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IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.23620 of 2023

CNR No. ODHC010575942023

Nand Kishore Pathak …. ***Petitioner***

Mr. S. Mishra, Advocate

-Versus-

Govt. of India and others …. ***Opp. Parties***

Mr. D. Nayak, Advocate
(Opp. Party Nos. 2 & 3)

CORAM:
HON'BLE THE CHIEF JUSTICE
AND
HON'BLE MR. JUSTICE CHITTARANJAN DASH

Date of Hearing & Date of Judgment: 28.10.2026

CHITTARANJAN DASH, J.

1. Heard learned counsel for the Parties.

2. The Petitioner has filed the present writ application challenging the order dated 09.03.2023 passed by the Opposite Party No.2–Food Corporation of India, whereby he has been debarred from participating in future tenders of the Corporation for a period of three years. The Petitioner also seeks refund of Rs.1,67,500/- deposited towards security deposit, along with the Earnest Money Deposit (EMD) furnished during the tender process.

3. The principal contention of learned counsel for the Petitioner is that the Petitioner had participated in the tender

process under the experienced category by submitting the requisite experience certificate. However, despite having applied under the said category, he was subsequently declared the lowest bidder under the inexperienced category and was called upon to furnish the security deposit and bank guarantees applicable to that category. It is contended that, if the Petitioner did not satisfy the eligibility requirements under the experienced category, his bid ought to have been dealt with accordingly, rather than treating him as a successful bidder under an altogether different category and subsequently penalising him for his inability to comply with the financial requirements attached thereto. In support of his submissions, has also relied upon the decisions of the Hon'ble Supreme Court to contend that the power of blacklisting, having serious civil and commercial consequences, must be exercised in a fair, reasonable and proportionate manner, consistent with the principles of natural justice and non-arbitrariness.

4. Per contra, learned counsel for the Opposite Parties submits that the Petitioner was granted extensions of time to furnish the requisite security and bank guarantees and was also afforded an opportunity of personal hearing. Since he failed to comply with the tender conditions within the stipulated period, the Opposite Parties contend that the action taken under the relevant clauses of the Model Tender Form was justified.

5. Having considered the rival submissions and examined the materials available on record, this Court finds that the controversy is not confined merely to the Petitioner's failure to furnish the requisite security within the stipulated time. The circumstances leading to such failure, particularly the manner in which his tender was considered under a category different from the one in which he had participated, are equally material. If the Petitioner was found ineligible under the experienced category, the appropriate course was to deal with his bid in accordance with the tender conditions applicable thereto. The authority could not, without a proper basis in the tender conditions, treat him as a successful bidder under the inexperienced category and thereafter visit him with the consequences arising from non-compliance with the financial obligations attached to such category.

6. It is well settled that blacklisting is a serious measure carrying adverse civil and commercial consequences, affecting not merely the existing contractual relationship but also the future business prospects and commercial reputation of the affected party. The exercise of such power, therefore, must conform to the principles of fairness, reasonableness and proportionality. In ***M/s. Kulja Industries Ltd. v. Chief General Manager, W.T. Project, BSNL & Ors.***, reported in **(2014) 14 SCC 731**, the Hon'ble Supreme Court has elaborated upon the nature of the power of blacklisting and the requirement that its

exercise must be proportionate to the gravity of the misconduct alleged. The relevant paragraph is herein reproduced below:

> "17. That apart the power to blacklist a contractor whether the contract be for supply of material or equipment or for the execution of any other work whatsoever is in our opinion inherent in the party allotting the contract. There is no need for any such power being specifically conferred by statute or reserved by contractor. That is because 'blacklisting' simply signifies a business decision by which the party affected by the breach decides not to enter into any contractual relationship with the party committing the breach. Between two private parties the right to take any such decision is absolute and untrammelled by any constraints whatsoever. The freedom to contract or not to contract is unqualified in the case of private parties. But any such decision is subject to judicial review when the same is taken by the State or any of its instrumentalities. This implies that any such decision will be open to scrutiny not only on the touchstone of the principles of natural justice but also on the doctrine of proportionality. A fair hearing to the party being blacklisted thus becomes an essential pre-condition for a proper exercise of the power and a valid order of blacklisting made pursuant thereto. The order itself being reasonable, fair and proportionate to the gravity of the offence is similarly examinable by a writ Court. The legal position on the subject is settled by a long line of decisions rendered by this Court starting with Erusian Equipment & Chemicals Ltd. v. State of West Bengal and Anr. (1975) 1 SCC 70 where this Court declared that blacklisting has the effect of preventing a person from entering into lawful relationship with the Government for purposes of gains and that the Authority passing any such order was required to give a fair hearing before passing an order blacklisting a certain entity. This Court observed:
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> > "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.””

7. The aforesaid principles have also been reiterated by the Hon’ble Supreme Court in ***UMC Technologies Pvt. Ltd. v. Food Corporation of India***, reported in **(2021) 2 SCC 551**, wherein it has been held that an order of blacklisting entails serious consequences and must be preceded by a fair and meaningful opportunity of hearing. This Court, in ***Artatran Bhuyan v. State of Odisha and Others***, in **W.P.(C) No.37383 of 2021**, decided on **24.07.2025**, wherein one of us (Hon’ble the Chief Justice Harish Tandon, J.), was a member, has also considered the legal position governing blacklisting in the light of the aforesaid decision of the Hon’ble Supreme Court. The same principles were subsequently applied by this Bench in ***M/s. Konark Ayurvedic Pharmacy, Khurda v. State of Odisha*** in **W.P.(C) No.10170 of 2026**, decided on **12.08.2026**.

8. Applying the aforesaid principles to the facts of the present case, this Court finds that the Petitioner’s failure to furnish the requisite security and bank guarantees cannot be considered in isolation from the manner in which his bid was treated by the Opposite Parties. Merely because the Petitioner was afforded an opportunity of hearing, the ultimate decision does not become immune from scrutiny on the touchstone of fairness and proportionality. The very basis on which the Petitioner was treated as a successful bidder under the inexperienced category, despite his participation under the experienced category, requires

consideration. In such circumstances, the consequential imposition of a three-year debarment, without due consideration of the aforesaid distinction and the circumstances leading to the alleged default, cannot be sustained. The impugned order dated 09.03.2023, to the extent it blacklists the Petitioner and debars him from participating in future tenders for three years, is accordingly liable to be quashed.

9. Insofar as the prayer for refund is concerned, in view of the conclusion arrived at hereinabove, the Opposite Parties cannot retain the amount deposited by the Petitioner towards security deposit and EMD on the basis of the impugned action. Accordingly, the Opposite Parties are directed to refund the sum of Rs.1,67,500/- deposited by the Petitioner towards security deposit, along with the EMD furnished during the tender process, within a period of eight weeks from the date of communication or production of a certified copy of this order.

10. Accordingly, the writ application is allowed. The impugned order dated 09.03.2023, insofar as it relates to blacklisting/debarment of the Petitioner for a period of three years, is hereby quashed. The Opposite Parties are directed to comply with the direction for refund as indicated above.

(Harish Tandon)
Chief Justice

(Chittaranjan Dash)
Judge

AKPradhan/Sarbani

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Signed by: SARBANI DASH
Reason: Authentication
Location: HIGH COURT OF ORISSA, CUTTACK
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