

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.3076 OF 2024

BASAVRAJ
GURAPPA
PATIL

Harsha Infra Power Pvt. Ltd.

..... Petitioner

Vs.

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BASAVRAJ GURAPPA
PATIL
Date: 2025.03.06
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Bharat Petroleum Corporation Ltd. & Anr. Respondents

Dr. Abhinav Chandrachud (through Video Conferencing)
a/w. Mr. V. C. Shukla, Mr. Tarun Gulia and Mr. Darshan
Patankar i/b. Mr. Tejas Mande for the petitioner

Mr. Prasad S. Dani, Senior Advocate i/b. S. R. Page for
respondent No.1.

**CORAM: ALOK ARADHE, CJ. &
BHARATI DANGRE, J.**

**RESERVED ON : MARCH 4, 2025
PRONOUNCED ON : MARCH 6, 2025**

JUDGMENT (PER : CHIEF JUSTICE)

1. Rule. Rule is made returnable forthwith. By consent of the parties, heard finally.

2. In this petition, the petitioner has assailed the validity of Clause 4.1.1 (g)-(h) of Policy for Holiday Listing (**Policy**) of Bharat Petroleum Corporation Ltd. (**Corporation**) as well as the validity of orders dated 29th December 2023 and 29th March 2024. In order to appreciate the challenge of the petitioner to the impugned clauses of the Policy as well as the impugned orders, the relevant facts need mention which are stated infra.

3. The petitioner is a Company incorporated under the laws of India. The petitioner deals with contracts of laying down and maintenance etc. of water pipelines. The Respondent Corporation is a Public Sector Undertaking. The Corporation issued a Notice Inviting Bid for laying pipelines in Ahmednagar and Aurangabad in the State of Maharashtra. The petitioner on 13th March 2023 in the aforesaid tender was adjudged as successful bidder and a Letter of Acceptance (**LoA**) was issued to the petitioner on the same day.

4. The Project Management Consultant (**PMC**) of the Corporation, within a period of less than six weeks from issuance of LoA to the petitioner, issued a show cause notice to it on 24th April 2023 for not mobilizing the labour by which the petitioner was informed that in case it fails to mobilize the site in 45 days, the Corporation shall put the contractor on holiday list for future tendering process. The petitioner, on 27th April 2023 submitted a response to the PMC of the Corporation. The Corporation, vide communication dated 30th May 2023 again informed the petitioner that any further delay on its part will force the Corporation to invoke the clause as per the Policy. Thereafter, on 17th June 2023 a meeting was held between the parties in which the Corporation agreed to extend the period of completion of contract by three months i.e. upto 31st October 2023.

5. The Corporation, by communication dated 10th July 2023 issued another notice to the petitioner by which the petitioner was informed that on account of non-compliance of contractual obligations by the petitioner, the contract period shall not be

extended further and shall be terminated on 12th July 2023. The petitioner, thereupon, submitted its response on 14th July 2023 and stated that after completion of the land acquisition process, it shall start the work within a week. The Corporation, however, on 24th July 2023 terminated the contract even before the extended deadline for completion of the work i.e. upto 31st October 2023.

6. The Corporation, on 11th September 2023 issued a notice to the petitioner terminating the contract and initiating the process of blacklisting under Clause 10(b) of General Conditions of Contract. The petitioner, on 18th September 2023 submitted a response. Thereafter, on 29th December 2023 the impugned order was passed by the Corporation blacklisting the petitioner for a period of three years, which is the maximum period prescribed under Clause 4.2.12 of the Policy. The petitioner, thereafter on 14th January 2023 filed an appeal before the appellate authority, which was dismissed by an order dated 29th March 2023. In the aforesaid factual back-ground the petitioner has approached this Court seeking the reliefs stated supra.

7. Learned Counsel for the petitioner submitted that no show cause notice, as mandated under clauses 4.2.1 and 4.2.5 read with Annexure-I of the Policy, was issued prior to blacklisting the petitioner. It is submitted that the impugned order of blacklisting the petitioner has been passed in violation of principles of natural justice. In support of aforesaid submission, reliance has been placed on ***Gorkha Security Services Vs.***

Government (NCT of Delhi) & Ors.¹. It is further submitted that it is not permissible for an instrumentality of the State to blacklist a party for mere contractual disputes. In support of the aforesaid submission, reliance has been placed on the Supreme Court decisions in **M/s. Techno Prints Vs. Chhattisgarh Textbook Corporation & Anr.²**, **M/s. J. K. Surface Coatings Pvt. Ltd. vs. Oil and Natural Gas Corporation & Ors.³**, **Medico Remedies Ltd. Vs. Municipal Corporation of Greater Mumbai & Ors.⁴** and **Sarku Engineering Services SDN BHD vs. Union of India & Anr.⁵** It is also urged that the impugned order blacklisting the petitioner violates the principles of proportionality as the petitioner has been blacklisted for a period of three years which is the maximum period provided in Clause 4.2.12 of the Policy.

8. Alternatively, it is contended that Clause 4.1.1 (g)-(h) and Clause 4.2.12 of the Policy are contrary to the decision of the Supreme Court in **M/s. Techno Prints (supra)** as well as the Division Bench decisions of this Court in **M/s. J. K. Surface Coatings Pvt. Ltd. (supra)**, **Medico Remedies Ltd.(supra)** and **Sarku Engineering Services SDN BHD (supra)** and therefore, aforesaid clauses are liable to be struck down.

9. On the other hand, learned Senior Counsel for the respondents submitted that as many as three show cause-notices were issued to the petitioner for non-completion of the

1 **(2014) 9 SCC 105**

2 **SLP(C) No.10042/2023 dated 12.02.2025**

3 **2016 SCC OnLine Bom 9281**

4 **2020 SCC OnLine Bom 4498**

5 **2016 SCC OnLine Bom 5233**

work. It is also pointed out that the petitioner, in its reply, did not dispute the fact that it did not even commence the work of the contract awarded to it. Therefore, the Corporation was left with no option but to blacklist the petitioner. It is further submitted that even though the appeal preferred by the petitioner was barred by limitation yet the same was decided on merits. It is urged that the order of blacklisting does not call for any interference in this petition.

10. We have considered the rival submissions made on behalf of both the sides and have perused the record.

11. Before proceeding further, it is apposite to take note of the well settled legal principles with regard to the effect of blacklisting a contractor and the scope of interference by this Court in exercise of powers of judicial review.

12. In the celebrated decision of ***Erusian Equipment & Chemicals Ltd. v. State of W.B.***⁶, the Supreme Court held that an order of 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 and therefore, a disability created by an order of blacklisting indicates that the relevant authority is to have an objective satisfaction. In ***Raghunath Thakur Vs. State of Bihar***⁷ it was held that it is an implied principles of rule of law that an order having civil consequences should be passed only after following the principles of natural justice. The similar view was taken in

⁶ (1975) 1 SCC 70

⁷ (1989) 1 SCC 229

Patel Engineering Vs. Union of India⁸. A three Judge Bench of Supreme Court in ***Blue Dreamz Advertising (P) Ltd. v. Kolkata Municipal Corpn.***⁹ reiterated the principles laid down in ***Erusian Equipment & Chemicals Ltd. (supra)*** and held that where there is a case of an ordinary breach of contract and the explanation offered by the person concerned raises a *bona fide* dispute, blacklisting/debarment as a penalty ought not to be resorted to. It was further held that debarring such a person albeit for a certain number of years tantamount to civil death inasmuch as the said person is commercially ostracized resulting in serious consequences for the person and those who are employed by him.

13. A two Judge Bench of Supreme Court in ***M/s. Techno Prints (supra)*** reiterated the principles laid down in ***Erusian Equipment & Chemicals Ltd. (supra)*** and it was held as under:

"33. As observed by this Court in Erusian Equipment & Chemicals Ltd. Vs. State of W.B. reported in (1975) 1 SCC 70, an order of blacklisting casts a slur on the party being blacklisted and is stigmatic. Given the nature of such an order and the import thereof, it would be unreasonable and arbitrary to visit every contractor who is in breach of his contractual obligations with such consequences. There have to be strong, independent and overwhelming materials to resort to this power given the drastic consequences that an order of blacklisting has on a contractor. The power to blacklist cannot be resorted to when the grounds for the same are only breach or violation of a term or condition of a particular contract and when legal redress is available to both parties. Else, for every breach or violation, though there are legal modes of

⁸ (2012) 11 SCC 257

⁹ 2024 SCC OnLine SC 1896

redress and which compensate the party like the Corporation before us, it would resort to blacklisting and at times by abandoning or scuttling the pending legal proceedings.

34. Plainly, if a contractor is to be visited with the punitive measure of blacklisting on account of an allegation that he has committed a breach of a contract, the nature of his conduct must be so deviant or aberrant so as to warrant such a punitive measure. A mere allegation of breach of contractual obligations without anything more, per se, does not invite any such punitive action."

14. From perusal of the aforesaid decisions of Supreme Court, the following principles can be culled out:

- (i) an order of blacklisting is stigmatic in nature and prevents a person from entering into a contract with the Government.
- (ii) An order of blacklisting has adverse civil consequences and therefore, should be passed after complying with principles of natural justice.
- (iii) power to blacklist a contractor cannot be resorted to when the grounds for the same are only breach or violation of a term or condition of a particular contract when legal redress is available to both the parties.

15. In the backdrop of aforesaid well settled legal principles, we may advert to the relevant clauses of the Policy, viz. Clause 4.2.1 and 4.2.5 as well as relevant extract of Clause 4.2.12, which read as under:

"4.2.1 *Proceedings for Holiday Listing shall be initiated against an Agency when a prima facie case for Holiday Listing comes up, under any of the above-mentioned circumstances; before taking a decision, a fair opportunity*

of hearing the party should be given by means of a Show cause notice. The show cause-notice should indicate clearly and precisely the charges/misconduct which should be based on facts as can be proved as distinct from mere allegations. Statement containing the imputation of misconduct or misbehaviour may be appended to the show-cause notice and the "Agency" should be asked to submit within 15 days a written statement in its defense. A proforma of Show- cause notice is attached at Annexure-I. "

"4.2.5 *Thereupon the Show Cause Notice, as approved, will be issued by the concerned Procurement Department. Before issuing the Show Cause Notice, concerned procurement department should give intimation to the Nodal Department regarding the proposed action against the Agency, along with a copy of the Show Cause notice for record. The Nodal Department, shall in turn publish this information in BPCL website for information and reference of all procuring departments across the corporation."*

4.2.12 *Ordinarily the period for which as Agency is Holiday listed should not be less than 1 year (6 months in less serious cases with proper justification) and should not exceed 3 years. However, in extraordinary circumstances as mentioned below, banning of 15 years can be done. The broad guidelines for the period of holiday listing based on the circumstances under which they were put on holiday listing is as under:*

<i>S.No.</i>	<i>Reasons for holiday listing</i>	<i>Period of holiday listing</i>
<i>1 to 6</i>	<i>.....</i>	<i>.....</i>
<i>7</i>	<i>has committed breach of contract or has abandoned the contract</i>	<i>3 years</i>
<i>8</i>	<i>Poor performance of the Agency in one or several contracts</i>	<i>1 year</i>

16. Thus, Clause 4.2.1 incorporates the principles of natural justice and requires that a fair opportunity of hearing has to be provided to a party by means of a show-cause notice. Clause 4.2.1 further mandates that the show-cause notice should indicate clearly and precisely the charges/misconduct which should be based on facts as can be proved as distinct from mere allegations. The person concerned is required to submit a response within 15 days. The show-cause notice is required to be issued in the proforma appended to the Policy as Annexure-I. The proforma is extracted below for the facility of reference:

*"Annexure-I
(Proforma of Show Cause Notice)*

BY REGD.POST/SPEED POST/COURIER

No....

Date.....

To M/s.....

Attn : Shri

Sub : Show Cause Notice

Ref :

Dear Sir,

You are hereby required to show cause in writing within 15 days from the date hereof why you should not be placed on Holiday List and be debarred from entering into any contracts with BPCL for the following reasons:

(Give reasons)

Your reply (if any) should be supported by documents and documentary evidence which you wish to rely in support of your reply should you fail to reply to this Show Cause Notice within the time and manner aforesaid, it will be presumed that you have nothing to say and we shall proceed accordingly.

Your reply, if any, and the documents/documentary evidence given in support shall; be taken into consideration prior to arriving at a decision.

Yours faithfully,

For & On behalf of BPCL."

17. Clause 4.2.5 mandates that the show-cause notice is required to be issued by the procurement department after intimation to the Nodal Department regarding the proposed action against the Agency, along with a copy of the show-cause notice for record. The policy incorporates the procedural safeguards which are mandatory in nature to be followed in case an order of blacklisting is to be passed against a person as an order of blacklisting has drastic consequences and amounts to civil death of a person and it deprives the person from entering into contractual relations with the Government or its instrumentality.

18. We may advert to the facts of the case in hand. In the instant case, admittedly, no show-cause notice as required under Annexure-I to the policy, indicating the reasons for blacklisting the petitioner was communicated to the petitioner. The impugned action of blacklisting the petitioner has been taken in flagrant violation of clauses 4.2.1 and 4.2.5 of the policy. Clause 4.2.12 prescribes the maximum period of three years in case of breach of contract. In the instant case, no reasons have been assigned for blacklisting the petitioner for a maximum period of three years. The order of blacklisting has been passed in casual and cavalier manner. The petitioner has already suffered blacklisting for a period of more than a year. It is also worth mentioning that the order of blacklisting is in contravention of principles of proportionality inasmuch as no reasons have been assigned for passing an order for blacklisting for a period of three years which is the maximum period prescribed under

clause 4.2.12 of the Policy. The impugned order suffers from the procedural irregularity and therefore, cannot be sustained in the eye of law. In view of aforesaid conclusion, it is not necessary for us to advert to other contentions urged on behalf of the petitioner which is kept open to be agitated, if occasion so arises.

19. In view of preceding analysis, impugned orders dated 29th December 2023 and 29th March 2024 are quashed and set aside. However, liberty is reserved to the Corporation to proceed against the petitioner, if so advised in accordance with the policy. Needless to state that in case Corporation decides to proceed against the petitioner, it shall bear in mind the law laid down by the Supreme Court in ***M/s. Techno Prints (supra)***.

20. Rule is made absolute in the aforesaid terms.

21. The writ petition stands disposed of.

(BHARATI DANGRE, J.)

(CHIEF JUSTICE)