



2024:DHC:7968-DB



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

% Judgment reserved on: 30.09.2024
Judgment delivered on: 16.10.2024

+ LPA 957/2024, C.M. APPL. Nos. 55939-41/2024

OKINAWA AUTOTECH INTERNATIONAL
PRIVATE LIMITED & ANR

....Appellants

versus

UNION OF INDIA

..... Respondent

Advocates who appeared in this case:

For the Appellants : Ms. Meenakshi Arora, Sr. Advocate with Mr. Manish Bishnoi, Mr. Anurag Bhatt, Mr. Lokesh Pathak, Mr. Vaibhav Vijayvargiya and Mr. Ankur Gupta, Advocates.

For the Respondent : Mr. N. Venkataraman, ASG with Mr. Amish Tandon, Ms. Anushree Kulkarni and Ms. Vaishnavi, Advocates with Mr. Amit Acharya, Govt. Pleader for UoI.
Mr. Anurag Ahluwalia, CGSC with Mr. Kaushal Jeet Kait, GP and Ms. Hridyanshi Sharma, Advocate for UoI.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

J U D G M E N T

TUSHAR RAO GEDELA, J.

1. Present appeal has been preferred under Clause X of the Letters Patent Act, 1866 assailing the order dated 11th September, 2024 passed by the learned Single Judge dismissing the underlying writ petition being

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12:45:46

LPA 957/2024



2024:DHC:7968-DB



W.P.(C) No.12776/2024 whereby the appellants had challenged the Show Cause Notice dated 6th September, 2024 issued by the respondent/ Ministry of Heavy Industries and Public Enterprises, proposing the action of blacklisting the appellant.

2. The facts germane to the issue and culled out from the appeal are as under:-

(i) The appellant company participated in the Scheme namely Faster Adoption and Manufacturing of Electric Vehicles in India, Phase II (in short '*FAME-II Scheme*') floated by the respondent on 8th March, 2019 for promotion of electric and hybrid vehicles. As per the Phased Manufacturing Program Guidelines (in short '*PMP Guidelines*'), the manufacturers were required to indigenise the parts of their vehicle models in accordance with the guidelines issued from time to time, within the relevant dates so provided.

(ii) It is the case of the appellants that the appellant company complied with the FAME II Scheme and the PMP Guidelines issued by the respondent and accordingly claimed subsidy for sale of its vehicle models from the respondent from time to time. However, the respondent issued a letter dated 25th July, 2022 alleging non-compliance by the appellant company and directed it to submit supporting documents etc., as per the PMP Guidelines in support of its claim with effect from 1st April, 2021. Thereafter, *vide* letter dated 26th September, 2022, the respondent suspended the vehicle models of the appellant company from FAME II Scheme. Finally, in view of the findings of ARAI through strip down analysis alleging violation of localization norms/PMP Guidelines with regard to four components by the appellant company and otherwise, the

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By: MADHU KARDANA
Signing Date: 16.10.2024
12:45:46

EP 957/2024



2024:DHC:7968-DB



respondent passed the order dated 9th October, 2023 de-registering the appellant company from the FAME II Scheme.

(iii) The appellants challenged the de-registration order dated 9th October, 2023 before the learned Single Judge by way of a writ petition being W.P.(C) 15125/2023 which is stated to be pending adjudication. It is the case of the appellant that on 24th November, 2023, since the learned Single Judge was granting an interim measure in favour of the appellants, learned ASG for the respondent gave an oral undertaking that no coercive action shall be taken against the appellant company.

(iv) Since the FAME II Scheme was coming to an end on 31st March, 2024, the learned Single Judge, on an application preferred by the appellant, passed an order dated 13th March, 2024 making it clear that the decision of the respondent will be subject to the outcome of the said writ petition. It was also made clear that even if the policy lapses, the amounts claimed would be subject to the final outcome of that writ petition.

(v) Thereafter, since the said W.P.(C) 15125/2023 was not being heard due to very heavy position of the board and the investors were not willing to infuse funds in the appellant company as there was no interim protection in writing, the appellants moved an application before the learned Single Judge requesting to record the interim protection in writing. However, the said request was not accepted and an order dated 5th August, 2024 was passed observing that since the predecessor Bench had already considered the issue of interim relief and granted a limited relief, thus the prayer for interim measures now requested for by the appellants, cannot be granted. It was also noted therein that even if any oral understanding was in existence, the subsequent order dated 13th March, 2024 extinguishes the same.

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Signing Date: 16.10.2024
12:45:46

EP 957/2024



2024:DHC:7968-DB



(vi) It is the case of the appellant that it was only after the order dated 5th August, 2024 was passed by the learned Single Judge that the respondent proceeded with issuing the impugned Show Cause Notice dated 6th September, 2024 to the appellant company. The said Show Cause Notice was challenged before the learned Single Judge in the underlying writ petition which was dismissed *vide* impugned order dated 11th September, 2024 passed therein.

(vii) Hence, the present appeal has been preferred challenging the order dated 11th September, 2024 passed in the underlying writ petition.

3. This Court has heard Ms. Meenakshi Arora, learned senior counsel for the appellants and Mr. N. Venkataraman, learned ASG for the respondent, perused the impugned order and considered the judgements relied upon.

4. Ms. Arora, learned senior counsel for the appellants at the outset, briefly adumbrated the background facts leading to the present *lis*. From the submissions and contentions rendered on behalf of the appellants, it is clear that the challenge in the underlying petition is limited to the issuance of the Show Cause Notice dated 6th September, 2024. As the challenge is against issuance of Show Cause Notice, the present appeal is being tested on the limited issue of whether the Show Cause Notice itself is illegal for three precise reasons, that is, (i) the Show Cause Notice is vitiated since the same is issued with a predetermined mind; (ii) since the person who passed the de-registration order and issued the impugned Show Cause Notice is one and the same, bias against the appellant would be natural, rendering the administrative proceedings to follow such Show Cause Notice, a mere formality; and (iii) the blacklisting proceedings ought not to commence

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Signing Date: 16.10.2024 12:45:46
EPA 957/2024



2024:DHC:7968-DB



until the outcome of the other writ petition wherein the de-registration order is under challenge.

5. For the respondent, Mr. N. Venkataraman, learned ASG has made brief submissions as under:

(i) that the allegation of bias/targeting the appellants is unfounded as there are five (5) other companies whose claims for subsidy were not found to be genuine and similar action of recovering the subsidy have been taken against them as well.

(ii) that the appellant was afforded a reasonable opportunity of hearing previously, before passing the order of deregistration. Similarly, the principles of natural justice would be adhered to by the authorities while proceeding with the present Show Cause Notice too. He submitted that the apprehension of the appellants on that count is baseless.

(iii) that there is no impediment in conducting simultaneous proceedings which entail different consequences. In any case, there is no prejudice caused to the appellants in case the Show Cause Notice is proceeded with concurrently, as it would have the full opportunity to defend itself. He also stated that the authority would proceed with the Show Cause Notice, bearing in mind the distinct parameters and after proper application of mind, a decision would be taken in accordance with law.

(iv) that a plain reading of the Show Cause Notice does not evidence any predetermination of the proposed blacklisting. He also submitted that mere reference to the de-registration order in the Show Cause Notice would not lead to an assumption of predisposition towards imposition of order of blacklisting. He urged that in any case, it is a settled law that a cause of

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Signing Date: 16.10.2024
12:45:46



action, if any, would arise only after a final decision is taken by the authority.

6. The core issue presented before this Court for consideration is, as to under what circumstances a Constitutional Court can interdict or interfere with issuance of a Show Cause Notice.

7. It is no more *res integra* that ordinarily, a Writ Court may not exercise its discretionary jurisdiction in entertaining a writ petition challenging a Show Cause Notice unless the same appears to have been issued without jurisdiction or in abuse of process of law. The Supreme Court in ***Union of India v. VICO Laboratories, (2007) 13 SCC 270*** has held as under:-

“31. Normally, the writ court should not interfere at the stage of issuance of show-cause notice by the authorities. In such a case, the parties get ample opportunity to put forth their contentions before the authorities concerned and to satisfy the authorities concerned about the absence of case for proceeding against the person against whom the show-cause notices have been issued. Abstinance from interference at the stage of issuance of show-cause notice in order to relegate the parties to the proceedings before the authorities concerned is the normal rule. However, the said rule is not without exceptions. Where a show-cause notice is issued either without jurisdiction or in an abuse of process of law, certainly in that case, the writ court would not hesitate to interfere even at the stage of issuance of show-cause notice. The interference at the show-cause notice stage should be rare and not in a routine manner. Mere assertion by the writ petitioner that notice was without jurisdiction and/or abuse of process of law would not suffice. It should be prima facie established to be so. Where factual adjudication would be necessary, interference is ruled out.”

8. The Supreme Court has succinctly stated the parameters as to when and under what circumstances the Constitutional Courts are to, or not to interfere with or interdict a Show Cause Notice. Ordinarily, the Courts should not embark upon a path to decide a dispute at such a premature stage, but relegate the party to submit its reply before the authority



2024:DHC:7968-DB



concerned, which is mandated to decide the same in accordance with law. Law is well settled that interference by a Writ Court under Article 226 of the Constitution of India, at the stage of Show Cause Notice should only be in rare and exceptional cases, and not in a routine manner. (See: ***Union of India & Anr. Vs. Kunisetty Satyanarayana, (2006) 12 SCC 28*** and ***State of U.P. v. Brahm Datt Sharma, (1987) 2 SCC 179***).

9. It is not disputed that the respondent had passed an order dated 9th October, 2023 de-registering the appellant company on the grounds, which are subject matter of challenge in another writ petition bearing W.P.(C) 15125/2023. The same appears to be premised on the alleged violations of the conditions set out in FAME – II Scheme and PMP Guidelines. It has been vehemently argued by the appellants that the impugned Show Cause Notice is entirely predicated upon the de-registration order alone. It was stated that there are no other palpable grounds on which the Show Cause Notice has been issued. On that basis, it was argued that the said Show Cause Notice has been issued with a predetermined mind and following the procedures of granting an opportunity of filing a reply thereto and possibly affording an opportunity of hearing would then, surely be an empty formality. According to the appellants, the Supreme Court has not only deprecated, but has also quashed Show Cause Notices in such circumstances.

10. Though at the first blush, the aforesaid argument appears to be attractive, yet, on a closer scrutiny and consideration, it is fallacious. This is for the reason that, though an order for de-registration and blacklisting may be predicated on the same set of facts, yet the consideration as to whether a party may only be penalised with de-registration or to take it to the next

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By: MADHU KARDANA
Signing Date: 16.10.2024
12:45:46

EPA 957/2024



2024:DHC:7968-DB



severe level of blacklisting, may be different. Merely because the appellant company has been de-registered by the respondent would not, *ipso facto*, imply that the Show Cause Notice intending blacklisting, would also be decided against the appellant. Moreover, the appellant would be afforded an opportunity to file its reply which would be considered by the Competent Authority in accordance with law. This Court has also perused the Show Cause Notice carefully and does not find the same to be predetermined. Apart from referring to the order of de-registration, the recitals do not betray the mind of the issuing authority. Since it appears that the background facts are similar, a reference to the de-registration order may have been made. Other than that, this Court does not find any palpable reason to conclude a 'predetermined mind'. This conclusion is also clear from the ratio laid down by the Supreme Court in ***Siemens Ltd. vs. State of Maharashtra & Ors., (2006) 12 SCC 33*** and ***Oryx Fisheries Private Limited vs. Union of India & Ors., (2010) 13 SCC 427*** as also noted by the learned Single Judge in para 7 of the impugned order. In those cases, the authority issuing the Show Cause Notice had clearly betrayed its findings and conclusion of guilt of the noticee. In the present case, no such determination is discernible. It can also not be assumed at this stage that a reasonable opportunity of defence would not be provided to the appellants.

11. As an analogy, in service jurisprudence, on the same set of facts, two sets of proceedings could be possible. One, in respect of disciplinary proceedings and the other could be the parallel proceedings initiated before the Criminal Court. It is trite that both proceedings could commence and be adjudicated simultaneously. These are two independent proceedings

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Digitally Signed
By: MADHU KARDANA
Signing Date: 16.10.2024
12:45:46

EPA 957/2024

Page 8 of 11



2024:DHC:7968-DB



entailing two different consequences altogether. Though, at times, there could be exceptions to the above rule.

12. So far as the second submission regarding the same authority having issued the Show Cause Notice, who had also, on a previous occasion, passed an order de-registering the appellant company is concerned, there is no allegation of bias nor has the learned senior counsel for the appellants submitted any such issue, except to state that the same person who had passed the order de-registering the appellant could not have issued the Show Cause Notice entailing consequence of blacklisting. Learned senior counsel for the appellants had also expressed apprehension that there could be a possibility of a natural bias to uphold the findings of de-registration and apply the same to blacklisting too. We do not find any substance in the said submission. There are multiple reasons for the said opinion, (i) there is no prohibition for the same person in authority to have passed both, the de-registration order as well as issuing the Show Cause Notice proposing action of blacklisting; (ii) there is no restriction or prohibition either, for the same authority to pass an order of penalty and consider the issuance of Show Cause Notice for a major penalty or action, if the situation or facts so warrant/necessitate; (iii) there is no restriction or prohibition against an authority, circumscribing its power of blacklisting an entity on the same set of facts, *vide* which the previous penalty, in the present case, de-registration was passed; (iv) there is no restriction in exercising its power, so long as the authority concerned acts in accordance with the principles of natural justice envisaged in administrative law. This Court also notices that there are no allegations of personal bias against the officer concerned. The officer concerned appears to be holding a position warranting different roles and

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Signing Date: 16.10.2024 12:45:46
EPA 957/2024



2024:DHC:7968-DB



responsibilities in the same capacity. Merely because of such position and status, it cannot be inferred that there would be a natural bias, inbuilt or inherent. On the above principles, this Court does not find any reasons to interdict the Show Cause Notice at this stage. In any case, the appellants can raise all its contentions before the authority while filing the reply to the Show Cause Notice, taking all the objections that are possibly available with them.

13. Learned senior counsel for the appellants had also argued that the said Show Cause Notice has been issued post haste, that is, immediately after the order dated 5th August, 2024 was passed in the other writ petition being W.P.(C) 15125/2023 rejecting the prayer of the appellants for stay of the order of de-registration. She contended that when the impugned Show Cause Notice proposing the action of blacklisting is based on the same set of facts which resulted in passing of the de-registration order, the authorities ought to have awaited the outcome of the other writ petition challenging the said de-registration order, prior to issuing such Show Cause Notice. Reliance is placed on the judgements in the cases of *Prakash Atlanta JV & Ors. vs. National Highways Authority of India & Ors.*, 2010 SCC OnLine Del 471; and *National Building Construction Corporation Limited vs. New Delhi Municipal Council & Anr.*, 2006 SCC OnLine Del 1435.

14. So far as the aforesaid argument is concerned, this Court finds that the learned Single Judge in para 8 of the impugned judgement has succinctly considered the judgements relied upon and rightly held the ratio to be not applicable. This Court does not wish to compound the present order with repetition. There is no law or jurisprudence which contemplates that in all such cases, the action proposed to be taken by an Authority, needs

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Signing Date: 16.10.2024
12:45:46

EPA 957/2024



2024:DHC:7968-DB



to be delayed on the premise that the earlier action or penalty levied, is under challenge. The action proposed to be now undertaken *vide* the Show Cause Notice is separate and distinct from the order of de-registration and thus, pendency of the writ challenging the de-registration order would not be an impediment to the issuance of Show Cause Notice for blacklisting. Suffice to state that this Court reiterates the reasoning rendered by the learned Single Judge in the aforementioned paragraph. Moreover, as observed above, the Show Cause Notice, in the present case, does not betray a predetermined mind as apprehended by the appellant.

15. That said, this Court does not find any reason to interfere with the sound reasoning rendered by the learned Single Judge in the impugned judgement dated 11th September, 2024. Consequently, the appeal is dismissed along with pending applications, if any, without costs.

16. It is made clear that the observations made herein shall not tantamount to any expression on merits of the case. The rights and contentions of the parties are left open.

TUSHAR RAO GEDELA, J

MANMOHAN, CJ

OCTOBER 16, 2024/rl

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EPA 957/2024