

(2023) 08 OHC CK 0166

In the Orissa High Court

Case No : Writ Petition (C) No. 19439 Of 2023

RAPS Infratech Pvt. Ltd And Another

APPELLANT

Vs

State Of Odisha And Others

RESPONDENT

Date of Decision : 22-08-2023

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)(g), 226, 227

Citation : (2023) 08 OHC CK 0166

Hon'ble Judges : Dr. B.R. Sarangi, J; Murahari Sri Raman, J

Bench : Division Bench

Advocate : Goutam Mukherjee, Kirtita Banerjee, S.D. Ray, A. Mishra, R.D.B. Dash, M. Wright, A. Acharya, Tarun Patnaik

Final Decision : Disposed Of

Judgement

Dr. B.R. Sarangi, J

1. RAPS Infratech Pvt. Ltd., a company incorporated under the Companies Act, 1956 and registered as a Super Class Contractor, being petitioner no.1, and its Managing Director, being petitioner no.2, have filed this writ petition seeking to quash the notice of show cause dated 05.06.2023 issued by the Chief Engineer, World Bank Projects, Odisha-opposite party no.2 regarding blacklisting of petitioner no.1-company and consequential office order dated 16.06.2023 blacklisting the petitioner for a period of three years, pursuant to Sub-rules (a) & (d) of Rule-A of Appendix-XXXIV of the OPWD Code Volume-I1, on the ground of persistent and intentional violation of important conditions in tendering process, and as per Clause-2.3 of the DTCN (procedure to participate in online bidding e-procurement) of the work "Improvement to Deobandha-Chandahandi Road (ODR) from 22/00 Km to 32/00 Km. in the District of Nabarangpur under NABARD Assistance" vide Bid Identification No. CE-WBP (O)-27/2021-22 dated 22.12.2021.

2. The factual matrix of the case, in precise, is that the Government of Odisha

through opposite party no.2-Chief Engineer (World Bank Project) floated tenders for about 20 number of works including "Improvement to Deobandha-Chandahandi Road (ODR) from 22/00 Km to 32/00 Km. in the District of Nabarangpur under NABARD Assistance", vide Bid Identification No. CE-WBP (O)-27/2021-22 dated 22.12.2021. The extended last date for submission of bid for this work was 14.02.2022.

2.1 Petitioner no.1-company through its Managing Director-petitioner no. 2, who was looking after the business, participated in the bid. But, by that time, petitioner no.2 had suffered from Covid-19 and also had a lot of post-Covid complications. Initially, he was infected by Covid-19 on two occasions, i.e., on 27.10.2020 and 18.05.2021, for which he had to be admitted to NIMHANS Hospital, Bangalore on 03.06.2021, and subsequently he was shifted to Jashlok Hospital, Mumbai on 21.06.2021. Then, again on 07.12.2021, petitioner no.2 had to be admitted in Ashwini Hospital, Cuttack for combating his neurological complications, resulted from Covid-19.

2.2 Petitioner no. 2 submitted the bid for the aforesaid work on 14.02.2022, but his health relapsed and he was again hospitalized at Jaslok Hospital, Mumbai, on 12.04.2022, which eventually led to delay in submission of documents for concluding the verification process required for the aforesaid tender. Petitioner no.2 was informed, vide letter dated 27.04.2022, that he stands as the 1st lowest bidder and was asked to turn up at the office of opposite party no.2 for verification of the documents uploaded by him for the tender work within 5 days from 27.04.2022, i.e., by 02.05.2022. But, due to the post-Covid complications, petitioner no.2, vide his letter dated 03.05.2022, informed opposite party no.2 that though he was very interested in taking up the opportunity that came his way, but he was compelled to take some time to deal with an unavoidable medical issues and asked for additional time till 12.05.2022. Vide letter dated 12.05.2022, opposite party no.2 intimated petitioner no.2 to attend their office for the verification process, but he could not remain present. On 20.05.2022 and 22.05.2022, he made request to extend the time period of the bid validity, as he had full intention of fulfilling his responsibilities towards the tender, but due to his ill health he could not and beg excuse.

2.3 Without taking into consideration the predicaments faced by petitioner no.2 and without taking into consideration the ailment of petitioner no.2, the opposite party no.2, vide letter dated 24.05.2022, intimated petitioner no.2 that he is deliberately not submitting the original documents and, consequently, for non-participation in the verification process, the tender process could not be progressed. Accordingly, opposite party no.2 issued a show cause notice on 15.07.2022. In response to the letter of opposite party no.2 dated 15.07.2022, petitioner no.2 replied on 18.07.2022 with all his medical documents with a hope that his sufferings will be considered genuine and petitioner no.1 would not be blacklisted. As such, when the steps for blacklisting will be taken, petitioner no.2 will be given reasonable opportunity to present his defence by refuting the

allegations made in the show cause notice. But since the same was not given, the petitioners approached this Court by filing W.P.(C) No.18726 of 2022 with a prayer to revoke the show cause notice dated 15.07.2022. This Court, vide order dated 08.08.2022, directed that any coercive action taken by the opposite parties against the petitioner no.1-company should not be given effect to and, as such, the petitioners may be granted 15 days' time to execute the agreement for the work in question and the matter was adjourned to 12.08.2022. But the tender in question had already been cancelled on 01.08.2022, i.e., much before the order dated 08.08.2022 was passed, giving no more opportunity to petitioner no.2 to execute the agreement for the work in question. When the matter was listed on 12.08.2022, the learned State Counsel stated that the blocked portal of petitioner no.1 has been opened and in pursuance to the show cause notice no action has been taken against petitioner no.1-company. Taking into consideration the said submissions, the matter was disposed of.

2.4 On 05.06.2023, another show cause notice was served on petitioner no.1 to initiate penal action against it for not responding to the verification of documents. Such show cause notice was served basing on the letter dated 31.05.2023 and on the advice of the Law Department dated 30.05.2023 by misinterpreting the order dated 12.08.2022 passed in W.P.(C) No. 18726 of 2022 under misconception that the said writ petition was dismissed. Pursuant to such show cause notice, the petitioners submitted their reply on 10.06.2023, but the same was found to be unsatisfactory by opposite party no.2. Consequentially, petitioner no.1 was informed on 16.06.2023 that it has been blacklisted for 3 (three) years and that Special Class Contractor Registration Certificate in the name of RAPS Infratech Pvt. Ltd. bearing registration number 952VN522 remains suspended automatically. Also that RAPS is henceforth banned from participating or bidding for any work to be undertaken by the Government of Odisha and from transacting with the Government of Odisha. The Works Dept., Government of Odisha also blocked the online portal of petitioner no.1 wherefrom it participates in bidding processes. Hence, this writ petition.

3. Mr. Goutam Mukherjee, learned Senior Advocate appearing along with Ms. Kirtika Banerjee, learned counsel for the petitioners vehemently contended that though the predicament of the petitioners was communicated on different occasions and even when the notice dated 05.06.2023 was issued, the petitioners submitted their reply on 10.06.2023 informing the reasons for non-production of documents for verification due to the illness of opposite party no.2, but the same was not taken into consideration, rather, on the basis of the opinion rendered by the Law Department dated 30.05.2023 by making a misrepresentation of the order of this Court dated 12.08.2022 passed in W.P.(C) No. 18726 of 2022, the opposite parties took steps for blacklisting of petitioner no.1. In addition to this work, two more work orders were issued by the Works Department in favour of petitioner no.1-company, namely, (1) "For widening and strengthening of Koksara Behera Road from 7/210 to 14/900 Kms in the District of Kalahandi" at an agreement value of Rs.10.20,40,699/- with stipulated dates

of commencement and completion being 21.10.2022 and 20.08.2023 respectively vide agreement no. 61/P1/2022-23; and (2) "Improvement to Ampani Dharmgarh Road (ODR) from 0/00 to 15/00 kms in the District of Kalahandi" at an agreement value of Rs 13,98,77,999/- with stipulated dates of commencement and completion being 21.10.2022 and 20.02.2024 respectively vide agreement no. 62/P1/2022- 23. These two works have been successfully executed by the petitioners and are nearing completion, without any complaint from any quarter whatsoever. It is further contended that when a notice of show cause was issued on 05.06.2023, petitioner no.2 submitted his reply indicating the difficulties because of his ailment referring to the certificates issued by different hospitals. But the same was not considered in proper perspective and the order impugned dated 16.06.2023 was passed vide Annexure-9 series, whereby petitioner no.1 has been blacklisted for a period of 3 (three) years and its Special Class Contractor Registration Certificate has been suspended banning him from participating and bidding for any work to be undertaken by the Government of Odisha, and its online portal, wherefrom petitioner no.1 participates in the bidding process, has been blocked. The entire action is arbitrary, unreasonable, contrary to the provisions of law and violates the principles of natural justice. As such, no reason has been assigned in the order impugned save and except indicating that it has been blacklisted in view of the codal provisions of Sub-rules (a) & (d) of Rule-A of Appendix-XXXIV of the OPWD Code Volume-I1 on the ground of persistent and intentional violation of important conditions in tendering process and as per Clause-2.3 of the DTCN (procedure to participate in online bidding e-procurement) of the work in question. It is contended that such reason for blacklisting petitioner no.1-company is absolutely misconceived one.

3.1 To substantiate his contention, learned Senior Counsel has placed reliance on *Lt. Governor Delhi & Others v. HC Narinder Singh*, (2004) 13 SCC 342; *Omax Engineering Works New Delhi v. State of Haryana*, 2016 (3) SCT 494; *Oryx Fisheries Pvt. Ltd v. Union of India*, (2010) 13 SCC 427; *Gorkha Security Services v. Government of NCT of Delhi*, AIR 2014 SC 3371; *Kranti Associates Pvt. Ltd. v Masood Ahmed Khan*, (2010) 9 SCC 496; and *M/s. Woolcombers of India Ltd. v. Woolcombers Workers Union*, AIR 1973 SC 2758.

4. Mr. Tarun Patnaik, learned Addl. Standing Counsel appearing for the State-opposite parties vehemently contended that in spite of several opportunities were given to the petitioners to participate in the process of bid by producing the documents, they having been failed to do so, action as deemed fit and proper, as per the provisions contained in the DTCN and as per the codal provisions of OPWD Code, has been taken against petitioner no.1-company. It is further contended that pursuant to tender floated on 22.12.2021 under Annexure-1 series, the petitioner no.1-company participated in respect of the work mentioned at sl. no. 12, wherein it was stipulated that the work was to be completed within 9 calendar months. Even though petitioner no.1-company applied for the same and came out as L1 bidder, but, it failed to comply with

clause 2.3 of the DTCN. As per clause 23 of the DTCN, the L1 bidder had to submit all original documents for verification within a period of five days of opening of tender (price bid) and on its failure to attend the office for verification of original documents, the L1 bidder was to be subjected to penal action such as debarment and blacklisting etc. Thereby, the petitioner no.1-company was well aware of the conditions stipulated in the DTCN. In compliance to such provision, a letter dated 27.04.2022 was issued to petitioner no.1-company with a request to attend the office of opposite party no.2 within a period of 5 days for verification of the documents uploaded. On receipt of letter dated 27.04.2022, petitioner no.1-company through petitioner no.2 sent a letter on 03.05.2022 to opposite party no.2 praying therein to allow time up to 12.05.2022 for verification of documents due to some unavoidable medical purpose. Defying his own promise, petitioner no.2 never appeared for verification of documents, for which the tender process could not proceed further. Therefore, petitioner no.1 was liable for penal action as envisaged under Clauses-2.3 and 7 of the DTCN. Observing due process of law, the order of blacklisting and debarment for a period of 3 years was issued on 16.06.2023 by giving opportunity of hearing and giving notice of show cause. Consequentially, no illegality or irregularity has been committed by opposite party no.2 so as to cause interference by this Court at this stage.

5. This Court heard Mr. Goutam Mukherjee, learned Senior Advocate appearing along with Ms. Kirtita Banerjee, learned counsel for the petitioners; and Mr. Tarun Patnaik, learned Addl. Standing Counsel appearing for the State-opposite parties in hybrid mode and perused the records. Pleadings have been exchanged between the parties and with the consent of learned counsel for the parties, the writ petition is being disposed of finally at the stage of admission.

6. Before delving into the issue involved, the necessary provisions relied upon for blacklisting the petitioners are to be looked into:-

"APPENDIX-XXXIV

CODAL PROVISIONS FOR BLACKLISTING

CONTRACTORS

A. The Chief Engineer of a department may blacklist a contractor with the approval of concerned Administrative Department on the following grounds.

a) Misbehavior/threatening of departmental and supervisory officers during execution of work/tendering process.

(b) Involvement in any sort of tender fixing.

(c) Constant non-achievement of milestones on insufficient and imaginary grounds and non-adherence to quality specifications despite being pointed out.

(d) Persistent and intentional violation of important conditions of contract.

(e) Security consideration of the State i.e., any action that jeopardizes the security of the State.

(f) Submission of false/fabricated/forged documents for consideration of a tender.

The Divisional Officer shall report to the Chief Engineer if in his opinion any of the above wrong has/ have been committed by any contractor. On receipt of such a report from the Divisional Officer the Chief Engineer shall make due enquiry and if considered necessary, issue show cause notice to the concerned contractor who in turn shall furnish his reply, if any, within a fortnight from the date of receipt of the show cause notice. Therefore, if the Chief Engineer is satisfied that there is sufficient ground, he shall blacklist the concerned contractor with the approval of the Administrative Department. After issue of the order of blacklisting of the said contractor, the Chief Engineer shall intimate to all Chief Engineers of other Administrative Departments, the Registering Authority as provided under Rule 4 of PWD Contractor's Registration Rules, 1967 and Department of Information & Technology for publication in web site of State Government.

B. The registration certificate of blacklisted contractor shall remain automatically suspended while allowing him to complete all his ongoing work(s) unless otherwise rescinded by the competent authority on grounds of breach of conditions of agreement.

C. The name(s) of partners and allied concerns of the blacklisted contractors shall also be communicated to all concerned. Care shall be taken to see that the contractor blacklisted and his partners do not transact any business with Government under a different name or title.

D. Once the blacklisting order is issued it shall not be revoked ordinarily unless:

(i) On review in later date, the Chief Engineer is of the opinion that there is sufficient justification to revoke the order of blacklisting, or

(ii) In respect of the same offense, the accused has been honourably acquitted by court of law.

The concerned Chief Engineer will obtain order from the concerned Administrative Department before revoking the order of blacklisting. The order of revocation shall also be communicated to all concerned.

E. The Chief Engineer and Administrative Department shall maintain a list of blacklisted contractor. Updated list of blacklisted contractors shall be communicated to all concerned by the Chief Engineers on a quarterly basis.

F. Checklist as per Annexure-I, shall be furnished by the concerned Chief Engineer for blacklisting the contractor.

G. Checklist as per Annexure-II, shall be furnished by the concerned Chief Engineer for revoking blacklisting order.

Explanation: (i) Action taken under this rule shall be in addition to any action

taken under Rule 11 of PWD Contractor's Registration Rules, 1967 (Appendix-VIII of OPWD Code, Vol.-II). On revocation of order of blacklisting, registration certificate of the contractor shall valid automatically, if not otherwise become invalid which shall be recorded in the registration certificate by the revoking authority.

(ii) The ground mentioned above for blacklisting of contractor shall be deemed to be deleted from the grounds for cancellation/suspension of registration certificate U/R-11(a) of PWD Contractor's Registration Rules, 1967 (Appendix VIII of OPWD Code, Vol.-II)."

7. Though reference has been made to Clauses 2.3 and 7 of the DTCN, but none of the parties has filed such documents. However, in the pleading, as has been made in the counter affidavit filed by the opposite parties no. 1 and 2, it has been stated that as per clause 2.3 of the DTCN the L1 bidder has to submit all original documents for verification within a period of five days of opening of tender (price bid). Further, it is stipulated that on failure to attend the office for verification of original documents, the L1 bidder shall be subjected to penal action, such as, debarment, blacklisting, etc. Though reference was made to clause-7 of the DTCN, but no pleadings thereto have been made in the counter affidavit.

8. On the basis of the materials available on record, now it is to be considered whether the order impugned dated 16.06.2023 blacklisting petitioner no.1-company for a period of three years and suspending its Special Class Contractor Registration Certificate, which is valid up to 31.03.2025, and banning it from participating or bidding for any work to be undertaken by the Government of Odisha and from transacting with the Government of Odisha either directly in the name of proprietary bidder or indirectly under different name of title for 3 (three) years from the date of the issue of the order can be sustained in the eye of law or not.

9. The undisputed fact is that pursuant to the tender notice dated 22.12.2021 issued by opposite party no.2 the petitioner no.1-company participated in respect of the work mentioned at sl. no. 12, i.e., "Improvement to Deobandha-Chandahandi Road (ODR) from 22/00 Km to 32/00 Km. in the District of Nabarangpur under NABARD Assistance" vide Bid identification No. CE-WBP (O)-27/2021-22 dated 22.12.2021. The duration of completion of the said work was 9 calendar months. During the period from 27.10.2020 to 18.04.2022, petitioner no.2 remained hospitalized for various periods being thrice suffered from Covid-19 infection. Though he was called upon on various occasions for submission of documents, the time was sought and the same was allowed. However, he could not produce such documents because of his ailments and being admitted to different hospitals. He was served with a show cause notice on 15.07.2023 as to why penal action should not be taken against the petitioner no.1-company and why petitioner no.1-company should not be blacklisted as per clause 2.3 of the DTCN. The said show cause notice was challenged in W.P.(C)

No. 18726 of 2022. While entertaining the writ petition, this Court passed an interim order on 08.08.2022 directing that the coercive action taken against the petitioner no.1-company shall not be given effect to, and 15 days' time was granted to execute the agreement for the work in question. However, by that time, the tender was cancelled on 01.08.2022. This fact was not brought to the notice of this Court either by the petitioners or by the State counsel appearing for opposite parties. As per the direction given on 08.08.2022, the matter was listed on 12.08.2022. Basing on the instructions received, learned counsel appearing for the State contended that the portal of the petitioner no.1-company has already been unblocked and no action has been taken against the petitioner no.1-company for blacklisting. Accordingly, the writ petition was disposed of. The petitioner no.1-company, however, was not allowed to execute the agreement and the work was re-tendered and awarded to another contractor. In the meantime, petitioner no.1-company has participated in other tenders and is in the process of executing some of the contracts and awaiting execution of agreements in some of them.

10. On 05.06.2023, petitioner no.1 was served with a show cause notice for blacklisting it for the self-same cause of action for which Annexure-6 was issued, which was challenged by the petitioners in W.P.(C) No.18726 of 2022 and ultimately the same was disposed of on the basis of the statement made by learned State counsel that the portal has been unblocked and no action has been taken against the petitioner no.1-company for blacklisting. However, petitioner no.1-company through petitioner no.2 responded to the show cause notice by giving reply on 10.06.2023 along with all the documents showing the reason for non-production of the required documents pursuant to the tender call notice issued on 22.12.2021, more particularly expressing the fact that petitioner no.2 having been suffered from ailment and hospitalised in different hospitals of the country could not produce all the documents for verification. Without taking into consideration of the same, on the basis of the opinion rendered by the Law Department dated 30.05.2023 and by misinterpreting the order dated 12.08.2022 passed in W.P.(C) No.18726 of 2022, the opposite parties came to hold that the show cause reply submitted by the petitioner no.1-company is unsatisfactory and passed the order of blacklisting petitioner no.1-company for a period of 3 (three) years and proceeded to block the petitioner no.1-company's e-portal on 17.06.2023.

11. Pursuant to the notice issued by this Court, the opposite parties have filed their counter affidavit indicating therein that medical documents in support of partial incapacitation of petitioner no.2 were not given and since the petitioner no.1 was found involved in other tender work during that period, it cannot be construed that due to ailment of petitioner no.2, he could not participate. Rather those original documents could have been submitted by an authorised representative for verification. It is further asserted that so far as the show cause notice issued to the petitioner no.1-company dated 15.07.2022 under Annexure-6 is concerned, the same has not been conclusively decided in the

earlier writ petition in W.P.(C) No.18726 of 2022.

12. In the rejoinder affidavit, the petitioners have stated that factum of admission of petitioner no.2 in the various hospitals has been proved by the documents furnished in the show cause reply filed by the petitioners. Those documents were also part of W.P.(C) No.18726 of 2022. So far as award of other contract is concerned, it has been contended that the same were undertaken by trusted friend on execution of special power of attorney. Therefore, whenever the petitioners were called upon for verification of the original documents, petitioner no.2 was requesting for extension of time till he was physically fit. But the same after sometime was cancelled and re-tendered. Therefore, taking into consideration the predicament of the petitioners, show cause notice dated 05.06.2023 could not have been issued, as for the self same cause of action, earlier show cause notice was issued on 15.07.2022, which was subject-matter of challenge in earlier writ petition. By issuing second show cause notice on 05.06.2023 for the self same issue, imposition of penalty of blacklisting without taking into consideration the show cause reply filed by the petitioners cannot be sustained. Without regard being had to the undeniable factum of ill health and sickness on account of post-COVID-19 viral effect on the physical condition, the order of blacklisting ought not to have been clamped, inasmuch as entire blame could not have been attributed to the petitioners. Therefore, a fair hearing has been denied to the person who suffered civil consequences offending provisions of Article 19(1)(g) of the Constitution of India. Such circumstance invites exercise of judicial review under Article 226 of the Constitution.

13. As a prelude it may be apposite to say that an order of "blacklisting" has the effect of depriving a person of equality of opportunity in the matter of public contracts and by blacklisting a person, the State acts to the prejudice of a person and in such eventuality, such an action is to have support of legality. Thus, fairness and equality in State action is highly solicited.

The position regarding "blacklisting" as set at rest emanated from dicta of Courts is this, that:-

(i) Prior to taking decision to blacklist a contractor, which has adverse impact to carry on business as envisaged under Article 19(1)(g) of the Constitution of India, the contractee-Government is required to adhere to the one of the statutory principles of natural justice, being "AUDI ALTERAM PARTEM";

(ii) At the time of evaluation of any entity of being blacklisted, doctrine of proportionality has weight;

(iii) If at all it is decided to "blacklist" an entity/contractor, the same cannot be "permanent";

(iv) Show-cause Notice inviting reply must show in clear terms the reason(s) based thereof and the person to be affected and/or against whom adverse civil consequences would ensue, has to be afforded adequate reasonable and

effective opportunity to demonstrate his case/plight prior to decision to "blacklist" him is taken. Nonetheless, with word of caution, there is no inviolable rule that a personal hearing of the affected party must precede every decision of the contractee-Government, vide, *Patel Engineering Ltd. Vrs. Union of India*, (2012)11 SCC 257.

14. In *Lt. Governor Delhi (supra)*, though it relates to a service jurisprudence, the apex Court at paragraph-4 observed as follows:-

4. Reading of the show-cause notice suggests as if it is in continuation of the departmental proceedings. Lack of devotion to duty is mentioned as the reason for the proposed action which was the subject-matter of the earlier proceedings as well. The second proposed action based on the same cause of action proposing to deny promotion or reversion is contemplated under the impugned show-cause notice. Second penalty based on the same cause of action would amount to double jeopardy. The Tribunal, was, therefore, right in law in annulling such an action. We are not expressing any opinion on the ambit or scope of any rule.

15. In *Omax Engineering Works (supra)*, the High Court of Punjab and Haryana, at paragraphs 21 and 28 observed as follows:-

21. In our view, in a case such as this, where the second show cause notice is identical in every respect to the first show cause notice and where the first show cause notice was taken to its logical conclusion and the decision taken therein has attained finality, a second show cause notice is impermissible on the principle embodied in the Latin maxim '*interest reipublicae ut sit finis litium*' and on the principle of cause of action/estoppel. These principles in turn are based on an important aspect of public policy.

28. The contention that the second impugned order is nothing but an additional order in respect of the first show cause notice requires merely to be stated to be rejected. The proceedings relating to the first show cause notice did not indicate that the issue of blacklisting was not to be taken up or considered. Nor do the proceedings indicate any intention to deal with the issue of blacklisting separately and/or subsequently. The record reveals that the first show cause notice was dealt with, considered and disposed of in its entirety without reserving any part or aspect thereof for further and/or separate consideration."

16. Once the 1st show cause notice dated 15.07.2022 was under challenge before this Court in earlier writ petition and subsequently the same was disposed of on the basis of the statement made by learned counsel for the State, calling for opinion of Law Department and on the basis of such opinion dated on 30.05.2023, issuance of 2nd show cause notice on 05.06.2023 clearly indicates that the opposite parties are determined to take action against the petitioner no.1-company. As such, the opinion rendered by Law Department by misinterpreting the order dated 12.08.2022 passed in W.P.(C) No.18726 of 2022 establishes the entire action of the opposite parties against the petitioner no.1-

company as pre-meditated.

17. In Oryx Fisheries Pvt Ltd (supra), where reliance has been placed on Kranti Associates (supra), in paragraph-41 it was observed as follows:-

"41. In M/s Kranti Associates (supra), this Court after considering various judgments formulated certain principles in para 51 of the judgment which are set out below

a. In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

b. A quasi-judicial authority must record reasons in support of its conclusions.

c. Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

d. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

e. Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.

f. Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

g. Reasons facilitate the process of judicial review by superior Courts.

h. The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice.

i. Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

j. Insistence on reason is a requirement for both judicial accountability and transparency.

k. If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

l. Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process.

m. It cannot be doubted that transparency is the sine qua non of restraint on

abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harward Law Review 731-737).

n. Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR 553, at 562 para 29 and Anya vs. University of Oxford, 2001 EWCA Civ 405, wherein the Court referred to Article 6 of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions". o. In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".

18. On the touchstone of the aforementioned judgements of the apex Court, if the office order dated 16.06.2023 is tested, it would be made clear that the petitioner no.1-company was blacklisted in pursuance of codal provision contained in Sub-rules (a) & (d) of Rule-A of Appendix-XXXIV of OPWD Code Volume-II. Sub-rule (a) prescribes misbehavior/threatening of departmental and supervisory officers during execution of work/tendering process. Nothing has been placed on record to substantiate the same by the opposite parties. Sub-rule (d) prescribes persistent and intentional violation of important conditions of contract. There is no question of intentional violation of any important conditions of contract by the petitioner no.1-company. Rather, the entire action has been taken by the petitioners bonafidely. Whenever they were called upon for production of original documents for verification, because of ailment of petitioner no.2 and as he was to move from place to place and hospitalised in various hospitals of the country due to Covid-19 effect, the petitioners could not do so. Under these circumstances, it cannot be construed that the petitioners have violated any of the conditions of Sub-rules (a) & (d) of Rule-A of Appendix-XXXIV of OPWD Code Volume-II warranting blacklisting of the contractor. More so, if the Chief Engineer is satisfied that there is sufficient ground, he shall blacklist the concerned contractor with the approval of the administrative department. Nothing has been placed on record to substantiate the same. Therefore, mechanically the order dated 16.06.2023 has been passed blacklisting the petitioner without affording opportunity of hearing.

19. In Gorkha Security Services (supra), it has been held that blacklisting causes civil death. Such a grave consequence, therefore, attracts exercise of power of judicial review.

20. In the facts and circumstances enumerated above, when the petitioner no.1-company has successfully executed multiple contracts under the same department with an unblemished track record and has earned appreciation of the department, this Court is of the considered view that the same should not have

been utilised adversely against the petitioner no.1-company so as to impose penalty of blacklisting and suspension of the license.

21. Furthermore, in response to the show cause asked for from the petitioner no.1-company on 05.06.2023, though the petitioner no.1-company submitted a detailed reply on 10.06.2023, merely indicating that the same was "found unsatisfactory", without assigning any reasons therefor, the passing of the impugned order of blacklisting cannot be sustained, the same being in violation of the principles of natural justice. This question has no more remained res integra, in view of the ratio decided by the apex Court in *Kranti Associates Pvt. Ltd.* (supra).

22. In *Nova Steel (India) Ltd vs M.C.D. And Ors*, AIR 1995 SC 1057 the apex Court held that the question of blacklisting of the contracts have been considered by the Courts time and again and it has categorically been held that such order cannot be passed without giving opportunity of hearing to the party.

23. In *Urusian Equipment & Chemicals Ltd. v. State of West Bengal*, AIR 1975 SC 266, the apex Court held that a fair hearing to the party being blacklisted thus becomes an essential pre-condition 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 offence is similarly examinable by a writ Court. The apex Court also declared that blacklisting has the effect of preventing a person from entering into lawful relationship with the Government for purposes of gains and the authority passing any such order is required to give a fair hearing before passing an order of blacklisting in certain entity.

24. In *Mr. B.S.N. Joshi & Sons Ltd v. Nair Coal Services Ltd. & Ors*, (2006) 11 SCC 548 : AIR 2007 SC 437 and a long line of decisions have followed the ratio of that decision and applied principle of audi alteram partem to the process that may eventually culminate in the blacklisting of a contractor.

25. In *TELSA Transformers Limited v. Odisha Power Transmission Corporation Limited*, 2016 (II) ILR CUT-37, this Court also taking into consideration the ratio of *Gorkha Security Services v. Government (NCT of Delhi)*, AIR 2014 SC 3371 held that merely because clause in notice inviting tender empowers the department to impose such penalty that does not mean that such penalty can be imposed without putting defaulting contractor to notice to this effect.

26. In *Isolators and Isolators v. Madhya Pradesh Madhya Kshetra Vidyut Vitran Co. Ltd.*, (2023) 4 SCR 445, it has been laid down that finality attaching to the action of cancellation cannot be read as a due notice for imposition of penalty even if the respondents chose to employ the expression 'cancelled with imposition of penalty' in the orders. If at all penalty was considered to be leviable, the same could not have been carried out without affording adequate opportunity of response to the appellant. It is, thus, held in the said case that the action of the respondents in imposing penalty without even putting the appellant to notice as regards proposed action could not be approved.

27. In *Kulja Industries Limited v. Chief General Manager, Western Telecom Project Bharat Sanchar Nigam Limited and others*, (2014) 14 SCC 731, the apex Court held, if State or its instrumentality takes decision on blacklisting then such decision is subject to judicial review on grounds of principles of natural justice, doctrine of proportionality, arbitrariness and discrimination under Article 14 of the Constitution of India.

28. In *UMC Technologies Private Limited v Food Corporation of India* (2020) 13 SCR 1175, the apex Court has also taken note of the decision of the apex Court in *Erusian Equipment & Gorkha Security* (supra) and has come to a conclusion 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. Therefore, 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.

29. In view of the foregoing discussions, the office order of blacklisting dated 16.06.2023 under Annexure-9 series cannot be sustained in the eye of law and the same is liable to be quashed and is hereby quashed.

30. The writ petition is thus allowed. However, there shall be no order as to costs.

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