



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 07.04.2022

DELIVERED ON : 18.04.2022

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THE HONOURABLE MR.JUSTICE **ABDUL QUDDHOSE**

W.P. (MD)No.18262 of 2019

and

W.M.P (MD)Nos.781 of 2020 & 14704 of 2019

M/s.Rali Engineering Works,
represented by its Proprietor, L.Lenin,
Tuticorin-628 101.

... Petitioner

vs.

1.The Chairman cum Managing Director,
Tamil Nadu Generation and Distribution
Corporation Limited,
10th Floor, NPKRR Maaligai,
144, Anna Salai, Chennai -600 002.

2.The Chief Engineer,
Tuticorin Thermal Power Station,
Tuticorin - 628 004.

3.BMW Steels Limited,
represented by its Director,
Uttar Pradesh.

4.Turbo Engineers (CBE),
through its G.M.(Tech & Marketing),
D.Arunkumar, Coimbatore.

... Respondents

(R3 was impleaded vide order of this Court, dated 07.04.2022 in W.M.P.(MD)No.18111 of 2021 in WP(MD).18262/2019.

R4 was impleaded vide order of this Court, dated 07.04.2022 in W.M.P.(MD)No.5125 of 2022 in WP(MD).18262/2019.

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records of the second respondent show cause notice in Lr.No.CE/TTPS/SE/P&A/EA/F.OT No.1959-M/PO No.8273-M/D No. /18, dated .01.2018 and consequent impugned order of the second respondent banning the petitioner firm participating in future tenders of TENGEDCO, TANTRANSOCO and TNEB Ltd for the next five years in Lr.No.CE/TTPS/EA/F.Enq.1959-M/D.1826/19, dated 02.08.2019.



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For Petitioner :Mr.AR.L.Sundaresan
Senior Counselling
for Mrs.G.Prabahari
For R1 and R2 :Mr.Veera Kathiravan
Additional Advocate General
assisted by Mr.S.Deenadhayan
For R3 :No Appearance
For R4 :Mr.K.Ravi Anantha Padmanaban

ORDER

This Writ Petition has been filed challenging the show cause notice, dated 05.01.2018 and the consequential final order, dated 02.08.2019 passed by the second respondent banning the petitioner from participating in the future tenders of TANGEDCO, TANTRANSCO and TNEB Limited for the next five years.

2. Brief facts leading to the filing of this Writ Petition:

3.The second respondent had floated a tender in the year 2014 and one M/s.BMW Steels Limited had satisfied the BQR conditions. M/s.BMW Steels Limited in the principal offer letter, dated 11.02.2014 addressed to the Tuticorin Thermal Power Station, has mentioned that they had authorised the petitioner to get order on their behalf and also authorised them for further negotiation and clarification with the respondents 1 and 2. Thereafter, Tuticorin Thermal Power Station issued a purchase order, dated 21.06.2014 in favour of the petitioner.

4.According to the petitioner, the supplies effected for Tuticorin Thermal Power Station is only in accordance with the purchase order. However, M/s.BMW Steels Limited, the successful bidder, who has authorised the official respondents to issue purchase order in favour of the petitioner, has lodged a complaint on 27.10.2015 against the petitioner, after issuance of the purchase order in favour of the petitioner.

5.The second respondent on the basis of the said complaint had issued a show cause notice, dated 05.01.2018, levelling various charges with regard to the supplies effected by the petitioner and sought for a reply from the petitioner. The petitioner has issued a reply on 17.01.2018 to the show cause notice, dated 05.01.2018 denying all the allegations and has sought for a personal hearing to putforth the petitioner's contentions with available materials. The second respondent has passed a final order, dated 02.08.2019 banning the petitioner from participating in future tenders for the next five years. The petitioner has challenged the show cause notice, dated 05.01.2018 as well as the final order, dated 02.08.2019 banning them from participating in future tenders for the next five years in this Writ Petition.



6.The petitioner has challenged the show cause notice as well as the final order on the following grounds:

(a)The order of blacklisting for a period of five years was disproportionate.

(b)In the show cause notice, dated 05.01.2018, the proposed blacklisting for five years or any other period was not indicated, which is mandatory.

(c)The alleged enquiry report reflected in the show cause notice, dated 05.01.2018, was not furnished to the petitioner.

7.In response to the contentions of the petitioner, the respondents 1 and 2 have filed their counter affidavit. The contentions of respondents 1 and 2 are as follows:

(a)There is ample evidence to prove that the petitioner had tampered with the original tender cover received from M/s.BMW Steels Limited and attached a fabricated "Undertaking in lieu of EMD" and an invalid NSIC, thereby cheating TANGEDCO as well as M/s.BMW Steels Limited.

(b)The petitioner having obtained the purchase order under the shield of M/s.BMW Steels Limited, did not place any reciprocal orders with M/s.BMW Steels Limited and the petitioner has imported the materials from China without the knowledge of its Principal, M/s.BMW Steels Limited. The genuineness of undertaking in lieu of EMD, Authorisation letter, test certificate is questionable.

(c)On a complaint given by M/s.BMW Steels Limited to the vigilance cell of the respondents 1 and 2, the documents were sent to forensic lab and thereafter, it was found that some of the important documents produced by the petitioner were forged documents.

(d)In the show cause notice, dated 05.01.2018 issued to the petitioner, it has been clearly mentioned that "why action deemed fit against your firm M/s.Rali Engineering Works, Tuticorin, cannot be taken".

(e)In the tender specification also, in para.4.2(d), it has been made clear that "In the event of documents furnished with offer found to be bogus or the documents contained false particulars, the EMD paid by the Tenders will be forfeited in addition to blacklisting them for future tenders/contracts in TANGEDCO". Therefore, in the show cause notice, the action contemplated, which culminated in the final order of blacklisting the petitioner, was clearly mentioned.

(f)Having omitted to make proper and cogent reply, rebutting the factual position stated in the final order would obviously amount to acceptance and as such estopped to dispute the same.

(g)The issues raised by the petitioner in this Writ Petition are disputed questions of fact, which cannot be canvassed in a Writ Petition by invoking Article 226 of Constitution of India.



8.The fourth respondent was impleaded based on the direction given by this Court. The fourth respondent had also participated in the tender in which, M/s.BMW Steels Limited, the principal of the petitioner, was a successful bidder. The fourth respondent has also filed a Writ Petition in W.P.(MD)No.23633 of 2015 before this Court seeking for a Mandamus to declare them as the successful bidder in place of M/s.BMW Steels Limited by blacklisting the petitioner. They have reiterated the contentions of the respondents 1 and 2 in this Writ Petition, as stated supra.

9.Heard Mr.AR.L.Sundaresan, learned Senior Counsel for the petitioner, Mr.Veerakathiravan, learned Additional Advocate General appearing for the respondents 1 and 2 and Mr.K.Ravi Anantha Padmanaban, learned Counsel for the fourth respondent.

10.Mr.AR.L.Sundaresan, learned Senior Counsel for the petitioner drew the attention of this Court to the following:

- (a)Impugned show cause notice, dated 05.01.2018;
- (b)Impugned final order, dated 02.08.2019; and
- (c)Counter affidavit filed by the second respondent in W.P.(MD) No.23633 of 2015, wherein, the second respondent has denied the allegations levelled by the third respondent against the petitioner.

11.After referring to the aforesaid documents, he would contend as follows:

- (a)the show cause notice, dated 05.01.2018 has not proposed to ban the petitioner for five years or for any other period. The same is not indicated in the show cause notice.
- (b)The order of blacklisting for five years was disproportionate.
- (c)The alleged enquiry report referred to in the show cause notice was not furnished to the petitioner.

12.In support of his contentions, Mr.AR.L.Sundaresan, learned Senior Counsel for the petitioner relied upon the following authorities:

- (1)**Gorkha Security Services vs Government (NCT of Delhi) and others**, reported in (2014) 9 SCC 105;
- (2)**Kulja Industries Limited vs Chief General Manager and others**, reported in (2014) 14 SCC 731;
- (3)**Vetindia Pharmaceuticals Limited vs State of Uttar Pradesh and another**, reported in (2021)1 SCC 804; and
- (4)**Daffodills Pharmaceuticals Limited and another vs State of Uttar Pradesh and another**, reported in (2020) 18 SCC 550.

13.Per contra, Mr.Veerakathiravan, learned Additional Advocate General appearing for the official respondents reiterated the contents of the counter affidavit filed by the respondents 1 and 2 in this Writ Petition and he would submit that only after a



vigilance enquiry and having come to the conclusion that the petitioner had supplied Chinese products, which is not permissible under the contract, the show cause notice, dated 05.01.2018 was issued to the petitioner. The allegations disclosed in the show cause notice are serious in nature and the action contemplated therein clearly indicate that blacklisting is also one of the contemplated actions. He also relied upon the tender conditions, which prescribe blacklisting action and would submit that only in accordance with the tender conditions, the show cause notice was issued to the petitioner.

14. According to him, only after giving due consideration to the reply sent by the petitioner, the final order, dated 02.08.2019, which is impugned in this Writ Petition came to be passed. Having supplied sub standard products, which is detrimental to the good working of the project, the impugned order, dated 02.08.2019 blacklisting the petitioner for five years is unquestionable and is a fair order.

15. Mr. K. Ravi Anantha Padmanaban, learned Counsel for the fourth respondent also drew the attention of this Court to various documents and based on those documents, he would summarise his arguments in the following manner:

15.1. Only a manufacturer could participate in a tender for the supply of "cast basalt bend pipes" to TANGEDCO and Tuticorin Thermal Power Station. He would submit that the cast basalt bend pipes are manufactured by heating the lava taken from volcanoes at a temperature of 1500°C for moulding them into bend pipes. At TANGEDCO, electricity is produced by using coal. To transport the ash upto the ash collecting point through paddy fields and grooves, these cast basalt pipes are used for conveying them. The significance is that if it spills on the land while transporting it to the collecting point, the land will permanently lose its fertility. Therefore, only accredited manufactures are permitted to make it. Only a manufacture can claim exemption from earnest money deposit. The petitioner is not a manufacturer of cast basalt bend pipes. The petitioner should have supplied materials of M/s. BMW Steels Limited, as the contract was awarded only to M/s. BMW Steels Limited and not to the petitioner, who is only an agent of M/s. BMW Steels Limited. The petitioner issued BMW's Test report, though the materials supplied were not manufactured by M/s. BMW Steels Limited, but were Chinese products. A fabricated test report has been furnished by the petitioner to the respondents 1 and 2. Therefore, the impugned order, dated 02.08.2019 banning the petitioner for a period of five years is a correct order and does not call for any interference by this Court.

15.2. Mr. Ravi Ananthapadmanabhan, would further submit that the show cause notice, dated 05.01.2018 clearly infers that blacklisting the petitioner is one of the contemplated actions against the



petitioner. Therefore, according to him, the petitioner was put on notice about the blacklisting action.

Discussion:

16.Blacklisting affects the fundamental rights of any person to carry on their business. When a fundamental right is likely to be deprived, the State or its instrumentalities will have to be more cautious and must afford sufficient opportunity to the person against whom blacklisting order is proposed to be passed, as it affects their fundamental right to carry on their business.

17.The Hon'ble Supreme Court in the case of ***M/s.Erusian Equipment & Chemicals Ltd., vs. State of West Bengal and Another*** reported in **(1975) 1 SCC 70** laid down the law regarding blacklisting and held that the order of blacklisting has serious civil consequences for the affected company, as such an order affects the future prospects of the business by depriving it the chance to do business with the Government, earning money and also it greatly tarnishes the reputation of the company and therefore, the opportunity of being heard should be given to the company before taking any such decision. The Hon'ble Supreme Court in the same decision held that if the rules on blacklisting or the contract does not mention any requirement for hearing before blacklisting the party, it cannot be deduced that principles of natural justice need not be followed. The relevant paragraphs of the aforesaid judgment are extracted hereunder:

"15.The blacklisting order does not pertain to any particular contract. 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".

16. In passing an order of blacklisting the Government department acts under what is described as a standardised Code. This is a Code for internal instruction. The Government departments make regular purchases. They maintain list of approved suppliers after takings into account the financial standard of the firm, their capacity and their past performance. The removal from the list is made for various reasons. The grounds on which blacklisting may be ordered are if the proprietor of the firm is convicted by court of law or security considerations so warrant or if there is strong justification for believing that the proprietor or employee of the firm, has been guilty of malpractices such as bribery, corruption, fraud, or if the firm continuously refuses to return Government dues or if the firm employs a Government servant, dismissed or removed on account of corruption in a position where he could



blacklisted on the ground of justification for believing that the firm has been guilty of malpractices such as bribery, corruption, fraud. The petitioners were blacklisted on the ground that there were proceedings pending against the petitioners for alleged violation of provisions under the Foreign Exchange Regulations Act.

17. The Government is a government of laws and not of men. It is true that neither the petitioner nor the respondent has any right to enter into a contract but they are entitled to equal treatment with others who offer tender or quotations for the purchase of the goods. This privilege arises because it is the Government which is trading with the public and the democratic form of Government demands equality and absence of arbitrariness and discrimination in such transactions. Hohfeld treats privileges as a form of liberty as opposed to a duty. The activities of the Government have a public element and, therefore, there should be fairness and equality. The State need not enter into any contract with any one but "if it does so, it must do as fairly without discrimination and without unfair procedure. Reputation is a part of person's character and personality. Blacklisting tarnishes one's reputation."

18. In the case of **Southern Painters vs. Fertilisers and Chemicals Tiruvancore limited and another** reported in **1994 Supp (2) SCC 699** following the **Erusian** case referred to supra, the Hon'ble Supreme Court held that blacklisting affects the reputation of a contractor and therefore, blacklisting a contractor based on a vigilance report without affording a fair hearing to the contractor will amount to violation of principles of natural justice. The relevant paragraph of the said judgement is extracted hereunder:

"11. The deletion of the appellant's name from the list of approved contractor on the ground that there were some vigilance report against it, could only be done consistent with and after due compliance with the principles of natural justice. That not having been done, it requires to be held that withholding of the tender form from the appellant was not justified. In our opinion, the High Court was not justified in dismissing the writ petition."

19. In the case of **Kulja Industries Limited vs. Chief General Manager, Western Telecom Project Bharat Sanchar Nigam Limited and Others** reported in **(2014) 14 SCC 731**, the Hon'ble Supreme Court held that blacklisting the contractors by the State or an instrumentality of the State is subject to judicial review on the grounds of principles of natural justice, doctrine of proportionality, arbitrariness and discrimination. The relevant paragraph of the said



judgement is extracted hereunder:

"20. It is also well settled that even though the right of the writ petitioner is in the nature of a contractual right, the manner, the method and the motive behind the decision of the authority whether or not to enter into a contract is subject to judicial review on the touchstone of fairness, relevance, natural justice, non-discrimination, equality and proportionality. All these considerations that go to determine whether the action is sustainable in law have been sanctified by judicial pronouncements of this Court and are of seminal importance in a system that is committed to the rule of law. We do not consider it necessary to burden this judgment by a copious reference to the decisions on the subject. A reference to the following passage from the decision of this Court in **M/s Mahabir Auto Stores & Ors. v. Indian Oil Corporation Ltd., (1990) 3 SCC 752** should, in our view, suffice:

"12. It is well settled that every action of the State or an instrumentality of the State in exercise of its executive power, must be informed by reason. In appropriate cases, actions uninformed by reason may be questioned as arbitrary in proceedings under Article 226 or Article 32 of the Constitution. Reliance in this connection may be placed on the observations of this Court in **Miss Radha Krishna Agarwal and Ors. v. State of Bihar and Ors., [1977] 3 SCR 249** ... In case any right conferred on the citizens which is sought to be interfered, such action is subject to Article 14 of the Constitution, and must be reasonable and can be taken only upon lawful and relevant grounds of public interest. Where there is arbitrariness in State action of this type of entering or not entering into contracts, Article 14 springs up and judicial review strikes such an action down. Every action of the State executive authority must be subject to rule of law and must be informed by reason. So, whatever be the activity of the public authority, in such monopoly or semi-monopoly dealings, it should meet the test of Article 14 of the Constitution. If a Governmental action even in matters of entering or not entering into contracts, fails to satisfy the test of reasonableness, the same would be unreasonable. It appears to us that rule of reason and rule against arbitrariness and discrimination, rules of fair play and natural justice are part of the rule of law applicable in situation or action by State instrumentality in dealing with citizens in a situation like the present one. Even though the rights of the citizens are in the nature of

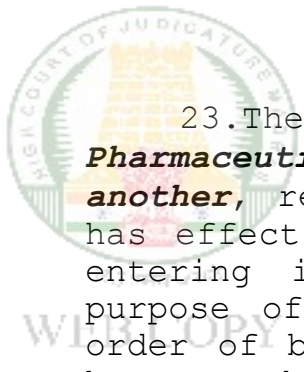


contractual rights, the manner, the method and motive of a decision of entering or not entering into a contract, are subject to judicial review on the touchstone of relevance and reasonableness, fair play, natural justice, equality and non-discrimination in the type of the transactions and nature of the dealing as in the present case."

20. In the case of **Raghunath Takur vs. State of Bihar** reported in **AIR 1989 SC 620**, the State Government had blacklisted the petitioner therein without giving any opportunity to be heard. It was contended by the State that there was no specific requirement in any rule that a notice had to be given to the petitioner before issuing a blacklisting order. The Hon'ble Supreme Court held that even if the rules do not specify so, it is an implied principle of law that an order having civil consequences should be passed only after adhering to the principles of natural justice.

21. The Honourable Supreme Court in the case of **Vetindia Pharmaceuticals Limited vs State of Uttar Pradesh and another**, reported in **(2021) 1 SCC 804** held that it was incumbent on the part of the department to state in the show cause notice that the competent authority intended to impose such a penalty of blacklisting, so as to provide adequate and meaningful opportunity to the appellant to show cause against the same. The Honourable Supreme Court held that there must be a clear inference from the show cause notice that blacklisting action is proposed. This position followed the earlier decision of the Honourable Supreme Court in the case of **Gorkha Security Services vs Government (NCT of Delhi) and others**, reported in **(2014) 9 SCC 105**.

22. Another recent decision of the Honourable Supreme Court which was not cited by any of the learned Counsels, which is exactly on the point in issue is the decision rendered in **UMC Technologies Private Limited vs. Food Corporation of India and another**, reported in **(2021) 2 SCC 551**. In that decision, where the facts are akin to the case on hand, the Honourable Supreme Court held 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 there from that there is an intention on the part of the issuer of the notice to blacklist the noticee. The Honourable Supreme Court further held that existence of a clause in the bid document, which mentions blacklisting as a bar against the eligibility, cannot satisfy the mandatory requirement of a clearly mention of the proposed action in the show cause notice. The Honourable Supreme Court further held that 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 persons/entity being blacklisted.



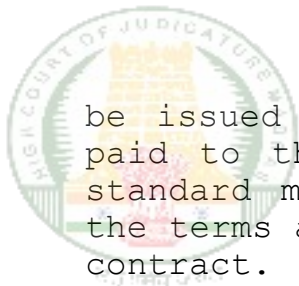
23.The Honourable Supreme Court in the case of ***Daffodills Pharmaceuticals Limited and another vs State of Uttar Pradesh and another***, reported in (2020) 18 SCC 550, has held that blacklisting has effect of preventing a person from privilege and advantage of entering into lawful relationship with the Government for the purpose of gains. The fact that the disability is created by an order of blacklisting indicates that the relevant authority is to have an objective satisfaction. Fundamentals of fair play require the person concerned should be given an opportunity to represent his case before he is put on blacklist.

24.The fact that the Government has a right to enter into contract with anyone of its choice does not give the Government the power to arbitrarily blacklist a party without affording a fair hearing as blacklisting involves material damage of losing the prospect of entering into contracts with the Government in future. The effect of blacklisting are quite drastic. It prevents the person from the privilege and the advantage of entering into lawful relationship with the Government, PSUs for the purposes of gains. Apart from reducing the person's prospects of making profits, it leads to loss of credibility and goodwill, a decline in business and clients and financial hardship. It acts as a libel to the person, if unjustifiably done.

25.This is the reason why the Courts have time and again cautioned the Government and other PSUs to adopt utmost fair play before blacklisting any party. The Courts have directed the Government and PSUs to strictly adhere to (a)Principles of natural justice and (b) *doctrine of proportionality* before blacklisting a party. The *doctrine of proportionality* means a proper balance is maintained to the adverse effects which the administrative order may have on the rights and persons, keeping in mind the purpose for which they intend to serve.

26.Excluding a member of the public from dealing with Government, restricts a person's right of doing lawful trade which has been guaranteed under Article 19(1)(g) of the Constitution of India. If blacklisting has been done unjustifiably and without affording a fair hearing, Article 21 of the Constitution is also violated, as the reputation of a person is seriously tarnished beyond repair.

27.In the case on hand, the petitioner has executed the contract and has also received payments from the respondents 1 and 2. Only thereafter, based on the complaint lodged by M/s.BMW Steels Limited, the successful bidder, for whom the petitioner acted as an agent and was authorised to collect payment, the vigilance enquiry was initiated by the respondents 1 and 2. Based on adverse report against the petitioner by the vigilance department of the respondents 1 and 2, a show cause notice, dated 05.01.2018 came to



be issued against the petitioner seeking for recovery of the sum paid to them on the ground that the petitioner had supplied sub standard materials purchased from Chinese markets in violation of the terms and conditions of the tender and the specifications of the contract.

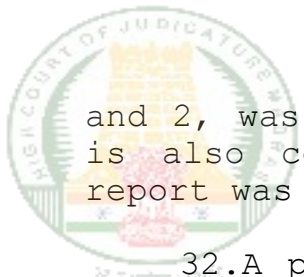
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28. In the show cause notice, dated 05.01.2018, there is no reference about the contemplation of blacklisting action against the petitioner. In the show cause notice, after relying upon the vigilance report conducted by them, the respondents 1 and 2 have only indicated to the petitioner as to why action should not be initiated against them, as deemed fit as per the terms and conditions of the contract. Though the tender conditions as found in clause-4.2(d), enables the respondents 1 and 2 to blacklist a tenderor in the event of documents submitted by the contractor to be bogus or the documents contained false particulars, in the show cause notice, there is no reference to the said clause and therefore, the petitioner was not put on notice about the proposed blacklisting action against them.

29. It is also contended by the petitioner that the copy of the vigilance report, based on which the show cause notice was issued, was not furnished to them. A reply, dated 17.01.2018 was also sent by the petitioner to the show cause notice, dated 05.01.2018 issued by the respondents 1 and 2, denying the allegations of the respondents 1 and 2. According to them, they have supplied the materials only based on the purchase order issued by the respondents 1 and 2 and only after obtaining a test certificate in accordance with the relevant standard obtained from M/s. Inspection India, Chennai and only after scrutiny by the respondents 1 and 2, they approved the test certificate.

30. In the affidavit filed by the petitioner in this Writ Petition, they have also highlighted the contents of the counter affidavit filed by the respondents No.1 and 2 in the Writ Petition, W.P.(MD)No.23633 of 2015 filed by M/s.Turbo Engineers, the fourth respondent herein, who is a competitor, wherein, the respondents 1 and 2 in the said Writ Petition, have denied the allegations levelled by M/s.Turbo Engineers, against the petitioner with regard to the improper execution of the project by the petitioner. Therefore, the petitioner has contended that the action contemplated in the show cause notice, dated 05.01.2018 is contrary to the counter affidavit filed by the respondents 1 and 2 in W.P(MD) No.23633 of 2015 filed by M/s.Turbo Engineers.

31. Since the petitioner was not put on notice about the proposed blacklisting in the show cause notice, dated 05.01.2018, the petitioner has also not given their comments with regard to the blacklisting initiated against them in their reply, dated 17.01.2018. The copy of the vigilance report, based on which the show cause notice, dated 05.01.2018 was issued by the respondents 1

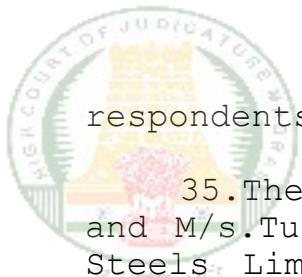


and 2, was also not enclosed along with the show cause notice. It is also contended by the petitioner that the vigilance enquiry report was never furnished to them by the respondents 1 and 2.

32.A plain reading of the show cause notice, dated 05.01.2018, makes it clear that the action of blacklisting was neither expressively proposed nor could it have been inferred from the language employed by the respondents No.1 and 2 in its show cause notice. The mere existence of a clause in the bid document, which mentions blacklisting cannot satisfy the mandatory requirement of a clear mention of the proposed action in the show cause notice. The show cause notice, dated 05.01.2018, is completely silent about blacklisting and as such, it could not have led the petitioner to infer that such an action could be taken. Had the respondents No.1 and 2 expressed its mind in the show cause notice to blacklist, the petitioner could have filed a suitable reply to the same. Therefore, the show cause notice, dated 05.01.2018, does not fulfill the requirements of a valid show cause notice for blacklisting. The order of blacklisting the petitioner clearly traversed beyond the bounds of the show cause notice, which is impermissible in law. As a result, the consequential blacklisting order, dated 02.08.2019 cannot be sustained.

33.It is also to be noted that M/s.BMW Steels Limited, the successful bidder and the principal of the petitioner though having given a complaint against the petitioner, which is the basis of blacklisting order against the petitioner, has not initiated any legal action against the petitioner till date for the alleged loss suffered by them on account of the alleged breach of contract committed by the petitioner. The petitioner was authorised by M/s.BMW Steels Limited, to get a purchase order in its name from the respondents 1 and 2 and also was authorised to collect payment. The purchase order was issued by the respondents in favour of the petitioner on 21.06.2014 and though a complaint was given by M/s.BMW Steels Limited to the respondents 1 and 2 on 27.10.2015, till date, no action has been initiated by M/s.BMW Steels Limited, against the petitioner for the loss of reputation said to have been caused to them on account of the alleged breach of contract committed by the petitioner on account of supply of bogus products claimed to be that of M/s.BMW Steels Limited.

34.M/s.Turbo Engineers has filed W.P.(MD)No.23633 of 2015 seeking to declare them as a successful bidder in place of the petitioner on the ground that the petitioner is not a manufacturer and also on the ground that they supplied Chinese products, which is not in accordance with the tender conditions. M/s.Turbo Engineers is a rival competitor of the petitioner. M/s.Turbo Engineers, also participated in the tender. The relief sought for by M/s.Turbo Engineers, in W.P.(MD)No.23633 of 2015, has now become infructuous in view of the fact that the contract has already been executed by the respondents and they have also received payments from the



respondents 1 and 2.

35. There is also no privity of contract between the petitioner and M/s. Turbo Engineers. The complaint was only given by M/s. BMW Steels Limited against the petitioner for the alleged supply of bogus products claiming to be that of M/s. BMW Steels Limited. As observed earlier, M/s. BMW Steels Limited, has not initiated any legal action against the petitioner for the loss of its reputation and for recovery of their loss. Since the relief sought for by M/s. Turbo Engineers in W.P.(MD)No.23633 of 2015 has now become infructuous, they have no say about the present dispute between the petitioner and the respondents 1 and 2.

36. The entire materials/evidence pertaining to the execution of the contract by the petitioner is only with the respondents 1 and 2 and M/s. Turbo Engineers, who is a competitor for the petitioner, does not have any *locus standi* to intervene in these proceedings and support the case of respondents 1 and 2. They have also not placed any evidence available on their side to substantiate the contents of the show cause notice issued by the respondents 1 and 2 to the petitioner on 05.01.2018. Excepting for filing an impleading application and reiterating the contention of the respondents 1 and 2, admittedly, they have not produced any fresh incriminating evidence against the petitioner with regard to the allegations levelled in the show cause notice, dated 05.01.2018.

37. Being a blacklisting order, strict adherence to fair play, principles of natural justice and *doctrine of proportionality* will have to be followed. In the case on hand, in the show cause notice, dated 05.01.2018, the respondents 1 and 2 have not indicated either directly or indirectly to the petitioner that they are proposing to blacklist the petitioner. They have only indicated the petitioner that action will be taken against the petitioner in accordance with the terms and conditions of the contract.

38. Being a blacklisting order, which tarnishes the image of the petitioner, which would result in serious civil consequence to them and disable them from participating in the future Government/PSUs projects, the respondents 1 and 2 ought to have disclosed in the show cause notice that they are contemplating blacklisting action against the petitioner. Having not done so, the respondents 1 and 2 cannot blacklist the petitioner thereafter, as no opportunity was granted to them to submit their explanation with regard to the proposed blacklisting action. As seen from the reply, dated 17.01.2018 sent by the petitioner, it is clear that the petitioner was not put on notice about the proposed blacklisting action by the respondents 1 and 2 and that is the reason, they had not stated anything about the blacklisting action in their reply.



39. Since the respondents No.1 and 2 have not followed the settled procedure for blacklisting the petitioner as laid down by the decisions of the Honourable Supreme Court in (1) **Gorkha Security Services vs Government (NCT of Delhi) and others**, reported in (2014) 9 SCC 105; (2) **Kulja Industries Limited vs Chief General Manager and others**, reported in (2014) 14 SCC 731; (3) **Vetindia Pharmaceuticals Limited vs State of Uttar Pradesh and another**, reported in (2021) 1 SCC 804; (4) **Daffodills Pharmaceuticals Limited and another vs State of Uttar Pradesh and another**, reported in (2020) 18 SCC 550; and **UMC Technologies Private Limited vs. Food Corporation of India and another**, reported in (2021) 2 SCC 551, the impugned show cause notice, dated 05.01.2018 and the consequential blacklisting order, dated 02.08.2019 has to be quashed and the Writ Petition will have to be allowed.

40. For the foregoing reasons, this Writ Petition is allowed and the impugned show cause notice, dated 05.01.2018 as well as the impugned order, dated 02.08.2019 are hereby quashed. However, liberty is granted to the respondents 1 and 2 to initiate fresh legal action, if so advised, against the petitioner for blacklisting based on the vigilance report after adhering to the settled legal procedure and by following the principles of natural justice. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(Records)

// True Copy //

18/04/2022

Sub Assistant Registrar(CS)

Cmr

To

1. The Chairman cum Managing Director,
Tamil Nadu Generation and Distribution Corporation Limited,
10th Floor, NPKRR Maaligai,
144, Anna Salai, Chennai -600 002.

2. The Chief Engineer,
Tuticorin Thermal Power Station, Tuticorin - 628 004.

+1 CC to M/s.G. PRABHAHARI, Advocate (SR-18965[F] dated 18/04/2022)

Order made in
W.P. (MD) No.18262 of 2019
18.04.2022

srk(CO)

TR(18.04.2022) 14P 4C

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