

**HIGH COURT OF CHHATTISGARH, BILASPUR****WPC No. 1297 of 2021****(Judgment/order Reserved on 01.09.2021)****(Delivered on 08.09.2021)**

Sharda Offset Printers Pvt. Ltd. through its Director Rahul Uppal,
Aged About - 40 Years, Director at Sharda Offset Printers Pvt. Ltd.
Registered Office at Sejbahar Road, Village- Dunda, Raipur District :
Raipur, Chhattisgarh **--- Petitioner**

Versus

1. Chhattisgarh Textbook Corporation through its Managing Director -
Chhattisgarh Textbook Corporation, Premises of C.G. Board of
Secondary Education, Pensionbada Raipur District : Raipur,
Chhattisgarh
2. General Manager Chhattisgarh Textbook Corporation, Premises of
Chhattisgarh Board of Secondary Education, Pensionbada Raipur
District : Raipur, Chhattisgarh **--- Respondents**

| | | |
|---------------------|---|---|
| For the Petitioner | : | Mr. Ashutosh Pandey, Advocate. |
| For the respondents | : | Mr. Sudeep Shrivastava and Arjit Tiwari, Advocates |
| For the intergvener | : | Mr. Raghavendra Pradhan, Advocate |

Hon'ble Shri Justice Goutam Bhaduri**CAV ORDER/JUDGMENT**

1. The challenge in this writ petition is to the order dated 02.01.2021 passed by respondent No.1 whereby the petitioner has been black listed for a period of 3 years.
2. The facts as pleaded would show that the petitioner participated in a Tender process for printing of syllabus text books for the academic year of 2020-2021 by the respondents. Notice Inviting Tender (NIT) was issued on



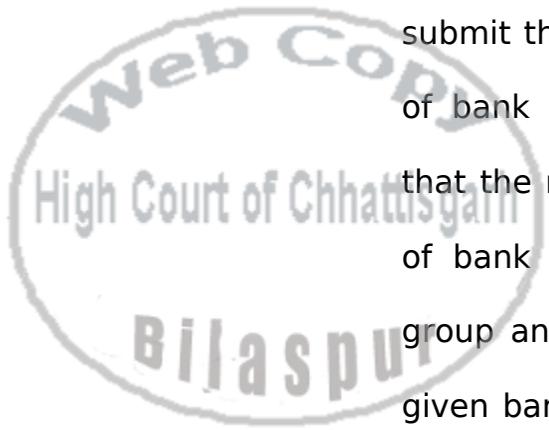
20.12.2019 and the petitioner being the successful bidder and L-1 executed an agreement on 26th December, 2019 (Annexure P-4). Thereafter, different work orders were issued on different dates in favour of the petitioner by Annexure P-5. The petitioner contended that on 17.1.2020 they received 10.14 metric tons of papers from the respondent Corporation and initiated the offset printing work. Subsequently, till 05.02.2020 they had received a total 187.24 metric tons of papers. According to the petitioner, in order to obtain the papers, the Bank Guarantee was required to be submitted. According to the petitioner, there has been certain confusion with respect to the amount of bank guarantees submitted by the petitioner, as such, a communication was made by the respondents to verify the bank guarantees. According to the petitioner, the petitioner has submitted two separate bank guarantees of Rs.20 lakhs and Rs.50 lakhs total amounting to Rs.70 lakhs. The bank guarantee of Rs.20 lakhs was valid upto 03.04.2022 and another bank guarantee of Rs.50 lakhs was valid upto 13.01.2021 whereas respondents contended that one Bank Guarantee of Rs.20 lakhs which was said to be additional one of Rs.20 lakhs was not proper whereby the paper material was lifted as against the bank guarantee to the extent of Rs.90 lakhs. As per the petitioner, this confusion having come to the fore, the petitioner submitted a detailed letter dated 19.02.2020 (Annexure P-8) that they have only submitted two bank guarantees of Rs.20 lakhs and Rs.50 lakhs. The petitioner contended that serial number of one bank guarantee was changed when the renewal was made which was thought to be a new bank guarantee by the





respondents and confusion was on the part of the respondents. It is contended that thereafter the petitioner demanded certain documents under the Right to Information Act and the letter, the alleged show cause was issued to the petitioner on 25.02.2020 by Annexure P-2. The same was replied by the petitioner. The detailed reply was filed by the petitioner on 28.04.2020 (Annexure P-14). But on different grounds the blacklisting of the petitioner was ordered, which is under challenge.

3. Learned counsel for the petitioner would submit that the black-listing is predominantly on three grounds which was based on Clause 3, 13.3 & 13.6 of the agreement. He would submit that in the agreement, clause 3.1 is about furnishing of bank guarantee/FDR for paper security, which purports that the respondents will allot the paper double the amount of bank guarantee/FDR deposited by him for the allotted group and the petitioner has never claimed that they have given bank guarantee of Rs.90 lakhs. He would submit that the petitioner has furnished two bank guarantees worth Rs.70 lakhs and the query which was made by the respondents while making correspondence would show that two serial numbers of the bank guarantees are one and the same, therefore, there remained a confusion on the part of the respondents, for which, the petitioner was made to suffer. It is further submitted that in respect of the bank guarantee, the agreement clause 3.2 provides that if the paper obtained for printing is not used/returned then legal action should be taken against the defaulting printer and the tenderer will be black-listed for 3 years. He would submit





that it is not a case that the petitioner has not returned the printed material. So no financial loss was caused to the respondents.

4. With respect to Clauses 13.3 & 13.6 of the agreement based on which the black-listing is made, it is contended that Clause 13.3 is general in nature and clause 13.6 would be applicable in case the tenderer tries to influence/coerce the CGPPN or its staff in any unauthorised manner. It is further submitted that later one of the employees of respondents namely Chinta Ram Sahu has admitted the fact that under certain circumstances he has used the letter-head of the petitioner because of the work pressure to get the printing on time by providing paper to the petitioner and subsequently on this issue, an FIR was lodged by respondent.

After due investigation, it was found by the police that a non-cognizable offence is reported and no offence is committed by the petitioner in either way. It is further submitted that since the papers were supplied on day-to-day basis and the papers were not lifted on a single day, it was difficult to track the quantum of paper received. It is contended that the text book corporation misunderstood the renewal of the bank guarantee as new one and the petitioner has never contended that they had given the bank guarantees of Rs.90 lakhs, which was admitted by the employee of the respondents.

5. Learned counsel for the petitioner would further submit that the basis of blacklisting has exceeded the content which was in the show cause notice as the allegation that discharge of Bank Guarantee done without necessary entry in the records





of the Corporation was not a part of the show cause notice that the petitioner in connivance with the employee of the respondents Corporation has received an earlier bank guarantee. He would submit that all the papers were handed-over to the respondents after printing, as such, no financial loss was caused to the corporation. He would submit that the actions of the respondent was tainted with prejudice by referring to the account sheet, Counsel would submit that when the arrears of Rs.20 crores was raised and the proceeding before the Court was filed, this proceeding of blacklisting was commenced. It is submitted that before issuance of show cause notice dt. 25.02.2020 the petitioner has informed by letter dated 19.02.2021 that they had submitted the Bank Guarantee of Rs.70 lakhs only. Learned counsel further contends that the principles laid down in **(2014) 9 SCC 105 and (2021) 2 SCC 551** have not been followed and all of a sudden the order of black-listing has been passed, which requires to be set aside.

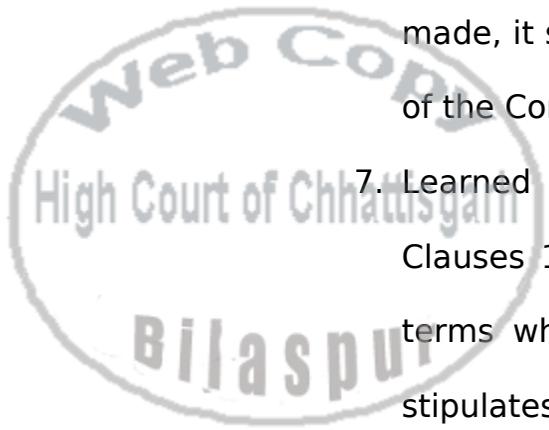
6. Per contra, Mr. Sudeep Shrivastava & Mr. Arjit Tiwari, learned counsels for the respondents would submit that for printing of text books for the academic session, 1484.74 metric tons of papers were to be given. Initially with the agreement, the petitioner submitted bank-guarantee of Rs. Rs.50 lakhs, for which, 103 metric tons of papers were given to them. It is submitted that subsequently on 23.01.2020 the petitioner gave a letter that they were in need of more paper and enclosed therewith the Bank Guarantees of Rs.40 lakhs of Rs.20 lakhs each, therefore, the papers were issued double the amount of bank guarantee for printing. Subsequently





when the enquiry was made about the bank guarantee, it was found that only the bank guarantee of Rs.70 lakhs was genuine and not to the extent of Rs.90 lakhs. Therefore, on the basis of the documents, the papers were verified as only two bank guarantees of Rs.50 lakhs and Rs.20 lakhs were existing. It is stated that in respect of the fraud committed, the petitioner was given a show cause notice which was replied by them. It is contended that if the letter-head of the petitioner was misused, the petitioner took undue advantage by availing more papers as against the bank guarantee. He would submit that if the letter-head was misused which came to the notice of the petitioner but no complaint was ever made, it shows the petitioner tried to influence the employee of the Corporation.

7. Learned counsel for the respondents further submits that Clauses 13.3 & 13.6 of the Agreement contain the general terms which empowers the Nigam to blacklist and further stipulates a condition that any tenderer would not try to influence the employee of the Corporation. He would submit that as per the statement of Chinta Ram Sahu, he has given a statement in favour of the petitioner, which shows that the employee was in convince with the petitioner thereby influence was made over the employee. He would submit that on the basis of the forged bank guarantee, the excess paper material was received and one bank guarantee though was discharged but was used, therefore, the show cause notice was issued on this premises which was necessary to imply the allegations of charges and no prejudice is caused. Further referring to the work done by the petitioner, he





would submit that the petitioner had executed very less amount of job thereby he was not able to perform upto the mark. Reliance is placed in *Patel Engineering Limited Versus Union of India AIR 2012 SC 257* and *Municipal Corporation, Ujjain Vs. BVG India Ltd (2018) 5 SCC 462* as also the Division Bench Order of the High Court of M.P. passed in *WP No.2778/ 2019 (UMC Technology Private Ltd Vs. Food Corporation of India* and would submit that the advantage gained would be necessary to come to a definite conclusion. With respect to the closure of Police FIR, the respondents would submit that they are not satisfied with the police action and would take future steps and the civil and criminal liability would be entirely different and the instant action has been taken on the basis of the agreement. Therefore, after serving the show cause notice, the order black-listing the petitioner was passed, which is completely legal and justified.

8. Heard learned counsel for the parties. The case is being heard finally pursuant to the observation made by the Hon'ble Supreme Court on 16.08.2021 in S.L.P. Nos.6589-6590/2021 wherein it was expected by the Supreme Court to dispose of the matter within a period of 4 weeks from order dated 16.08.2021. The order of the Supreme Court was passed at the instance of the respondents in SLP wherein the respondents sought for vacating the interim stay order of black-listing against the petitioner. The Supreme Court after hearing the case observed that it is of the considered view that the interim order issued by the Supreme Court on 29.04.2021 shall continue till the disposal of the writ petition





and further observed that the High Court is expected to decide the writ petition within a period of 4 weeks.

9. After consideration of the documents and submissions, the issue to be looked into as to whether the order of blacklisting had exceeded the contents of the show cause notice or not ? The principle has been laid down by the supreme Court in *Gorkha Security Services Versus Government (NCT of Delhi) (2014) 9 SCC 105* and *UMC Technologies Private Ltd Vs. Food Corporation of India 2021 2 SCC 551*. In those dictum, it is observed that the fundamental purpose behind serving the show cause notice is to make the noticee understand the precise case set-up against him and that would require the statement of imputations elaborating the alleged breaches and defaults he has committed, so that he gets an opportunity to rebut the same. The another requirement of show cause is the proposed action to be taken for such a breach. It should also be stated that the noticee is able to point-out the proposed action is not warranted even if the defaults/ breaches complained of are not satisfactorily explained and when it comes to blacklisting, this requirement becomes all the more imperative, having regard to the fact that it is harshest possible action.
10. For the sake of convenience, the relevant Paras of *(2014) 9 SCC 105 (supra)* i.e., 21 & 22 are quoted hereinbelow:

“21. The central issue, however, pertains to the requirement of stating the action which is proposed to be taken. The fundamental purpose behind the serving of show cause notice is to make the noticee understand the precise case set up against him which he has to meet. This would require the





statement of imputations detailing out the alleged breaches and defaults he has committed, so that he gets an opportunity to rebut the same. Another requirement, according to us, is the nature of action which is proposed to be taken for such a breach. That should also be stated so that the noticee is able to point out that proposed action is not warranted in the given case, even if the defaults/breaches complained of are not satisfactorily explained. When it comes to blacklisting, this requirement becomes all the more imperative, having regard to the fact that it is the harshest possible action.

22. The High Court has simply stated that the purpose of show cause notice is primarily to enable the noticee to meet the grounds on which the action is proposed against him. No doubt, the High Court is justified to this extent. However, it is equally important to mention as to what would be the consequences if the noticee does not satisfactorily meet the grounds on which an action is proposed. To put it otherwise, we are of the opinion that in order to fulfil the requirements of principles of natural justice, a show cause notice should meet the following two requirements viz:

- (i) *the material/grounds to be stated which according to the department necessitates an action;*
- (ii) *Particular penalty/action which is proposed to be taken. It is in this second requirement which the High Court has failed to omit.*

We may hasten to add that even if it is not specifically mentioned in the show cause notice but it can clearly and safely be discerned from the reading thereof, that would be sufficient to meet this requirement.”

11. With the aforesaid legal parameter, when the show cause notice is compared to the black-listing order, it shows that according to the show cause notice, the entire base of respondents was founded on a letter of communication dated





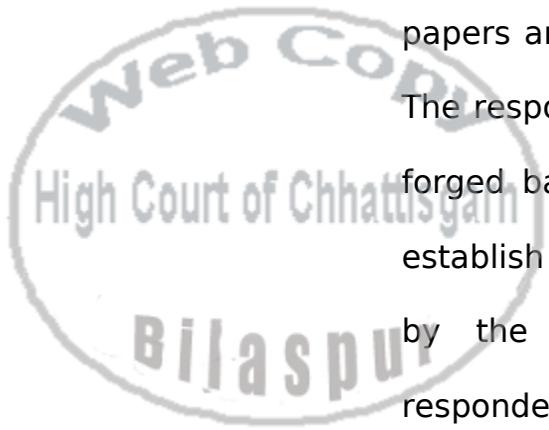
23.01.2020 whereby the petitioner had contended that additional bank guarantee of Rs.40 lakhs was deposited and two bank guarantees were submitted. The respondent contends that based on that the papers worth Rs.78,68,918/- was supplied as per the show cause. In the reply given to show cause notice vide letter dated 28.04.2020 (Annexure P-14) the petitioner contended that the letter dated 23.01.2020 which speaks about two bank guarantees of Rs.20 lakhs each was not given by them. The petitioner in their reply stated that on receipt of information from the Nigam under RTI Act, it was revealed that the respondents alleged that letter dated 23rd January 2020 was issued by the petitioner firm. In such letter, the Bank Guarantee of Rs.40 lakhs was mentioned. It was also replied by the petitioner that the said letter was not signed by any person of the petitioner's firm. The reply further raises a counter allegation that in order to take action against the petitioner's firm, forged signature was made. The allegation also purports that efforts have been made to tarnish the image of the petitioner's firm and requested that the forged signature may be examined by any authorised hand-writing expert. The petitioner has further stated in the reply that some of the employees of the Nigam issued the letter by misusing the letter-head of the petitioner's firm. The reply would show that the petitioner had sought a fair and unbiased decision from the respondents and they also replied that by counter action they would proceed against Nigam. The reply further contemplates that verification of the bank guarantee is the responsibility of the Nigam. The Bank Guarantee of Rs.20





lakhs presented by the petitioner's firm along-with renewed one or amendment, if by mistake, is understood to be of Rs.40 lakhs, it is the fault of the Nigam and not that of petitioner's firm. It was also stated that the papers for printing were being supplied by the Corporation without specifying the value of it.

12. A perusal of the show cause and its reply along-with clauses of agreement would show that as per arrangements the double the paper material was required to be supplied to the printers as against the bank guarantee given. Nothing is placed on record to show the fact as to whether or not a tabulated account was maintained about the quantity of papers and how much paper is given to a particular printer. The respondents contend that the petitioner on the basis of forged bank guarantee obtained more papers. In order to establish the very basis of it, the quantity of paper received by the petitioner should have been placed by the respondents before this Court to appreciate the facts. In absence of any data or facts which are in the possession of respondents, the adverse inference is required to be drawn. Further more, it is not the case of respondents that they have suffered a financial loss whereby the presumption can be drawn that after printing of papers the books were not returned to the respondents by the petitioners.
13. The allegation of the respondents is based on letter dt. 23.1.2020 whereby the alleged bank guarantees of Rs.40 lakhs were given by the petitioner by such covering letter. The respondents based on such allegations issued a show cause notice to one of its employees and the complaint was





also made to the Police by the Nigam. The police investigated the matter and found that the alleged letter of 23.01.2020 was written by one Chinta Ram Sahu, who is an employee of the respondent corporation. The statement of Chintaram Sahu recorded by Police is placed on record by the petitioner. According to him, since both the bank guarantees bear the same number but the serial number was different, as such, out of confusion, it was taken to be a bank guarantee of Rs.40 lakhs and not of Rs.20 lakhs. It has further been stated that in order to meet out the need of printing in time, the said letter was written by him on a letter-head of the petitioner available with respondents in its file. It has been further stated that he himself had given the said letter to one Rupesh Gabne and both the guarantees were enclosed with the letter. The employee further submitted that he does not have any technical knowledge of the bank-guarantee and accordingly the papers were supplied. His statement further purports that after receiving the said papers and printing work was done by the petitioner the entire papers were returned back to the respondents, as such, no financial loss was caused to the Corporation. Likewise, the police after investigation of the entire facts and on verification of the record also found that no offence is made out and shelved the report made by respondents as non-cognizable one. Against the statement of Chinta Ram Sahu and the police proceeding which was filed by the corporation, though time was obtained by the corporation to explain but no plausible explanation has been put-forth.

14. Reverting back to the terms of the agreement (Annexure P-4)





under the head process of work completion, one clause deals with the issue when the excess papers are given to a printer.

Clauses 6.1.3 & 6.1.4 read as under :

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|--------|---|
| "6.1.3 | Paper will be provided as per the bank guarantee/FDR deposited by the printer (see Clause 9) |
| 6.1.4 | If any excess paper beyond the admissible consumption or otherwise reaches the printer, the same shall have to be returned by the printer in good condition just after completion of printing work and detail information related to excess/remaining paper will be attached with last bill of printing. In case of failure to do so, the printer shall be levied a penalty @ 1.5 times the cost of paper. Nigam may inspect physically any press any time. If paper is found at the premises of printer which information was not given by printer to Nigam, then Nigam is also free to take any legal action against the printer and the firm may be black listed for three years". |



15. Reading of clause 6.1.4 shows that in case excess paper is obtained by the petitioner, the same shall be returned by the printer after completion of printing work and the detailed information of excess or remaining paper would be attached with the last bill of printing. In case of failure to do so, the printer shall be levied a penalty @ 1.5 time cost of the paper. Therefore, the agreement itself contains the clause that in case any excess paper is received and the same is not returned by the printer, then how the matter is to be dealt with. It speaks of levy of penalty but does not speak of any blacklisting if the excess paper material is so received by the

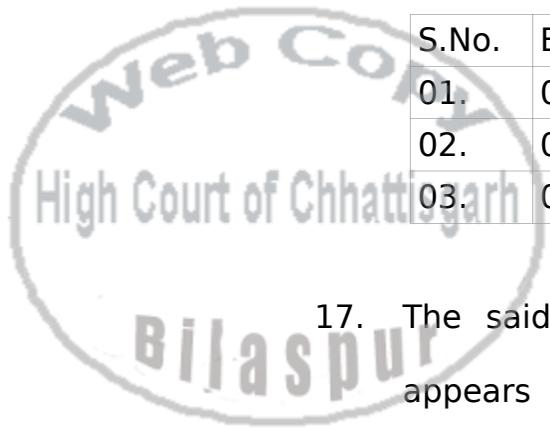


printer. Therefore, to deal with the allegation of like nature in case of non-return of paper the penalty is prescribed in terms of money and not the blacklisting.

16. Coming back to the show cause notice dated 25.02.2020 (Annexure P-10) it was alleged that the petitioner though has supplied the bank guarantee of Rs.70 lakhs but he received the papers worth Rs.90 lakhs which was much more to his entitlement and was on the basis of forged bank guarantee. The letter addressed to the Axis Bank by the respondent Corporation vide (Annexure P-7) dated 03.02.2020 would show that the information was sought in respect of the following bank guarantees :

| S.No. | Bank Guarantee Serial | Validity date | Amount (Rs.) |
|-------|-----------------------|---------------|--------------|
| 01. | 01390100000828 | 03.04.2020 | 20,00,000/- |
| 02. | 01390100000828 | 03.04.2020 | 20,00,000/- |
| 03. | 01390100000830 | 13.01.2020 | 50,00,000/- |

17. The said letter was also forwarded to the petitioner. It appears that first two bank guarantees bear same serial number of 01390100000828 with validity of 03.04.2020 for Rs.20 lakhs and the third bank guarantee bear serial no.01390100000830 with validity of Rs.13.01.2020 for Rs.50 lakhs. The document placed on record shows that before issuance of letter i.e., show cause on 25.02.2020, the petitioner had made it clear to the respondents vide letter dated 19.02.2020 (Annexure P-8) that they had only given the bank guarantee of Rs.50 lakhs and 20 lakhs meaning thereby bank guarantees for total sum of Rs.70 lakhs were given. The letter dated 02.03.2020 addressed by the petitioner which is placed on record (Annexure P-11) shows that certain information of bank guarantee under RTI Act





was called for by the petitioner but as it appears copies of the bank guarantees were not supplied. Thereafter a detailed reply to show cause notice was filed on 28.04.2020 (Annexure P-14). A cumulative reading of the documents together would show that in the show cause notice only the receipt of the excess paper over the bank guarantee was shown.

18. Now coming back to the order of blacklisting on 02.01.2021 (Annexure P-1), the first part is about the lifting of paper in excess of the bank guarantee submitted. The other reason is assigned that the discharge of bank guarantee no. 01390100000716 of Rs. 20 lakhs was received back from the department by the petitioner without making any proper entry in the records of Corporation. The second allegation which was also made a basis for blacklisting was not a part of show cause notice. Apart from this, Annexure R-5 letter of Axis Bank and the letter addressed to Sharda Offset by the Corporation which is alleged by the respondent is forged when is again examined with the statement of Chinta Ram Sahu, it shows that he deposed that Sharda Offset Printers had earlier deposited a bank guarantee of Rs.20 lakhs which was signed by the then Managing Director and was given to the dispatch section by him. In order to rebut the same, nothing has been placed on record by the respondent. only a bald statement has been made that the said letter which was received from the bank is a forged one. If the respondent was of the view that the said letter was forged and has been made a basis of blacklisting those allegations should have been found place in the show cause notice,





which was not there.

19. Respondents have placed reliance on an order the Division Bench of the M.P. High Court in case of *UMC Technologies Private Ltd. Versus Food Corporation of India WP No.2778/2019* decided on 13.02.2019. That order was subject of challenge in the Supreme Court and the decision reported in *(2021) 2 SCC 551 – (UMC Technologies Private Ltd (supra)* has upset the said order of the Division Bench of the M.P. High Court wherein Hon'ble the Supreme Court has held that at the outset, it must be noted that it is the first principle of civilized jurisprudence that a person against whom any action is sought to be taken or whose right or interests are being affected should be given a reasonable opportunity to defend himself. The basic principle of natural justice is that before adjudication starts, the authority concerned should give to the affected party a notice of the case against him so that he can defend himself. Such notice should be adequate and the grounds necessitating action and the penalty/action proposed should be mentioned specifically and unambiguously.

20. The relevant part of the judgment reported in *(2021) 2 SCC 551* (paras 13 to 16) is reproduced hereinbelow :

“13. At the outset, it must be noted that it is the first principle of civilised jurisprudence that a person against whom any action is sought to be taken or whose right or interests are being affected should be given a reasonable opportunity to defend himself. The basic principle of natural justice is that before adjudication starts, the authority concerned should give to the affected party a notice of the case against him so that he can defend himself. Such notice should be adequate and the grounds





necessitating action and the penalty/action proposed should be mentioned specifically and unambiguously. An order travelling beyond the bounds of notice is impermissible and without jurisdiction to that extent. This Court in *Nasir Ahmad v. Custodian General, Evacuee Property (1980) 3 SCC 1* has held that it is essential for the notice to specify the particular grounds on the basis of which an action is proposed to be taken so as to enable the noticee to answer the case against him. If these conditions are not satisfied the person cannot be said to have been granted any reasonable opportunity of being heard.

14. Specifically, in the context of blacklisting of a person or an entity by the State or a State Corporation, the requirement of a valid, particularised and unambiguous show cause notice is particularly crucial due to the severe consequences of blacklisting and the stigmatization that accrues to the person/entity being black-listed. Here it may be gainful to describe the concept of blacklisting and the graveness of the consequences occasioned by it. Blacklisting has the effect of denying a person or an entity the privileged opportunity of entering into government contracts. This privilege arises because it is the State who is the counter-party in government contracts and as such, every eligible person is to be afforded an equal opportunity to participate in such contracts, without arbitrariness and discrimination. Not only does blacklisting take away this privilege, it also tarnishes the blacklisted person's reputation and brings the person's character into question. Black-listing also has long lasting civil consequences for the future business prospects of the blacklisted person.

15. In the present case as well, the appellant has submitted that serious prejudice has been caused to it due to the Corporation's order of blacklisting as several other government





corporations have now terminated their contracts with the appellant and/or prevented the appellant from participating in future tenders even though the impugned blacklisting order was, in fact, limited to the Corporation's Madhya Pradesh regional office. This domino effect, which can effectively lead to the civil death of a person, shows that the consequences of blacklisting travel far beyond the dealings of the blacklisted person with one particular government corporation and in view thereof, this Court has consistently prescribed strict adherence to principles or natural justice whenever an entity is sought to be blacklisted.

16. The severity of the effects of blacklisting and the resultant need for strict observance of the principles of natural justice before passing an order of blacklisting were highlighted by this Court in *Erusian Equipment & Chemicals Ltd. V. State of WB* (1975) 1 SCC 70 in the following terms : (SCC pp.74-75, paras 12, 15 & 20) :

...12. ... The order of blacklisting has the effect of depriving a person of equality of opportunity in the matter of public contract. A person who is on the approved list is unable to enter into advantageous relations with the Government because of the order of blacklisting. A person who has been dealing with the Government in the matter of sale and purchase of materials has a legitimate interest or expectation. When the State acts to the prejudice of a person it has to be supported by legality.

* * *

15. ... The blacklisting order involves civil consequences. It casts a slur. It creates a barrier between the persons blacklisted and the Government in the matter of transactions. The blacklists are "instruments" of coercion".

* * *

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 black-list.”

The Court further held that a clear legal position emerges out that for a show cause notice to constitute the valid basis of a blacklisting order, such notice must spell out clearly, or its contents be such that it can be clearly inferred therefrom.

21. The proposition relied on by the respondents in *(2012) 11 SCC 257* is not in conflict with the principles laid down. In those cases, it was held that the bidder refused to enter into an agreement which resulted in huge loss of money to the public exchequer. Consequently the bidder was blacklisted, therefore, it was held that it was part of the right of the government and can take action and that cannot be saved under the freedom of contract and it was further held that it is the prerogative of the State to enter into contract. Likewise in *(2018) 5 SCC 462*, the principles have been laid down that it is the prerogative of the State and freedom of contract of Government would be paramount and right to refuse even the lowest tenderer would be with the Government. The said principles would not be applicable in the given set of cases before this Court.

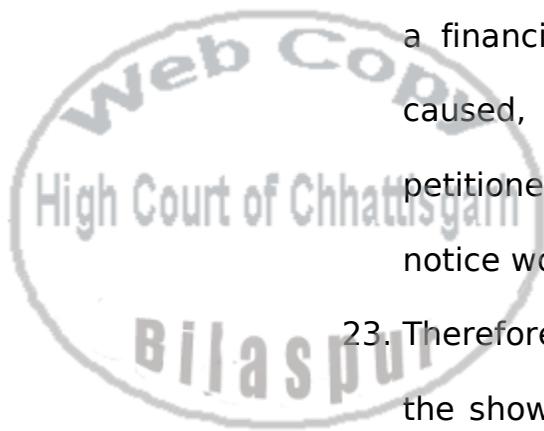
22. It is a settled proposition that the Supreme Court way back in *Kulja Industries Case Vs. Chief General Manager, W.T. Proj., BSNL (AIR 2014 SC 9)* has observed that the State's action cannot be arbitrary, it must be proportional. It





observed that the power to blacklist a contractor for execution of any other work whatsoever is inherent in the party allocating the contract, but where the party involved is State, such decision is open to scrutiny not only on the basis of principles of natural justice but also on the doctrine of proportionality. A proper balance is to be maintained between the adverse effects which may however effect the right of a person who is blacklisted. The agreement in this case would show that even if the papers of printing material is given much more to a printer, then he has to return the same and in case of non-return, monetary penalty is inflicted. It is not a case where the respondents had suffered a financial loss, therefore, when the financial loss is not caused, the doctrine of proportionality to blacklist the petitioner beyond the reasons shown in the show cause notice would render it illegal.

23. Therefore, when the order of blacklisting is compared with the show cause notice, in the instant case, it clearly spells out that the order of blacklisting exceeded the grounds which were given in show cause. The main emphasis was that the petitioner has received paper material in excess of bank guarantee for which the agreement contains measures under Clause 6.1.4. The black-listing was made under Clauses 13.3 & 13.6 of the agreement with respect to furnishing of bank guarantee. Even Clause 3 was not part of the show cause. The show cause notice was only confined to Clause 13.3 & 13.6. Reading of clause 13.3 & 13.6 would show that they are in general terms as Clause 13.3 purports that any failure to fulfill contractual obligations or breach of





any provisions of agreement, may render the bidder to be black-listed. Clause 13.6 further purports that if the printer is found to influence any staff of the Nigam in any unauthorised manner will also be blacklisted. In the Statement of Chinta Ram Sahu and in police enquiry against him, nothing was found against the petitioner and omnibus inference cannot be drawn that the petitioner had influenced the staff of the Corporation and had influenced the Police, thereby the petitioner was liable to be blacklisted.

24. Applying the principles laid down by the Supreme Court, I am of the view that the blacklisting order in this case travelled beyond the scope of show cause notice, as such, is liable to be quashed. Accordingly the order dated 02.01.2021 is quashed. With the above observations, this writ petition is allowed.



Rao

Sd/-
GOUTAM BHADURI
JUDGE