

HIGH COURT OF ANDHRA PRADESH

* * * *

WRIT PETITION No. 18172 of 2016

Between:

M/s. Coromandel Roller Flour Mills (P) Ltd.,
Marripalem, Hussain Nagar, Visakhapatnam,
Rep. by its Director Sri Naveen Gupta

..... PETITIONER

AND

The Andhra Pradesh State Civil Supplies
Corporation Limited, rep.by its Chairman and
Managing Director, Hyderabad and another

.....RESPONDENTS

DATE OF ORDER PRONOUNCED: **04.04.2023**

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

- | | |
|---|--------|
| 1. Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2. Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3. Whether Your Lordships wish to see the fair copy of the Judgment? | Yes/No |

RAVI NATH TILHARI,J

*** THE HON'BLE SRI JUSTICE RAVI NATH TILHARI**+ WRIT PETITION No. 18172 of 2016

% 04.04.2023

M/s. Coromandel Roller Flour Mills (P) Ltd.,
Marripalem, Hussain Nagar, Visakhapatnam,
Rep. by its Director Sri Naveen Gupta

....Petitioners

Versus

\$ The Andhra Pradesh State Civil Supplies
Corporation Limited, rep.by its Chairman and
Managing Director, Hyderabad and another

....Respondents

! Counsel for the Petitioner: Sri P. Narasimha Rao

^ Counsel for respondents : Sri N. Manikanta

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> Head Note:

? Cases Referred:

1. AIR 2021 Madhya Pradesh 135
2. AIR 2018 Punjab and Haryana 46
3. AIR 2016 Punjab and Haryana 98
4. AIR 2010 MP 216
5. AIR 1999 AP 270
6. AIR 1978 Patna 46
7. (2021) 2 SCC 551
8. (1980) 3 SCC 1
9. (1975) 1 SCC 70
10. (2014) 9 SCC 105
11. (2021) 1 SCC 804
12. (2007) 14 SCC 517
13. (2019) 20 SCC 143
14. (2020) 13 SCC 285
15. (2020) 16 SCC 759
16. (2021) 6 SCC 15
17. (2021) 6 SCC 771
18. (2023) 3 SCC 629
19. (1997) 3 SCC 261

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI**WRIT PETITION No. 18172 of 2016****JUDGMENT:**

Heard Sri P. Narasimha Rao, learned counsel for the petitioner and Sri N. Manikanta, learned counsel for the respondents.

2. The petitioner-M/s.Coromandel Roller Flour Mills (P) Ltd., Visakhapatnam, a private limited company, incorporated under the Companies Act, engaged in flour milling business, has filed this writ petition under Article 226 of the Constitution of India, challenging the impugned notice/intimation dated 07.06.2016, by the Vice Chairman and Managing Director of the 1st respondent-the Andhra Pradesh State Civil Supplies Corporation Limited (in short 'APSCL' or 'the Corporation'), imposing penalty of Rs.6 lakhs @Rs.2 lakh per sample, for three samples, and directing recovery of the said amount from the final payment, apart from blacklisting the petitioner for a period of one year.

3. The petitioner, pursuant to the tender notice PDS 1/70/AP/WMWA/Tenders/2015-16, dated 20.05.2015 of the Corporation for supply of wheat atta for Zone-I consisting of districts Srikakulam, Vizianagaram and Visakhapatnam, applied tender and was granted the said work for which an agreement dated 10.06.2015 was executed between the petitioner and the Corporation for supply of whole meal wheat atta of 2,728.769 MTS quantity on the eve of Sankranti festival 2016 for the said three districts under 'Chandranna Kanuka' (Special Scheme launched in the interests of the poor

sections under below poverty line). The petitioner supplied the product of whole meal wheat atta to the Corporation in packaging under the agreement. It is the case of the petitioner that the petitioner company got certification after conducting analytical testing in the Directorate of Marketing and Inspection Regional Agmark Laboratory, Guntur, in all batches and the product was certified. After such certification the product, packed in 1 kg polythene bags and in secondary packing of 50 bags of 1 kg polythene bags, was delivered to the authorized agencies of the Corporation. The entire stock was supplied at the destination points in time, complying with the terms of the agreement in all respects.

4. The petitioner company received a letter No.PDS-I/Analysis Report/CSK-2016, dated 20.01.2016, from the Corporation calling for the explanation for the reason of non-confirmation of quality parameters of wheat atta supplied. It referred to the analysis report of the third party agency M/s.NCML, Hyderabad appointed under Clause 7.2 of the agreement, reporting non-confirmation of quality parameters, as exceeding the limits.

5. The petitioner submitted explanation dated 28.01.2016 *inter alia* that there must be some serious technical error in the report of the third party agency as there could be no possibility for some samples being in conformity and only three not in conformity as the petitioner had adopted the same process. It was also submitted that depending upon the quality of the wheat supplied by the Corporation to the petitioner converting into flour there might be the possibility of difference. The petitioner also submitted that the notice

did not disclose the batch number, date of manufacturing and the parameters in which it has exceeded the limit and requested to provide such information in detail.

6. The Corporation-1st respondent initially passed order dated 05.03.2016, against which the petitioner sent legal notice dated 04.04.2016 and thereafter the order/notice dated 07.06.2016 impugned in the present writ petition was passed, being the same as order dated 05.03.2016..

7. Learned counsel for the petitioner submitted that the petitioner got several quantities of the product testified for quality testing analysis through the Directorate of Marketing and Inspection Regional Agmark Laboratory, Guntur, which issued certificates regarding 100% confirmation of quality specifications, but the Corporation got it tested through its own appointed third party agency, which gave different reports on quality specifications but the third party assaying agency M/s.NCML, Hyderabad's analysis report obtained by the Corporation was not furnished to the petitioner. Consequently, the imposition of penalty is in violation of the principles of natural justice of opportunity of hearing.

8. Learned counsel for the petitioner submitted that if the whole meal wheat atta was found to be non-confirming to the specifications, the same should have been rejected by the Corporation, the rejected stock should have been returned, granting opportunity to the petitioner to replace the same, at the costs of the petitioner, in terms of Clause No.10 (b) & (c) of the agreement, but the Corporation did not reject any quantity instead utilized the same and

also imposed the penalty. He submits that the petitioner had no opportunity for replacement of the stock, if it was rejected, and consequently, the imposition of penalty is not justified.

9. With respect to the blacklisting part of the impugned intimation/order, learned counsel for the petitioner submitted that any opportunity of hearing with respect to the action of blacklisting, was not provided. The show cause notice dated 20.01.2016 did not mention about the proposed action of blacklisting. Consequently, the blacklisting of the petitioner for one year being in violation of the principles of natural justice, cannot be sustained.

10. Learned counsel for the petitioner placed reliance on the following judgments in support of his contention that before blacklisting, opportunity of hearing is required to be afforded.

- 1. *Eco Pro Environmental Services v. Municipal Corporation*¹**
- 2. *Sukhdev Singh and Co. v. Food Corporation of India*²**
- 3. *M/s. Rs Labour and Transport v. Food Corporation of India*³**
- 4. *Bhupendra Singh Kushwah v. State of M.P.*⁴**
- 5. *Sri Shiva Shakthi Constructions Pvt.Ltd. v. Engineer-in-Chief (Adm. Wing) Irrigation and CAD Deptt, Hyderabad*⁵**
- 6. *Gopal Nath Sharma v. The State*⁶**

¹ AIR 2021 Madhya Pradesh 135

² AIR 2018 Punjab and Haryana 46

³ AIR 2016 Punjab and Haryana 98

⁴ AIR 2010 MP 216

⁵ AIR 1999 AP 270

⁶ AIR 1978 Patna 46

11. Learned standing counsel for the 1st respondent submitted that the petitioner entered into an agreement dated 10.06.2015 with the 1st respondent Corporation to supply whole meal wheat atta after conversion of wheat belonging to APSCSCL to three districts. The petitioner had to maintain the quality throughout. The quality certificates after conducting analytical testing in the Directorate of Marketing and Inspection Regional Agmark Laboratory, Guntur, as stated by the petitioner, in all batches, were not sent to the destination points. The petitioner failed to furnish pre-dispatch inspection reports from the said laboratory, which was in violation of the terms and conditions of the agreement. Considering the third party M/s.NCML, Hyderabad, an assaying agency appointed for collection of random samples, analysis and furnish the test reports, as per the agreement term No.10(a), after giving opportunity to the petitioner by issuing notice, dated 20.01.2016, and examining the petitioner's explanation, the order imposing penalty and blacklisting was passed. He submitted that under the terms and conditions No.XVII (g), the Corporation has the power to blacklist the supplying company and in exercise of that power the petitioner was blacklisted for one year.

12. Learned standing counsel for the 1st respondent further submitted that the petition raises disputed questions of fact with respect to the quality of the product supplied, as also the alleged violation of the terms and conditions of the agreement and consequently, the petitioner should avail the remedy of arbitration in terms of the arbitration clause.

13. I have considered the submissions advanced by the learned counsels for the parties and perused the material on record.

14. In view of the submissions advanced by the learned counsels for the parties, the following points arise for consideration:

- (i) Whether the impugned order suffers from the violation of the principles of natural justice of affording opportunity of hearing to the petitioner?
- (ii) Whether the petitioner is to be relegated to avail the remedy of arbitration as provided under the agreement?

15. So far as the submission of the learned counsel for the petitioner that the analysis report of M/s.NCML, Hyderabad on the basis of which the impugned order is passed was not furnished to the petitioner, it is so mentioned in para-6 of the affidavit in support of the writ petition. In the counter affidavit, there is no specific denial of this specific averment. It is not the case of the 1st respondent in the counter affidavit that the analyst report of the third party M/s.NCML, Hyderabad was given to the petitioner. A perusal of the show cause notice dated 20.01.2016, does not show that the copy of the third party report was supplied to the petitioner along with the notice to enable to submit reply there against.

16. A perusal of the petitioner's reply dated 28.01.2016 also shows that the petitioner requested the Corporation to inform about the details of whole meal wheat atta details of batch number, manufacturing date and parameters

in which it has exceeded the limits, but there is nothing on record to show that the same was informed to the petitioner.

17. Further, the impugned order, except saying that the explanation is not satisfactory, does not deal with the explanation submitted by the petitioner.

18. 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.

19. In ***UMC Technologies (P) Ltd. Food Corpn. of India***⁷ the Hon'ble Apex Court referred the judgment in ***Nasir Ahmad v. Custodian General, Evacuee Property***⁸ wherein it was 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 notice 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.

20. So far as the impugned order relating to the blacklisting of the petitioner for one year is concerned, by interim order dated 16.06.2016 this Court granted interim suspension of the impugned order only to the extent of blacklisting the petitioner, on consideration, *prima facie*, that the material placed, more particularly, the notice dated 20.01.2016 and the reply dated 28.01.2016, do not indicate about giving of any notice and calling any explanation from the petitioner with respect to the action of blacklisting.

⁷ (2021) 2 SCC 551

⁸ (1980) 3 SCC 1

21. The notice dated 20.01.2016 filed along with the counter affidavit does not show that it also proposed the action of blacklisting. A reading of the notice dated 20.01.2016 makes it clear that it was not a notice for the proposed action of blacklisting.

22. The condition No.XVII (g) of the tender conditions dated 20.05.2015 upon which learned standing counsel placed reliance, reads as under:

“XVII: Quality control conditions:

(g) In case of any deviations reported against prescribed tender specifications would entitle forfeiture of Security Deposit and Bank Guarantee besides, **Black-listing the supplier**, initiating criminal action against the supplier for supplying unsafe, insect infested and sub-standard, etc.”

23. Though the agreement, contains the provision for blacklisting the supplier, by the Corporation, but such power had to be exercised in consonance with the principles of natural justice of affording opportunity of hearing to the person concerned against the proposed action of blacklisting, specifying the reasons on which such action was to be taken.

24. In the present case, even such proposed action of blacklisting was not stated in the notice dated 20.01.2016. Blacklisting has civil consequence and it is settled position in law that opportunity of hearing is to be afforded before the action of blacklisting is taken.

25. In ***Erusian Equipment and Chemicals v. State of W.B***⁹ the Hon'ble Apex Court held that the blacklisting order does not pertain to any particular contract. The blacklisting order involves civil consequences. It casts

⁹ (1975) 1 SCC 70

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”. It has been further held that 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.

26. In ***UMC Technologies (P) Ltd.*** (supra) the Hon’ble Apex Court held that the 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. Blacklisting also has long-lasting civil consequences for the future business prospects of the blacklisted person. The Hon’ble Apex Court further held that in view of the severity of the effects of blacklisting, there is resultant need of strict observance of principles of natural justice.

27. In ***UMC Technologies (P) Ltd.*** (supra), the factum of service of the show cause notice by the Corporation upon the appellant therein was not in

dispute, but what was argued on behalf of the appellant therein was that the contents of the said show cause notice were not such that the appellant therein could not have anticipated that an order of blacklisting being contemplated by the Corporation. In that context, the Hon'ble Apex Court referred to its previous judgment in ***Gorkha Security Services v. State (NCT of Delhi)***¹⁰, in which it was held that "*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*".

28. In ***UMC Technologies (P) Ltd.*** (supra) the Hon'ble Apex Court further held that mere existence of a clause in the bid document, which mentions blacklisting as a bar against eligibility, cannot satisfy the mandatory requirement of a clear mention of the proposed action in the show cause notice. In the said case, the Corporation's notice was completely silent about blacklisting and as such it was held that it could not have led the appellant therein to infer that such an action could be taken by the Corporation in pursuance of the notice served and had the Corporation expressed its mind in the show cause notice to blacklist, the appellant could have filed a suitable reply for the same.

¹⁰ (2014) 9 SCC 105

29. It is apt to reproduce paragraphs-14 to 21 and 25 in **UMC Technologies (P) Ltd.** (supra) as under:

“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 stigmatisation 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 take 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.

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 of 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 W.B. [Erusian Equipment & Chemicals Ltd. v. State of W.B., (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”.

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.”

17. Similarly, this Court in *Raghunath Thakur v. State of Bihar* [*Raghunath Thakur v. State of Bihar*, (1989) 1 SCC 229] struck down an order of blacklisting for future contracts on the ground of non-observance of the principles of natural justice. The relevant extract of the judgment in that case is as follows: (SCC p. 230, para 4)

“4. ... [I]t is an implied principle of the rule of law that any order having civil consequences 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.”

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

government tenders thereby precluding him from the award of government contracts. It has been held thus: (SCC p. 115, para 16)

“16. It is a common case of the parties that the blacklisting has to be preceded by a show-cause notice. Law in this regard is firmly grounded and does not even demand much amplification. The necessity of compliance with the principles of natural justice by giving the opportunity to the person against whom action of blacklisting is sought to be taken has a valid and solid rationale behind it. With blacklisting, many civil and/or evil consequences follow. It is described as “civil death” of a person who is foisted with the order of blacklisting. Such an order is stigmatic in nature and debars such a person from participating in government tenders which means precluding him from the award of government contracts.”

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.

20. In the present case, the factum of service of the show-cause notice dated 10-4-2018 by the Corporation upon the appellant is not in dispute. Rather, what Shri Banerji has argued on behalf of the appellant is that the contents of the said show-cause notice were not such that the appellant could have anticipated that an order of blacklisting was being contemplated by the Corporation. *Gorkha Security Services* [*Gorkha Security Services v. State (NCT of Delhi)*, (2014) 9 SCC 105] is a case where this Court had to decide whether the action of blacklisting could have been taken without specifically proposing/contemplating such an action in the show-cause notice. For this purpose, this Court laid down the below guidelines as to the contents of a show-cause notice pursuant to which adverse action such as blacklisting may be adopted: (SCC pp. 118-19, paras 21-22)

“Contents of the show-cause notice

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 harshest possible action.

22. The High Court has simply stated [*Gorkha Security Services v. State (NCT of Delhi)*, 2013 SCC OnLine Del 4289] 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 consequence 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 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.”

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.

25. The mere existence of a clause in the bid document, which mentions blacklisting as a bar against eligibility, cannot satisfy the mandatory requirement of a clear mention of the proposed action in the show-cause notice. The Corporation's notice is completely silent about blacklisting and as such, it could not have led the appellant to infer that such an action could be taken by the Corporation in pursuance of this notice. Had the Corporation expressed its mind in the show-cause notice to blacklist, the appellant could have filed a suitable reply for the same. Therefore, we are of the opinion that the show-

cause notice dated 10-4-2018 does not fulfil the requirements of a valid show-cause notice for blacklisting. In our view, the order of blacklisting the appellant clearly traversed beyond the bounds of the show-cause notice which is impermissible in law. As a result, the consequent blacklisting order dated 9-1-2019 cannot be sustained.”

30. In the present case also though there is a clause in the agreement empowering the Corporation to blacklist the supplier, but mere existence of such a clause would not entitle the Corporation to blacklist the supplier without serving the notice expressing its mind to blacklist the supplier so as to enable the supplier to file a suitable reply. In the present case, though notice was given, but it is silent about the proposed action of blacklisting.

31. In ***Vetindia Pharmaceuticals Ltd. v. State of U.P***¹¹ the Hon’ble Apex Court held that an order of blacklisting operates to the prejudice of a commercial person not only *in praesenti* but also puts a taint which attaches far beyond and may well spell the death knell of the organization/institution for all times to come described as a civil death.

32. It is evident from the material on record that no such opportunity of hearing was given to the petitioner before the order of blacklisting.

33. In Para-10 of the counter affidavit also the 1st respondent has stated *inter alia* that “.....the Hon’ble Court observed that the 1st respondent issued notice dated 20.01.2016 in that notice nowhere it was mentioned that petitioner shall be blacklisted. ***In pursuance of the above observation of***

¹¹ (2021) 1 SCC 804

the Hon'ble High Court, the 1st respondent will give the detailed blacklisting notice to the petitioner therefore....".

34. So it is also admitted to the respondent Corporation that before passing the impugned order, the notice for blacklisting was not given.

35. Consequently, the blacklisting of the petitioner for one year is in violation of the principles of natural justice and deserves to be quashed.

36. The proposition of law in the judgments cited by the learned counsel for the petitioner as mentioned in para-10 supports his contention that before passing the order of blacklisting, principles of natural justice are to be followed, on which proposition of law there is no dispute.

37. The point No.1 is answered to this effect, the impugned order has been passed in violation of the principles of natural justice of affording opportunity of hearing to the petitioner and consequently, cannot be sustained.

38. The next submission of Sri N. Manikanta, learned counsel for the respondents, is that the writ petition is not maintainable, as the petitioner has got alternative remedy to approach in arbitration proceedings in terms of the arbitration clause under the agreement, dated 10.06.2015.

39. On the point of maintainability, it is relevant to consider and discuss the following judgments:

1. ***Jagdish Mandal v. State of Orissa***¹²
2. ***Rajendra Diwan v. Pradeep Kumar Ranibala***¹³
3. ***Maharashtra Chess Assn. v. Union of India***¹⁴

¹² (2007) 14 SCC 517

¹³ (2019) 20 SCC 143

4. ***Bharat Coking Coal Ltd. v. AMR Dev Prabha***¹⁵
5. ***U.P. Power Transmission Corpn. Ltd. v. CG Power & Industrial Solutions Ltd.***¹⁶
6. ***Radha Krishan Industries v. State of H.P.***¹⁷
7. ***Gail v. Indian Petrochemicals Corpn. Ltd.***¹⁸

40. In ***Jagdish Mandal*** (supra), on the scope of judicial review on award of contracts, the Hon'ble Apex Court observed and held that a Court before interfering in tender or contractual matters in exercise of power of judicial review, should pose to itself the questions; (i) whether the process adopted or decision made by the authority is *mala fide* or intended to favour someone; or whether the process adopted or decision made is so arbitrary and irrational that the court can say, "the decision is such, that no responsible authority acting reasonably and in accordance with relevant law could have reached" and (ii) whether public interest is affected. The Hon'ble Apex Court held that if the answers are in the negative, there should be no interference under Article 226 of the Constitution of India. The Hon'ble Apex Court further held that the cases involving blacklisting or imposition of penal consequences on a tenderer/contractor or distribution of State largesse (allotment of sites/shops, grant of licences, dealerships and franchises) stand on a different footing as they may require a higher degree of fairness in action.

¹⁴ (2020) 13 SCC 285

¹⁵ (2020) 16 SCC 759

¹⁶ (2021) 6 SCC 15

¹⁷ (2021) 6 SCC 771

¹⁸ (2023) 3 SCC 629

41. In ***Rajendra Diwan*** (supra), the Hon'ble Apex Court held that in the exercise of its extraordinary power of superintendence and/or judicial review under Articles 226 and 227 of the Constitution of India, the High Courts restrict interference to cases of patent error of law which go to the root of the decision, perversity, arbitrariness and/or unreasonableness, violation of principles of natural justice, lack of jurisdiction and usurpation of powers. Referring to ***L. Chandra Kumar v. Union of India***¹⁹ the Hon'ble Apex Court held that the power of the High Court under Articles 226/227 of the Constitution of India being an inviolable basic feature of the Constitution such power cannot be abrogated by statutory enactment or for that matter even by constitutional amendment.

42. In ***Maharashtra Chess Assn.*** (supra), the Hon'ble Apex Court held that while the powers the High Court may exercise under its writ jurisdiction are not subject to strict legal principles, two clear principles emerge with respect to when a High Court's writ jurisdiction may be engaged. First, the decision of the High Court to entertain or not entertain a particular action under its writ jurisdiction is fundamentally discretionary. Secondly, limitations placed on the court's decision to exercise or refuse to exercise its writ jurisdiction are self-imposed. It is a well-settled principle that the writ jurisdiction of a High Court cannot be completely excluded by statute. If a High Court is tasked with being the final recourse to upholding the rule of law within its territorial jurisdiction, it must necessarily have the power to examine any case before it and make a

¹⁹ (1997) 3 SCC 261

determination of whether or not its writ jurisdiction is engaged. Judicial review under Article 226 is an intrinsic feature of the basic structure of the Constitution.

43. In ***Maharashtra Chess Assn.*** (supra), the Hon'ble Apex Court further held that the existence of an alternate remedy, whether adequate or not, does not alter the fundamentally discretionary nature of the High Court's writ jurisdiction and therefore does not create an absolute legal bar on the exercise of the writ jurisdiction by a High Court. The decision whether or not to entertain an action under its writ jurisdiction remains a decision to be taken by the High Court on an examination of the facts and circumstances of a particular case.

44. In ***Maharashtra Chess Assn.*** (supra), the Hon'ble Apex Court further held as under, in para-23:

“23. In exercising its discretion to entertain a particular case under Article 226, a High Court may take into consideration various factors including the nature of the injustice that is alleged by the petitioner, whether or not an alternate remedy exists, or whether the facts raise a question of constitutional interpretation. These factors are not exhaustive and we do not propose to enumerate what factors should or should not be taken into consideration. It is sufficient for the present purposes to say that the High Court must take a holistic view of the facts as submitted in the writ petition and make a determination on the facts and circumstances of each unique case.”

45. In ***Bharat Coking Coal Ltd.*** (supra), on the maintainability of the writ petition, the Hon'ble Apex Court held that it is settled that constitutional Courts are concerned only with lawfulness of a decision, and not its soundness.

Phrased differently, the Courts ought not to sit in appeal over decisions of executive authorities or instrumentalities. Plausible decisions need not be overturned, and latitude ought to be granted to the State in exercise of executive power so that the constitutional separation of powers is not encroached upon. However, allegations of illegality, irrationality and procedural impropriety would be enough grounds for courts to assume jurisdiction and remedy such ills. It was further held that it would only be the decision making process which would be the subject of judicial enquiry, and not the end result.

46. In ***U.P.Power Transmission Corpn. Ltd.*** (supra), the Hon'ble Apex Court reiterated that it is well settled that availability of an alternative remedy does not prohibit the High Court from entertaining a writ petition in an appropriate case. The High Court may entertain a writ petition, notwithstanding the availability of an alternative remedy, particularly: (i) where the writ petition seeks enforcement of a fundamental right; (ii) where there is failure of principles of natural justice or (iii) where the impugned orders or proceedings are wholly without jurisdiction or (iv) the vires of an Act is under challenge.

47. In ***U.P.Power Transmission Corpn. Ltd.*** (supra), the Hon'ble Apex Court held that the existence of arbitration clause does not debar from entertaining the writ petition.

48. It is apt to reproduce paragraphs 66 and 67 in ***U.P.Power Transmission Corpn.Ltd.*** (supra) as under:

“66. Even though there is an arbitration clause, the petitioner herein has not opposed the writ petition on the ground of existence of an arbitration clause. There is no whisper of any arbitration agreement in the counter-affidavit filed

by UPPTCL to the writ petition in the High Court. **In any case, the existence of an arbitration clause does not debar the court from entertaining a writ petition.**

67. It is well settled that availability of an alternative remedy does not prohibit the High Court from entertaining a writ petition in an appropriate case. The High Court may entertain a writ petition, notwithstanding the availability of an alternative remedy, particularly: (i) where the writ petition seeks enforcement of a fundamental right; (ii) where there is failure of principles of natural justice or (iii) where the impugned orders or proceedings are wholly without jurisdiction or (iv) the vires of an Act is under challenge.”

49. In ***Radha Krishan Industries*** (supra), the Hon’ble Apex Court held, on the point of maintainability of the writ petition before the High Court, in paragraphs-27 and 28, which are reproduced as under:

“27. The principles of law which emerge are that:

27.1. The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well.

27.2. The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person.

27.3. Exceptions to the rule of alternate remedy arise where : (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged.

27.4. An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law.

27.5. When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion.

27.6. In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.

28. These principles have been consistently upheld by this Court in *Chand Ratan v. Durga Prasad* [*Chand Ratan v. Durga Prasad*, (2003) 5 SCC 399], *Babubhai Muljibhai Patel v. Nandlal Khodidas Barot* [*Babubhai Muljibhai Patel v. Nandlal Khodidas Barot*, (1974) 2 SCC 706] and *Rajasthan SEB v. Union of India* [*Rajasthan SEB v. Union of India*, (2008) 5 SCC 632] among other decisions.”

50. In **GAIL** (supra), the Hon’ble Apex Court held that writ jurisdiction can be exercised when the State, even in its contractual dealings, fails to exercise a degree of fairness or practices any discrimination. It was further held that it cannot be said that merely because an alternative remedy was available, the Court should opt out of exercising jurisdiction under Article 226 of the Constitution of India and relegate the parties to a civil remedy.

51. On consideration of the aforesaid judgments, this Court is of the considered view that existence of the arbitration clause in the agreement is only an alternative remedy, which may be available to the petitioner, but the existence of the arbitration clause would not operate as an absolute bar to the maintainability of the present writ petition.

52. In view of the discussion as made above, the impugned order of penalty and blacklisting has been passed in violation of the principles of natural justice of affording opportunity of hearing to the petitioner.

53. On point No.2, it is held that as the order impugned has been passed in violation of the principles of natural justice, in spite of the alternative remedy of arbitration under the agreement, the writ petition is maintainable.

54. So far as the petitioner's contention that the whole meal wheat atta supplied was as per the specification is a question of fact which in the present case is disputed one. The case of the petitioner is that the supply was made after getting quality testing and certification of 100% granularity and standard of material passed through 500 micron at 99.12% as per the Directorate of Marketing and Inspection Regional Agmark Laboratory, Guntur. The contrary stand of the Corporation is that any such certificate did not reach the destination and in the random test by third party M/s.NCML, Hyderabad, as per the analyst report, it was not as per the specifications. It is not disputed that the Corporation was at sole discretion to carry out the sampling of the final product of whole meal wheat atta for quality certification of third party appointed by the Corporation as per para-10 (d) of the Agreement dated 10.06.2015. So, this Court in the exercise of writ jurisdiction, would not enter into the disputed questions of fact with respect to the quality of the supplied atta, i.e., as to whether it was as per the specification or not.

55. In the result, the writ petition is allowed, the impugned order/intimation dated 07.06.2016 is quashed but with the direction to the

respondent Corporation to pass fresh orders in accordance with law in consonance with the principles of natural justice, after affording opportunity of hearing to the petitioner afresh against the report of M/s.NCML, Hyderabad, as also for 'blacklisting' if so proposed.

56. Let the entire exercise be completed, preferably within six months from the date of production of copy of this judgment before the 1st respondent.

Pending miscellaneous petitions, if any, shall stand closed in consequence.

RAVI NATH TILHARI, J

Date: 04.04.2023
Dsr

Note:
LR copy to be marked
B/o
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