



W.P.(MD)No.8247 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 18.03.2024

Pronounced on : 22 .03.2024

CORAM

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

W.P.(MD)No.8247 of 2021

and

W.M.P.(MD)No.6229 of 2021

G.Muthuraj

... Petitioner

Vs.

1. The Executive Officer,
Thiruppuvanam Special Grade
Town Panchayat,
Thiruppuvanam,
Sivagangai District.

... Respondents

Prayer : This Writ Petition filed under Article 226 of Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records pertaining to the impugned order of the respondent dated 10.03.2021 in Na.Ka.No.372/2020/A2 and quash the same.

For Petitioner : Mr.J.Anand Kumar

For Respondent : Mr.SRA.Ramachandran
Additional Government Pleader



W.P.(MD)No.8247 of 2021

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ORDER

The Writ Petition is directed against the order dated 10.05.2021 passed in Na.Ka.No.372/2020/ A2 by the respondent, black listing the petitioner on contractor.

2.The case of the writ petitioner is that the respondent has conducted a tender for license to collect fees in the Daily Market and in the Weekly Market for the year 2018 - 19, that the petitioner had participated and he was declared as successful bidder and he was granted license for the period from 01.04.2018 to 31.08.2019, that since the petitioner is belonging to the opposite party, both the licenses were cancelled by the respondent vide order dated 11.01.2018, that the petitioner has filled two writ petitions before this Court in WP(MD)Nos.1407 and 1408 of 2018 challenging the cancellation orders; that this Court has allowed the petition in WP(MD)No.1408 of 2018 in respect of Daily Market on the ground that there was no notice issued to the petitioner before passing of the impugned order, but, dismissed the petition in WP(MD)No.1407 of 2018 on the ground that the notice was given and the petitioner has not responded; that the petitioner has preferred an appeal challenging the dismissal of WP(MD)No.1407 of 2018 and the same is pending in WA(MD)No.438 of 2019; that the petitioner in order to renew his registration submitted an application on 09.06.2020 and paid the necessary charges; that since



W.P.(MD)No.8247 of 2021

some of the works were allotted by the respondent to others during the pendency of the application to renew registration, he filed a petition in WP(MD)No.6991 of 2020 and this Court has passed an interim order on 23.06.2020 to the effect that any payment made to the third respondent shall be subject to the result of the writ petition; that the respondent by anti-dated proceedings, dated 11.06.2020 raised a query, that the petitioner has submitted his explanation along with necessary documents on 03.07.2023, that the respondent has passed an order dated 07.07.2020 stating that his renewal will be considered, after the said writ appeal is over and that the petitioner has then filed a petition in WP(MD)No.7635 of 2020 and after due contest, the said petition came to be allowed on 06.08.2020.

3. It is the further case of the petitioner that during the pendency of the said writ petition, the respondent has issued a show cause notice dated 16.07.2020 to black list him and granted 3 days time to submit his explanation; that the petitioner had filed another petition in WP(MD)No.8114 of 2020 and this Court has passed an order dated 27.07.2020 extending the time for submitting his explanation, that the petitioner has submitted his explanation on 04.08.2020; that the respondent has preferred an appeal in WA(MD)No.639 of 2020 and the same is pending; that when the writ appeals were taken up for hearing on 22.03.2021, the respondent produced the impugned order blacklisting the petitioner permanently; that the said order,

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W.P.(MD)No.8247 of 2021

dated 10.03.2021 was communicated to the petitioner only on 23.03.2021 and that since the impugned order blacklisting him is illegal, he was constrained to file the present writ petition.

4.The learned counsel appearing for the writ petitioner would reiterate the contentions raised in the writ petition.

5.The learned Additional Government Pleader appearing for the respondent would submit that the petitioner has filed many writ petitions against the respondent in connection with the license granted for collecting fee in the Daily Market as well as in the Weekly Market and that since the petitioner was involved in misconduct of collecting more fee than the prescribed amount by printing the receipt and after issuing proper notice, he was black listed.

6.At this juncture, it is necessary to refer the decision of the Hon'ble Supreme Court in the case of **M/s.Kulja Industries Limited Vs. Chief General Manager, Western Telecom Project Bharat Sanchar Nigam Limited and Others** reported in **2014 (14) SCC 731** wherein, the Hon'ble Apex Court has issued guidelines to be followed before blacklisting a Company and the relevant passages are extracted hereunder:-

“The guidelines also stipulate the factors that may influence the



W.P.(MD)No.8247 of 2021

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debaring official's decision which include the following:

- a) The actual or potential harm or impact that results or may result from the wrongdoing.*
- b) The frequency of incidents and/or duration of the wrongdoing.*
- c) Whether there is a pattern or prior history of wrongdoing.*
- d) Whether contractor has been excluded or disqualified by an agency of the Federal Government or have not been allowed to participate in State or local contracts or assistance agreements on a basis of conduct similar to one or more of the causes for debarment specified in this part.*
- e) Whether and to what extent did the contractor plan, initiate or carry out the wrongdoing.*
- f) Whether the contractor has accepted responsibility for the wrongdoing and recognized the seriousness of the misconduct.*
- g) Whether the contractor has paid or agreed to pay all criminal, civil and administrative liabilities for the improper activity, including any investigative or administrative costs incurred by the government, and has made or agreed to make full restitution.*
- h) Whether contractor has cooperated fully with the government agencies during the investigation and any court or administrative action.*



W.P.(MD)No.8247 of 2021

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i)Whether the wrongdoing was pervasive within the contractor's organization.

j) The kind of positions held by the individuals involved in the wrongdoing.

k)Whether the contractor has taken appropriate corrective action or remedial measures, such as establishing ethics training and implementing programs to prevent recurrence.

l) Whether the contractor fully investigated the circumstances surrounding the cause for debarment and, if so, made the result of the investigation available to the debarring official.”

“17. That apart, the power to blacklist a contractor whether the contract be for supply of material or equipment or for the execution of nay other work whatsoever is in our opinion inherent in the party allotting the contract. There is no need for any such power being specifically conferred by statute or reserved by contractor. That is because 'blacklisting' simply signifies a business decision by which the party affected by the breach decides not to enter into any contractual relationship with the party committing the breach. Between two private parties the right to take any such decision is absolute and untrammelled by any constraints whatsoever.



W.P.(MD)No.8247 of 2021

The freedom to contract or not to contract is unqualified in the case of private parties. But, any such decision is subject to judicial review when the same is taken by the State or any of its instrumentalities. This implies that any such decision will be open to scrutiny not only on the touchstone of the principles of natural justice but also on the party being blacklisted thus becomes an essential pre-condition for a proper exercise of the power and a valid order of blacklisting made pursuant thereto. The order itself being reasonable, fair and proportionate to the gravity of the offence is similarly examinable by a writ Court."

7. It is also necessary to refer the decision of the Hon'ble Supreme Court in the case of **UMC Technologies Private Limited Vs. Food Corporation of India and Another** reported in **2021 (2) SCC 551** wherein the Hon'ble Apex Court had made clear 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 and paragraph 22 of the said judgment is extracted hereunder:-

"22.The High Court has simply stated 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 agent. However, it is equally important to mention as to



W.P.(MD)No.8247 of 2021

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 option that in order to fulfil the requirements of principles of natural justice, a show-cause 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."

8. In the case on hand, admittedly, the petitioner has filed many writ petitions against the respondent and some are pending even now.

9. It is also not in dispute that the writ appeal filed by the petitioner as well as by the respondent are also pending.

10. As already pointed out, the petitioner has submitted his application to renew his registration on 09.06.2020; that the respondent has issued a show cause notice, dated 16.07.2020 to blacklist the petitioner and granted 3 days time to submit his explanation; that the petitioner has challenged the said notice and this Court has



W.P.(MD)No.8247 of 2021

passed an order by extending time for submitting his explanation and that the respondent has passed the impugned order blacklisting him on 10.03.2021. No doubt, the respondent has issued show cause notice to the petitioner on 16.07.2020 with regard to blacklisting the petitioner and the same was also referred in the impugned order, dated 10.03.2021.

11. But, as rightly contended by the learned counsel for the petitioner there is nothing in the impugned order to infer that the petitioner was given any personal hearing or that they have conducted any sort of enquiry prior to passing of the impugned order. As rightly contended by the learned counsel for the petitioner, blacklisting order affects the rights of any person to carry on his business. The Hon'ble Supreme Court in catena of decisions, has reiterated the legal position that before blacklisting any person, fair hearing will have to be granted. Unless and until a fair hearing is granted, no fair adjudication can be done.

12. Considering the above, this Court has no hesitation to hold that the impugned order dated 10.03.2010, is legally unsustainable and the same is liable to be quashed. But, at the same time, liberty has to be granted to the respondent to initiate fresh action against the petitioner to blacklist him by following the procedure established under law.

13. (*) In the result, the impugned order passed by the respondent in



W.P.(MD)No.8247 of 2021

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Na.Ka.No.372/2020/A2, dated 10.03.2010 is hereby quashed and the writ petition stands allowed. However, the respondent is at liberty to take fresh action against the

petitioner in accordance with law, if advised so. Consequently, connected Miscellaneous Petition is closed. No costs.

(*) Corrected/Amended as per order of this Court dated 07/06/2024 made in WP(MD)No.8247 of 2021.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/05/2024

Sub Assistant Registrar
(CS-I / II / III / IV)

csm

To

(*)To be substituted to the order already despatched on 24/05/2024

The Executive Officer,
Thiruppuvanam Special Grade Town Panchayat,
Thiruppuvanam,
Sivagangai District.

+1 CC to M/s.J.ANANDKUMAR, Advocate (SR-14824[F] dated 22/03/2024)
+1 CC to M/s.SPL.GP (SR-15103[F] dated 25/03/2024)

W.P.(MD)No.8247 of 2021
and



W.P.(MD)No.8247 of 2021

W.M.P.(MD)No.6229 of 2021

22.03.2024

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RK(06/05/2024) 11P / 4C

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SL(16.07.2024)/ 11P/ 4C

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