



WEB COPY



W.P. No.10518/2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
04.10.2024	21.10.2024

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO.10518 OF 2024

AND

W.M.P. NOS.11529, 16754, 26911 & 30372 OF 2024

Renaatus Projects Pvt. Ltd.
Rep. By its Authorised Signatory
Mr. S.Elangovan
No.139/2, 2nd Floor, Kodambakkam High Road
Nungambakkam, Chennai 600 034.

.. Petitioner

- Vs -

1. Highways & Minor Ports Dept.
Rep. By the Addl. Chief Secretary to Govt.
Secretariat, Chennai 600 009.

2. The Highways Department
Rep. By its Superintending Engineer
C & M Circle, Trichy Road
Coimbatore – 18.

3. The Highways Department
Rep. By its Superintending Engineer
Saidapet, CMDP Circle, Saidapet
Chennai 600 015.



W.P. No.10518/2024

WEB COPY

4. The Highways Department
rep. By the Chief Engineer (Highways)
Integrated Chief Engineers Office
HRS Campus, 76, Sardar Patel Road
Guindy, Chennai – 25.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari calling for the records of the 1st respondent in G.O. Ms. No.156 dated 27.11.2023 and quash the same.

For Petitioner : Mr. AL.Somayaji, SC, for
M/s. P.J.Rishikesh

For Respondents : Mr. J.Ravindran, AAG
Assisted by
Mr.Vadivelu Deenadayalan, AGP

ORDER

Challenging the impugned order of the 1st respondent in and by which the petitioner was blacklisted from participating in any tender process for a period of one year, the present writ petition has been filed.

2. It is the averment of the petitioner that the State Highways Department floated a tender for the works relating to construction of Grade Separator connecting Medavakkam-Sholingallur Road Junction, Medavakkam-



W.P. No.10518/2024

WEB COPY

Mambakkam Road Junction and Mount-Medavakkam Junction in Marmalong Bridge, Irumbuliyur Road (Balance work) in which the petitioner participated and was declared as the successful bidder and work order was issued to the petitioner on 5.12.2018 and agreement was executed on 12.12.2018.

3. It is the further averment of the petitioner that the petitioner executed the work diligently and to the full satisfaction of the State Highways Department and completed the entire works in terms of the contract. It is the further averment of the petitioner that it received a letter dated 23.5.2022 from the 3rd respondent alleging that the experience certificate produced by the petitioner was not genuine to which the petitioner, vide letter dated 22.6.2022 denied the allegations by filing a reply pointing out that these complaints were instigated by a relative of the Managing Director of the petitioner company.

4. It is the further averment of the petitioner that thereafter, the 2nd respondent, vide letter dated 18.08.2022 called for explanation from the petitioner with regard to the genuineness of the experience certificate, which was alleged to be not genuine to which the petitioner gave a detailed reply by



W.P. No.10518/2024

WEB COPY

letter dated 16.9.2022 wherein the petitioner specifically stated that there is no question of verification of the genuineness of the experience certificate and also requested the 2nd respondent to drop the complaints. It was further pointed out in the said explanation that almost the entire works with regard to the contract had been completed and the bridge was also inaugurated on 23.2.2021 and 13.5.2022 by the Hon'ble Chief Minister of Tamil Nadu.

5. It is the further averment of the petitioner that inspite of the response of the petitioner, the 2nd respondent had passed the proceeding dated 27.9.2022 concluding that the experience certificate submitted by the petitioner was not genuine and, therefore, an adverse order was passed by temporarily removing the name of the petitioner from the registration list, however, without mentioning any specific period. It is the further averment of the petitioner that the said order has been passed by the 2nd respondent on the recommendations of the 3rd respondent.

6. It is the further averment of the petitioner that the effect of the temporary removal from the contract registration list amounted to debarring the



W.P. No.10518/2024

WEB COPY

petitioner, which has serious civil consequences and, therefore, the petitioner filed an appeal as against the same before the 4th respondent, vide letter dated 17.4.2023. It is the further averment of the petitioner that it was the specific claim of the petitioner in the appeal that the order has been passed in a predetermined fashion without considering the representation of the petitioner and further submitted that the punishment was very harsh and disproportionate to the alleged offence and that the contract did not provide for a provision for blacklisting.

7. Pending the appeal, the petitioner also addressed a letter to the 2nd respondent to recall the order, as it is harsh and caused severe prejudice to the petitioner as they were not able to participate in any of the tenders floated by the Highways Department. It is the further case of the petitioner that in the appeal, the 4th respondent, through an one line cryptic order, had dismissed the appeal of the petitioner stating that reconsideration of the decision of the 2nd respondent was not tenable. It is the further averment of the petitioner that none of the grievance raised by the petitioner were considered and the order



W.P. No.10518/2024

WEB COPY

would clearly reflect total non-application of mind on the part of the Chief Engineer.

8. It is the further case of the petitioner that the order of suspension was passed on 27.9.2022 and appeal was rejected on 2.6.2023 by which time nine months had passed, during which time, the petitioner could not participate in any of the tenders floated by the Highways Department. It is the further stand of the petitioner that the contract was completed by the petitioner to the full satisfaction of the 3rd respondent and final bill was received and the 3rd respondent had also issued the completion certificate dated 22.12.2023.

9. It is the further averment of the petitioner that to his complete shock and surprise, the petitioner received a letter dated 2.1.2024 from the 2nd respondent, wherein it has been specifically stated that the petitioner has been banned from business dealings for a period of one year by attaching the Government Order passed by the 1st respondent in G.O. Ms. No.156 of 2023 dated 27.11.2023.



W.P. No.10518/2024

WEB COPY

10. It is the specific averment of the petitioner that prior to the passing of the Government Order, no show cause notice whatsoever was provided and the period of banning was also not mentioned. In this regard, the petitioner was put in dark, as it was not clear as to whether the Government Order would have prospective effect or whether the same would run concurrently from the date of suspension of the business dealings passed in letter dated 27.09.2022 by the 2nd respondent.

11. In spite of the sustained efforts of the petitioner, the petitioner was not able to obtain any proper response though the petitioner had already been removed from the registration list and was not able to participate in the tenders floated by the State Highways Department from 27.09.2022, effectively shutting the petitioner from participation for the past 18 months. The present Government Order has been passed against the petitioner without affording any opportunity to the petitioner, which is against the principles of law and is a stark violation of principles of natural justice, notwithstanding the fact that the petitioner had already suffered punishment for 18 months without participation.



W.P. No.10518/2024

WEB COPY

12. It is the further grievance of the petitioner that the present Government Order is being circulated among other departments where the petitioner is already executing projects and the present Government Order would cause grave prejudice and hardship to the petitioner and, therefore, left with no other alternative, the present writ petition has been filed.

13. Learned senior counsel appearing for the petitioner submitted that when the 2nd respondent had already passed an order suspending the petitioner for a period of one year from participating in any of the tender process, the act of the 1st respondent in further passing the impugned order by blacklisting the petitioner for a period of one year, which has not been spelled to be prospective or retrospective, but given prospective effect, is clearly erroneous, moreso, when the petitioner has not been provided with an opportunity to submit its case before the 1st respondent.

14. It is the submission of the learned senior counsel that non-grant of an opportunity of hearing to the petitioner before passing the impugned order is a clear violation of principles of natural justice, which prejudices the petitioner. It



W.P. No.10518/2024

WEB COPY

is the further submission of the learned senior counsel that without admitting that the experience certificate submitted is not genuine, it is the contention of the learned senior counsel that it is not the case of the respondents that the quality of work executed by the petitioner is below standard. In this regard, learned senior counsel pointed out that the 3rd respondent had given its satisfaction certificate on completion of the works by the petitioner and final bill was also received. The issuance of completion certificate by the 3rd respondent to the petitioner clearly reveals that the work carried out by the petitioner is to the satisfaction of the 3rd respondent.

15. It is the further submission of the learned senior counsel that already since the suspension of the petitioner by order dated 27.9.2022, the petitioner has been suffering without participating in any tender process for more than 18 months and out of blue, without affording an opportunity to the petitioner, once again blacklisting the petitioner on the very same allegation is wholly impermissible, that too without an opportunity of hearing being granted.



W.P. No.10518/2024

WEB COPY

16. It is the further submission of the learned senior counsel that when an order has already been passed by the 2nd respondent suspending and blacklisting the petitioner for one year, the further blacklisting of the petitioner by the 1st respondent for a further period of one year, whether prospective or retrospective, not being clearly spelt in the impugned order, is nothing but a penalisation of the petitioner twice for the very same alleged offence, which is impermissible in law.

17. It is the further submission of the learned senior counsel, by placing reliance on clauses 6.2, 6.4 and 6.5 of the General code to deal with Works Contractors particularly provides the circumstances in which banning of business could be ordered by the tender inviting authority. Referencing the above, it is the submission of the learned senior counsel that the reasons for which banning is contemplated do not stand attracted to the case of the petitioner. Such being the case, the imposition of ban on the petitioner, moreso, the dual imposition of penalty, one by the 2nd respondent and, thereafter, by the 1st respondent, is wholly arbitrary and is a direct affront on the doctrine of proportionality.



W.P. No.10518/2024

WEB COPY

18. It is the further submission of the learned senior counsel that the impugned order has put the livelihood of the petitioner in jeopardy as not only it does not spell the time period of the ban and also whether it is prospective or retrospective, but the Government Order has been circulated to other departments in which the petitioner is executing contractual works, where the petitioner is faced with a piquant situation where the authorities therein are threatening the petitioner with action insofar as the works that are being undertaken by the petitioner. In the above backdrop, it is submitted that the order being arbitrary and illegal, the same requires interference at the hands of this Court.

19. In support of the aforesaid submissions, learned senior counsel placed reliance on the following decisions :-

- i) *Erusian – Vs – Union of India (1975 (1) SCC 70);*
- ii) *Raghunath Thakur – Vs – State of Bihar (1989 (1) SCC 229);*
- iii) *Southern Painters – Vs – Fertilizers & Chemicals Travancore (1994 Supp. (2) SCC 699);*
- iv) *Gorkha Security – Vs – Govt. Of NCT of Delhi (2014 (9) SCC 105);*



W.P. No.10518/2024

WEB COPY

- v) *Kulja Industries – Vs – Chief General Manager (2014 (14) SCC 731);*
- vi) *Daffodills Pharma – Vs – State of UP (2020 (18) SCC 550);*
- vii) *Vet India – Vs – State of UP (2021 (1) SCC 804);*
- viii) *UMC Technologies Pvt. Ltd. – Vs – FCI (2021 (2) SCC 551); and M/s.Dharampal Satyapal Ltd. – Vs – Dy. Commissioner of Central Excise, Gauhati & Ors. (Civil Appeal Nos.4458-4459 of 2015 – Dated 14.5.2015)*

20. Per contra, learned Addl. Advocate General appearing for the respondents submitted that the experience certificate, which was a mandatory condition for considering the tender of the petitioner, was found to be a forged document, which came to light on the basis of complaint received and after ascertaining its genuineness, show cause notice was issued to the petitioner and after obtaining the reply, which, being found unsatisfactory, the 3rd respondent had addressed the 2nd respondent to take action against the petitioner for blacklisting the petitioner as per the letter of Public Department in Lr. No.56/1386/1-79 dated 15.11.1979.



W.P. No.10518/2024

WEB COPY

21. It is the further submission of the learned Addl. Advocate General that after following the procedures contemplated therein, show cause notice was issued and after obtaining the explanation of the petitioner on 16.9.2022, the same being found not satisfactory as the petitioner failed to explain the genuineness of the above certificate, the petitioner was temporarily removed from the contractor registration list vide proceedings dated 27.9.2022.

22. It is the further submission of the learned Addl. Advocate General that after suspension of the petitioner, blacklisting was recommended by the 2nd respondent to the 1st respondent, who had, after consideration of the material, passed the impugned order. In this regard, it is the submission of the learned Addl. Advocate General that show cause notice and opportunity of hearing having already been given to the petitioner by the 2nd respondent and the temporary act of the 2nd respondent in suspending the petitioner was only placed for approval of the 1st respondent, there arises no necessity for the 1st respondent to grant an opportunity of personal hearing to the petitioner as the said condition stood fulfilled by the act of the 2nd respondent and, therefore, there is no violation of principles of natural justice, as alleged by the petitioner.



W.P. No.10518/2024

WEB COPY

23. It is the further submission of the learned Addl. Advocate General that clauses 6.2, 6.5 and 6.5 of the code dealing with Works Contractors which provides for banning provides banning for malpractice and the present act of the petitioner being a malpractice within the said clause 6.2 of the said Code, the petitioner was rightly banned by the 1st respondent and, therefore, there is no error in the order passed by the 1st respondent.

24. In fine, it is the submission of the learned Addl. Advocate General that the 2nd and 3rd respondents having given the petition an opportunity of being heard upon show cause notice, there is due compliance of principles of natural justice and, therefore, the non-grant of opportunity by the 1st respondent, would in no way be termed to be a violation of principles of natural justice warranting interference with the impugned order.

25. It is the further submission of the learned Addl. Advocate General that the act of the petitioner amounts to malpractice for securing the projects from the Government by means of producing fabricated, forged and bogus



W.P. No.10518/2024

WEB COPY

qualification documents for bidding, which, if allowed to be continued, the projects which are given to the petitioner by the Government would have serious implications with regard to the quality of work and, therefore, the ban imposed on the petitioner cannot be said to be unjust and unreasonable. Therefore, considering the public interest involved in the present case, no interference is warranted with the order passed by the 1st respondent.

26. In support of the aforesaid submissions, learned Addl. Advocate General placed reliance on the following decisions :-

- i) *Ram Preeti Yadav – Vs – UP Board of High School & Intermediate Education & Ors. (2003 (8) SCC 311); and*
- ii) *Secretary, AP Social Welfare Residential Educational Institutions – Vs – Pindiga Sridhar & Ors. (2007 (13) SCC 352)*

27. This Court gave its anxious consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record as also the decisions relied on by the learned senior counsel for the petitioner.



W.P. No.10518/2024

WEB COPY

28. There is no dispute with regard to the factual aspects of this case with regard to the grant of tender in favour of the petitioner and also the work executed by the petitioner. Furthermore, the work executed by the petitioner was completed and completion certificate was also issued by the 3rd respondent along with the final bill for settlement. It is to be noted that no grievance has been expressed by the respondents with regard to the quality of work executed by the petitioner and that inauguration of the overbridges have also been done and it has been thrown open by the Hon'ble Chief Minister of Tamil Nadu.

29. The whole case now lingers on the experience certificate, which has been submitted by the petitioner along with the tender document, as per clause 2.2. of the Notice Inviting Tender. It is to be noted that on a complaint received, the 3rd respondent, after verifying the genuineness of the experience certificate submitted by the petitioner, upon coming to know that the experience certificate has not been issued by the authority, which is said to have issued the certificate, had placed the matter before the 2nd respondent for taking action.



W.P. No.10518/2024

WEB COPY

30. The 2nd respondent, on the basis of the materials placed before it, had issued show cause notice to the petitioner on 18.8.2022 with regard to the aforesaid complaint relating to bogus experience certificate to which reply was submitted by the petitioner on 16.9.2022. It is also not disputed that based on the explanation given, being not satisfied with the said reply, the 2nd respondent has passed the proceedings dated 27.9.2022 and, thereby, the petitioner was temporarily removed from the registration list. It is also not disputed by the parties, that in the said order dated 27.9.2022, there is no specific period mentioned with regard to the suspension. In fine, the petitioner was debarred from participating in future tender process on and from the date of proceeding, viz., 27.9.2022.

31. The whole issue arises only after this particular point. The 2nd respondent had, in turn, after issuing the aforesaid proceeding, had placed the matter before the 1st respondent for passing final orders and the 1st respondent, considering the materials placed before it, had passed the impugned order, however, without granting any opportunity to the petitioner, which, according to



W.P. No.10518/2024

WEB COPY

the petitioner is a stark violation of principles of natural justice as no opportunity was granted by the 1st respondent before passing the final order.

32. In the aftermath of the above facts, as emerge from the materials available on record, it is tacitly evident that a show cause notice was issued by the 2nd respondent pursuant to the recommendation made by the 3rd respondent with regard to the experience certificate not found to be genuine and to the said show cause notice, the petitioner has also submitted his explanation. However, in the show cause notice, there is no whisper about the fact that the petitioner would be inflicted with blacklisting; rather, the petitioner was asked to only submit his explanation with regard to the genuineness of the experience certificate which has been submitted by the petitioner.

33. Pursuant to the explanation submitted by the petitioner, the 2nd respondent had suspended the petitioner and, thereafter, placed the papers before the 1st respondent for passing final orders. This clearly shows that the order passed by the 2nd respondent is not final and the orders that would be passed by the 1st respondent alone would be final.



W.P. No.10518/2024

WEB COPY

34. Such being the position, the issue that requires consideration of this

Court is –

- i) *Whether the non-grant of opportunity of hearing to the petitioner by the 1st respondent before passing the impugned order is violation of principles of natural justice;\.*
- ii) *If the answer to the question is in the affirmative, what could be the relief that could be granted to the petitioner.*

35. The main thrust of argument advanced on behalf of the petitioner is placing reliance upon clause 6.2, 6.4 and 6.5 of the Code relating to Works Contracts, whereas, the respondents place reliance upon clause 4 of the very same Code.

36. Even a bare perusal of the aforesaid clauses reveal that it relates to corrupt acts, which would form the basis for blacklisting. The fraud played



W.P. No.10518/2024

WEB COPY

should be of such a magnitude that it has a direct impact on the discharge of the work, which alone would attract the punishment of blacklisting. However, the act of the petitioner, as alleged, though could be categorised as fraud, but it has not impacted the work done by the petitioner, which would be evident from the completion certificate given by the 3rd respondent as also the final bill based on which the petitioner could raise his claim. Therefore, it is clear that the fraud is not of such a magnitude, which has a direct bearing on the interest of the public and it is not act breeding corruption, which would impact the work and, therefore, passing the impugned order for blacklisting has to be done only in accordance with law and infraction of the same would have to be looked into on the facts and circumstances of the case.

37. In *Vet India Pharmaceuticals case (supra)*, similar issue relating to blacklisting of the appellant without granting an opportunity of hearing and also not putting the appellant on notice about the likelihood of blacklisting of the appellant therein, fell for consideration before the Apex Court and in the said context, the Apex Court held as under :-



WEB COPY

“11. If the respondents had expressed their mind in the show-cause notice to blacklist, the appellant could have filed an appropriate response to the same. The insistence of the respondents to support the impugned order by reference to the terms of the tender cannot cure the illegality in the absence of the appellant being a successful tenderer and supplier. We therefore hold that the order of blacklisting dated 8.9.2009 stands vitiated from the very inception on more than one ground and merits interference.

12. In view of the aforesaid conclusion, there may have been no need to go into the question of the duration of the blacklisting, but for the arguments addressed before us. An order of blacklisting operates to the prejudice of a commercial person not only in praesenti but also puts a taint which attaches far beyond and may well spell the death knell of the organisation/institution for all times to come described as a civil death. The repercussions on the Appellant were clearly spelt out by it in the representations as also in the writ petition, including the consequences under the Rajasthan tender, where it stood debarred expressly because of the present impugned order. The possibility always remains that if a proper show cause notice had been given and the reply furnished would have been considered in accordance with law, even if the Respondents decided to blacklist the Appellant, entirely different considerations may have prevailed in their minds especially with regard to the duration.”



38. Yet again, in *UMC Technologies case (supra)*, the need to spell out clearly the intention of the issuer of the notice to blacklist the notice, was considered by the Supreme Court and in the said context, it was held as under :-

“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.

* * * * *

25. The mere existence of a Clause in the Bid Document, which mentions blacklisting as a bar against eligibility, cannot satisfy the mandatory requirement of a clear mention of the proposed action in the show cause notice. The Corporation's notice is completely silent about blacklisting and as such, it could not have led the Appellant to infer that such an action could be taken by the Corporation in pursuance of this notice. Had the Corporation expressed its mind in the show cause notice to black list, the Appellant could have filed a suitable reply for the same. Therefore, we are of the opinion that the show cause notice dated



W.P. No.10518/2024

WEB COPY

10.04.2018 does not fulfil the requirements of a valid show cause notice for blacklisting. In our view, the order of blacklisting the Appellant clearly traversed beyond the bounds of the show cause notice which is impermissible in law. As a result, the consequent blacklisting order dated 09.01.2019 cannot be sustained.”

39. Though decisions contra to the above have been placed before this Court by the learned Addl. Advocate General, however, it is to be pointed out that those cases arise from other aspects and does not pertain to blacklisting and the need to spell out in the notice that there is likelihood of blacklisting the notice. Therefore, the said decisions would not in any way advance the case of the respondents any further and, therefore, this Court is not venturing into delving deep into the said decisions.

40. From the decisions noted above, it unambiguously transpires, as laid down by the Apex Court, that the intention to blacklist should be spelt out in the notice which alone could be taken to mean that it is an adequate, informed and meaningful opportunity to show cause and not otherwise.



W.P. No.10518/2024

WEB COPY

41. Keeping the ratio laid down above, dissecting the materials available on record, it clearly reveals that the show cause notice only proceeds on the footing calling upon the petitioner to spell out about the genuineness of the experience certificate and as to why action should not be taken against the petitioner. It does not speak about the nature of action that is proposed to be taken against the petitioner.

42. Further, one other important aspect, which requires consideration of this Court is that the show cause notice has been issued by the 2nd respondent calling for explanation and the explanation having found to be not satisfactory, the petitioner was kept under suspension and the matter was placed before the 1st respondent for passing final orders. From the above, it is evident that the authority to pass final orders is the 1st respondent and not the 2nd respondent, which along had prompted the 2nd respondent to keep the petitioner under suspension and place the matter before the 1st respondent for passing final orders.



W.P. No.10518/2024

WEB COPY

43. Therefore, of necessity, it is incumbent on the 1st respondent, upon perusing the materials placed before it by the 2nd respondent, to call upon the petitioner by giving the petitioner an opportunity to put forth its case, whereinafter, the 1st respondent could decide the order to be passed. However, without granting any opportunity to the petitioner and putting the petitioner on notice about the likelihood of the petitioner being blacklisted, the impugned order had come to be passed, which is a clear violation of principles of natural justice.

44. In *Dharampal Satyapal case (supra)*, the Supreme Court had discussed the necessity of grant of an opportunity of personal hearing and the outcome in case of infraction/violation has been detailed and in that context, it was held as under :-

“25. It is on the aforesaid jurisprudential premise that the fundamental principles of natural justice, including audi alteram partem, have developed. It is for this reason that the courts have consistently insisted that such procedural fairness has to be adhered to before a decision is made and infraction thereof has led to the quashing of decisions taken. In many statutes, provisions are made ensuring that a notice is given to a person against whom an order is likely to be passed before a decision is made, but there may be



instances where though an authority is vested with the powers to pass such orders, which affect the liberty or property of an individual but the statute may not contain a provision for prior hearing. But what is important to be noted is that the applicability of principles of natural justice is not dependent upon any statutory provision. The principle has to be mandatorily applied irrespective of the fact as to whether there is any such statutory provision or not.

De Smith captures the essence thus- "Where a statute authorises interference with properties or other rights and is silent on the question of hearing, the courts would apply rule of universal application and founded on plainest principles of natural justice".

Wade also emphasizes that principles of natural justice operate as implied mandatory requirements, non-observance of which invalidates the exercise of power. In Cooper v. Sandworth Board of Works (1863) 14 GB (NS) the Court laid down that: '...although there is no positive word in the statute requiring that the party shall be heard, yet justice of common law would supply the omission of Legislature". Exhaustive commentary explaining the varied contours of this principle can be traced to the judgment of this Court in Managing Director, ECIL, Hyderabad and Ors. v. B. Karunakar and Ors. MANU/SC/0237/1994 : (1993) 4 SCC 727, wherein the Court discussed plenty of previous case law in restating the aforesaid principle, a glimpse whereof can be found in the following passages:

"20. The origins of the law can also be traced to the principles of natural justice, as developed in the following cases: In A.K. Kraipak v. Union of India MANU/SC/0427/1969 : (1969) 2 SCC 262 : (1970) 1 SCR



WEB COPY



W.P. No.10518/2024

457, it was held that the rules of natural justice operate in areas not covered by any law. They do not supplant the law of the land but supplement it. They are not embodied rules and their aim is to secure justice or to prevent miscarriage of justice. If that is their purpose, there is no reason why they should not be made applicable to administrative proceedings also especially when it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial ones. An unjust decision in an administrative inquiry may have a more far reaching effect than a decision in a quasi-judicial inquiry. It was further observed that the concept of natural justice has undergone a great deal of change in recent years. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the inquiry is held and the constitution of the tribunal or the body of persons appointed for that purpose. Whenever a complaint is made before a Court that some principle of natural justice has been contravened, the Court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case. The rule that inquiry must be held in good faith and without bias and not arbitrarily or unreasonably is now included among the principles of natural justice.

21. In *Chairman, Board of Mining Examination v. Ramjee* MANU/SC/0061/1977 : (1977) 2 SCC 256, the Court has observed that natural justice is not an unruly



W.P. No.10518/2024

WEB COPY

horse, no lurking landmine, nor a judicial cure-all. If fairness is shown by the decision-maker to the man proceeded against, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice, without reference to the administrative realities and other factors of a given case, can be exasperating. The Courts cannot look at law in the abstract or natural justice as mere artifact. Nor can they fit into a rigid mould the concept of reasonable opportunity. If the totality of circumstances satisfies the Court that the party visited with adverse order has not suffered from denial of reasonable opportunity, the Court will decline to be punctilious or fanatical as if the rules of natural justice were sacred scriptures.

22. In Institute of Chartered Accountants of India v. L.K. Ratna MANU/SC/0083/1986 : (1986) 4 SCC 537, Charan Lal Sahu v. Union of India MANU/SC/0285/1990 : (1990) 1 SCC 613 (Bhopal Gas Leak Disaster Case) and C.B. Gautam v. Union of India MANU/SC/0673/1992 : (1993) 1 SCC 78, the doctrine that the principles of natural justice must be applied in the unoccupied interstices of the statute unless there is a clear mandate to the contrary, is reiterated."

In his separate opinion, concurring on this fundamental issue, Justice K. Ramaswamy echoed the aforesaid sentiments in the following words:



WEB COPY

“61. It is now settled law that the proceedings must be just, fair and reasonable and negation thereof offends Articles 14 and 21. It is well settled law that principles of natural justice are integral part of Article 14. No decision prejudicial to a party should be taken without affording an opportunity or supplying the material which is the basis for the decision. The enquiry report constitutes fresh material which has great persuasive force or effect on the mind of the disciplinary authority. The supply of the report along with the final order is like a post mortem certificate with putrefying odour. The failure to supply copy thereof to the delinquent would be unfair procedure offending not only Articles 14, 21 and 311(2) of the Constitution, but also, the principles of natural justice.”

26. Likewise, in C.B. Gautam v. Union of India and Ors. MANU/SC/0673/1992 : (1993) 1 SCC 78, this Court once again held that principle of natural justice was applicable even though it was not statutorily required. The Court took the view that even in the absence of statutory provision to this effect, the authority was liable to give notice to the affected parties while purchasing their properties Under Section 269-UD of the Income Tax Act, 1961. It was further observed that the very fact that an imputation of tax evasion arises where an order for compulsory purchase is made and such an imputation casts a slur on the parties to the agreement to sell leads to the conclusion that before such an imputation can be made against the parties concerned they must be given an opportunity to show-cause that the under valuation in the agreement for sale was not with a view to evade tax. It is,



therefore, all the more necessary that an opportunity of hearing is provided.

27. From the aforesaid discussion, it becomes clear that the opportunity to provide hearing before making any decision was considered to be a basic requirement in the Court proceeding. Later on, this principle was applied to other quasi-judicial authorities and other tribunals and ultimately it is now clearly laid down that even in the administrative actions, where the decision of the authority may result in civil consequences, a hearing before taking a decision is necessary. It was, thus, observed in *A.K. Kraipak's case* (supra) that if the purpose of rules of natural justice is to prevent miscarriage of justice, one fails to see how these rules should not be made available to administrative inquiries. In the case of *Maneka Gandhi v. Union of India and Anr.* MANU/SC/0133/1978 : (1978) 1 SCC 248 also the application of principle of natural justice was extended to the administrative action of the State and its authorities. It is, thus, clear that before taking an action, service of notice and giving of hearing to the noticee is required. In *Maharashtra State Financial Corporation v. Suvarna Board Mills and Anr.* MANU/SC/0527/1994 : (1994) 5 SCC 566, this aspect was explained in the following manner:

“3. It has been contended before us by the learned Counsel for the Appellant that principles of natural justice were satisfied before taking action Under Section 29, assuming that it was necessary to do so. Let it be seen whether it was so. It is well settled that natural justice cannot be placed in a straight-jacket; its rules are not embodied and they do vary from case to case and from one



WEB COPY

fact-situation to another. All that has to be seen is that no adverse civil consequences are allowed to ensue before one is put on notice that the consequence would follow if he would not take care of the lapse, because of which the action as made known is contemplated. No particular form of notice is the demand of law: All will depend on facts and circumstances of the case.”

30. But that is not the end of the matter. While the law on the principle of audi alteram partem has progressed in the manner mentioned above, at the same time, the Courts have also repeatedly remarked that the principles of natural justice are very flexible principles. They cannot be applied in any straight-jacket formula. It all depends upon the kind of functions performed and to the extent to which a person is likely to be affected. For this reason, certain exceptions to the aforesaid principles have been invoked under certain circumstances. For example, the Courts have held that it would be sufficient to allow a person to make a representation and oral hearing may not be necessary in all cases, though in some matters, depending upon the nature of the case, not only full-fledged oral hearing but even cross-examination of witnesses is treated as necessary concomitant of the principles of natural justice. Likewise, in service matters relating to major punishment by way of disciplinary action, the requirement is very strict and full-fledged opportunity is envisaged under the statutory rules as well. On the other hand, in those cases where there is an admission of charge, even when no such formal inquiry is held, the punishment based on such admission is upheld. It is for this reason, in certain circumstances, even post-decisional hearing is held to be permissible. Further, the Courts have held that under certain circumstances



principles of natural justice may even be excluded by reason of diverse factors like time, place, the apprehended danger and so on.

* * * * *

33. So far so good. However, an important question posed by Mr. Sorabjee is as to whether it is open to the authority, which has to take a decision, to dispense with the requirement of the principles of natural justice on the ground that affording such an opportunity will not make any difference? To put it otherwise, can the administrative authority dispense with the requirement of issuing notice by itself deciding that no prejudice will be caused to the person against whom the action is contemplated? Answer has to be in the negative. It is not permissible for the authority to jump over the compliance of the principles of natural justice on the ground that even if hearing had been provided it would have served no useful purpose. The opportunity of hearing will serve the purpose or not has to be considered at a later stage and such things cannot be presumed by the authority. This was so held by the English Court way back in the year 1943 in the case of *General Medical Council v. Spackman* 1943 AC 627. This Court also spoke in the same language in the case of *The Board of High School and Intermediate Education, U.P. and Ors. v. Kumari Chittra Srivastava and Ors.* MANU/SC/0069/1969 : (1970) 1 SCC 121 : AIR 1970 SC 1039, as is apparent from the following words:

8. The learned Counsel for the Appellant, Mr. C.B. Aggarwal, contends that the facts are not in dispute and it is further clear that no useful purpose would have been served if the Board had served a show cause notice on the Petitioner. He says that in view of these circumstances it was not necessary for the Board to have issued a show cause notice. We are unable to accept



W.P. No.10518/2024

WEB COPY

this contention. Whether a duty arises in a particular case to issue a show cause notice before inflicting a penalty does not depend on the authority's satisfaction that the person to be penalised has no defence but on the nature of the order proposed to be passed."

45. From the aforesaid decision, it clearly transpires that *audi alteram partem* is an important facet of justice delivery and merely because show cause notice was issued by an authority, it cannot be taken to mean that an opportunity of hearing has been granted and, therefore, no necessity arises for granting an opportunity of personal hearing. The administrative authority, even be it for that matter the Government, cannot dispense with the requirement of issuing notice by itself by deciding no prejudice would be caused. Therefore, the non-grant of an opportunity of personal hearing before passing the impugned order vitiates the impugned order and the contention to the contra does not deserve acceptance.

46. Be that as it may. The order of suspension has been passed on 27.9.2022 and, thereafter, the petitioner has been under suspension till date. After 18 months, the impugned order blacklisting the petitioner had come to be



W.P. No.10518/2024

WEB COPY

passed on 27.11.2023, which has been received by the petitioner on 6.1.2024 banning the petitioner from business dealing with Governmental contracts for a period of one year. However, curiously, it is noted that the date of operation of the one year period has not been spelt out. Whether the said period would start from the date on which the order of suspension was passed, which would mean that it would have a retrospective operation or it would start operation from the date of issuance of the Government Order, meaning thereby, it would have prospective operation. It is to be pointed out at the risk of repetition that a period of 18 months had passed since the suspension of the petitioner before the order dated 27.11.2023 had come to be passed. Therefore, for all purposes, the petitioner had been made to suffer for a period of about 29 months from the date of suspension till date, though the order of blacklisting is only for a period of one year, even if it is to be considered prospectively.

47. In such view of the matter, the petitioner having already suffered a period of 18 months of suspension and 11 months of blacklisting from the date of the impugned order, viz., 27.11.2023 and further this Court having already held that non-grant of opportunity of personal hearing to the petitioner before



W.P. No.10518/2024

passing the order vitiates the impugned order, however, notwithstanding the fact that the genuineness of the certificate submitted by the petitioner is also an issue, which has to be kept in mind, this Court is of the considered view that the blacklisting imposed on the petitioner could be modified on certain terms.

48. Accordingly, this Court disposes of this writ petition with the following observations and directions :-

- i) *The period of blacklisting of one year, as per the order passed by the 1st respondent, in G.O. Ms. No.156 of 2023, dated 27.11.2023 will start running from the date of issuance of the Government Order, viz., 27.11.2023 and the one year period has to be reckoned from the said date, which would end on 26.11.2024;*
- ii) *The blacklisting of the petitioner from participating in any tender process relating to Governmental works would be restricted to the area in which the petitioner had done the present contract works and it would not*



W.P. No.10518/2024

stand enlarged to the other parts of the State of Tamil Nadu.

- iii) *Any tender, which the petitioner is executing for any Department under the Government of Tamil Nadu would not attract the rigours of the present G.O. (Ms) No.156 of 2023 dated 27.11.2023 and no action can be initiated on the petitioner based on the aforesaid Government Order.*
- iv) *On and from 27.11.2024, the petitioner would be entitled to participate in all the tenders floated by the Government of Tamil Nadu for any contractual works throughout the State of Tamil Nadu, including the area, which is the subject matter of the present lis.*
- v) *Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.*

21.10.2024

Index : Yes / No



W.P. No.10518/2024

WEB COPY GLN



WEB COPY



W.P. No.10518/2024

To

1. The Addl. Chief Secretary to Govt.
Highways & Minor Ports Dept.
Secretariat, Chennai 600 009.
2. The Superintending Engineer
Highways Department
C & M Circle, Trichy Road
Coimbatore – 18.
3. The Superintending Engineer
Highways Department
Saidapet, CMDP Circle, Saidapet
Chennai 600 015.
4. The Chief Engineer (Highways)
Highways Department
Integrated Chief Engineers Office
HRS Campus, 76, Sardar Patel Road
Guindy, Chennai – 25.



WEB COPY



W.P. No.10518/2024

M.DHANDAPANI, J.

GLN

**PRE-DELIVERY ORDER IN
W.P. NO. 10518 OF 2024**

Pronounced on



WEB COPY



W.P. No.10518/2024

21.10.2024