



2025:KER:5427

WP(C) NO.34512 OF 2024 1
IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

THURSDAY, THE 23RD DAY OF JANUARY 2025 / 3RD MAGHA, 1946

WP(C) NO.34512 OF 2024

PETITIONER:

M/S. P S ENTERPRISES REPRESENTED BY SYED
NAJMUDDIN
AGED 45 YEARS
SON OF MR SYED KHUDBUDDIN, ENTERPRISES SITUATED
AT PLOT NUMBER 1063, GALI NO. 30,VINOBA BHAVE
NAGAR, NAGPUR ., REP BY AUTHORIZED PERSON
RESIDING AT ELAHEE MASJID ROAD, C RAHIM NAGAR VTC
BANGARPET. KOLAR KARNATAKA, PIN - 440017
BY ADVS.
SREENATH VIJAYARAGHAVAN
AKHILA C.
VISHNU SATHEESAN

RESPONDENTS:

- 1 THE UNION OF INDIA
REP BY ITS SECRETARY, THE MINISTRY OF RAILWAYS,
RAIL BHAVAN, RAISINA ROAD, NEW DELHI, PIN -
110001
- 2 THE CHAIRMAN
RAILWAY BOARD, THE MINISTRY OF RAILWAYS, RAIL
BHAVAN, RAISINA ROAD, NEW DELHI, PIN - 110001
- 3 CHIEF COMMERCIAL MANAGER/ GENERAL MANAGER,
SOUTHER RAILWAY
SITUATED AT POONAMALLEE HIGH RD, NGO ANNEXE, PARK
TOWN, CHENNAI, TAMIL NADU, PIN - 600003
- 4 THE SENIOR DIVISIONAL COMMERCIAL MANAGER
SOUTHERN RAILWAYS, THIRUVANANTHAPURAM DIVISION,
SITUATED AT THYCADU, TRIVANDRUM , KERALA, PIN -
695014
BY ADV KRISHNA T C DSGI

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 23.01.2025, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:



“C.R”

JUDGMENT

Dated this the 23rd day of January, 2025

The petitioner firm was awarded the contract to operate a catering stall at the Thrissur Railway Station. As per Ext.P7 letter of award ('LOA'), the petitioner was obliged to deposit the license fee and security deposit within 15 days from the date of the LOA. Surprisingly, by Ext.P8 communication, the Railway administration cancelled the LOA, forfeited the earnest money deposit ('EMD') and debarred the petitioner from participating in all the upcoming tenders of the respondents for five years. No show cause notice or termination notice was issued to the petitioner, which is against the principles of natural justice. Even though the petitioner had submitted Ext.P9 representation before the 4th respondent, there was no response. The



actions of the respondents are arbitrary and unjustifiable.

Hence, the writ petition.

2. The Central Government Counsel has filed a statement on behalf of the respondents stating that paragraph 3.5.2, Section B, Chapter 2 of Ext.P6 tender notification, expressly provides that if the selected bidder does not sign and return a copy of the LOA and deposits the license fee and security deposit within 7 days from the date of receipt of the LOA, the Railways have the right to cancel the LOA, forfeit the EMD and debar the selected bidder from participating in the bidding process of all catering contracts over the Indian Railways for five years. The petitioner has failed to return the signed copy of the LOA and deposit the license fee and security deposit. The tender notification does not require issuing a show cause notice. Therefore, there is no illegality in Ext.P8 proceeding.

3. Heard; Sri. Sreenath Vijayaraghavan, the learned counsel for the petitioner and Sri. T.C. Krishna, the learned



Senior Panel Central Government Counsel.

4. By Ext.P7 LOA, the petitioner was awarded the contract to operate a catering stall at Thrissur Railway Station for five years.

5. The petitioner's case is that, since he was indisposed, he could not adhere to the time period stipulated in paragraph 3.5.2, Section B, Chapter 2 of Ext.P6 tender notification. Even though he submitted Ext.P9 representation to the 4th respondent for enlargement of time to comply with the above condition, the respondents failed to consider Ext.P9. The respondents have passed the impugned Ext.P8 order without issuing the petitioner a show cause notice or hearing him.

6. The respondents, on the other hand, contend that the petitioner has failed to comply with paragraph 3.5.2, Section B, Chapter 2 of Ext.P6 tender notification, which is a self-working clause. Therefore, the respondents are empowered to pass Ext.P8 order without issuing the



petitioner a show cause notice or hearing him.

7. The learned Counsel for the petitioner submitted that the petitioner was confining his challenge to his debarment.

8. Paragraph 3.5.2, Section B, Chapter 2 of Ext.P6 tender notification reads as follows:

“3.5.2. After selection, a letter of award (the ‘LOA’) shall be issued by Railway to the Selected Bidder and the Selected Bidder shall, within seven (7) days of the receipt of the LOA, sign and return the duplicate copy of the LOA in acknowledgment thereof. In the event of the duplicate copy of the LOA duly signed by the Selected Bidder is not received by the stipulated time, Railway may, unless is consents to extension of time for submission thereof, forfeit the Earnest Money of such Selected Bidder. Thereafter there shall be re-tendering. It is clarified that in case the Selected Bidder refuses to accept the LOA, the earnest money will be forfeited and it will be debarred from participating in the Bidding process for all catering contracts over Indian Railways including IRCTC for a period of five (5) years. This is without prejudice to the rights of Railway administration under the law of contract”.

9. It is undisputed that the petitioner had failed to submit a copy of the LOA and deposit the license fee and security deposit.

10. The question is whether an in-built clause in the tender notification empowers the respondents to debar the petitioner from participating in their future tenders without issuing him a show-cause notice and affording him an



opportunity to be heard.

11. In a case of an identical nature and while construing an analogous clause in a tender condition, the Honourable Supreme Court in **Raghunath Thakur v. State of Bihar** [(1989) 1 SCC 229] has held the following:

“4. Indisputably, no notice had been given to the appellant of the proposal of blacklisting the appellant. It was contended on behalf of the State Government that there was no requirement in the rule of giving any prior notice before blacklisting any person. Insofar as the contention that there is no requirement specifically of giving any notice is concerned, the respondent is right. **But it is an implied principle of the rule of law that any order having civil consequence should be passed only after following the principles of natural justice. It has to be realised that blacklisting any person in respect of business ventures has civil consequence for the future business of the person concerned in any event. Even if the rules do not express so, it is an elementary principle of natural justice that parties affected by any order should have right of being heard and making representations against the order. In that view of the matter, the last portion of the order insofar as it directs blacklisting of the appellant in respect of future contracts, cannot be sustained in law.** In the premises, that portion of the order directing that the appellant be placed in the blacklist in respect of future contracts under the Collector is set aside. So far as the cancellation of the bid of the appellant is concerned, that is not affected. This order will, however, not prevent the State Government or the appropriate authorities from taking any future steps for blacklisting the appellant if the Government is so entitled to do in accordance with law i.e. after giving the appellant due notice and an opportunity of making representation. After hearing the appellant, the State Government will be at liberty to pass any order in accordance with law indicating the reasons therefor. We, however, make it quite clear that we are not expressing any opinion on the correctness or otherwise of the allegations made against the appellant. The appeal is thus disposed of.”

(emphasis given)

12. It is well settled in a host of judicial



pronouncements that debarring or blacklisting a person from future contracts is a serious matter. The termination of the contract may be a mode of ending an existing contractual relationship, but blacklisting a bidder is a mode of preemptively disqualifying him from participating in any future contractual relationship. The two terminologies are separate and distinct and cannot be rolled into one. To enforce the two courses, there should be independent grounds and its rationale, after putting the affected party to notice and affording an opportunity to be heard, which is a rudimentary principle of natural justice. In any case, blacklisting cannot be a necessary concomitant of every termination.

13. The severity of the effects of blacklisting and the need for strict observance of the principles of natural justice were laid down by the Honourable Supreme Court in **Erusian Equipment & Chemicals Ltd. v. State of W.B** [(1975) 1 SCC 70] 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.

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".

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."

14. In **Gorkha Security Services v. State (NCT of Delhi)** [(2014) 9 SCC 105], the Honourable Supreme Court has described blacklisting as being equivalent to the civil death of a person because it is stigmatic and debars a person from participating in government tenders.

15. In the instant case, the petitioner was not put to notice before the passing of Ext.P8 order. Hence, the decision-making process leading to Ext.P8 is arbitrary. Thus, I am satisfied that the petitioner has made out valid grounds to invoke the extraordinary jurisdiction of this court under Article 226 of the Constitution of India.



In the result, I pass the following directions:

(i) Ext.P8 order is quashed to the extent that it debars the petitioner from participating in any bidding process for all Indian Railways contracts, including the IRCTC.

(ii) The respondents would be at liberty to issue a show notice to the petitioner if they propose to debar him.

(iii) On the petitioner receiving such show cause notice, he would be at liberty to file his objections to the notice within two weeks of receiving such notice.

(iv) On the petitioner submitting his reply, the respondents shall afford the petitioner an opportunity to be heard. After that, the respondents would be at liberty to decide to debar the petitioner in accordance with the law and untrammelled by any observation made in this judgment.

Sd/-C.S.DIAS, JUDGE



APPENDIX OF WP(C) 34512/2024

PETITIONER EXHIBITS

Exhibit P-1	TRUE COPY OF CATERING POLICY 2017 DATED 27.02.2017
Exhibit P-2	TRUE COPY OF GENERAL CONDITIONS OF CONTRACT FOR SERVICES DATED 02.02.2018
Exhibit P-3	TRUE COPY OF GST REGISTRATION CERTIFICATE DATED 19.07.2018
Exhibit P-4	TRUE COPY OF THE LETTER OF ACCEPTANCE DATED 28.01.2020
Exhibit P- 5	TRUE COPY OF THE LETTER OF ACCEPTANCE DATED 28.01.2020
Exhibit P-6	TRUE COPY OF TENDER DOCUMENT DATED 06.06.2024 ISSUED BY THE 3RD RESPONDENT
Exhibit P-7	TRUE COPY OF LETTER OF AWARD DATED 08.07.2024 ISSUED BY THE 4TH RESPONDENT IN FAVOR OF THE PETITIONER
Exhibit P-8	TRUE COPY OF IMPUGNED COMMUNICATION DATED 17.09.2024 ISSUED BY THE 4TH RESPONDENT IN FAVOR OF THE PETITIONER
Exhibit P-9	TRUE COPY OF REPRESENTATION DATED 19.09.2024 ISSUED BY THE PETITIONER IN FAVOR OF THE 4TH RESPONDENT
Exhibit P-10	A COPY OF AUTHORIZATION LETTER DATED 23.09.2024
Exhibit P-11	A COPY OF AADHAAR OF THE PROPRIETOR OF THE PROPRIETORSHIP FIRM
Exhibit P-12	TRUE COPY OF AADHAAR OF THE AUTHORIZED PERSON
Copy of the Order	Copy of Order in SLA 29712 of 2024 be the Honorable Supreme Court