

**IN THE HIGH COURT OF JHARKHAND AT RANCHI**  
**W.P.(C) No. 4304 of 2020**

M/s. Sai Traders, a proprietorship concern through its sole Proprietor  
 Smt. Shobha Pandey, Kinamar, Latehar ... .. Petitioner

Versus

1. The State of Jharkhand through the Principal Secretary, Department of Home, Prison & Disaster Management, Ranchi
2. The Inspector General of Prison, Government of Jharkhand, Department of Home, Prison & Disaster Management, Ranchi
3. The Assistant Inspector General of Prison, Government of Jharkhand, Department of Home, Prison & Disaster Management, Ranchi
4. The Superintendent of Jail, Divisional Jail, Lohardaga  
 ... .. Respondents

**CORAM: HON'BLE MR. JUSTICE RAJESH SHANKAR**

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For the Petitioner	: Mr. Amritansh Vats, Advocate Ms. Rashmi Kumari, Advocate
For the Respondents	: Mr. Mohan Kumar Dubey, AC to AG

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**Order No. 08**

**Dated: 20.03.2023**

The present writ petition has been filed for quashing the Office Order as contained in memo no. 2274 dated 04.11.2020 (Annexure-11 to the writ petition) issued under the signature of the respondent no. 2 – the Inspector General of Prison, Government of Jharkhand, Department of Home, Prison & Disaster Management, Ranchi, whereby the petitioner has been blacklisted for five years. Further prayer has been made for quashing letter no. 964 dated 05.11.2020 (Annexure-11/1 to the writ petition) issued by the respondent no. 4 – the Superintendent of Jail, Divisional Jail, Lohardaga, whereby in pursuance of the said office order, the petitioner has been debarred from supplying any food material in the Divisional Jail, Lohardaga with immediate effect against the work allotted to it for the fourth quarterly period of contract i.e., 01.10.2020 to 31.12.2020.

**2.** Learned counsel for the petitioner submits that the petitioner had participated in the tender floated by the respondent no. 4 and being the L-1 bidder, it was allotted the work of supplying food materials at Lohardaga Jail as an annual contract for a period from 01.04.2019 to 31.03.2020. The petitioner duly supplied the food

materials in terms with the contract without any complaint from the respondent authorities. When the entire country was facing lockdown owing to COVID-19 pandemic, the petitioner received informal direction from the respondent no. 4 in the month of April 2020 for supplying food materials in Lohardaga Jail, which was replied by the petitioner vide letters dated 25.04.2020 and 28.04.2020 showing its inability to supply some of the food items such as mutton, fruits etc. since the concerned area was under lockdown. The petitioner also stated in the said letter that its previous annual contract for the period from 01.04.2019 to 31.03.2020 as well as quarterly contract for the period from 01.01.2020 to 31.03.2020, had already expired and were neither extended nor allotted afresh through any tender process. Thereafter, the respondent no. 4 vide letter no. 531 dated 20.05.2020 informed the respondent no. 2 that the petitioner had shown its inability to supply food materials and other items as were required for the inmates of the Divisional Jail, Lohardaga and recommended initiation of appropriate penal proceeding against it. During this period, the petitioner on several informal directions of respondent no. 4, somehow managed to procure about 900 Kgs. of flour (Aata) on 20.05.2020 and supplied it to Lohardaga Jail without there being any contract. In the month of May 2020, the respondent no. 4 directed the petitioner to supply mutton in Lohardaga Jail without any contract or issuing any tender notice and due to unavailability of the said item in the market during lockdown period, the petitioner expressed its inability to supply the same. The respondent no. 4 created pressure on the petitioner's proprietor for supplying food materials and other items against which she represented the respondent no. 2 vide letter dated 21.05.2020 sent through e-mail dated 22.5.2020. Thereafter, the petitioner received show cause notice dated 26.05.2020 and reminder show cause notice dated 11.6.2020, both issued under the signature of respondent no. 3 – the Assistant Inspector General of Prison, Government of Jharkhand, Department of Home, Prison & Disaster Management, Ranchi asking it to give explanation with evidence on the allegation that the food materials

were not being supplied to Lohardaga Jail administration. The petitioner filed its detailed reply on 12.06.2020 sent through e-mail dated 13.06.2020 explaining that its earlier contractual obligations under annual as well as quarterly contracts had already ended on 31.03.2020 and thereafter during the period of lockdown, on the verbal direction of the respondent no. 4, it tried its best to procure most of the required food materials and supplied the same to the Divisional Jail, Lohardaga, however, it was quite difficult for the petitioner to procure a huge quantity of mutton during lockdown for which it had suggested the respondent no. 4 that the said item could be procured from any other source.

**3.** It is further submitted that during the said period, the petitioner was not under any contractual obligation to compulsorily follow the official instructions. However, vide office order as contained in memo no. 2274 dated 04.11.2020 issued under the signature of respondent no. 2, the petitioner was blacklisted for five years in an arbitrary manner. In the light of said office order, the respondent no. 4 vide letter no. 964 dated 05.11.2020 restrained the petitioner from supplying such materials at Divisional Jail, Lohardaga which were to be supplied by it during the fourth quarterly contract period i.e., from 01.10.2020 to 31.12.2020. The petitioner represented the respondent no. 2 on 05.12.2020 requesting inter alia to withdraw/cancel the said order of blacklisting, however the same remained unresponded, which has compelled it to prefer the present writ petition.

**4.** Learned counsel for the petitioner also submits that the impugned order of blacklisting has been passed in violation of the principles of natural justice as no specific show cause for the proposed action of blacklisting has been issued to it. It is further submitted that the impugned order of blacklisting is highly disproportionate as the petitioner has been blacklisted for unreasonably long period i.e., for five years which is unsustainable in the eye of law. Such a harsh punishment of blacklisting for a period of five years will have severe adverse consequences on the petitioner and will face the stigma in its business field. Issuance of the office

order dated 04.11.2020 and letter dated 05.11.2020 imposing severe punishment on the petitioner without even following the principles of natural justice clearly suggests the prejudice of the respondent authorities against it.

**5.** On the contrary, learned counsel for the respondents submits that vide office order as contained in letter no. 401 dated 07.04.2020, the petitioner and other suppliers were requested by the respondent no. 4 for resumption of supply of food materials as well as other items for the use of jail inmates during the lockdown period beyond 31.03.2020 as the tender for the said quarter could not be invited in time due to ongoing lockdown. The petitioner refused to follow the orders of supply on the pretext of lockdown which caused various problems to the jail administration, Lohardaga in procuring the items. The petitioner was twice served show cause notices issued under the signature of the respondent no. 3 upon a complaint received from the respondent no. 4. It did not reply the first show cause notice but subsequently replied the second show cause notice.

**6.** It is further submitted that the petitioner participated in the post facto tender invited for the quarterly period of 01.04.2020 to 30.06.2020 and deliberately quoted lower rates for the items to be supplied so as to pressurize the other suppliers who had supplied the food materials and other items during the lockdown period. The said act of the petitioner caused much inconvenience to the suppliers as well as the jail administration.

**7.** Considering the petitioner's reply submitted in response to the show cause notices as well as following the principles of natural justice and the doctrine of proportionality, the respondent no. 2 put the petitioner on the blacklist for a period of five years. It is important to note that office order dated 07.04.2020 was issued to the petitioner and other suppliers for supply of food materials during the period of lockdown as they were continuously supplying the food items for last seven years and tender for the second quarterly period could not be invited in time owing to Covid-19 pandemic.

**8.** Heard learned counsel for the parties and perused the

materials available on record. The petitioner is aggrieved with the order dated 04.11.2020 passed by the respondent no. 2, whereby it has been blacklisted for a period of five years and the letter dated 05.11.2020 issued by the respondent no. 4, whereby in pursuance of the order dated 04.11.2020, it has been debarred from supplying the materials to be supplied by it in the Divisional Jail, Lohargada during the fourth quarterly contract period.

**9.** To appreciate the rival contentions of the learned counsel for the parties, it would be appropriate to refer the relevant judgments of the Hon'ble Supreme Court rendered on the issue of blacklisting/debarment.

**10.** In the case of "***Kulja Industries Limited Vs. Chief General Manager, Western Telecom Project Bharat Sanchar Nigam Limited & Others***" reported in **(2014) 14 SCC 731**, the Hon'ble Supreme Court has held that blacklisting simply signifies a business decision by which the party affected by the breach decides not to enter into any contractual relationship with the party committing the breach. The freedom to contract or not to contract is unqualified in the case of private parties. However, any such decision is subject to judicial review if the same is taken by the State or any of its instrumentalities. This implies that any such decision is open to scrutiny not only on the touchstone of the principles of natural justice but also on the doctrine of proportionality. A fair hearing to the party being blacklisted thus becomes an essential precondition for a proper exercise of the power and a valid order of blacklisting made pursuant thereto. Whether the order itself is reasonable, fair and proportionate to the gravity of the offence, is also examinable by a writ court.

**11.** In the case of "***Erusian Equipment & Chemicals Ltd. Vs. State of West Bengal & Anr.***" reported in **(1975) 1 SCC 70**, the Hon'ble Supreme Court has 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.

**12.** In the case of "*Gorkha Security Services Vs. Government (NCT of Delhi) & Ors.*" reported in *(2014) 9 SCC 105*, the Hon'ble Supreme Court has held that the necessity of compliance with the principles of natural justice by giving an opportunity to the person against whom action of blacklisting is sought to be taken has a valid and solid rationale behind it. Many civil and/or evil consequences are involved with the order of blacklisting. 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.

**13.** In the case of "*UMC Technologies Private Limited Vs. Food Corporation of India & Anr.*" reported in *(2021) 2 SCC 551*, the Hon'ble Supreme Court has 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. 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 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.

**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.

**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.

**14.** Thus, it is now well settled that the power to blacklist is inherent in the party allotting the contract and the same is unqualified. There is no need for any such power being specifically conferred by the statute or through the terms of contract as the blacklisting is merely a business decision not to enter into contractual relationship with the party committing the breach. However, if such decision is taken by the government or its instrumentalities, the same is open to scrutiny on the touchstone of fairness, relevance, natural justice, non-discrimination, equality, reasonableness and proportionality. Serving of show cause notice specifying the grounds on the basis of which an action is proposed to be taken, is a mandatory requirement so as to enable the noticee to answer the case before passing the order of blacklisting/banning since the same has not only long lasting civil consequence, but it also tarnishes the blacklisted person's reputation. The issuance of show cause notice cannot be excused on mere ground that there is a stipulation of blacklisting in the bid document if any of the terms and conditions of the tender is violated. Moreover, the blacklisting/debarment cannot be permanent.

**15.** In the case in hand, on bare perusal of the show cause notices dated 26.05.2020 and 11.06.2020, it is evident that the proposed punishment of blacklisting was not communicated to the petitioner. The petitioner was only called upon to explain as to why the food materials were not being supplied by it. Thus, the said show cause notices cannot be said to be in compliance of the principles of natural justice for passing the order of blacklisting. That apart, the respondent no. 2 has observed in the impugned order dated 04.11.2020 that the petitioner not only showed negligence and arbitrariness in not supplying the required food materials, but in the 2<sup>nd</sup> quarterly tender, it also knowingly quoted items rates lower than the market rate so as to put pressure on other contractors. So far as the allegation of quoting a low price in the tender of the 2<sup>nd</sup> quarter is concerned, the same was not alleged against the petitioner in the show cause notices and thus the impugned order has been passed in



violation of the principles of natural justice on that aspect as well. The manner in which the respondent no. 2 proceeded to issue show cause notices to the petitioner and passed the impugned order of blacklisting against it, is in the teeth of the judgments rendered by the Hon'ble Supreme Court referred hereinabove.

**16.** In view of the aforesaid discussion, the impugned Office Order as contained in memo no. 2274 dated 04.11.2020 issued under the signature of the respondent no. 2 – the Inspector General of Prison, Government of Jharkhand, Department of Home, Prison & Disaster Management, Ranchi, whereby the petitioner has been blacklisted for a period of five years as well as the consequential letter no. 964 dated 05.11.2020 issued by the respondent no. 4 – the Superintendent of Jail, Divisional Jail, Lohardaga communicating the said office order to the petitioner debarring it from supplying the materials to be supplied by it in Divisional Jail, Lohardaga during the fourth quarterly period of contract, are hereby quashed and set aside.

**17.** Now, the question before this Court is as to whether under the present circumstance, is it proper to remand the matter to the concerned respondent to pass a fresh order? In the case of "***Vetindia Pharmaceuticals Limited Vs. State of Uttar Pradesh & Anr.***" reported in **(2021) 1 SCC 804**, the Hon'ble Supreme Court observed that the show cause notice issued in that case did not state the action of blacklisting which was to be taken or was under contemplation, rather it only mentioned appropriate action to be taken in accordance with the terms of the tender. It was thus held that if the respondents had expressed their mind in the show cause notice that the competent authority intended to impose such a penalty of blacklisting, the appellant could have filed an appropriate response to the same. Though the Hon'ble Supreme Court found the order of blacklisting as unsustainable, the matter was not remanded to the concerned authorities considering that the judgment was being delivered on 06.11.2020 whereas the order of blacklisting was passed on 08.09.2009. In the present case also, the petitioner has already suffered for more than two years after passing of the impugned order and as such, it will not be appropriate to remand the matter to the

concerned respondent for passing fresh order in this regard.

**18.** The writ petition is accordingly allowed.

**(Rajesh Shankar, J.)**

Manish/AFR