-III

of the Constitution of India. It further held that in such matters, the State has a duty to observe equality and it cannot choose to discriminate between two individuals. It further held that the order of blacklisting has the effect of depriving a person of equality of opportunity in the matter of a public contract and, therefore, the person who is sought to be blacklisted must be given an opportunity to represent his case before he is put in the blacklist.

23. The principle of law enunciated in the case of *Erusian Equipment & Chemicals Limited* (supra) has been reiterated by the Supreme Court in several other cases such as *Raghunath Thakur Vs. State of Bihar & Others*, (1989) 1 SCC 229, *Patel Engineering Limited Vs. Union of India & Another*, (2012) 11 SCC 257, *Gorkha Security Services Vs. Government (NCT of Delhi) & Others*, (2014) 9 SCC 105 and *Vetindia Pharmaceuticals Limited Vs. State of Uttar Pradesh & Another*, (2021) 1 SCC 804.

24. In the case of *Gorkha Security Services* (supra) the Supreme Court found that there is a rationale behind the necessity of compliance with the principles of natural justice by giving an opportunity to the person against whom action of blacklisting is sought to be taken. The Supreme Court termed blacklisting of a person as “civil death” for him, because such an order is stigmatic in nature and

debars such a person from participating in Government tenders leading to his disability to get any Government contract. The Supreme Court also held that 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 and this would require the statement of imputations giving details of the alleged breaches and defaults he has committed and the action proposed to be taken for the breaches. In other words, the Apex Court has found that before a person is blacklisted, he must be served with a show cause notice giving the list of the alleged breaches and stating the proposed penalty of blacklisting.

25. In the case of ***Patel Engineering Limited*** (supra) laying down the same principles of law, the Supreme Court held that the authority of State to blacklist a person is a necessary concomitant to the executive power of the State to carry on the trade or the business and making of contracts for any purpose and that there is no need for any statutory grant of such a power. The Apex Court further held that the only legal limitation upon the exercise of such an authority is that the State must act fairly and rationally without in any way being arbitrary and it must take a decision for some legitimate purpose. The Supreme Court further held that what could be the legitimate purpose

that is sought to be achieved by the State while blacklisting a person in a given case can vary depending upon various factors.

26. The law on the subject discussed thus would indicate unequivocally that the State or its instrumentality is under a duty to follow the principles of equality and fair play before a person is blacklisted. It also makes it clear that blacklisting leads to virtual “civil death” of a person as it deprives the person from getting any award of Government contracts. Therefore, it is necessary that principles of natural justice are followed before a person is subjected to such a severe penalty. That means, such a person must be issued a show cause notice giving the details of the alleged breaches committed by him and the penalty proposed against him, which may be either imposition of fine or blacklisting or both, so that such person gets an opportunity to submit his explanation to the State or the authority and in some cases, it may happen that the explanation given by such a person is found to be satisfactory and the action of blacklisting such a person avoided. Such being the purpose of show cause notice, the bidding of law is that the show cause notice must be given to the person concerned to enable him to resist, to refute and to explain the adversity and possibly tide over it. But, there could be a few cases as well where the person concerned is already put on notice that if he did certain act, a particular consequence would follow unavoidably. In such cases, doing

of a particular thing itself would invite a particular consequence and the authority concerned is not given any discretion to avoid the consequence upon acceptance of the explanation given by the doer of that thing. In such cases, there would be some or the other clause either in the tender document or in the work agreement listing the prohibited acts and consequences that would perforce follow if any of the prohibited acts is committed. Whenever such a clause is incorporated, it is implicit in the nature of contract between the parties that the parties are already put on notice about the prohibited acts and are warned to stay away from those acts, lest the consequence as of necessity would follow. In our opinion, this case is one of such rare cases. In this case, there is a clause in tender document which enumerates various do's and don'ts by a tenderer. Condition No.xviii of Clause 'A' of the tender document is relevant here. It spells out the things which should be done and which should not be done by the contractor. It also prescribes the consequences which will follow upon the contractor or the agency doing certain things. For the sake of clarity, Condition No.xviii is quoted as follows :-

“xviii) The amount of earnest money will be forfeited in case successful contractor does not pay the amount of initial security deposit within the time specified as stipulated by the General Manager (Engg) and complete the contract documents. In all other cases earnest money will be refundable. Further it may be noted that lowest Agency who fail to execute agreement and to deposit S.D. will be

black listed and debarred from participation in MSWC for future works for 1 years.”

27. It would be clear from the above referred condition that if the lowest bidder fails to execute the agreement, it or he would be blacklisted and debarred from participating in future works of Respondent No.1 for one year. In the present case, by the letter dated 15.06.2021, which has been discussed above by us earlier, the Petitioner has simply expressed its inability to complete the contract at the rate quoted by it on the ground that there was price escalation and, therefore, it requested for refund of earnest money and security performance amount. In this letter, the Petitioner has also put the blame upon the Respondent No.1 for causing delay in execution of the work agreement. But, the correspondence that was exchanged between the parties and which has been discussed earlier, would show that primarily the Petitioner was responsible for the delay. It may be recalled here that by the letter dated 26.02.2021 sent by Respondent No.1 to the Petitioner, the Petitioner was informed that as the rate quoted by it (which was 24.28% below the estimated price) being hugely underrated, it was necessary for it to submit the rate analysis and give an assurance that with such enormous underrated quote, it would be able to complete the work without compromising with the quality. The Petitioner was supposed to submit its rate analysis at the earliest. It had also sent a letter on 05.03.2021 to Respondent No.1

informing that since the Petitioner was already having necessary equipments, machinery and manpower and also the purchase of cement and steel was going to be as per the R.C., the quality of the work would not suffer in any way despite the fact that it's quote was greatly underrated. Along with this letter, the Petitioner did not submit the rate analysis and it submitted the rate analysis on 22.03.2021. It appears that the letter dated 22.03.2021 was missed by Respondent No.1 and this fact is also impliedly acknowledged by the Petitioner when it sought further one month's time to submit rate analysis as per the letter dated 23.04.2021 written to the Respondent No.1. It is an admitted fact that thereafter the Petitioner did not submit any rate analysis and straightaway sent a letter of it's withdrawal from the contract on 15.06.2021, which letter has been suppressed by the Petitioner. Thereafter, the Petitioner sent an another letter dated 09.07.2021 demanding execution of work agreement with price escalation, which was not possible for the Respondent No.1. Ultimately, the blacklisting and debarring of the Petitioner from future contracts of Respondent No.1 for a period of one year followed.

28. The afore-stated events would show that the Petitioner indulged itself in a prohibited act about which there was already a warning given in Condition No.xviii of Clause 'A' of the tender document. The warning put the lowest bidder on notice that if the

lowest bidder committed the prohibited act, it or he would face its or his blacklisting for a period of one year. The Petitioner in spite of this warning committed the prohibited act and was inevitably visited with the consequence of blacklisting. Breach of this condition by the Petitioner was the fact well within its knowledge. Upon the Petitioner withdrawing its bid, the Respondent No.1 had issued a IInd call tender notice in response to which the Petitioner submitted its fresh bid. This step indicates acceptance by the Petitioner of termination of contractual relationship with necessary consequences following suit, as per Condition No.xviii. The Condition No.xviii, being clear and the Petitioner having its knowledge, it can be said that the Petitioner was already put on notice of the prohibited act and already had the opportunity of knowing the case which would be set up against it. Besides, even if any show cause notice had been sent to the Petitioner in such a case, which in any case would have been nothing but repetition of warning and consequence stated in Condition No.xviii, and the Petitioner had submitted its explanation, still the Respondent No.1 would not have been in a position to avoid the consequence of blacklisting, for, the consequence was the direct result of commission of the prohibited act and the Respondent No.1 had no discretion to ignore the breach or grant pardon to the sin of the Petitioner. In other words, we find that this is one of the rare cases wherein the principle of 'fair play' is already incorporated in the tender document given the nature

of Condition No.xviii of Clause 'A' and this condition fulfills substantially the requirements of principles of natural justice. It would then follow that there was no need for Respondent No.1 to have issued any show cause notice and given the opportunity of hearing to the Petitioner. The second question is answered accordingly.

29 In the result, we find that there is no merit in the Petition and it deserves to be dismissed.

30. The Petition stands dismissed. No costs.

(SMT. M.S. JAWALKAR, J.)

(SUNIL B. SHUKRE, J.)

Kirtak