BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **05.11.2024**

CORAM:

THE HONOURABLE **MR.JUSTICE G.K.ILANTHIRAIYAN**

W.P.(MD)No.24403 of 2024
and
W.M.P.(MD)No.20726 of 2024

M/s.Muthupandeeswari Modern Rice Mill,
Rep. by its Proprietor,
M.Muthupandeeswari. ... Petitioner

/Vs./

1.The Managing Director,
Tamil Nadu Civil Supplies Corporation,
No. 12, Thambusamy Street,
Kilpauk,
Chennai 600 010.

2.The Sub Collector / Regional Manager,
Tamil Nadu Civil Supplies Corporation,
Madurai Region,
Madurai. ... Respondents

PRAYER**:** Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the entire records relating to the impugned order passed by the 2nd respondent dated 04.10.2024 in Se.Mu.Order No. B1/13168/2023 and quash the same.

For Petitioner : Mr.M.Subash Babu
Senior Counsel

For Respondents : Mr.R.Satheesh
Standing Counsel

ORDER

This writ petition has been filed challenging the order passed by the second respondent dated 04.10.2024, thereby black-listed the petitioner mill and also ordered for recovery for a sum of Rs.4,41,440/- from its security deposit.

2. According to the petitioner, the petitioner is a modern rice mill. It was appointed as Nulling Agent of Tamil Nadu Civil Supplies Corporation by agreement dated 29.07.2020. The object of the work is that After supply of paddy by the respondents to the mill for hulling purpose, the mill should return back the resultant rice, for which, the respondents will disburse the hulling charges to the rice mill. After entering into the agreement dated 29.07.2020, the petitioner had deposited the bank guarantee for a sum of Rs.3.2 crores and also paid security deposit to the tune of Rs.22,90,400/-. While being so, on 14.08.2024, the first respondent had conducted an inspection in the petitioner mill with regard to missing of 16 metric tonne of paddy (400 gunny bags), which was procured from direct purchase center from Kamathakudi, Ramanathapuram. During inspection, the petitioner had given a written statement stating that the missing paddy was not delivered in the petitioner mill and signature referred by the inspection authorities in the truck memo was not its employee's signature. However, without issuing any show cause notice, the agreement dated 29.07.2020 was terminated and also black-listed the petitioner.

3. The learned senior counsel appearing for the petitioner submitted that the petitioner's contract was terminated and also black-listed without issuing any show cause notice. It is a clear violation of principles of natural justice. The learned senior counsel appearing for the petitioner, by pointing out Clause Nos.43 and 44 of the agreement dated 29.07.2020, stated that the agreement shall be in force for a period of five years subject to the option on either side to terminate the agreement after giving three months notice. However, the petitioner was not served with prior notice. Further, if there is any dispute arising out of the agreement, there is an arbitration clause to settle the disputes before the sole arbitrator between the parties. Therefore, the respondents ought to have invoked the arbitration clause to settle the issues between them. Instead, the respondents, without issuing show cause notice and without conducting any enquiry, mechanically terminated the agreement dated 29.07.2020 and also black-listed the petitioner rice mill for lifetime. The respondents did not even mention the period of time for black-listing.

4. The learned senior counsel appearing for the petitioner, in support of his contention, relied upon the judgment of the Hon'ble Supreme Court of India in the case of ***Umc Technologies Private Ltd. vs Food Corporation Of India and Another***, reported in ***2021 (2) SCC 551***, wherein it is held that 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.

5. The learned senior counsel appearing for the petitioner also relied upon the judgment of the Hon'ble Supreme Court of India in the case of ***M/s Daffodills Pharmaceuticals Ltd., & Another vs State of UP & Another***, reported in ***2020 (18) SCC 550*** and the relevant paragraphs are extracted hereunder:-

> *"14. The decisions in Erusian Equipments and Chemicals Ltd. v. State of West Bengal1 and Raghunath Thakur v. State of Bihar & Ors 2 as well as later decisions3 have now clarified that before any executive decision maker proposes a drastic adverse action, such as a debarring or blacklisting order, it is necessary that opportunity of hearing and representation against the proposed action is given to the party likely to be affected. This has been stated in unequivocal terms in Raghunath Thakur (supra) as follows:*
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> > *" 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 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."*

In Southern Painters (supra) the grievance was with respect to unilateral deletion of the petitioners' name from the list of approved contractors, maintained by the public sector agency. This court held that such an action was arbitrary:

> *"The deletion of the appellant's name from the list of approved contractors 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 1 1975 (1) SCC 70 2 1989 (1) SCC 229 3 Southern Painters v. Fertilizers & Chemicals Travancore Ltd., 1994 Supp (2) SCC 699; Grosons Pharmaceuticals (P) Ltd. v. State of U.P.,(2001) 8 SCC 604; B.S.N. Joshi & Sons Ltd. v. Nair Coal Services Ltd. (2006) 11 SCC 548 was not justified in dismissing the writ petition."*

15. In the present case, even if one assumes that Surender Chaudhary, the accused in the pending criminal case was involved and had sought to indulge in objectionable activities, that ipso facto could not have resulted in unilateral action of the kind which the State resorted to- against Daffodils, which was never granted any opportunity of hearing or a chance to represent against the impugned order. If there is one constant lodestar that lights the judicial horizon in this country, it is this: that no one can be inflicted with an adverse order, without being afforded a minimum opportunity of hearing, and prior intimation of such a move. This principle is too well entrenched in the legal ethos of this country to be ignored, as the state did, in this case."

6. Thus, it is clear that before black-listing, the person concerned should be given an opportunity to re-present his case before he is put on black-list.

7. Insofar as black-listing for lifetime is concerned, the learned senior counsel appearing for the petitioner also relied upon the judgment of the Hon'ble Supreme Court in the case of ***M/s.Chauhan Builders Raibareli vs. The State of Uttar Pradesh & Others*** reported in ***2022 Livelaw SC 694,*** wherein it is held that one cannot be black-listed for life. The order of black-listing to the extent that it has not specified the period cannot be sustained. In the order impugned in this writ petition also, the respondents did not mention the period for black-listing of the petitioner. Therefore, he submitted that the impugned order cannot be sustained and is liable to be quashed.

8. The learned standing counsel appearing for the petitioner on instructions submitted that even before inspection or enquiry, the petitioner was duly served with show cause notice dated 05.06.2024. As per the show cause notice, the petitioner ought to have filed their reply on or before 08.06.2024. Accordingly, the petitioner also replied vide letter dated 07.06.2024. However, without satisfying the reply submitted by the petitioner, the respondents conducted an inspection on 14.08.2024 and only thereafter, on 14.10.2024, the petitioner was ordered to be recovered for a sum of Rs.4,41,440/- from its security deposit and also the petitioner was black-listed as per Clause 12 of the agreement dated 29.07.2020. Further, there is also an appeal provision, as against the order passed by the second respondent, before the first respondent within a period of 60 days. However, the petitioner, without exhausting appeal remedy, straight away filed this writ petition and as such, this writ petition is not maintainable.

9. The learned senior counsel appearing for the respondents also pointed out that the second respondent passed the impugned order only on the instructions of the first respondent. The first respondent is the appellate authority and therefore, the appeal remedy is only eye-wash and hence, this writ petition is very much maintainable.

10. Heard the learned senior counsel appearing for the petitioner and the learned standing counsel appearing for the respondents.

11. The petitioner was awarded a contract for hulling purpose by agreement dated 29.07.2020. It is relevant to extract Clause No.12 of the agreement dated 29.07.2020 as follows:-

> *"(12)Where there is reason to believe that the Agent has indulged in malpractices or has mis-appropriated the paddy / resultant rice or gunnies, the Agreement may be terminated by the principal* ***besides black listing the mill apart from recovering the value of rice, paddy / gunny*** *at the rates prescribed by the principal time to time or adjusted from any amounts due to him from the Corporation, without prejudice to any criminal action that may be taken according to law."*

12. Thus, it is clear that if the petitioner indulged in any mal-practices or misappropriation of paddy, the agreement may be terminated, besides black-listing the petitioner.

13. Admittedly, 16 metric tonne of rice was not returned to the respondents after hulling, due to which, there was loss to the tune of

Rs.4,41,440/-, thereby the petitioner committed misappropriation of resultant rice to the tune of 16 metric tonne. Though Clause No.43 of the agreement dated 29.07.2020 says about three months prior notice for termination of the agreement, if the petitioner indulged in any misappropriation of resultant rice, the respondents are entitled to terminate the agreement of the petitioner as per Clause 12 of the agreement dated 29.07.2020. It is relevant to extract Clause No.43 of the agreement dated 29.07.2020 as follows:-

> *"(43) The agreement shall be in force for a period of five years, subject to the option on either side to terminate the agreement after giving **three months** notice. The Agent shall ensure that there is a valid bank guarantee / valid licence during currency of the agreement."*

14. Further, it is also relevant to extract Clause No.44 of the agreement dated 29.07.2020 as follows:-

> *"(42) Against the orders passed by the Principal an appeal shall lie to the Chairman and Managing Director / Managing Director, T.N.C.S.C. Whose decision in the matter shall be final."*

15. Further, as per Clause No.12 of the agreement dated 29.07.2020, the respondents can very well terminate the agreement dated 29.07.2020 and hence, they black-listed the petitioner from awarding any contract from the government sector.

16. If there is any dispute arising in respect of the agreement dated 29.07.2020, there is an arbitration clause. It is also made clear in the agreement dated 29.07.2020 that if there is any dispute arising out of the agreement dated 29.07.2020, the disputes can be resolved before the sole arbitrator. But, here the petitioner had misappropriated 16 metric tonne of paddy and therefore, this dispute cannot be resolved before the arbitrator.

17. In respect of Clause No.(37)(c) of the agreement dated 29.07.2020 is concerned, there is an appeal remedy lying with the first respondent. However, the petitioner, without exhausting the appeal remedy, straight away filed this writ petition under Article 226 of the Constitution of India. When there is a statutory appeal remedy, this writ petition is not maintainable under Article 226 of the Constitution of India.

18. As stated supra, it cannot be said that the agreement was terminated without issuing any show cause notice and without giving any opportunity of hearing to the petitioner. If there is any violation of principles of natural justice, the petitioner can very well maintain this writ petition under Article 226 of the Constitution of India.

19. Admittedly, the petitioner was served with show cause notice dated 05.06.2024 and on receipt of the same, the petitioner also submitted an explanation dated 07.06.2024. Therefore, the petitioner was well given with an opportunity before termination of the agreement dated 29.07.2020 by issuance of show cause notice. Further, the judgments relied upon by the learned senior counsel appearing for the petitioner are not applicable to the case on hand.

20. In view of the above, this Court does not find any infirmity or illegality in the impugned order passed by the second respondent and this writ petition is liable to be dismissed. Accordingly, this writ petition is dismissed. However, it is clear that black-listing of the petitioner is only restrained from getting any contract from the government sector and hence, the petitioner can do its business privately. No costs. Consequently, connected miscellaneous petition is closed.

05.11.2024

Index : Yes / No
NCC : Yes / No
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G.K.ILANTHIRAIYAN, J.

Sm

Order made in
W.P.(MD)No.24403 of 2024

Dated:
05.11.2024