



\$~41

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

+ **W.P.(C)14330/2022, CM APPL. 43752/2022, CM APPL.32930/2023
& CM APPL. 33239/2023**

M/S SHREE SAI FACILITIES

.....Petitioner

**Through: Mr. Aseem Mehrotra and Ms.
Deeksha Mehrotra, Advs.**

versus

GENERAL MANAGER, NORTHERN RAILWAY & ANR.

.....Respondents

**Through: Mr. Anurag Ahluwalia, CGSC with
Mr. Kaushal Jeet Kait, GP along with
Mr. Jatin Yadav, Mr. Daksh Gupta,
Advs. and Mr. Rajesh Kahol, SSE.**

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

ORDER

%

26.07.2024

1. The petitioner in the instant writ petition has prayed for the following reliefs:

“a) issue an appropriate Writ, order or direction in the nature of mandamus commanding the Respondents to withdraw Letter No. CRSE/Mech/NR letter No. Confdl/Mech/203 dated 05.12.2018; Letter No. Confdl/mech./Genl. Corresp./PFA/124 dated 29.11.2021 & Letter no. Confdl/mech./Genl. Con-esp./PFA/124 dated 24.08.2022 (the confidential letters have not been provided to the petitioner by the respondent;

b) issue an appropriate Writ, order or direction in the nature of mandamus not to technically disqualify the Petitioner in light of Letter No. CRSE/Mech/NR letter No. Confdl/Mech/203 dated 05.12.2018; Letter No. Confdl/mech./Genl. Corresp./PFA/124 dated 29.11.2021 & Letter no. Confdl/mech./Genl. CoiTesp./PFA/124 dated 24.08.2022 in



respect of tenders being floated by the Northern Railway”

2. The solitary grievance raised in the present case pertains to the respondent's adverse actions taken against the petitioner without providing any opportunity of hearing. The petitioner asserts that these actions were based on a confidential letter that was not communicated to him but to the Railway Divisions, resulting in a decision being made without his knowledge or input. The petitioner further avers that he is a reputed contractor and that the respondent's reliance on this undisclosed letter has led to his unwarranted debarment from participating in future contracts. He also asserts that the petitioner firm was proactive in assisting the respondent in the investigation and had made repeated complaints to the Railways, asserting that the fraud was committed by Shri Sandeep Kumar and a few other private persons in collusion.

3. He further submits that it was the petitioner itself that, on 7th March 2018, wrote to the Anti-Corruption Bureau (ACB), Chandigarh, requesting the registration of an F.I.R. Additionally, the petitioner submitted a written complaint to the General Manager, Northern Railways, Baroda House, New Delhi, on 24th March 2018, regarding the fraud committed by railway officials. He avers that he is being penalized for no fault of its own for approximately five years, as all tenders submitted by it are being rejected in view of the confidential letters issued by the respondent. The petitioner also contends that the repercussions of the confidential letters issued by the respondent are more severe than formal blacklisting, as the latter has a defined duration, whereas the effects of the confidential letters are perpetual.

4. The respondents, in terms of paragraph Nos.2 to 4 of their counter affidavit, have taken the following stand:-



"2. It is submitted that on the directions of Ministry of Railway the Vigilance department of the Northern Railways, vide letter dated 03.12.2019 has handed over the matter to CBI and a FIR has been registered by the CBI vide FIR No. RC0052023A0019 under section 420, 467, 468 & 471, dated 13.04.2023, the FIR states that one of the main findings in the investigation conducted by the Department of Vigilance is that the payments pertaining to Amritsar, Jalandhar, Jammu Tawi including price variation bills and release of EMD's of earlier as well as current contract pertaining to M/s Shree Sai Facilities were diverted to a fictitious **Account No. 3989002100007395**, in PNB G.T Road, Ambala Cantt. All the irregular payments of Shree Sai were diverted in the above mentioned fictitious accounts instead of Axis Bank **Account No- 914020003366927** provided by the contractor at the time of initiation of contract for regular payment. It is further submitted that some of the regular payments have also been diverted into fictitious accounts, investigation into the payments made against PVC and few miscellaneous contracts is underway by the Northern Railway Vigilance, the above said two bank accounts were running in parallel in one in which regular payments were being made and one irregular payment (**Rs 35,81,596/- Dated 13.10.2017**) has also gone into the regular account of the Petitioner thus there is a positive act of collusion and malafide in the case. **It is evident on record that said payment was one of the initial forged payment credited to petitioner account during initial phase of forgery act. CWP- 17713 of 2018 is with Honorable Punjab and Haryana High Court, Chandigarh for disposal. The next hearing date is schedule on 02.11.2023.**

3. It is submitted that in the present case repeated payments were being made and the bills claimed were highly inflated, an average monthly payment for Jalandhar depot should have been less than Rs. 1.5 lakhs and payments to the tune of Rs. 35 to 40 Lakhs have been made in different months, this was deliberately done by showing inflated number of coaches in various months in the bill. Since the allegations are of serious nature independent investigation is required so that possibility fraud by the Petitioner can be ruled out.

4. It is submitted that since there is a clear criminality by way of defrauding government money to the tune of 9 cr. which could further increase and reasons like, involvement of outside agencies such as banks, alleged beneficiaries of the money drawn by Shree Sandeep Kumar are being looked into and the entire matter requires an independent investigation."

5. A perusal of the respondent's reply, alongside the petitioner's stance,



indicates that several FIRs have been registered concerning payments associated with significantly inflated bills.

6. The respondents' case is that the average monthly payment for the Jalandhar depot should have been less than Rs. 1.5 lakhs, yet payments ranging from Rs. 35 to 40 lakhs were made in different months. This was deliberately executed by showing inflated numbers of coaches in the bills for various months.

7. Given the serious nature of these allegations, the respondents aver that an independent investigation is necessary to eliminate the possibility of fraud by the petitioner. They further contended in the reply that criminality is evident through the defrauding of government funds amounting to Rs. 9 crores, a figure that could further increase in the course of investigation. Due to the involvement of external agencies such as banks and the alleged beneficiaries of the funds withdrawn by Shree Sandeep Kumar, the contractor representative, an independent investigation is required.

8. Based on the aforesaid position, the respondents submit that given that one of the representative of the petitioner is involved in an alleged financial fraud, the possibility of the petitioner being involved in fraud cannot be ruled out and thus, they have taken the step to blacklist the petitioner.

9. I have considered the submissions of both the parties and perused the record.

10. Based on a thorough consideration of the submissions, the Court is of the opinion that the respondents have failed to allude to any evidence indicating that the petitioner was afforded an opportunity of hearing prior to the impugned decision being made.



11. It is evident that the petitioner was not afforded an opportunity of hearing prior to the rejection of any tenders submitted by the petitioner-firm or before the blacklisting action was executed against the petitioner. This action was taken in connection with the alleged financial fraud purportedly committed by one of the petitioner's employees or representatives. Furthermore, there is no record of any notice regarding such action.

12. It is well-established law that no adverse action of such nature should be taken against any individual without affording an opportunity of hearing, as such a hearing constitutes a fundamental principle of natural justice, which is the cornerstone of any decision making exercise. The respondents are bound by this principle, given the undisputed position that they fall within the ambit of Article 12 of the Constitution.

13. On this aspect, it is relevant to refer to the decision in the case of ***Gorkha Security Services v. Govt. (NCT of Delhi)***¹, wherein, the Supreme Court observed that any action of blacklisting must be mandatorily preceded by serving of a show-cause notice. The Court emphasized the severe consequences of blacklisting, describing it as a "civil death" for the person or entity involved. The relevant paragraphs of the said decision are reproduced 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***

¹ (2014) 9 SCC 105



contracts.”

14. In another decision of the Supreme Court titled as ***Erusian Equipment & Chemicals Ltd. v. State of W.B.***², it was held that before an individual is blacklisted, the fundamentals of fair play require that the concerned individual has been granted an opportunity to represent his case.

Paragraph no.20 of the said decision reads as under:-

“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.”

15. In the case of ***Raghunath Thakur v. State of Bihar***³, the Supreme Court took a view that even if the rules do not prescribe service of notice before blacklisting any person, by virtue of being affected by such adversarial order and in light of the elementary principle of natural justice, the said individual has a right of being heard. The relevant paragraph of the said decision is reproduced herein for reference:-

*“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***

² (1975) 1 SCC 70

³ (1989) 1 SCC 229



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 of otherwise of the allegations made against the appellant. The appeal is thus disposed of.”

16. The impugned decision has the effect of a permanent blacklisting. The Supreme Court in ***Kulja Industries Ltd. v. Western Telecom Project BSNL***⁴ has held that an action of blacklisting/debarment, though considered as an effective method to penalise breach of contracts or punish fraud, has to be taken for a finite period and cannot remain in force till perpetuity. Paragraph no.25 of the said decision reads as under:-

*“25. Suffice it to say that “debarment” is recognised and often used as an effective method for disciplining deviant suppliers/contractors who may have committed acts of omission and commission or frauds including misrepresentations, falsification of records and other breaches of the regulations under which such contracts were allotted. **What is notable is that the “debarment” is never permanent and the period of debarment would invariably depend upon the nature of the offence committed by the erring contractor.**”*

17. Therefore, as is evident from the judicial decisions cited above, the respondents are bound to afford an opportunity of hearing to the petitioner before initiating any action of blacklisting or debarment. In absence of such

⁴ (2014) 14 SCC 731.



an opportunity, the impugned action is liable to be set aside.

18. In light of the foregoing analysis and findings, the instant petition is hereby, allowed. Consequently, all communications and actions taken by the respondents that are adverse to the petitioner pertaining to the controversy in hand are set aside.

19. Nevertheless, the respondents retain the right to undertake appropriate legal actions, provided they strictly adhere to the due process. This includes, but not limited to, affording the petitioner a fair and reasonable opportunity to be heard, in full compliance with the principles of natural justice.

20. The Court has not expressed any opinion on the merits of the case. All other rights and contentions of the parties are left open for adjudication in appropriate proceedings.

21. The petition stands disposed of alongwith the pending applications.

PURUSHAINDR KUMAR KAURAV, J

JULY 26, 2024/p