HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

S.B. Civil Writ Petition No. 19186/2023

Royal Institute Of Health Awareness And Education, Khansoli, District Churu Through Its Director Bhanwar Lal Ruyal Son Of Shri Phula Ram Ruyal, Aged About 52 Years, R/o Khasoli, District Churu (Rajasthan).

----Petitioner

Versus

1. State Of Rajasthan, Through The Director Cum Special Secretary, Directorate, Local Self Department, Jaipur (Rajasthan).
2. The District Collector, Churu (Rajasthan).
3. Municipal Board, Rajgarh, District Churu (Rajasthan), Through Its Executive Officer.

----Respondents

Connected With

S.B. Civil Writ Petition No. 19190/2023

Zila Pariyavaran Sudhar Samiti, Jhunjhunu, Through Its Secretary Rajesh Agarwal Son Of Shri Hansraj Agarwal, Aged About 55 Years, R/o Singhana, Jhunjhunu (Rajasthan).

----Petitioner

Versus

1. State Of Rajasthan, Through The Director Cum Special Secretary, Directorate, Local Self Department, Jaipur (Rajasthan).
2. The District Collector, Churu (Rajasthan).
3. Municipal Council, Churu (Rajasthan), Through Its Commissioner.

----Respondents

S.B. Civil Writ Petition No. 629/2024

Zila Pariyavaran Sudhar Samiti, Jhunjhunu. Through Its Secretary Rajesh Agarwal Son Of Shri Hansraj Agarwal, Aged About 55 Years, Resident Of Singhana, Jhunjhunu (Rajasthan).

----Petitioner

Versus

1. State Of Rajasthan, Through The Director Cum Special

Secretary, Directorate, Local Self Department, Jaipur (Rajasthan).

2. The District Collector, Churu (Rajasthan).

3. Municipal Council, Churu (Rajasthan). Through Its Commissioner.

----Respondents

For Petitioner(s) : Mr. Chandra Shekhar Kotwani
For Respondent(s) : Mr. Rajesh Parihar

HON'BLE MR. JUSTICE VINIT KUMAR MATHUR

Order

26/02/2024

S.B. Civil Writ Petition No. 19186/2023 :

1. Learned counsel for the petitioner has shown the order passed by a coordinate Bench of this Hon’ble Court in S.B. Civil Writ Petition No.11302/2022 (Kisan Gramin Vikas Samiti Vs. State of Rajasthan & Ors.), decided on 04.02.2023. The order reads as follows:-

> *“This writ petition has been filed by the petitioner with the following prayers:-*
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> > *“It is, therefore humbly prayed that your Lordship may graciously be pleased to accept and allow this writ petition and by an appropriate writ, order or direction, the impugned order dated 8.07.2022 (Annexure-9) passed by the respondent NO.2 may kindly be quashed and set aside in the interest of justice. Any other appropriate order or direction which this Hon’ble Court deems expedient in the facts and circumstances of the caes may kindly be passed in favour of the petitioner.”*

By way of this writ petition, the petitioner has challenged the order dated 08.07.2022 passed by the respondents whereby the petitioner-firm has been blacklisted without providing opportunity of hearing and penalty of Rs.1 lac has also been imposed upon it. Counsel further submits that it is a case of non-application of mind and action of the respondents is also in violation of the principles of natural justice as the impugned order has been passed without hearing the petitioner.

The Hon'ble Supreme Court in the matter Gorkha Security Services Vs. Govt. of NCT of Delhi & Ors. reported in 2014 (9) SCC 105 in para Nos.31 & 33 has held as under:-

> *31. When it comes to the action of blacklisting which is termed as 'Civil Death' it would be difficult to accept the proposition that without even putting the notice to such a contemplated action and giving him a chance to show cause as to why such an action be not taken, final order can be passed blacklisting such a person only on the premise that this is one of the actions so stated in the provisions of NIT. The "Prejudice" Argument*
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> *33. When we apply the ratio of the aforesaid judgment to the facts of the present case, it becomes difficult to accept the argument of the learned ASG. In the first instance, we may point out that no such case was set up by the Respondents that by omitting to state the proposed action of blacklisting, the Appellant in the show cause notice has not caused any prejudice to the Appellant. Moreover, had the action of black listing being specifically proposed in the show cause notice, the Appellant could have mentioned as to why such extreme penalty*

is not justified. It could have come out with extenuating circumstances defending such an action even if the defaults were there and the Department was not satisfied with the explanation qua the defaults. It could have even pleaded with the Department not to blacklist the Appellant or do it for a lesser period in case the Department still wanted to black list the Appellant. Therefore, it is not at all acceptable that non mentioning of proposed blacklisting in the show cause notice has not caused any prejudice to the Appellant. This apart, the extreme nature of such a harsh penalty like blacklisting with severe consequences, would itself amount to causing prejudice to the Appellant.

The respondent(s) have not submitted any document on record to show that the petitioner was given opportunity of hearing prior to passing of the order dated 08.07.2022.

Heard counsel for the parties and perused the record.

This writ petition filed by the petitioner deserves to be allowed for the reasons; firstly, the order dated 08.07.2022 (Annexure-9) has been passed by the respondents without providing any opportunity of hearing which in my considered view is in violation of principle of natural justice; secondly, in view of the judgment passed by the Hon'ble Supreme Court in the matter of Gorkha Security Services (supra).

I deem it proper to exercise the jurisdiction under Article 226 of the Constitution of India.

In that view of the matter, this writ petition stands allowed. The order dated 08.07.2022 is set aside. The respondents are at liberty to pass fresh

order against the petitioner after providing proper opportunity of hearing."

2. Learned counsel for the petitioner submits that there is nothing distinguishable from the aforequoted order.

3. Learned Additional Advocate General opposed but is unable to point out any distinction from the aforequoted order, however, he submits that though individual notice was not given but general notice have been given.

4. In light of the aforequoted order, the present writ petition is allowed in the same terms. The order dated 05.12.2023 is quashed and set aside with a clear liberty to the respondents to pass fresh order against the petitioner after providing proper opportunity of hearing.

5. All pending applications stand disposed of.

S.B. Civil Writ Petition No. 19190/2023 :

1. Learned counsel for the petitioner has shown the order passed by a coordinate Bench of this Hon'ble Court in S.B. Civil Writ Petition No.11302/2022 (Kisan Gramin Vikas Samiti Vs. State of Rajasthan & Ors.), decided on 04.02.2023. The order reads as follows:-

"This writ petition has been filed by the petitioner with the following prayers:-

"It is, therefore humbly prayed that your Lordship may graciously be pleased to accept and allow this writ petition and by an appropriate writ, order or direction, the impugned order dated 8.07.2022 (Annexure-9) passed by the respondent NO.2 may kindly be quashed and set aside in the interest of justice. Any other appropriate order or direction which this Hon'ble Court deems expedient in the facts

and circumstances of the caes may kindly be passed in favour of the petitioner."

By way of this writ petition, the petitioner has challenged the order dated 08.07.2022 passed by the respondents whereby the petitioner-firm has been blacklisted without providing opportunity of hearing and penalty of Rs.1 lac has also been imposed upon it. Counsel further submits that it is a case of non-application of mind and action of the respondents is also in violation of the principles of natural justice as the impugned order has been passed without hearing the petitioner.

The Hon'ble Supreme Court in the matter Gorkha Security Services Vs. Govt. of NCT of Delhi & Ors. reported in 2014 (9) SCC 105 in para Nos.31 & 33 has held as under:-

> *31. When it comes to the action of blacklisting which is termed as 'Civil Death' it would be difficult to accept the proposition that without even putting the notice to such a contemplated action and giving him a chance to show cause as to why such an action be not taken, final order can be passed blacklisting such a person only on the premise that this is one of the actions so stated in the provisions of NIT. The "Prejudice" Argument*
>
> *33. When we apply the ratio of the aforesaid judgment to the facts of the present case, it becomes difficult to accept the argument of the learned ASG. In the first instance, we may point out that no such case was set up by the Respondents that by omitting to state the proposed action of blacklisting, the Appellant in the show cause notice has not caused any prejudice to the Appellant. Moreover, had the action of black listing being specifically proposed*

in the show cause notice, the Appellant could have mentioned as to why such extreme penalty is not justified. It could have come out with extenuating circumstances defending such an action even if the defaults were there and the Department was not satisfied with the explanation qua the defaults. It could have even pleaded with the Department not to blacklist the Appellant or do it for a lesser period in case the Department still wanted to black list the Appellant. Therefore, it is not at all acceptable that non mentioning of proposed blacklisting in the show cause notice has not caused any prejudice to the Appellant. This apart, the extreme nature of such a harsh penalty like blacklisting with severe consequences, would itself amount to causing prejudice to the Appellant.

The respondent(s) have not submitted any document on record to show that the petitioner was given opportunity of hearing prior to passing of the order dated 08.07.2022.

Heard counsel for the parties and perused the record.

This writ petition filed by the petitioner deserves to be allowed for the reasons; firstly, the order dated 08.07.2022 (Annexure-9) has been passed by the respondents without providing any opportunity of hearing which in my considered view is in violation of principle of natural justice; secondly, in view of the judgment passed by the Hon'ble Supreme Court in the matter of Gorkha Security Services (supra).

I deem it proper to exercise the jurisdiction under Article 226 of the Constitution of India.

In that view of the matter, this writ petition stands allowed. The order dated 08.07.2022 is set

aside. The respondents are at liberty to pass fresh order against the petitioner after providing proper opportunity of hearing."

2. Learned counsel for the petitioner submits that there is nothing distinguishable from the aforequoted order.

3. Learned Additional Advocate General opposed but is unable to point out any distinction from the aforequoted order, however, he submits that though individual notice was not given but general notice have been given.

4. In light of the aforequoted order, the present writ petition is allowed in the same terms. The order dated 05.12.2023 is quashed and set aside with a clear liberty to the respondents to pass fresh order against the petitioner after providing proper opportunity of hearing.

5. All pending applications stand disposed of.

S.B. Civil Writ Petition No. 629/2024 :

1. Learned counsel for the petitioner has shown the order passed by a coordinate Bench of this Hon'ble Court in S.B. Civil Writ Petition No.11302/2022 (Kisan Gramin Vikas Samiti Vs. State of Rajasthan & Ors.), decided on 04.02.2023. The order reads as follows:-

"This writ petition has been filed by the petitioner with the following prayers:-

"It is, therefore humbly prayed that your Lordship may graciously be pleased to accept and allow this writ petition and by an appropriate writ, order or direction, the impugned order dated 8.07.2022 (Annexure-9) passed by the respondent NO.2 may kindly be quashed and set aside in the interest of justice. Any other appropriate order or direction which

this Hon'ble Court deems expedient in the facts and circumstances of the caes may kindly be passed in favour of the petitioner."

By way of this writ petition, the petitioner has challenged the order dated 08.07.2022 passed by the respondents whereby the petitioner-firm has been blacklisted without providing opportunity of hearing and penalty of Rs.1 lac has also been imposed upon it. Counsel further submits that it is a case of non-application of mind and action of the respondents is also in violation of the principles of natural justice as the impugned order has been passed without hearing the petitioner.

The Hon'ble Supreme Court in the matter Gorkha Security Services Vs. Govt. of NCT of Delhi & Ors. reported in 2014 (9) SCC 105 in para Nos.31 & 33 has held as under:-

31. When it comes to the action of blacklisting which is termed as 'Civil Death' it would be difficult to accept the proposition that without even putting the notice to such a contemplated action and giving him a chance to show cause as to why such an action be not taken, final order can be passed blacklisting such a person only on the premise that this is one of the actions so stated in the provisions of NIT. The "Prejudice" Argument

33. When we apply the ratio of the aforesaid judgment to the facts of the present case, it becomes difficult to accept the argument of the learned ASG. In the first instance, we may point out that no such case was set up by the Respondents that by omitting to state the proposed action of blacklisting, the Appellant in the show cause notice has not caused any prejudice to the Appellant. Moreover, had the

action of black listing being specifically proposed in the show cause notice, the Appellant could have mentioned as to why such extreme penalty is not justified. It could have come out with extenuating circumstances defending such an action even if the defaults were there and the Department was not satisfied with the explanation qua the defaults. It could have even pleaded with the Department not to blacklist the Appellant or do it for a lesser period in case the Department still wanted to black list the Appellant. Therefore, it is not at all acceptable that non mentioning of proposed blacklisting in the show cause notice has not caused any prejudice to the Appellant. This apart, the extreme nature of such a harsh penalty like blacklisting with severe consequences, would itself amount to causing prejudice to the Appellant.

The respondent(s) have not submitted any document on record to show that the petitioner was given opportunity of hearing prior to passing of the order dated 08.07.2022.

Heard counsel for the parties and perused the record.

This writ petition filed by the petitioner deserves to be allowed for the reasons; firstly, the order dated 08.07.2022 (Annexure-9) has been passed by the respondents without providing any opportunity of hearing which in my considered view is in violation of principle of natural justice; secondly, in view of the judgment passed by the Hon'ble Supreme Court in the matter of Gorkha Security Services (supra).

I deem it proper to exercise the jurisdiction under Article 226 of the Constitution of India.

In that view of the matter, this writ petition stands allowed. The order dated 08.07.2022 is set aside. The respondents are at liberty to pass fresh order against the petitioner after providing proper opportunity of hearing."

2. Learned counsel for the petitioner submits that there is nothing distinguishable from the aforequoted order.

3. Learned Additional Advocate General opposed but is unable to point out any distinction from the aforequoted order, however, he submits that though individual notice was not given but general notice have been given.

4. In light of the aforequoted order, the present writ petition is allowed in the same terms. The order dated 28.12.2023 is quashed and set aside with a clear liberty to the respondents to pass fresh order against the petitioner after providing proper opportunity of hearing.

5. All pending applications stand disposed of.

(VINIT KUMAR MATHUR),J

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