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HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (C) No. 15 of 2022

1. Shri Krishna Infra Developers Registered Partnership Firm Under The Indian Partnership Act, 1932, Through- Its Partner And Authorized Signatory Piyush Somani, Aged About 36 Years, Registered Office-Flat No. 313, Kusum Villa, Opposite Airtel Office, Ring Road No. 1, Telibandha Raipur (C.G.) 492001

---Petitioner(s)

Versus

1. State of Chhattisgarh Through- Its Secretary Ministry of Housing and Environment, Atal Nagar, Naya Raipur, Distt. Raipur (C.G.)
2. Chhattisgarh Housing Board Through- Its Chairman, Prayawas Bhawan, Atal Nagar, Naya Raipur District- Raipur (C.G.)
3. Commissioner Chhattisgarh Housing Board, Prayawas Bhawan, Atal Nagar, Naya Raipur, District- Raipur (C.G.)
4. Additional Commissioner Chhattisgarh Housing Board, Prayawas Bhawan, Atal Nagar, Naya Raipur District- Raipur (C.G.)

---Respondents

For Petitioner	:	Shri Abhishek Sinha, Sr. Advocate along with Shri Ravindra Sharma and Shri Gary Mukhopadhyay, Advocates.
For State	:	Shri Ashish Tiwari, Govt. Advocate.
For Respondents 2 to 4	:	Shri Sanjay Patel, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

13.01.2022

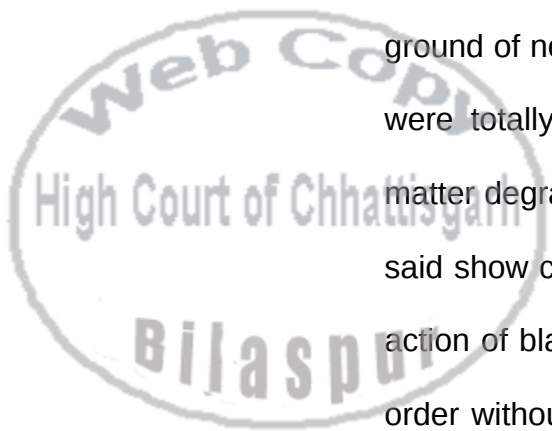
1. Aggrieved by the impugned order issued by the respondents No.2 to 4 dated 23.10.2021 whereby the petitioners establishment has been blacklisted/degraded for a period of two years for the alleged ground of non performance, the present writ petition has been filed.
2. The impugned order has been challenged apart from other grounds on the ground of it being violative of principles of natural justice. The contention of the petitioner is that before passing of blacklisting/degrading order, the petitioner was never given any opportunity of hearing inasmuch as even no show cause notice for the said action was ever issued to the petitioner.
3. Though the petitioner has challenged the said order on merits as well, this court had issued notices to the respondents No.2 to 4 calling upon them to



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instruct this court as to whether any opportunity of hearing was given to the petitioner before the impugned order was passed. The respondents have filed their reply and in the reply the stand that they have taken is that before issuance of the impugned order of blacklisting/degrading the respondents infact had issued show cause notices on three earlier occasions dated 17.05.2021, 04.06.2021 and 14.06.2021 and the petitioner had also submitted their reply to the said notices and it is only thereafter that the impugned order has been passed.

4. At this juncture the counsel for the petitioner submits that a perusal of aforementioned three show cause notices would give a clear indication that show cause notices were infact for the termination of contract on the ground of non performance by the petitioner. The said show cause notices were totally silent so far as action proposed of blacklisting or for that matter degrading. Therefore, the counsel for the petitioner submits that the said show cause notices cannot be treated as show cause notices for the action of blacklisting and as such the action of blacklisting amounts to an order without opportunity of hearing and the same deserves to be struck down holding it to be without following the principles of natural justice.
5. Having heard the contentions put forth on either side and on perusal of records particularly going through the documents enclosed along with reply of the respondents, it would clearly reflect that the contents of three show cause notices were of identical in nature. Show cause notices nowhere contemplated blacklisting or degrading to be the proposed action for which the show cause notices have been issued. On the contrary, perusal of document Annexure P/13 with the writ petition would show that infact those notices were used for passing the said order dated 19.07.2021 whereby the contract issued in favour of the petitioner was terminated.



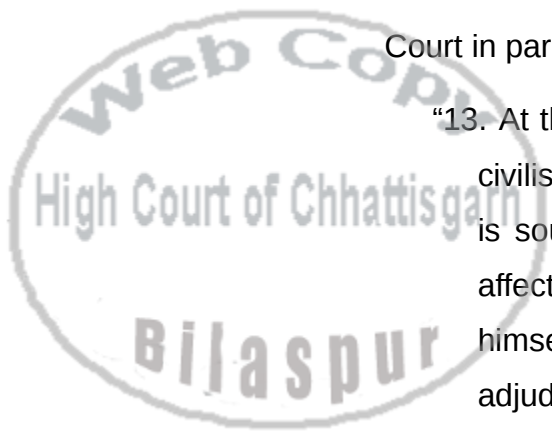


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This makes it clear that those proceedings which were drawn by the respondents were infact relating to termination of the contract and were not for the blacklisting or degrading part. This in other words also means that for the issuance of order of blacklisting dated 23.10.2021 which is under challenged in the present writ petition, there does not seem to have been any proceedings, nor any specific show cause notice issued, nor opportunity of hearing given to the petitioner specifically proposing the action of blacklisting/degrading.

6. It would be relevant at this juncture to take note of the recent decision of the Supreme Court in case of UMC Technologies Pvt. Ltd. Vs. Food Corporation of India & Another, 2021 (2)SCC 551, wherein the Supreme Court in paragraphs 13, 14, 19 and 21 held as under:

“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. Assistant Custodian General, Evacuee Property, Lucknow and Anr. 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, particularized 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 blacklisted. 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 counterparty 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 takes away this privilege, it also tarnishes the blacklisted person's reputation and brings the person's character into question. Blacklisting also has long-lasting civil consequences for the future business prospects of the blacklisted person.

19. In light of the above decisions, it is clear that a prior show cause notice granting a reasonable opportunity of being heard is an essential element of all administrative decision-making and particularly so in decisions pertaining to blacklisting which entail grave consequences for the entity being blacklisted. In these cases, furnishing of a valid show cause notice is critical and a failure to do so would be fatal to any order of blacklisting pursuant thereto.

21. Thus, from the above discussion, a clear legal position emerges 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, that there is intention on the part of the issuer of the notice to blacklist the noticee. Such a clear notice is essential for ensuring that the person against whom the penalty of blacklisting is intended to be imposed, has an





adequate, informed and meaningful opportunity to show cause against his possible blacklisting.

7. In the said judgment the Supreme Court has reiterated the principles of law laid down by the Supreme Court earlier on the issue in case of Gorkha Security Services v. Government (NCT of Delhi), (2014) 9 SCC 105. The Supreme Court in the said judgment in para 16 has held as under :

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 West Bengal](#)² in the following terms:

“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.

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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 black lists are instruments of coercion.

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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.”

- 8.** This court also relying upon the judgment of Supreme Court in case of Gorkha (Supra) in case of R.P. Bhojanwala Vs. State of Chhattisgarh & Ors., WPC No.2828 of 2007, decided on 31.08.2016, has held as under:

“18. Coming to the issue of blacklisting of the Petitioner, this court finds that there is no clear-cut notice by the concerned Department that the Petitioner is blacklisted. In Gorkha Security Services v. Government (NCT of Delhi), (2014) 9 SCC 105, the Apex Court has very clearly held that before blacklisting any person, a clear-cut notice must be issued to him and in case he does not reply to the notice, he shall be blacklisted. Merely stating that in case the Petitioner does not enter into an agreement, action will be taken against him including blacklisting, does not amount to a notice within the meaning as stated in Gorakha Security Services case (supra). We, therefore, accept this portion of the argument of Shri B.P. Sharma, Learned Counsel for the Petitioner that blacklisting of the Petitioner was improper.”

- 9.** Given the aforesaid legal decision as it stands and taking into consideration the factual matrix of the case, particularly the documents relied upon by the respondents in their reply it clearly reflects that there is no opportunity of hearing given to the petitioner so far as the action of blacklisting or degrading is concerned. Further, it is evident that show cause notices referred to by the respondents in their return are not pertaining to the action proposed of blacklisting or degrading, but were infact show cause notices which were issued prior to the termination of the contract awarded to the petitioner.

- 10.** It has been informed by the petitioner that termination of contract has already been subjected to challenge in a separate writ petition WPC No.3061 of 2021.



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- 11.** In view of the same, the impugned order of blacklisting/degrading would not be sustainable on the ground of it being violative of principles of natural justice and the same therefore deserves to be and is hereby set aside/quashed.
- 12.** It is made clear that the impugned order has been set aside by this court only on the technical ground of it being violative of principles of natural justice and this court has not gone into the merits of the case and other contentions raised by the petitioner in the writ petition.
- 13.** The writ petition accordingly stands allowed and disposed of.

Sd/-
(P. Sam Koshy)
Judge

inder

