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W.P. No. 32348 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.11.2023

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 32348 of 2023

and

W.M.P. No. 31968 of 2023

S.Mahadevan

... Petitioner

-VS-

1. The Additional Chief Secretary/Commissioner,
Greater Chennai Corporation,
Rippon Building,
Chennai – 600 003.
2. The Chief Engineer,
Greater Chennai Corporation,
Rippon Building,
Chennai – 600 003.
3. The Superintending Engineer,
Bus Route Roads Department,
Greater Chennai Corporation,
Amma Maligai,
Chennai – 600 003.
4. The Zonal Officer,
Greater Chennai Corporation,
Manali,
Chennai – 600 068.
5. The Executive Engineer,
Zone – 02,
Greater Chennai Corporation,
Manali,
Chennai – 600 068.

... Respondents



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Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorari, calling for the records relating to the order passed by the First Respondent in Proceedings in Ma. A-2. Na. Ka. No. 4008/2023 dated 03.11.2023 and quash the same.

For Petitioner : Mr. S.Doraiswamy

For Respondents : Mr. J.Ravindran,
Additional Advocate General
assisted by
Ms. K.Aswini Devi,
Standing Counsel

ORDER

Heard Mr. S.Doraiswamy, Learned Counsel for the Petitioner and Mr. J.Ravindran, Learned Additional Advocate General assisted by Ms. K.Aswini Devi, Learned Standing Counsel appearing for the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner has challenged the proceedings in No. Ma. A. 2. Na. Ka. No. 4008/2023 dated 03.11.2023 passed by the First Respondent blacklisting him in the list of its registered contractors without any time limit invoking Rule 244(4) of the Tamil Nadu Urban Local Bodies Rules, 2023, which reads as follows:-



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“244. Registration of contractors for the execution of municipal works.—

....

(4) Where any registered contractor commits any breach of contract or any default or any loss in the execution of any work or commits any other act by way of misrepresentation or fraud or commits any other offence under the Act or these Rules or for any other valid reason, the Commissioner after giving an opportunity of being heard, black list his name from the list of registered contractors. On such order being passed, the name of such contractor shall be deleted by the Commissioner from the register of contractors and a report in this regard shall also be placed before the council for information.”

3. The primordial contention of the Learned Counsel for the Petitioner is that the impugned order which entails adverse civil consequences to him has been passed in gross violation of principles of natural justice inasmuch as neither any paid notice nor any opportunity of personal hearing has been afforded to him in the matter as required in the said rule.

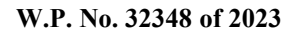


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4. The law relating to blacklisting has been succinctly explicated by Hon'ble

Supreme Court of India in ***UMC Technologies (P) Limited -vs- Food Corporation of India*** [(2021) 2 SCC 551] as follows:-

“ 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. Custodian General, Evacuee Property [Nasir Ahmad v. Custodian General, Evacuee Property, (1980) 3 SCC 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, particularised and unambiguous show-cause notice is particularly crucial due to the severe consequences of blacklisting and the stigmatisation that accrues to the person/entity being blacklisted. Here, it may be gainful to describe the concept of blacklisting and the graveness of the consequences occasioned by it. Blacklisting has the effect of denying a person or an entity the privileged opportunity of entering into government contracts. This privilege arises because it is the State who is the counterparty in government contracts and as such, every eligible person is to be afforded an equal opportunity to participate in such contracts, without arbitrariness and discrimination. Not only does blacklisting take away this privilege, it also tarnishes the blacklisted person's reputation and brings the person's character into question. Blacklisting also has long-lasting civil consequences for the future business prospects



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of the blacklisted person.

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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 W.B.*



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[Erusian Equipment & Chemicals Ltd. v. State of W.B., (1975) 1

SCC 70] in the following terms: (SCC pp. 74-75, paras 12, 15 & 20)

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

15. ... The blacklisting order involves civil consequences. It casts a slur. It creates a barrier between the persons blacklisted and the Government in the matter of transactions. The blacklists are “instruments of coercion”.

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



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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* [*Raghunath Thakur v. State of Bihar*, (1989) 1 SCC 229] struck down an order of blacklisting for future contracts on the ground of non-observance of the principles of natural justice. The relevant extract of the judgment in that case is as follows: (SCC p. 230, para 4)

“4. ... [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.”

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18. This Court in **Gorkha Security Services v. State (NCT of Delhi)** [(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: (SCC p. 115, para 16)

“16. It is a common case of the parties that the blacklisting has to be preceded by a show-cause notice. Law in this regard is firmly grounded and does not even demand much amplification. The necessity of compliance with the principles of 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.”

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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 10-4-2018 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 [Gorkha Security Services v. State (NCT of Delhi), (2014) 9 SCC 105] is a case where this Court had to decide whether the action of blacklisting could have been*



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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: (SCC pp. 118-19, paras 21-22)

“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.



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22. *The High Court has simply stated [Gorkha Security Services v. State (NCT of Delhi), 2013 SCC OnLine Del 4289] 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 to 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.”



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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.”*

That apart, it has been reiterated by the Hon'ble Supreme Court of India in ***Chauhan Builders, Rai Bareli -vs- State of Uttar Pradesh*** [Order dated 16.08.2022 in Civil Appeal arising out of Petition for Special Leave to Appeal (C) No. 32840 of 2018] that blacklisting a contractor permanently is impermissible in law.

5. There is nothing to show either in the impugned order or in the Counter-Affidavit dated 16.11.2023 filed by the Third Respondent that any show-cause notice has been issued to the Petitioner calling for explanation from him with supporting materials in that regard or that any enquiry had been conducted affording opportunity hearing to him to substantiate his contentions in terms of



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the aforesaid legal position.

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6. In view of the forgoing discussion, it is not possible to sustain the impugned order, which shall stand set aside, but it is hastened to clarify that it would not preclude the concerned authority from taking any action for blacklisting the Petitioner following the prescribed procedure in consonance with principles of natural justice and that no view is expressed by the Court on the merits of the controversy in that regard.

In the result, the Writ Petition is ordered on the aforesaid terms. Consequently, the connected Miscellaneous Petition is closed. No costs.

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Index: Yes/No

NCC: Yes/No

Note: Issue order copy by 24.11.2023.

vjt

To

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Greater Chennai Corporation,
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P.D. AUDIKESAVALU, J.

vjt

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