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

+ **W.P.(C) 7927/2024**

PRAFULL GOYAL

..... Petitioner

Through: Mr. Manu Bansal, Mr. Balvinder S.
Mouji, Mr. Hemant Bajaj and Mr.
Rohit Nain, Advocates.

versus

INDIRA GANDHI NATIONAL OPEN UNIVERSITY

..... Respondent

Through: Mr. Amit Gupta, Mr. Shiv Verma and
Ms. Muskan Nagpal, Advocates.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

29.05.2024

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CM APPL. 32723/2024 (Exemption)

Allowed, subject to all just exceptions.

W.P.(C) 7927/2024 , CM APPL. 32722/2024

1. The Petitioner has approached this Court challenging the Letter dated 09.05.2024 issued by the Respondent blacklisting the Petitioner from being awarded any contract by the Respondent regarding printing of study material.
2. It is the case of the Petitioner that no show cause notice has been issued to the Petitioner informing that the Petitioner will be blacklisted. The action of blacklisting the Petitioner by the Respondent is, therefore, contrary to the law laid down by the Apex Court in Gorkha Security Services v.

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Government (NCT of Delhi) and Ors., (2014) 9 SCC 105 and UMC Technologies Private Limited v. Food Corporation of India & Anr., 2021 (2) SCC 551. The Apex Court in Gorkha Security Services v. Government (NCT of Delhi) and Ors., (2014) 9 SCC 105, in categorical terms has held that the action of debarment 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 cannot be passed. The Apex Court 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.”

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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.”

3. In view of the fact that no show cause notice has been issued to the Petitioner, the Impugned Letter dated 09.05.2024 is set aside. However, it is



always open for the Respondent to issue a show cause notice to the Petitioner regarding blacklisting by specifically pointing out the relevant clauses under the contract entered into between the parties. A personal hearing be also afforded to the Petitioner.

4. With these observations, the writ petition is disposed of, along with pending application(s), if any. It is made clear that this Court has not made any observations on the merits of the case.

SUBRAMONIUM PRASAD, J

MAY 29, 2024

S. Zakir