
(2022) 04 BOM CK 0019
In the Bombay High Court
Case No : Writ Petition No.2055 Of 2021

M/S. Gupta Freight Carrier	Vs	APPELLANT
Executive Director And Others		RESPONDENT

Date of Decision : 05-04-2022

Acts Referred:

Constitution Of India, 1950 — Article 226, 226(2)

Citation : (2022) 04 BOM CK 0019

Hon'ble Judges : A. S. Chandurkar, J;M.S.Jawalkar, J

Bench : Division Bench

Advocate : S.P.Dharmadhikari, S.M.Vaishnav, S.R.Deshpande

Final Decision : Partly Allowed

Judgement

A.S.Chandurkar, J

1. RULE. Rule made returnable forthwith and heard the learned counsel for the parties.
2. The challenge raised in this writ petition is to the order dated 02.03.2021 passed by the Food Corporation of India (for short, FCI) terminating the contract that was issued to the petitioner for transportation of foodgrains from Hoshangabad (Madhya Pradesh) to Badnera (Maharashtra) as well as from Hoshangabad to Dhamangaon (Maharashtra) for a period of two years. Besides such termination of the contract, the earnest money deposited by the petitioner has been forfeited. The petitioner has also been debarred from participating in any future tender of the FCI for a period of five years. The grievance raised by the petitioner against the aforesaid order was considered by the Grievance Redressal Committee constituted by the FCI and the same was also rejected on 28.05.2021. That order is also under challenge in this writ petition.
3. The facts relevant for adjudicating the writ petition are that on 13.10.2019 a tender notice was issued by the FCI inviting bids for transportation of foodgrains from Hoshangabad (MP) to Badnera(MS) and Hoshangabad (MP) to

Dhamangaon(MS). The bid of the petitioner being the lowest, it was accepted by the FCI and on 20.03.2020 work order was issued to it. As per Clause 7 of the Model Tender Format (MTF) that was published by the FCI, a successful bidder was required within a period of fifteen working days of acceptance of the tender to furnish security deposit for due performance of the obligations under the contract. As per that Clause on failure to submit such Bank Guarantee within a period of fifteen working days of acceptance of tender, a further extension of fifteen working days was permissible subject to levy of penalty. In the event of further failure to submit the Bank Guarantee within the extended period, it was stated that the contract would be summarily terminated and earnest money was liable to be forfeited. The contractor was also to be debarred from participating in any future tender of the FCI for a period of five years. On 01.10.2020 the FCI issued notice to the petitioner in which it was stated that on 08.06.2020 the petitioner had submitted various documents but the Bank Guarantees had not been furnished. It was stated that submission of the Bank Guarantee was a pre-requisite of the contract and the same was required as per Clause 7 of the MTF. In view of Covid-2019 pandemic, the FCI by that notice granted final opportunity to furnish Bank Guarantees within a period of three days of issuance of the said notice failing which it was stated that a decision would be taken as per the provisions of the MTF.

4. The petitioner on 28.12.2020 replied to the aforesaid notice and conveyed to the FCI various difficulties faced by it as the reason for not being able to furnish the Bank Guarantees. It also referred to an order passed by the Collector, Amravati with regard to various restrictions that were imposed on account of Covid-2019 pandemic. It is thereafter that on 02.03.2021 the FCI noted that the Bank Guarantees as required had not been furnished and therefore the petitioner had violated Clause 7 (iv) of the MTF. It was stated that on this count the contract was terminated with immediate effect by forfeiting the security deposit. The petitioner was also debarred from participating in any future tender of the FCI for a period of five years. The petitioner made a representation with the Grievance Redressal Committee constituted by the FCI but that representation was not favourably considered and the same was accordingly rejected. The aforesaid has thus given rise to the present writ petition.

5. Shri S.P.Dharmadhikari, learned Senior Advocate for the petitioner at the outset submitted that the petitioner was principally challenging the order of blacklisting and the same having effect for a period of five years. The petitioner was not desirous of completing the contract that was awarded by the FCI. The order of blacklisting was bad in law for the reason that in the show cause notice dated 01.10.2020 the FCI did not state that on failure to furnish the Bank Guarantees the petitioner would be blacklisted. Merely by stating that the FCI would take a decision as per the provisions of the MTF would not indicate that the FCI intended to blacklist the petitioner for its failure to furnish the Bank Guarantees. The proposed action of blacklisting ought to have been mentioned in the show cause notice. It was a settled position of law that the penalty/action

proposed by the Principal ought to be indicated in the show cause notice itself and mere reference to the provisions of the MTF would not be sufficient. The petitioner had no idea whatsoever that it would be visited by an order of blacklisting for its failure to furnish the Bank Guarantees. If such notice would have been issued to it indicating the action proposed, the petitioner would have suitably replied to the same indicating as to why there is no reason to blacklist the petitioner. In that regard the learned Senior Advocate placed reliance on the decisions in *Gorkha Securities Services vs. Government* (NCT of Delhi) and ors. (2014) 9 SCC 105 and *Vetindia Pharmaceuticals Ltd. vs. State of Uttar Pradesh* and anr. (2021) 1 SCC 804 to submit that the show cause notice ought to indicate the action proposed to be taken against the noticee.

It was then submitted that no opportunity of hearing was granted to the petitioner before passing the impugned order of blacklisting the petitioner. If such opportunity would have been granted to the petitioner it would have demonstrated that the harsh order of blacklisting was not liable to be passed as the inability to furnish the bank guarantees within a stipulated time was on account of reasons beyond the control of the petitioner. In absence of any opportunity to do so, the petitioner was precluded from putting up its side of the story before the FCI. Consequence of an order of blacklisting being grave and resulting in civil death, it was necessary that such opportunity be granted prior to blacklisting the affected party. In support of said submission the learned Senior Advocate placed reliance on the decisions in *Kulja Industries Ltd. vs. Chief General Manager, Western Telecom Project Bharat Sanchar Nigam Ltd.* and ors. (2014) 14 SCC 731, *Sarku Engineering Services vs. Union of India* and ors. (2016) 5 AIR Bom R 417, *Daffodills Pharmaceuticals Ltd. and anr. vs. State of U.P.* and anr. 2019 SCC Online SC 1607, *UMC Technologies Private Ltd. vs Food Corporation of India* and anr. (2021) 2 SCC 551, and *Writ Petition No.3857/2021 (M/s. Aai Tuljabhawani Transport vs. Union of India and ors.)* decided on 04.10.2021. On this count too the order of blacklisting was liable to be set aside.

Yet another contention raised was that the order of blacklisting for a period of five years was grossly disproportionate to the breach of the MTF as alleged. There was no reason indicated as to why the petitioner had been blacklisted for a period of five years. Merely because the maximum period for which a tenderer could be blacklisted was five years, the same would not mean that blacklisting for a period of five years was warranted. Such action of blacklisting was not automatic and the FCI ought to have considered whether in fact an order of blacklisting for a period five years was warranted. The reply filed by the petitioner to the show cause notice had not been considered and had the same been considered, it was likely that the petitioner would not have been blacklisted or the order of blacklisting would have been passed for a lesser period than five years. Since there was no consideration of the aspect of proportionality while blacklisting the petitioner for a period of five years, this Court in exercise of jurisdiction under Article 226 of the Constitution of India could examine the same. On these counts, it was submitted that the order of blacklisting passed by

the FCI was liable to be set aside.

6. Per contra, Shri S.R.Deshpande, learned Advocate for the respondents at the outset questioned the tenability of the writ petition on the ground that the Bench of the High Court at Nagpur did not have any territorial jurisdiction to entertain the writ petition filed by the petitioner. It was stated that since no part of the cause of action arose at Nagpur, the writ petition itself was not maintainable at the Nagpur Bench. The contract in question was executed at Mumbai and the foodgrains were to be transported from Hoshangabad (MP). The petitioner had not indicated as to which part of cause of action had arisen at Nagpur. In that regard, the learned counsel relied upon the decisions in *Hindustan Petroleum Corporation Ltd. vs. Ramgopal Baliram Soni* 2011 (5) Mh.L.J. 944 and *Sachin Chotu Pawar vs. Collector Raigad and ors.* 2020 (6) Mh.L.J. 285. It was thus submitted that the writ petition was not liable to be entertained on merits.

Without prejudice to the aforesaid, it was submitted by the learned counsel that the order of blacklisting was preceded by a proper show cause notice dated 01.10.2020. In the said show cause notice, there was a specific reference to Clause 7 of the MTF wherein the consequence of not furnishing the Bank Guarantee within stipulated period would result in blacklisting had been specifically mentioned. The petitioner having signed the contract in question it was aware about the terms and conditions under the contract as well as the consequence of not furnishing the Bank Guarantee. Thus, after due notice to the petitioner the order of blacklisting was passed. Moreover, the petitioner failed to seek an opportunity of hearing after submitting its reply to the show cause notice. The petitioner ought to have sought such opportunity but failed to do so. The order dated 02.03.2021 had been passed after considering the communications made by the petitioner and after due application of mind. It therefore could not be said the FCI committed an error while blacklisting the petitioner. It was then submitted that the Grievance Redressal Committee also considered the representation made by the petitioner and even at that stage the petitioner had not sought to question the order of blacklisting as being excessive in nature and therefore disproportionate. It was therefore submitted that there was no ground whatsoever raised by the petitioner to warrant interference in writ jurisdiction. The learned counsel placed reliance on the judgment in Writ Petition No.6426/2019 (*M/s.Yogiraj Powertech Pvt. Ltd. vs. State of Maharashtra, through its Secretary, Industries, Energy and Labour Department and ors.*) decided at the Aurangabad Bench of this Court on 20.12.2019 in that regard. It was thus submitted that the writ petition was liable to be dismissed.

7. In reply to the aforesaid, it was submitted that the learned Senior Advocate for the petitioner that this Court had territorial jurisdiction to entertain the writ petition. The food-grains were being delivered at Badnera and Dhamangaon in Maharashtra which was within the territorial jurisdiction of this Bench. Since part of the cause of action had arisen within the territorial jurisdiction of the High Court, the petitioner had rightly filed the writ petition before the Nagpur Bench.

It was sufficient that some part of cause of action arose within the territorial jurisdiction of this Court. The decisions relied upon by the learned Advocate for the respondents were not applicable to the facts of the present case.

8. We have heard the learned counsel for the parties at length and with their assistance we have also perused the relevant documents on record. We have thereafter given due consideration to their rival submissions. The adjudication of the aforesaid submissions can be undertaken under the following heads namely, (a) territorial jurisdiction

(b) absence of proper show cause notice (c) absence of opportunity of hearing and (d) proportionality behind blacklisting the petitioner for a period of five years.

9. (a) Territorial jurisdiction:

In this regard, when the work order dated 20.03.2020 is perused, it is seen that the petitioner was required to transport food-grains from the godowns of the FCI at Hoshangabad (MP) to Badnera (MS) and Dhamangaon (MS). The food-grains were to be unloaded at Badnera (MS) and Dhamangaon (MS) which fall within the territorial jurisdiction of this Bench. As a consequence of the order dated 02.03.2021 terminating the contract for failure to furnish the Bank Guarantees, the petitioner was required to discontinue such transport of food-grains. Since the food-grains were to be transported to Badnera (MS) and Dhamangaon (MS), it is clear that part of cause of action as contemplated by Article 226 (2) of the Constitution of India arises within the territorial jurisdiction of this Bench. Though it was urged on behalf of the respondents that the impugned order dated 02.03.2021 was issued by the Regional Office of the FCI at Bhopal, Madhya Pradesh, that by itself would not be a reason to hold that this Court lacks territorial jurisdiction to entertain the challenge to the order dated 02.03.2021. As a consequence of termination of the contract, the petitioner is precluded from transporting the foodgrains to Badnera and Dhamangaon. Further, an order of blacklisting has also been passed against the petitioner. This has also affected the conduct of business of the petitioner. It is well settled that even if part of cause of action arises within the territorial jurisdiction of this Court, the writ petition can be entertained on that basis. Reference in this regard can be made to the decision in *Kusum Ingots & Alloys Limited vs. Union of India* (2004) 6 SCC 254. The decisions relied upon by the learned counsel for the respondents in *Hindustan Petroleum Corporation Ltd* and *Sachin Chhotu Pawar* (supra) are distinguishable on facts and ratio therein cannot be applied to the facts of the present case. It is accordingly held that the writ petition is liable to be entertained on merits as this Bench has territorial jurisdiction to do so.

10. (b) Absence of proper show cause notice:

According to the learned Senior Advocate for the petitioner, though the show cause notice dated 01.10.2020 was issued by the FCI stating therein that there was a failure to submit the Bank Guarantees within the specified period, the show cause notice did not specifically indicate that failure to do so would result in

the petitioner firm being blacklisted. Since an order of blacklisting results in harsh civil consequences, the show cause notice as issued ought to have indicated the proposed action of blacklisting on failure to furnish the Bank Guarantees.

11. A perusal of the show cause notice dated 01.10.2020 indicates that the FCI has stated that timely submission of Bank Guarantees was a pre-requisite of the contract and the petitioner had failed to complete the formalities in that regard. Thereafter in the notice it has been stated as under:

"As per Clause No.7(iv) of 'General Information to Tenders' & IX (e) of 'Terms and conditions governing contracts for transportation of foodgrains from Depot/ Mandi etc' of RTC MTF "In the event of the Tenderer's failure, after the communication of acceptance of the tender by the Corporation, to furnish the requisite Security Deposit under Clause 7(i)a by the due date or requisite Security Deposit in the form of Bank Guarantee under 7(i)b & 7(i)c including extension period (applicable to submission of BG only), his Contract shall be summarily terminated besides forfeiture of the Earnest Money and the Corporation shall proceed for appointment of another contractor. Any losses or damages arising out of and incurred by the Corporation by such conduct of the contractor will be recovered from the contractor, without prejudice to any other rights and remedies of the Corporation under the Contract and Law. The contractor will also be debarred from participating in any future tenders of the Corporation for a period of five years. After the completion of prescribed period of five years, the party may be allowed to participate in the future tenders of FCI provided all the recoveries/dues have been effected by the Corporation and there is no dispute pending with the contractor/party."

Hence, looking at the COVID-19 Pandemic, you are hereby provided an final opportunity to furnish the Bank Guarantees (with copy of SFMS) along with complete documentary evidence for delay within a period of three days of the issue of this letter, failing which decision shall be taken as per provisions of MTF."

It is seen that reference has been made to Clause 7 of the MTF to indicate the consequences of failure to furnish the Bank Guarantees. One of the consequences is debarment for a period of five years. It is stated that on failure to furnish the Bank Guarantees a decision as per the provisions of the MTF would be taken. This notice has been replied by the petitioner after which an order of blacklisting has been passed.

Clause 7(iv) of MTF reads as under:

"(iv) In the event of the Tender's failure, after the communication of acceptance of the tender by the Corporation, to furnish the requisite Security Deposit under Clause 7(i)a by the due date or requisite Security Deposit in the form of Bank Guarantee under 7(i)b & 7(i)c including extension period (applicable to submission of BG only), his Contract shall be summarily terminated besides forfeiture of the Earnest Money and the Corporation shall proceed for

appointment of another contractor. Any losses or damages arising out of and incurred by the Corporation by such conduct of the contractor will be recovered from the contractor, without prejudice to any other rights and remedies of the Corporation under the Contract and Law. The contractor will also be debarred from participating in any future tenders of the Corporation for a period of five years. After the completion of prescribed period of five years, the party may be allowed to participate in the future tenders of FCI provided all the recoveries/ dues have been effected by the Corporation and there is no dispute pending with the contractor/party."

12. In *Gorkha Securities Services* (supra) the question considered was with regard to the requirement of stating the action that is proposed to be taken against the noticee while issuing a show cause notice. It was held that in matters pertaining to blacklisting, the requirement to indicate the proposed action is imperative. In order to fulfill the requirement of the principles of natural justice the show cause notice should meet the following requirements namely, the material/grounds to be stated which necessitates an action and particular penalty/action that is proposed to be taken. It was then further stated that even if it was not specifically mentioned in the show cause notice but if it could be clearly and safely discerned from a reading thereof, then the same would be sufficient to meet this requirement. Similar issue was considered in *UMC Technologies (P) Ltd.* (supra) which also arose in proceedings to which FCI was a party. It was held that for a show cause notice to constitute a valid basis of a blacklisting order, such notice must spell out clearly the action proposed or its contents must be such that it can be clearly inferred therefrom that there is an intention on the part of the issuer of the notice to blacklist the noticee. Such a clear notice is essential to ensure that the person against whom the penalty of blacklisting is intended has an adequate, informed and meaningful opportunity to show cause against his possible blacklisting. It was found in that case that the show cause notice did not expressly propose the action of blacklisting nor could the same be inferred from the language employed by the FCI in its show cause notice. It was found that Clause 10 of the instructions to bidders which according to the FCI was the source of its power to blacklist the noticee was not mentioned in the show cause notice. On that count the order of blacklisting was set aside since it travelled beyond the bounds of the show cause notice. A somewhat similar view has been taken in *Vetindia Pharmaceuticals Ltd.* (supra).

13. When the show cause notice dated 01.10.2020 is considered in the light of the aforesaid legal position, it becomes clear that in the show cause notice the FCI had stated that timely submission of the Bank Guarantee was a pre-requisite of the contract which had not been complied with by the petitioner. Reference was made to Clause 7(iv) of the MTF and after reproducing that Clause, it was stated that a final opportunity to furnish the Bank Guarantees within a period of three days was being given, failing which it was stated that the FCI would take a decision as per the provisions of the MTF. On a plain reading of the show cause notice, it becomes clear that the proposed action of blacklisting can clearly and

safely be discerned from the show cause notice. By specifically quoting and reproducing Clause 7(iv) of the MTF in the show cause notice which Clause stipulates the consequence of debarment on failure to furnish the Bank Guarantee, no other inference can be drawn from the show cause notice. The impugned order of blacklisting has also been passed in the light of Clause 7(iv) of the MTF. By issuing the show cause notice the petitioner was called upon to furnish the Bank Guarantees as prescribed within a period of three days and it was also stated that on failure to furnish the Bank Guarantees, a decision would be taken as per the provisions of the MTF. The FCI had clearly expressed its intention of proceeding under Clause 7(iv) of the MTF on failure to furnish the Bank Guarantee. When the show cause notice reproduced Clause 7(iv) of the MTF and also stated that action would be taken accordingly as provided under the MTF, it was not necessary to again specifically state that on failure to furnish the Bank Guarantees, the petitioner's firm would be blacklisted. A prudent contractor on perusing the show cause notice would immediately gather that the FCI was seeking compliance of the condition pertaining to furnishing of Bank Guarantees and by reproducing Clause 7(iv) of the MTF, its intention to blacklist the petitioner was clear. Hence the contention raised on behalf of the petitioner that the show cause notice ought to specifically state that on failure to furnish the Bank Guarantees an order of blacklisting would be passed is not liable to be accepted since on a plain reading of the show cause notice the intention of the FCI to blacklist the petitioner has been clearly indicated therein. It is thus held that the FCI had given a proper show cause notice to the petitioner prior to blacklisting it. The order of blacklisting is not vulnerable on that count.

14. (c) and (d): Absence of opportunity of hearing and proportionality behind blacklisting the petitioner for a period of five years:

The contention with regard to absence of proper opportunity of hearing and the order of blacklisting being disproportionate now requires consideration. According to the petitioner, it was not granted any personal hearing before the order of blacklisting was passed. The contents of the reply submitted by the petitioner on 28.12.2020 were not taken into consideration while passing the impugned order terminating the contract. It was urged that had an opportunity of personal hearing been granted to the petitioner, it could have brought to the notice of the FCI that for reasons beyond its control and on account of the pandemic situation, it was not in a position to furnish the Bank Guarantees within the stipulated period. On the contrary, according to the FCI, the petitioner did not demand any opportunity of hearing. The reply furnished by the petitioner was taken into consideration before passing the order of blacklisting and hence the principles of natural justice were complied with.

Perusal of the reply of the petitioner to the show cause notice indicates that it had made an application on 25.03.2020 to the Syndicate Bank for being issued bank guarantee for a sum of Rs.3,22,00,000/- (Rs. Three Crores and Twenty Two Lakhs). Necessary documents were submitted at the Syndicate Bank but in the

meanwhile, in June 2020 Syndicate Bank was merged with Canara Bank. Thereafter lock down was imposed by the Collector till 31.07.2020. Various other reasons related to the pandemic situation were also quoted in the reply dated 28.12.2020. The petitioner has also sought to rely upon the letter issued by the Chief Manager, Canara Bank on 24.12.2020. In that letter issued to the Assistant General Manager, FCI it was stated that the petitioner's proposal for issuance of the bank guarantee had been received by the Bank. The earlier In-charge Officer had expired in July 2020 on account of Covid. On amalgamation of Syndicate Bank with Canara Bank, there was some difficulty in documentation and other compliances. It was further stated that the application of the petitioner had been processed and that it was likely to be sanctioned within a period of one month, if all documents were found to be in place. It was stated that the letter was issued on the request made by the petitioner. When the order dated 02.03.2021 terminating the contract is perused, it is seen that the FCI has acted in accordance with Clause 7 (iv) of the MTF. There is reference to the petitioner's letters dated 20.11.2020 and 28.12.2020 but it was observed that the Bank Guarantees were not furnished. It is thereafter that the action of debarment for failure to submit the Bank Guarantees has been taken for a period of five years.

15. In *Kulja Industries Ltd.* (supra) it has been observed in paragraph 17 as under:

"17. That apart, the power to blacklist a contractor whether the contract be for supply of material or equipment or for the execution of any other work whatsoever is in our opinion inherent in the party allotting the contract. There is no need for any such power being specifically conferred by statute or reserved by contractor. That is because "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. Between two private parties the right to take any such decision is absolute and untrammelled by any constraints whatsoever. The freedom to contract or not to contract is unqualified in the case of private parties. But any such decision is subject to judicial review when the same is taken by the State or any of its instrumentalities. This implies that any such decision will be 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. The order itself being reasonable, fair and proportionate to the gravity of the offence is similarly examinable by a writ court."

The aforesaid decision indicates that an order of blacklisting can be scrutinized not only on the touchstone of the principles of natural justice but also on the doctrine of proportionality. Whether an order of blacklisting is reasonable, fair and proportionate to the gravity of the offence can be examined by a writ Court. We may note that in *Gorkha Securities Services* (supra) the Hon'ble Supreme Court has in paragraph 20 of its decision observed that once it is shown that a

show cause notice is given and an opportunity to reply to the show cause notice is afforded, it would not be necessary to give an oral hearing to the noticee. Reference was made to the decision in *Patel Engineering Limited vs. Union of India*, (2012) 11 SCC 257 in that regard. We may note that in *UMC Technologies(P) Ltd.* (supra) reference was made to the earlier decision in *Raghunath Thakur vs. State of Bihar* (1989) 1 SCC 229 wherein it was held that even if the Rules did not expressly provide for, it was an elementary principle of natural justice that the party affected by an order should have the right of being heard and making the representations against the order.

16. In the case in hand the show cause notice dated 01.10.2020 has been found to be a proper notice indicating the action of blacklisting being proposed therein. This notice was replied by the petitioner on 28.12.2020. It is thus clear that due notice was given to the petitioner and the order of blacklisting cannot be questioned on the count that the petitioner was not heard before blacklisting it. However, considering the explanation sought to be furnished by the petitioner in its reply alongwith the communication of the General Manager, Canara Bank dated 24.12.2020, on the aspect of proportionality of the period of blacklisting for a period of five years we are of the view that before blacklisting the petitioner for a period of five years, an opportunity of hearing ought to have been extended to the petitioner in these facts. It is to be noted that Clause 7(iv) of the MTF provides for debarment for a period of five years. The decision to blacklist a contractor is within the jurisdiction of the Principal and the Court would not substitute its opinion for that of the Principal. However, when the aspect of proportionality of the order of blacklisting for a period of five years is questioned, in the light of law laid down in *Kulja Industries Ltd.* (supra) an opportunity of hearing to enable the petitioner to put-forth the reasons for its inability to furnish the Bank Guarantees within the stipulated period ought to have been granted in the light of the pandemic situation during the relevant period while determining the period for which the petitioner was to be blacklisted. It need not be reiterated that the order of blacklisting has the effect of depriving a party of the privilege and advantage of entering into a lawful relationship with the State for undertaking business. As held in *Erusian Equipment and Chemicals Ltd. vs State of West Bengal* (1975) 1 SCC 70 an order of blacklisting has an effect of depriving a person of equality of opportunity in the matter of public contract. An order of blacklisting is equivalent to civil death of the person concerned and is stigmatic in nature. It is with these aspects in mind that the proportionality of the order of blacklisting for a period of five years would have to be viewed. We therefore find that the petitioner ought to have been granted an opportunity of hearing at least on the aspect of duration of the period of blacklisting which is five years. It is thus held that in the present case absence of reasonable and meaningful opportunity of hearing on the proportionality of the period of blacklisting ought to have been granted to the petitioner and the petitioner is prejudiced to that extent.

17. We have noted the submission of the learned Senior Advocate for the

petitioner that the petitioner does not desire to further carry out the contract in question. The grievance is specifically to the order of blacklisting for a period of five years. In that view of the matter, we find that the FCI ought to grant an opportunity of hearing to the petitioner in the context of Clause 7(iv) of the MTF since the petitioner has been debarred for a period of five years. Thus, while upholding the decision of the FCI to debar the petitioner for failure to comply with the terms and conditions of Clause 7(iv) of the MTF, the petitioner is liable to be heard on the period for which it ought to be debarred. This is for the reason that even the Grievance Redressal Committee of the FCI has not considered this aspect.

18. As a result of aforesaid discussion, the following order is passed :

The order dated 02.03.2021 terminating the contract of the petitioner dated 20.03.2020, forfeiting the earnest money and blacklisting the petitioner is upheld. The FCI is however directed to grant an opportunity of hearing to the petitioner as regards the period of debarment. Such decision be taken by the FCI within a period of eight weeks from today after hearing the petitioner on its own merits without being influenced by any observation made in this regard since the Court has not expressed any opinion on what would be the ideal period of debarment.

The writ petition is partly allowed to the aforesaid extent. Rule is made absolute in aforesaid terms with no order as to costs.

19. At this stage the learned counsel for the petitioner prays that the interim order granted be continued for a period of four weeks. This request is opposed by the learned counsel for the respondents.

In the facts of the case, present judgment shall operate after a period of four weeks.