2024:DHC:4993

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 02nd JULY, 2024

IN THE MATTER OF:

\+ **W.P.(C) 2250/2024 & CM APPLs. 9357/2024, 9358/2024, 9954/2024 & 11605/2024**

VESUVIUS INDIA LIMITED ..... Petitioner

Through: Mr. Rajiv Nayar, Sr. Advocate with Mr. Nalin Kohli, Mr. Shankh Sen Gupta, Mr. Aubert Sebastian, Mr. Vedant Kumar, Ms. Nimisha Menon, Mr. Ayushman Aroraa, Ms. Shruti Agrawal, Advocates

versus

STEEL AUTHORITY OF INDIA LIMITED & ANR ... Respondents

Through: Mr. Chetan Sharma, ASG with Mr. Alakh Kumar, Mr. Amit Gupta, Mr. Vinay Yadav, Mr. Vikramaditya Singh, Mr. Saurabh Tripathi, Mr. Viplav Acharya and Mr. R.V. Prabhat, Advocates for SAIL.
Mr. Apoorv Kurup, CGSC with Ms. Nidhi Mittal, Mr. Akhil Hasija and Ms. Gauri Goburdhun, Mr. Gurjas Narula and Ms. Aanchal Dubey, Advocates for R-2/UoI.

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The Petitioner has approached this Court with the following prayers:

> *"a) declare that the order issued by the Respondent No.1 dated 10 February 2024 bearing number SAIL/CMMG /Restriction of Business/VIL/2024, received by the Petitioner on 12 February 2024 as arbitrary, violative of the*

Article 14 of the Constitution of India and the SAIL Banning Guidelines and hence ultra vires;

b) declare that the Respondent No. 1 has acted in breach of its statement made to this Hon'ble Court as recorded in the order dated 1 February 2024 passed in writ petition bearing number W.P (c) 16454 of 2023;

c) quash the order dated 10 February 2024 bearing number SAIL/CMMG/Restriction of Business/VIL/2024 issued by the Respondent No.1;

d) disclose the action(s) taken by the Respondent No.1 and Respondent No.2 against the Petitioner pursuant to the order dated 10 February 2024 bearing number SAIL/CMMG/Restriction of Business/VIL/2024 issued by Respondent No.1;

e) quash the action(s) taken by the Respondent No.1 and the Respondent No.2 pursuant to order dated 10 February 2024 bearing number SAIL/CMMG/Restriction of Business/VIL/2024, issued by the Respondent No.1;

f) restrain the Respondent No.1 from acting upon the order dated 10 February 2024 bearing number SAIL/CMMG/Restriction of Business/VIL/2024, issued by the Respondent No.1, against the Petitioner and direct the Respondent No.1 to notify its plants and concerned officer from acting upon this order;

g) restrain the Respondent No.1 from cancelling the ongoing contract(s)/tender order(s)/work order(s) awarded to the Petitioner;

h) restrain the Respondent No.1 from treating the Petitioner as an ineligible bidder for future tenders notified by the Respondent No. 1 or consider ineligible from introducing new products and service and/or *conducting trial orders.*

i) Pass any other further order (s) / direction (s) as this Hon'ble Court may deem fit and proper in the fact and circumstances of the case."

2. The facts, in brief, leading to filing of the instant writ petition read as under:

3. The Petitioner herein is an engineering and technology company which is primarily involved in production of various proprietary and non-proprietary items used in manufacturing of steel products by various companies. It is stated that the Petitioner has been involved in business dealing with Respondent No.1/SAIL since the year 1980 and has been supplying various proprietary and non-proprietary items which are used by Respondent No.1/SAIL for production of crude steel from its various steel plants situated in India.

4. Material on record indicates that an FIR was filed by SPE, ACB Bhubhaneshwar being RC No.0152017A0001 under Sections 7 and 12 of the Prevention of Corruption Act read with Section 120B of the IPC against Executive Director, Works (SAIL, Rourkela Steel Plant), the General Manger of the Petitioner and other unknown persons for providing illegal gratification to the employees of Respondent No.1/SAIL. Subsequently, a chargesheet was filed against the General Manger of the Petitioner and an external employee of the Petitioner as well as the Executive Director of the Rourkela Steel Plant on 28.03.2018. It is stated that the matter is still sub-judice.

5. Material on record further indicates that a complaint was filed on 10.07.2021 by a Member of Parliament with the Central Vigilance

Commission regarding unethical business activities of the Petitioner with Respondent No.1/SAIL at Bokaro Steel Plant and Bhilai Steel Plant. The complaint was forwarded by the Central Vigilance Commission (CVC) to Respondent No.2/Ministry of Steel whereby Respondent No.2/Ministry of Steel was directed to conduct an investigation into the allegations made in the complaint and submit an investigation report within three months. The same was forwarded to Respondent No.1/SAIL and an investigation report dated 28.09.2021 was submitted by Respondent No.1/SAIL to Respondent No.2/Ministry of Steel wherein it was stated that neither the Petitioner nor any of its directors are accused in either the FIR or in the chargesheet filed by the CBI and any action against the Petitioner can only be taken once the entity or any of its director is convicted. It was further stated that allegations made in the complaint regarding the Petitioner cannot be verified. Subsequently, an Office Memorandum (OM) dated 17.01.2022 was issued by the Central Vigilance Commission (CVC) wherein the Commission directed the Respondent No.1/SAIL to re-examine the banning of business Guidelines of SAIL in view of the facts of the case and Respondent No.1/SAIL was further requested to submit details with regard to the progress made in the CBI case against the Petitioner. Respondent No.1/SAIL was also directed to investigate various work orders given to the Petitioner and an action taken report was to be submitted regarding steps taken by Respondent No.1/SAIL to stop its business dealings with the Petitioner.

6. A Show Cause Notice dated 09.05.2022 was issued by Respondent No.1/SAIL to the Petitioner whereby the Petitioner was called upon to show cause as to why action to ban/stop business dealings with the petitioner shall

not be taken in view of the corrupt practices of the Petitioner and its employees of entering into criminal conspiracy and paying illegal gratification to the officers of Respondent No.1/SAIL at the Rourkela Steel Plant. The Petitioner replied to the Show Cause Notice on 16.06.2022 stating that no allegations have made out against the Petitioner but only against its General Manager in his personal capacity. It was stated that the matter is sub judice. It was further stated that other person against whom the chargesheet has been filed is an external consultant of the Petitioner and not their employee.

7. Material on record indicates that in the interregnum, an amendment was issued to the banning guidelines of Respondent No.1/SAIL on 21.07.2022 whereby the grounds on which banning of business dealings can be initiated against entities was expanded to include cases where "officials" of agencies have been convicted for offence of moral turpitude or where there is a strong justification for Respondent No.1/SAIL to believe that "officials" of an agency have been guilty of malpractices such as bribery, corruption, fraud, substitution of tenders, interpolations, etc.

8. The representatives of the Petitioner were provided personal hearings before the Standing Committee on banning of business dealings on 23.12.2022 and 30.01.2023 and an Order was subsequently rendered by the Standing Committee on 06.05.2023 whereby it was stated that there is no material available to establish the allegations made against the Petitioner in the Show Cause Notice dated 09.12.2022 and the Standing Committee was of the view that no case was made out to ban business dealings with the Petitioner. Material on record indicates that after culmination of these proceedings the Respondent No.2/Ministry of Steel received another

complaint against the malpractices of the Petitioner and, thereafter, issued a letter to Respondent No.1/SAIL on 10.08.2023 directing the Respondent No.1/SAIL to examine whether blacklisting of the Petitioner can be done in view of the revised guidelines of blacklisting and Respondent No.1/SAIL was further directed to provide an action taken report on measures taken by the Respondent No.1/SAIL to standardised specific items which are procured from the Petitioner. A reply was sent by Respondent No.1/SAIL on 10.08.2023 whereby Respondent No.1/SAIL stated that action to ban business dealings with the Petitioner was already initiated in 2022 but the same culminated on 06.05.2023 after the Standing Committee on banning of business dealings gave its view that no case of banning was made out against the Petitioner. It was further stated that efforts have been made by Respondent No.1/SAIL to develop various supply chains and standardised specific items which are procured from the Petitioner. Respondent No.2/Ministry of Steel sought further clarifications from Respondent No.1/SAIL regarding efforts taken by them to ban business dealings with the Petitioner which was again clarified by Respondent No.1/SAIL vide letter dated 16.08.2023.

9. On 18.08.2023, Respondent No.2/Ministry of Steel requested the Respondent No.1/SAIL to take urgent necessary actions on priority against the Petitioner and submit an action taken report by 21.08.2023. Material on record indicates that a Higher Level Committee was constituted by Respondent No.1/SAIL to look into the issue and after due consideration, the Committee held that immediate cessation of business activities with the Petitioner without establishing alternate or new vendors might result in significant disruptions to the production of crude steel and subsequently

impact the operations of blast furnaces and rolling mills. It was also stated that banning the Petitioner will not only result in stoppage of supply of crude steel but also in elimination of competition which will lead to an increase in prices. Accordingly, even the Higher Level Committee was of the view that banning business dealings with the Petitioner will be detrimental to the interests of Respondent No.1/SAIL.

10. On 20.09.2023, the Petitioner sent a letter to HOD-Blast Furnace, Rourkela Steel Plant expressing its interest to provide a free trial of "Taphole clay BF-5" to Respondent No.1/SAIL. Subsequently, a free trial for "Taphole clay BF-5" was ordered by Respondent No.1/SAIL for Rourkela Steel Plant. In the interregnum, a meeting was held by Respondent No.2/Ministry of Steel with representatives of Respondent No.1/SAIL on 20.11.2023 regarding actions to be taken against the Petitioner whereby Respondent No.1/SAIL was directed to immediately stop procurement from the Petitioner for all items where other vendors are available with immediate effect. The Respondent No.1/SAIL was also directed to take immediate measures for developing alternate suppliers for all items where the Petitioner is a sole supplier. Material on record indicates that subsequent to the meeting dated 20.11.2023, the free trial ordered by Respondent No.1/SAIL for "Taphole clay BF-5" was cancelled. The Petitioner on 30.11.2023 wrote to Respondent No.1/SAIL regarding cancellation of the free trial and requested reasons for the cancellation. Vide letter dated 03.12.2023, Respondent No.1/SAIL informed the Petitioner that the order had been cancelled pursuant to a Senior Level Committee constituted by Respondent No.1/SAIL to examine the issue of unethical business practices of the Petitioner and the Petitioner was afforded a personal hearing to further

discuss the issue with representatives of Respondent No.1/SAIL. The personal hearing took place on 05.12.2023 and a detailed response dated 06.12.2023 was submitted by the Petitioner against the queries raised by Respondent No.1/SAIL.

11. On 11.12.2023, an Office Order was issued by Respondent No.1/SAIL. The said Office Order reads as under:

"OFFICE ORDER

Subject: Action to be implemented by SAIL Plants/ Units with respect to M/s Vesuvius India Ltd. on account of adverse ethical conduct

Competent Authority in SAIL has concluded that a case of adverse ethical conduct is made out against M/s Vesuvius India Ltd. in the light of reported incident of unethical transaction by representative of M/s Vesuvius at SAIL/ Rourkela Steel Plant in the year 2017.

In view of the above, following actions are to be implemented by all Plants/Units of SAIL:

a) Procurement from M/s Vesuvius India for all items where other vendors are available is to be stopped with immediate effect. Any existing contracts of M/s Vesuvius India are allowed to be completed and also any supply by M/s Vesuvius India as part of plant and machineries through the OEMs may continue till such time an alternative supplier is available.

b) Immediate measures are to be taken for developing alternate suppliers for all the items where M/s Vesuvius is the sole supplier to SAIL, at the earliest.

The above actions shall be applicable for a period of 3 years from the date of issuance of this order.

S J Ahmed
Executive Director (CMMG)"

12. The Petitioner sent a letter to Respondent No.1/SAIL on 05.12.2023 with respect to constitution of Senior Level Committee to look into the issue of blacklisting the petitioner and subsequent actions taken against the Petitioner whereby the Petitioner stated that Respondent No.1/SAIL is taking predetermined adverse step against the Petitioner at the behest of Respondent No.2/Ministry of Steel which is against the banning of business guidelines issued by Respondent No.1/SAIL. It was also stated that the Office Order dated 11.12.2023 is similar to the recommendations issued pursuant to the meeting dated 20.11.2023 held by Respondent No.2/Ministry of Steel and the same have been given without any recourse to the Petitioner.

13. The Petitioner challenged the Office Order dated 11.12.2023 before this Court by filing a W.P.(C) 16454/2023 and the Office Order dated 11.12.2023 was stayed by this Court on 20.12.2023. The said Writ Petition was disposed of by this Court on 01.02.2024 upon statement made by the learned ASG that the Office Order dated 11.12.2023 will not be given effect to till a final decision is taken on the Show Cause Notice dated 09.05.2022.

14. Pursuant to the aforesaid Order passed by this Court, the Respondent No.1/SAIL passed the Impugned Order dated 10.02.2024 contemplating imposition of the following business restrictions on the Petitioner for a period of three years:

> *"a. Any existing contracts with you are allowed to be completed.*
>
> *b. Any supply by you as part of Plant and Machineries*

through the OEMs may continue till such time an alternative supplier is available.

c. Procurement from you for items where other vendors are available is to be stopped with immediate effect.

The above actions shall be applicable for a period of three years from the date of issuance of this Order."

15. Notice was issued in the writ petition on 19.02.2024. Pleadings are complete.

16. It is contended by the learned Senior Counsel for the Petitioner that the Impugned Order dated 10.02.2024 is a Blacklisting Order. It is stated that while on one hand the Impugned Order allows the Petitioner to complete the existing contracts, on the other hand it states that procurement for all items where there is an alternate supplier be stopped with immediate effect. It is stated that it is apparent from the Impugned Order that once an alternate supplier is available for proprietary items manufactured by the petitioner, then Respondent No.1/SAIL will not place any further orders on the Petitioner thus resulting in complete blacklisting of the Petitioner. It is further contended that due process and principles of natural justice have not been followed by Respondent No.1/SAIL while issuing the Impugned Order and Respondent No.1/SAIL being a Stated under Article 12 of the Constitution of India is obligated to follow the principles of natural justice, fairness, impartiality and transparency in its decisions and such an Impugned Order will result in civil death of the Petitioner.

17. It is also contended that the Impugned Order was passed without following the banning guidelines issued by Respondent No.1/SAIL. It is stated that according to the guidelines, the Standing Committee on Banning

of Business Dealings, which is constituted to take decision regarding banning of entities, is the only committee which is empowered to give a recommendation on banning/blacklisting, however, in this case a Senior Level Committee was constituted which has given a recommendation for banning of the Petitioner which is contrary to the guidelines. It is stated that such constitution of a Senior Level Committee is not provided for in the banning guidelines. It is contended that the Show Cause Notice dated 09.05.2022 had attained finality when the Standing Committee on banning had given its views on 06.05.2023 that no case has been made out to ban the Petitioner and, as such, constitution of another Higher Level Committee to examine the same issue is not contemplated under the guidelines and any action taken pursuant to that is *de hors* the guidelines.

18. It is further stated that the FIR on which the action has been taken against the Petitioner is of the year 2017 and as per Clauses 6.2 and 6.3 of the banning guidelines, Respondent No.1/SAIL can only issue banning orders in respect of alleged offences registered within the last five years. Since the alleged offence took place more than 5 years before the impugned order has been passed, the same is not covered under the guidelines. It is also contended that at the time of the alleged offence, clauses 6.2 and 6.3 did not include the term "officials" of the agencies which was only included vide amendment made on 21.07.2022 with effect from 25.07.2022. It is contended that such an amendment which holds the petitioner firm liable for offences committed by its employees or officials in their personal capacity cannot be relied upon while passing the impugned order.

19. *Per contra*, learned ASG appearing for Respondent No.1/SAIL submitted that the impugned Order is not a banning/blacklisting Order as

there is no cessation of business with the Petitioner. It is stated that Respondent No.1/SAIL is still continuing business dealings with the Petitioner and has already placed orders from the Petitioner, some of which are already underway.

20. It is further stated that the Petitioner cannot be banned/blacklisted as the proprietary items which are procured from the Petitioner are integral to the production of crude steel by Respondent No.1/SAIL from its various steel plants all over the country. It is stated that in case the Petitioner is banned, the production of crude steel would be severely hit and the total crude steel production of Respondent No.1/SAIL will come down. It is also stated that there is no alternative for some items which are only manufactured by the Petitioner and, therefore, these items cannot be procured from any other supplier.

21. It is further submitted by the learned ASG that the scope of interference under Article 226 of the Constitution of India is extremely limited. It is stated that the Courts do not substitute its conclusions to the one arrived at by experts unless the Order passed is completely perverse, contrary to law and shocks the conscious of the Courts. He contends that the Officers of the Petitioner have indulged in bribing the officers of Respondent No.1/SAIL and a criminal case has been registered against them, and therefore, the decision taken by the Respondent No.1/SAIL to not continue business dealings with the Petitioner cannot be found fault with. He also states that due to the fact that certain items which are supplied by the Petitioner cannot be procured from any other party/entity, the Respondent No.1/SAIL has no other option but to procure these items from the Petitioner. He states that decision to deal with the Petitioner only for the

selected items is not violative of Article 14 of the Constitution of India. He states that the Courts have always held that a Government Entity must be permitted to have some play in the joints and in the instant case, the production of Respondent No.1/SAIL cannot be permitted to come to a grinding halt.

22. Learned Counsel appearing for Respondent No.2/Ministry of Steel denies that the action taken by Respondent No.1/SAIL to ban business dealings with the Petitioner has been taken in a pre-determinative manner at the behest of Respondent No.2/Ministry of Steel. It is stated that even though a course of action was deliberated regarding business dealings with the Petitioner in the Minutes of Meeting held on 20.11.2023, Respondent No.1/SAIL still had to follow due process before taking any action against the Petitioner in consonance with the Banning Guidelines in vogue. It is stated that the Show Cause Notice was issued against the Petitioner by Respondent No.1/SAIL on 09.05.2022 and the Respondent No.2/Ministry of Steel had no role in the issuance of the said Show Cause Notice to the Petitioner. It is further stated that the Respondent No.2/Ministry of Steel had received multiple complaints regarding unethical practices of the Petitioner with the officers of Respondent No.1/SAIL and it was the duty of Respondent No.2/Ministry of Steel to highlight the same with Respondent No.1/SAIL in public interest. Since no immediate action was taken by Respondent No.1/SAIL, pursuant to the Meeting dated 20.11.2023, and since the Impugned Order specifically mentions that the action to ban business dealings has been taken by a Committee constituted by Respondent No.1/SAIL, it cannot be said that the decision of Respondent No.1/SAIL dated 10.02.2024 has been taken pursuant to directions given by Respondent

No.2/Ministry of Steel.

23. At this juncture, it is apposite to mention that the Petitioner filed applications being CM APPL. 9954/2024, CM APPL. 1153/2024 and CM APPL. 11605/2024 seeking directions to the Respondent No.1/SAIL to allow the Petitioner to participate in various tenders floated by Respondent No.1/SAIL on the GeM portal. It is even more pertinent to mention that the Petitioner has attached various screenshots pertaining to several bids which have been floated by Respondent No.1/SAIL on the GeM portal where the status of the Petitioner with respect to those bids stands as "disqualified". The screenshots attached by the Petitioner shows that the offer of the Petitioner was not accepted due to "restriction in business dealings". The Court, therefore, directed the Respondent No.1/SAIL to file an affidavit explaining as to how the status of the Petitioner on the GeM portal reflects disqualified and the same has been filed by the Respondent No.1/SAIL. A perusal of the said affidavit shows that the screenshots which have been attached by the Petitioner pertains to techno-commercial evaluation part of the tender evaluation process and the comments which have been received in the form of intermediate remarks made by the Respondent No.1/SAIL. It is further stated in the affidavit that the intermediate remarks which have been received on the GeM portal by Respondent No.1/SAIL during the techno-commercial evaluation are only visible to the respective bidder and are never visible in the public domain. It is, therefore, stated that the data which will be available in the public domain will only be the final outcome/status of the bidding process without any comments or remarks.

24. The Petitioner has, however, filed a reply affidavit attaching several screenshots of various tenders issued by Respondent No.1/SAIL wherein the

Petitioner can not only see his own remarks but also the remarks of other bidders who have also participated in the same tender. The Petitioner has also stated that since the Petitioner can see the remarks which have been received by other bidders at the stage of techno-commercial evaluation, it cannot be said that the remarks are not in public domain and are not visible to other bidders. After taking note of the submissions made by the Petitioner, this Court directed the Respondents to file an affidavit explaining as to how the intermediate comments/remarks made during techno-commercial evaluation of the bid are visible to other bidders for the same tender. The affidavit has been filed. A perusal of the said affidavit shows that the remarks with respect to disqualification of a bidder are dynamic in nature and change during different parts of evaluation during a tender process. The remarks as seen in the screenshots that have been attached are entered by Respondent No.1/SAIL during the techno-commercial evaluation stage are visible not only to the Petitioner but also to other bidders who have participated in the same tender. It has been stated that such intermediate views with remarks/comments for disqualification are not visible to anybody in the public domain but only to a limited number of persons who possess the correct login/passwords for entities participating in those respective bids. Hence, it has been argued that the intermediate views that are only visible to a limited number of persons which are ultimately not visible to everybody in the public domain and will not tantamount to a declaration of blacklisting of the Petitioner.

25. Heard learned Counsel appearing for the Parties and perused the material on record.

26. The short question that is to be decided is whether the Impugned

Order dated 10.02.2024 amounts to blacklisting of the Petitioner or not.

27. It is the contention of Respondent No.1/SAIL that an inherent power vests with the State to refuse to deal with or enter into a contract with any entity for a sound, plausible, rationale or justifiable cause and, therefore, the decision taken by Respondent No.1/SAIL to selectively deal with the Petitioner for supply of items by the Petitioner for any plant and machinery or any part thereof through the Original Equipment Manufacturing (OEM) till such time an alternate supplier is not available and if other vendors are available for other items other than the supply from the Petitioner is purely a business/commercial decision and therefore, the Impugned Order dated 10.02.2024 is not a Banning Order. Undoubtedly, the Apex Court Kulja Industries Ltd. v. Western Telecom Project BSNL, **(2014) 14 SCC 731** and in Patel Engg. Ltd. v. Union of India, **(2012) 11 SCC 257** has held that a State or an instrumentality of the State can take a decision to refuse to deal with or enter into a contract with any entity for a sound, plausible, rationale or justifiable cause. These decisions were taken when the Apex Court was considering a case regarding the right of a State or an instrumentality of the State to ban or completely refuse to enter into a contract with an entity. These decisions do not even remotely suggest that they were made in the context of partial banning.

28. This Court, at this juncture, is not going into the question as to whether a partial banning is permissible or not. In the present case, the Petitioner has filed a screenshot regarding a tender floated by Respondent No.1/SAIL itself wherein it has been shown that the Petitioner has been "disqualified" by the buyer organization with a remark that there is a "restriction in business dealing with the Petitioner". When a pointed

question was asked to Respondent No.1/SAIL as to whether the said remarks would be visible in the public domain or not, an affidavit has been filed by Respondent No.1/SAIL. Paragraph Nos.3 to 8 of the said affidavit reads as under:

> *"3. I say that when the Buyer desirous of floating a tender uploads the Notice Inviting Tender on the GeM Portal, the same is visible in the public domain. The interested bidders then submit their bids through the Portal.*
>
> *4. I say that the process of Tender evaluation by the evaluator/buyer usually has two stages i.e., Techno-Commercial Evaluation and Price Evaluation. I further stay that during the first stage of techno-commercial evaluation of offers, the enter comments/remarks buyer/evaluator is permitted to regarding acceptance or rejection of offers on the GeM Portal.*
>
> ***5. I say that these comments that have been entered by the evaluator/ buyer regarding acceptance or rejection of offers received against a tender (GeM Bid) are visible only to the respective bidder. These intermediate comments/remarks are neither visible to other participating bidders nor are they in the public domain.***
>
> *6. I say that in case the bidder has any issue with the remarks/comments/rejection of the evaluator, the bidder is entitled to raise a representation within a stipulated time (48 hours). It is mandatory for the buyer to respond/reply to all such representation(s).*
>
> *7. I say that the buyer can proceed to the Price Bid stage only after the response to the representations are given by the buyer.*
>
> *8. I say that the Final acceptance or rejection status of*

the offers are visible in the public domain only after the representations of the bidders are duly responded to by the evaluator. The intermediate remarks between the buyer and the respective bidder(s) during the process of techno-commercial evaluation process are never visible in the public domain. The only information in public domain i.e. the data available to the public is the outcome/final status of the bidding process and that too without any comments/remarks."

(emphasis supplied)

29. The Petitioner, thereafter, filed a reply to the aforesaid affidavit filed by Respondent No.1/SAIL. The said affidavit reads as under:

"1. I state that I am the authorized representative of the Petitioner and well conversant with the facts of the case on the basis of information derived from records maintained by the Petitioner in the due course of business. Therefore, I am competent to swear this affidavit.

2. I state that this Hon'ble Court on 1 April 2024, directed the Petitioner to file an affidavit to place on record the relevant facts pertaining to the status of Petitioner as visible on the Government e Marketplace (GeM) portal with respect to various tenders floated by Respondent No. 1.

3. I state that on 3 April 2024 the status of the Petitioner as "disqualified" continues to be visible on the GeM portal with respect to the bids nos. GEM/2023/B/3798350, GEM/2023/B/3982378, GEM/2023/B/4107877, GEM/2023/B/4198150, GEM/2023/B/4207561, GEM/2023/B/4235999, GEM/2023/B/4375849 and GEM/2024/B/4623544. Copies of the Snapshots of Petitioner's status on GeM portal with respect to bids nos. GEM/2023/B/3798350, GEM/2023/B/3982378, GEM/2023/B/4107877, GEM/2023/B/4198150,

GEM/2023/B/4207561, GEM/2023/B/4235999, GEM/2023/B/4375849 and GEM/2024/B/4623544 are annexed herewith as Annexure A-l (colly).

4. I state that the disqualification status of other bidders who have participated in the bid no. GEM/2023/B/4375849 and GEM/2023/B/4198150 is visible. I further state that the remarks pertaining to the disqualification of other bidders is also visible. I state that status of the Petitioner as 'disqualified' would be visible to the other bidders that have participated in the tender process. In this regard, snapshots of the bid no. GEM/2023/B/4375849 and GEM/2023/B/4198150 wherein remarks pertaining to the disqualified bidders visible to me are annexed herewith as Annexure A-2 (colly).

5. With respect to bid no. GEM/2023/B/4254980, as referred to in Respondent No.l's affidavit dated 27 March 2024, I state that on 19 December 2023, the Petitioner was disqualified from participating in the said tender by Respondent No. 1. I state that this disqualification along with remarks for disqualification was visible to other bidders. I state that pursuant to the order dated 20 December 2023 passed by this Hon'ble Court in Vesuvius India Limited vs Steel Authority of India Limited and Anr. (W.P(c) 16454 of 2023), Respondent No. 1 permitted Petitioner's participation in the said tender and same was awarded on the Petitioner on 18 January 2024.

6. I further state that in respect to bid no. GEM/2024/B/4807366 and GEM/2024/B/4650377 floated by the Respondent No. 1, Petitioner is not treated as an eligible bidder and its name does not feature in the eligible list of bidders in the bid documents issued by the Respondent No.1. I state that the Petitioner is otherwise eligible basis techno-commercial requirement. I further state that the bid

> *documents are available on the GeM portal and can be viewed by the public. Copies of the bid documents for the bid no. GEM/2024/B/4807366 and GEM/2024/B/4650377 wherein the Petitioner is not mentioned in the eligible bidders in the eligibility criteria are annexed herewith as Annexure A-3 (colly)."*
>
> *(emphasis supplied)*

30. Since the abovementioned affidavits are directly contradicting each other, this Court called for a response from Respondent No.1/SAIL to the affidavit filed by the Petitioner. The affidavit was filed by Respondent No.1/SAIL. Paragraph Nos. 8 and 9 of the said affidavit reads as under:

> ***"8. I say that this is to further clarify that the screenshots submitted along with the Affidavit dated 03.04.2024 of the Petitioner pertain to the "view" which may be visible only to the limited group of Bidders participating in the respective Bids / Tenders on GeM. Such "view" could be obtained only by using Login and Password by the participating bidder and not as a "view" which is visible to members of public visiting the GeM portal or other buyers. The Respondent No.1 cannot obtain this view as it does not have access to Login and Password as a "participating Bidder" would have for the mentioned Bids.***
>
> *9. I say that this is to further submit that Respondent No.1 is also registered as a Bidder/Seller on GeM portal for offering steel products to other government buyers. Thus, the Respondent No. 1 has tried checking what is visible to it regarding the Bids / Tenders referred to by the Petitioner in its Affidavit dated 03.04.2024 using its Bidder/Seller's Login ID and Password."*
>
> *(emphasis supplied)*

31. Paragraph No.8 of the aforesaid affidavit is, therefore, a clear departure from the earlier stand taken by Respondent No.1/SAIL in the affidavit filed by it. In Paragraph No.8 of the aforesaid second affidavit, the Respondent No.1/SAIL has stated that the fact that the Petitioner has been blacklisted may be visible to a limited group of bidders. The fact which emerges from the affidavits filed by both the Petitioner and the Respondent No.1/SAIL is that the fact that the Petitioner has been disqualified due to a "restriction in business dealings" is in public domain. The stand taken by the Respondent No.1/SAIL that it is only a commercial decision not to deal with the Petitioner for a few items cannot be accepted for the reason that the screenshots filed by the Petitioner shows that the Petitioner has been “disqualified” as there is a restriction in business dealings with the Petitioner and the fact that the Petitioner has been disqualified is visible to other participating bidders with the remark that there is a “restriction in business dealing with the Petitioner”. The effect of this is that for any contract for non-proprietary items which the Petitioner wants to enter into, the Petitioner's bid would not be accepted and even if the bid of the Petitioner is accepted, the Petitioner as well as the Respondent No.1/SAIL would have to face litigations by other bidders stating that the Petitioner has been blacklisted. Each tender, therefore, would be subject matter of litigation for the Court to take a decision as to whether the Petitioner has or has not been blacklisted.

32. In view of the above, this Court has to only consider as to whether the process followed by Respondent No.1/SAIL to blacklist the Petitioner is in accordance with law or not.

33. The Respondent No.1/SAIL has brought out Guidelines on Banning

of Business Dealings. Clause 6 deals with grounds on which Banning of Business Dealings can be initiated. Clauses 6.2 and 6.3, which are relevant, reads as under:

> *"**6.2** If the Director, Owner, Proprietor, Partner and/or Officials of the 'Agency' is convicted by a Court of Law for offences involving moral turpitude in relation to its business dealings with the Government or any other Public Sector Enterprises or SAIL, during the last five years preceding date of tender opening or during execution of contract, provided such information is known to SAIL;*
>
> ***6.3** If there is strong justification for believing that the Directors, Proprietors, Partners, Owner and/or Officials of the 'Agency' have been guilty of malpractices such as bribery, corruption, fraud, substitution of tenders, interpolations, etc., in relation to its business dealings with the Government or any other Public Sector Enterprises or SAIL, during the last five years preceding date of tender opening or during execution of contract, provided such information is known to SAIL."*

34. Clause 7 deals with Banning of Business Dealings. Clauses 7.1, 7.2, 7.3 and 7.4 reads as under:

> ***7.1** A decision to ban business dealings with any Agency by any one of the Plants/Units of SAIL will apply throughout the Company including Subsidiaries, i.e., company-wide banning.*
>
> ***7.2** There will be a Standing Banning Committee (SBC)in each Plant/Unit to be appointed by Competent Authority for processing the cases of "Banning of Business Dealings" (except for banning of business dealings with foreign suppliers of coal & coke). However, for procurement of items/award of contracts,*

to meet the requirement of Corporate Office only, the Committee shall be CGM/GM each from Operations, Finance, Law & CMMG. The proposal of the Concerned Department for initiating action under the Guidelines for Banning of Business Dealings based on their own findings and/or upon receipt of advice of the Investigating Department shall be forwarded through respective Head of Department to the Standing Banning Committee for consideration.

***7.3** The functions of the Standing Banning Committee shall, inter-alia include:*

> *i) To examine in detail the allegations/irregularities/misconduct mentioned in the proposal for banning forwarded by the Department, hold preliminary meeting and decide if a prima-facie case for banning under the guidelines exists. If during preliminary meeting, SBC is of opinion that prima facie no case is made out, it shall return the case to the Concerned Department.*
>
> *ii) If it is decided to proceed for banning action, to recommend for issue of showcause notice (as per para 9) to the Agency by the Concerned Department, as to why action should not be taken against the Agency, including its interconnected agencies, under the Guidelines for Banning of Business Dealings with them. Agency should be asked to submit its reply within 15 days of the show-cause notice.*
>
> *iii) To examine the reply given by the Agency to show-cause notice and call the Agency for personal hearing, if required.*
>
> *iv) To submit final recommendation to the Concerned Department for banning of business*

dealings with the Agency or Plant/Unit wide Hold on participation of the Agency in tenders or exoneration.

7.4 If banning is recommended by the Standing Banning Committee of any plant/unit, the proposal containing the facts of the case, proper justification of the action proposed, relevant supporting documents along with the recommendation of the SBC and proposed banning period should be sent by the Concerned Department and duly forwarded by the Head of the Department/Unit, to the Competent Authority. Based on this proposal, a decision for banning or otherwise shall be taken by the Competent Authority. At this stage if it is felt by the Competent Authority that there is no sufficient ground for banning, then the case with detailed reasons shall be sent back to the respective Department/Unit for necessary action at their end.

The Competent Authority may consider and pass an appropriate Speaking Order:

a) For exonerating the Agency if the charges/allegations are not established;

b) For banning the business dealings with the Agency or

c) For putting on Hold the participation of the Agency in tenders in the concerned plant/unit."

(emphasis supplied)

35. A perusal of material on record discloses that the Standing Banning Committee after considering the case of the Petitioner has given the following recommendations:

"RECOMMENDATION OF THE STANDING BANNING COMMITTEE:

In view of the circumstances stated herein above, the Standing Committee, after perusal of records and detail deliberation in the matter found that the banning proceeding initiated against the Agency M/s. Vesuvius with the allegation of criminal prosecution against their employee Mr. Shashi Kumar is not established. Further there is no material available on record to establish the allegations made in the Show Cause Notice dt.09.05.2022 regarding unethical business practice on the part of the Agency to cause wrongful gain and acting in a manner prejudicial to the interest of the company M/s Steel Authority of India limited, Rourkela Steel Plant, Rourkela. ***Therefore, the Standing Committee is of the considered view that, no case is made out to ban the party M/s Vesuvius from having business dealings with the company.***

Accordingly, the file may be returned to the concerned Department."

(emphasis supplied)

36. A perusal of the above recommendation shows that the Show Cause Notice dated 09.05.2022 had culminated with the recommendation of the Standing Banning Committee and the issue could not have been proceeded with any further. Material on record shows that despite the fact that the Standing Banning Committee had recommended not to ban the Petitioner, the Respondent No.2/Ministry of Steel sent a letter dated 01.08.2023 to the Chief Vigilance Officer (CVO) of Respondent No.1/SAIL directing them to examine the issue of blacklisting of the Petitioner based on the FIR and chargesheet filed by CBI. This procedure, is therefore, contrary to the

guidelines of Respondent No.1/SAIL. Material on record discloses that pursuant to the said letter dated 01.08.2023, further directions were issued by Respondent No.2/Ministry of Steel vide letter dated 18.08.2023 to Respondent No.1/SAIL to take action for stopping business with the Petitioner and take immediate action for blacklisting the Petitioner. Material on record further discloses that a Higher Level Committee was constituted to look into the issue. However, the said Higher Level Committee was also of the opinion that the blacklisting of the Petitioner will result in a significant disruption to the production of crude steel. Material on record further indicates that a meeting was held on 20.11.2023 by Respondent No.2/Ministry of Steel wherein a decision was taken that the Respondent No.1/SAIL should immediately stop procurement from the Petitioner where other vendors are available and measures must be initiated for developing alternate suppliers which resulted in the cancellation of the Purchase Order bearing No.005/MM(Pur)/rEFY/FREETRIAL/1034 by Respondent No.1/SAIL and the Petitioner was requested not to supply any material against the Purchase Order.

37. Material on record further indicates that on 11.12.2023, an Office Order was issued by Respondent No.1/SAIL stating that all procurement from the Petitioner where other vendors are available must be stopped. The said Office Order dated 11.12.2023 also stated that the existing contracts should be allowed to be continued and immediate measures should be taken to develop alternate suppliers. The said Office Order dated 11.12.2023 was a subject matter of challenge in a writ petition being W.P.(C) 16454/2023 filed before this Court. When a pointed question was asked from the Respondent No.1/SAIL as to whether the Petitioner has been blacklisted or

not, this Court was informed that the Office Order dated 11.12.2023 will not be given effect to till a final decision is not taken on the Show Cause Notice dated 09.05.2022. Thereafter, the Impugned Order dated 10.02.2024 has been passed by Respondent No.1/SAIL.

38. As stated earlier, the Petitioner was a bidder in one of the tenders floated by Respondent No.1/SAIL and the Petitioner has not been permitted to participate on the ground that there are restrictions in business dealings with the Petitioner. As also stated earlier, the endeavour by Respondent No.1/SAIL is to blacklist the Petitioner and in order to get over the fact that the guidelines prescribed by Respondent No.1/SAIL has not been followed and the law laid down by the Apex Court in Gorkha Security Services v. Government (NCT of Delhi) and Ors., **(2014) 9 SCC 105** that before issuing a Show Cause Notice to an entity/person, Blacklisting Order cannot be passed, the Respondent No.1/SAIL has come up with this argument that it is only a commercial decision by Respondent No.1/SAIL. The Petitioner has been blacklisted without following the guidelines and the law laid down by the Apex Court in Gorkha Security Services (supra). The Apex Court in the said Judgment has categorically held that the action of debarment/blacklisting has to be preceded by a notice specifically informing the Noticee that it will be debarred for any infringement and in the absence of any notice, the order of debarment/blacklisting cannot be passed. The facts of the present case shows that the Show Cause Notice had to be given a go-by inasmuch as the Standing Banning Committee had recommended not to blacklist the Petitioner.

39. The Apex Court in Gorkha Security Services v. Government (NCT of Delhi) and Ors., **(2014) 9 SCC 105** has held as under:

***"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.*

***17.** Way back in the year 1975, this Court in Erusian Equipment & Chemicals Ltd. v. State of W.B. [Erusian Equipment & Chemicals Ltd. v. State of W.B., (1975) 1 SCC 70] , highlighted the necessity of giving an opportunity to such a person by serving a show-cause notice thereby giving him opportunity to meet the allegations which were in the mind of the authority contemplating blacklisting of such a person. This is clear from the reading of paras 12 and 20 of the said judgment. Necessitating this requirement, the Court observed thus: (SCC pp. 74-75)*

> *"12. Under Article 298 of the Constitution the executive power of the Union and the State shall extend to the carrying on of any trade and to the acquisition, holding and disposal of property and the making of contracts for any purpose. The State can carry on executive function by making a law or without making a law. The exercise of such powers and functions in trade by the State is subject to Part III of the Constitution. Article 14 speaks of equality before the law and equal protection of the laws. Equality of opportunity*

should apply to matters of public contracts. The State has the right to trade. The State has there the duty to observe equality. An ordinary individual can choose not to deal with any person. The Government cannot choose to exclude persons by discrimination. 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.

***

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."

18. *Again, in Raghunath Thakur v. State of Bihar [(1989) 1 SCC 229] the aforesaid principle was reiterated in the following manner: (SCC p. 230, para 4)*

"4. Indisputably, no notice had been given to the appellant of the proposal of blacklisting the appellant. It was contended on behalf of the State Government that there was no requirement in the rule of giving any prior notice before blacklisting any person. Insofar as the contention that there is

no requirement specifically of giving any notice is concerned, the respondent is right. But it is an implied principle of the rule of law that any order having civil consequence 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. In that view of the matter, the last portion of the order insofar as it directs blacklisting of the appellant in respect of future contracts, cannot be sustained in law. In the premises, that portion of the order directing that the appellant be placed in the blacklist in respect of future contracts under the Collector is set aside. So far as the cancellation of the bid of the appellant is concerned, that is not affected. This order will, however, not prevent the State Government or the appropriate authorities from taking any future steps for blacklisting the appellant if the Government is so entitled to do in accordance with law i.e. after giving the appellant due notice and an opportunity of making representation. After hearing the appellant, the State Government will be at liberty to pass any order in accordance with law indicating the reasons therefor. We, however, make it quite clear that we are not expressing any opinion on the correctness or otherwise of the allegations made against the appellant. The appeal is thus disposed of."

19. *Recently, in Patel Engg. Ltd. v. Union of India [Patel Engg. Ltd. v. Union of India, (2012) 11*

SCC 257 : (2013) 1 SCC (Civ) 445] speaking through one of us (Jasti Chelameswar, J.) this Court emphatically reiterated the principle by explaining the same in the following manner: (SCC pp. 262-63, paras 13-15)

> *"13. The concept of 'blacklisting' is explained by this Court in Erusian Equipment & Chemicals Ltd. v. State of W.B. [Erusian Equipment & Chemicals Ltd. v. State of W.B., (1975) 1 SCC 70] as under: (SCC p. 75, para 20)*
>
> *'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.'*
>
> *14. The nature of the authority of the State to blacklist the persons was considered by this Court in the abovementioned case ["12. Under Article 298 of the Constitution the executive power of the Union and the State shall extend to the carrying on of any trade and to the acquisition, holding and disposal of property and the making of contracts for any purpose. The State can carry on executive function by making a law or without making a law. The exercise of such powers and functions in trade by the State is subject to Part III of the Constitution. Article 14 speaks of equality before the law and equal protection of the laws. Equality of opportunity should apply to matters of public contracts. The State has the right to trade. The State has there the duty to observe equality. An ordinary individual can choose not to deal with any person. The Government cannot choose to exclude persons by discrimination. 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."(Erusian Equipment case [Erusian Equipment & Chemicals Ltd. v. State of W.B., (1975) 1 SCC 70] , [(1975) 1 SCC 70], SCC p. 74, para 12)] and took note of the constitutional provision (Article 298) ["***298.Power to carry on trade, etc***.—The executive power of the Union and of each State shall extend to the carrying on of any trade or business and to the acquisition, holding and disposal of property and the making of contracts for any purpose:Provided that—(a) the said executive power of the Union shall, insofar as such trade or business or such purpose is not one with respect to which Parliament may make laws, be subject in each State to legislation by the State; and(b) the said executive power of each State shall, insofar as such trade or business or such purpose is not one with respect to which the State Legislature may make laws, be subject to legislation by Parliament."] , which authorises both the Union of India and the States to make contracts for any purpose and to carry on any trade or business. It also authorises the acquisition, holding and disposal of property. This Court also took note of the fact that the right to make a contract includes the right not to make a contract. By definition, the said right is inherent in every person capable of entering into a contract. However, such a right either to enter or not to enter into a contract with any person is subject to a constitutional obligation to obey the command of Article 14. Though nobody has any right to compel the State to enter into a contract, everybody has a right to be treated equally when the State seeks to establish contractual* *relationships. ["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. The 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 so fairly without discrimination and without unfair procedure. Reputation is a part of a person's character and personality. Blacklisting tarnishes one's reputation."(Erusian Equipment case [Erusian Equipment & Chemicals Ltd. v. State of W.B., (1975) 1 SCC 70] , [(1975) 1 SCC 70], SCC p. 75, para 17)]] The effect of excluding a person from entering into a contractual relationship with the State would be to deprive such person to be treated equally with those, who are also engaged in similar activity.*

15. It follows from the above judgment in Erusian Equipment case [Erusian Equipment & Chemicals Ltd. v. State of W.B., (1975) 1 SCC 70] that the decision of the State or its instrumentalities not to deal with certain persons or class of persons on account of the undesirability of entering into the contractual relationship with such persons is called blacklisting. The State can decline to enter into a contractual relationship with a person or a class of persons for a legitimate purpose. The authority of the State to blacklist a person is a necessary *concomitant to the executive power of the State to carry on the trade or the business and making of contracts for any purpose, etc. There need not be any statutory grant of such power. The only legal limitation upon the exercise of such an authority is that the State is to act fairly and rationally without in any way being arbitrary—thereby such a decision can be taken for some legitimate purpose. What is the legitimate purpose that is sought to be achieved by the State in a given case can vary depending upon various factors."*

20. *Thus, there is no dispute about the requirement of serving show-cause notice. We may also hasten to add that once the show-cause notice is given and opportunity to reply to the show-cause notice is afforded, it is not even necessary to give an oral hearing. The High Court has rightly repudiated the appellant's attempt in finding foul with the impugned order on this ground. Such a contention was specifically repelled in Patel Engg. [Patel Engg. Ltd. v. Union of India, (2012) 11 SCC 257 : (2013) 1 SCC (Civ) 445]*

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."*

40. The Apex Court in UMC Technologies (P) Ltd. v. Food Corpn. of India, **(2021) 2 SCC 551** has held as under:

> *"**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 of the blacklisted person."*

41. The Respondent No.1/SAIL can take a decision to blacklist the Petitioner, however, it has to be in accordance with law. The Apex Court in a number of Judgments has held that when there is a power, coupled with duties, to do a thing in a particular way it should be done in that way only and other modes are forbidden. This principle was first laid down in Taylor v. Taylor, **(1876) 1 Ch.D 426**. Subsequently, it was followed by the Privy Council in Nazir Ahmad v. Emperor, **1936 SCC OnLine PC 41**. The Hon'ble Apex Court has subsequently relied on this principle in various judgments such as Shiv Kumar Chadha v. Municipal Corporation of Delhi, **(1993) 3 SCC 161** and Ramchandra Keshav Adke v. Govind Joti Chavare, **(1975) 1 SCC 559** making it mainstream in the India Legal Jurisprudence. The procedure given in the Guidelines on Banning of Business Dealings has been flouted and therefore, the Impugned Order dated 10.02.2024 which has the effect of blacklisting cannot survive.

42. Needless to state that in cases where the Respondent No.1/SAIL is proceeding to procure items without following the procedure of tender, it is

always open for the Respondent No.1/SAIL not to call the Petitioner and not to the procure the items from the Petitioner.

43. The argument of the Respondent No.1/SAIL that certain items have to be procured from the Petitioner, and therefore, if the Petitioner is blacklisted it will severely affect the production of steel cannot be accepted. Amendments can be made to the guidelines and a procedure can be evolved to do business even with the entities which have been blacklisted. A reference can be made to the Guidelines of the Ministry of Defence for Penalties in Business Dealings with Entities where there is a procedure to procure goods from the entities which are the sole supplier and even they are blacklisted. The relevant extract of the said guidelines reads as under:

> ***"(I) Miscellaneous***
>
> ***I.1 The entity with which business dealings are suspended or banned, may with the approval of competent authority, participate in the future RFPs for spares, upgrades, maintenance etc. for the equipment/weapon systems supplied earlier by it, if the equipment which is the object of the Contract is a proprietary item and there are no available alternate sources of supply.***
>
> *I.2 In cases wherein Transfer of Technology (ToT)/Licensed production has been taken in the past for manufacturing of equipment/weapon systems in India from the entity with which business dealings are suspended or banned. may with the approval of the competent authority, participate in the future RFPs related to components/ rotables/ additional items of such equipment/ weapon systems for which the TOT/ Licensed production has been taken.*
>
> *I.3 Any contract(s) related to the procurement*

process(es) in connection with which business dealings with an entity have been suspended will be held in abeyance. Any contract(s) related to the procurement process(es) in connection with which business dealings with an entity have been banned, shall be cancelled. However, other contracts involving such entity shall continue unless a decision to the contrary is taken by the competent authority, on a case by case basis.

I.4 If it becomes necessary on grounds of national security and operational preparedness / export obligations, to deal with an entity with which business dealings have been suspended or banned, in a procurement process and which is the only source that can supply/manufacture an equipment/weapon systems, the Competent Authority will be approached for approval of issuance of RFP or conclusion of contract with such an entity. Certificates (as provided in Annexure-1) signed by the Vice Chief of the service concerned / CISC / Additional Secretary (Defence Production) will be placed before the Competent Authority. SHQ / Department of Defence Production may propose special conditions to conclude a contract with such an entity.

I.5 The entity with which business dealings have been suspended or banned will not be permitted to transact contracts or agreements under a different name or division either through a transfer of assets of such an entity to another legal entity or otherwise.

I.6 An updated list of entities with which business dealings have been suspended or banned by the competent authority and/or against which financial penalties have been imposed shall be maintained on the official website of the Ministry of Defence."

(emphasis supplied)

44. In view of the fact that the Respondent No.1/SAIL has taken a

decision to blacklist the Petitioner which is evident from the actions of the Respondent No.1/SAIL and in view of the fact that the procedure for blacklisting the Petitioner has not been followed, the Impugned Order dated 10.02.2024 is set aside.

45. It is open for the Respondent No.1/SAIL to proceed further and blacklist the Petitioner in accordance with the law. It is also open for the Respondent No.1/SAIL not to procure goods from the Petitioner in case the Respondent No.1/SAIL does not envisage to invite tenders or also to amend the guidelines evolving a procedure to procure goods even from a blacklisted entities to ensure that the steel production in the country is not affected.

46. Resultantly, the writ petition is disposed of in the abovementioned terms. Pending applications, if any, also stand disposed of.

SUBRAMONIUM PRASAD, J

JULY 02, 2024
S. Zakir