

(2003) 01 DEL CK 0009
In the Delhi High Court
Case No : C.W. No. 5475 of 2002

Saraswati Dynamics Pvt. Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 07-01-2003

Acts Referred:

Citation : AIR 2003 Delhi 146

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : Arun Jaitley and Sandeep Sethi, for the Appellant; K.K. Sud, Addl. Solicitor General, Jayant Bhushan and Neeraj Jain, for the Respondent

Judgement

Manmohan Sarin, J.—Petitioner M/s. Saraswati Dynamics Pvt. Ltd. seek a writ of certiorari for quashing letter/order numbering I(4)/ 2000/D (S-II)/ CPO(AMT)-1331, dated 6-8-2001, passed by the respondent as also quashing of all other consequential letters/ orders Issued by subordinate offices/agencies, departments, authorities under the Ministry of defense, pursuant to the above order dated 6-8-2001. Petitioner also seeks a writ of mandamus for restoration of all the cancelled supply orders/contracts and to grant residual delivery period of with additional mobilization period of a weeks to the petitioner for fulfillment of the contractual obligations. A restraint is also sought on the respondents and its subordinate offices and organisation from awarding respective contracts already entered into with the petitioner, to any third party.

2. By the Impugned order Annexure P2, Director, Department of defense Production and Supplies, cancelled supply order No. 1(4)/2000/I (S-II)/ CPO(AMT)-1331 dated 18-7-2001 placed on the petitioner for supply of Variable Speed Gear Units, required for the Bofor Guns. The Impugned order states that one Shri Naresh Kataria. Director of the petitioner had approached an Officer of the Department of defense Production and Supply with an offer of bribe (cash payment). Indulgence in corrupt practices attracted provision of Section 21 of the General Conditions of Contracts . This being breach of conditions of contract,

the supply order was cancelled with the approval, of the Competent Authority, subject to the right to recover loss occasioned by such cancellation. Additional, annual maintenance contract with the petitioner was also cancelled. Bank guarantees have also been Invoked. Petitioner made numerous representations, but no heed has been paid to them and respondents have even refused to acknowledge the said representations, far from considering the same.

3. The entry of Shri Naresh Kataria, and representatives of his company was banned in the Ministry and its subordinate offices. Petitioner's company was also banned from doing any business with the Ministry and its subordinate offices. Pursuant to the above order, the supply orders placed on the petitioner by other subordinate offices of the Ministry and the factories/units have also been cancelled by similar orders. The said cancellation orders and supply orders numbering 14 in all have been produced on record in the writ petition.

4. The tactual matrix of the case may be noted :

Petition came up for admission on 2-9-2002. After issuance of notice and completion of affidavits, counsel for parties were heard and judgment reserved on 13-12-2002.

Petitioner is a small scale manufacturing unit and registered with the Ministry of defense for the last over 15 years. Petitioner is engaged in indigenous Research and Development and production of hi-tech equipment and spares required by Armed forces. Petitioner has to its credit the national Award for indigenisation in the year 1994-95, DSIR national award for research and development, in Industry for the year 2000.

5. Petitioner on its own undertook the development of complex products including various critical assemblies for the Bofor Guns to replace the imports. One of such projects developed by the petitioner on "no cost no commitment basis" was the Variable Speed Gears (for short "VSGs). The function of this is essentially to track the target through its two Variable Speed Gears for elevation and traversing. These VSGs are required for 1000 anti-aircraft Bofor Guns. Petitioner's case is that a lobby of power arms dealers, engaged in import of equipment had been pressing the Ministry of defense, to replace the VSGs fitted in the Bofor Guns, which was hydro-mechanical, with electrical systems. The justification sought to be given was the non-availability of hydro-mechanical VSGs. Petitioner successfully developed and had the VSGs tested by the Director General of Quality Assurance. It is the petitioner's case that the cost of replacement of VSGs with the electrical system in the guns is about Rs. 1,500 Crores as compared to Rs. 150 Crores which would be the cost of acquiring VSGs, within the country indigenously.

6. As per the petitioner, respondent issued the first advertisement for supply of VSGs in Dec. 1998. Petitioner qualified the eligibility criteria and was the lowest bidder. However, this requirement was not finalised. In May. 1999, the drawing schedules and specifications of VSGs, were issued to the petitioner by the

Director General of Quality Assurance, upon the failure of the source for import of the same. Enquiry was again floated in June. 1999. Petitioner emerged the lowest bidder. However, the same was not awarded and the order remained inconclusive, During June to Sept. 1999, VSGs developed by the petitioner were successfully tested for fitment and functional trials with minor modifications. Respondent in Nov. 2000 again invited officers for the third time for the supply of VSGs. Petitioner participated and emerged as the lowest bidder.

Finally, the supply order to supply 61 pieces of VSGs with the basic value of Rs. 5,43 Crores, was placed on the petitioner. Petitioner claims that it was invested heavily on various sub-assemblies and critical raw materials. It is in the aforesaid background petitioner submits that the import, lobby of armed dealers was upset with the order being placed on the petitioner.

7. Petitioner claims that the impugned cancellation order dated 6-8-2001, has been passed in gross violations of principles of natural justice. Petitioner has been condemned unheard without being given an opportunity to explain . The order is also contrary to the terms and conditions of the DCS & D Manual. As regards Shri Naresh Kataria, petitioner's case is that he was employed with the petitioner till 8-4-2000 as an employee. Thereafter on 23-1-2001. he was appointed as an Additional Director and he so continued till 20-4-2002. Primary responsibility of Mr. Kataria was to deal with the Confederation of Indian Industries, in so far as it related to petitioner's company and to deal with select vendors. Mr. Kataria did not own any shares in the petitioner's company. Few days prior to his resignation from employment of the petitioner's company i.e. in April, 2000, Shri Naresh Kataria had incorporated a company with his wife by the name "K.G. Global Pvt. Ltd." with the object inter alias of dealing in defense products. Petitioner claims that Shri Kataria after ceasing to be in the employment of the petitioner company was promoting his own company and the business therefore. Petitioner has filed an additional affidavit dated 25-10-2002 in support of the above averments .

8. Mr. Arun Jaitley, learned Senior counsel appearing for the petitioner submitted that no notice to show cause or an opportunity of hearing was given prior to passing the ban order. Counsel submits that the effect of the banning order was that the petitioner who was executing as many as 15 contracts is deprived of the same without any opportunity of explaining or even knowing the nature and extent of allegations against Mr. Naresh Kataria. The impugned order simply stated that said Mr. Kataria had approached an officer of the Department of defense Production and Supplies with an offer or bribe (cash payment). Neither the name of the said officer nor any details were given. Even the date of occurrence was not mentioned. Learned counsel refers to the provisions of DCS & D Manual to submit that in terms of para 5.17.3. in the event of any breach or violation in the terms or any mal practices being indulged in by the Contractor, a show cause notice is to be issued with the approval of the Deputy Director General of Quality Assurance, giving the proposed action and the grounds

therefore. It is only upon consideration of the reply or after the expiry of the notice period that the Deputy General of Quality Assurance would pass orders for de-registration or cancellation of the registration of the firm and removal from the list of approved contractors. The grounds for suspension are given in para 5.18.2 while the grounds for banning of business dealings are given in para 5.18.3. Once the firm is banned on the grounds specified under the above provisions, no contract is placed with the banned firm including its allied or associate firms. However, contracts concluded before the banning order are not be affected by the banning orders. He submits that though the provisions relate to cancellation of registration or deregistration, the effect of the banning order would be that it virtually tantamounts to cancellation or deregistration since no orders are to be placed on the banned firm. Counsel submits that on a solitary alleged incident an pervasive action, cancelling 15 contracts has been taken.

9. Mr. Jaitley further submitted that Mr. Kataria had been canvassing his own business since January, 2001 and an order had been placed in favor of his company. One of the plausible defenses of the petitioner could be that Mr. Kataria was canvassing the case of his own firms. However, the petitioner, as stated earlier, has been condemned without any hearing and the representations made have been ignored, without even an acknowledgement.

10. Before coming to the legal issues, arising for determination, it would be relevant at this stage to refer to the incident. which forms the basis of the impugned order resulting in cancellation of the contracts with the petitioner which has been done by passing orders on similar lines as the impugned order dated 6-8-2001.

11. Records of the case had been called for. The Additional Secretary, defense Production and Supplies, reported that Mr. Naresh Kataria who happens to be one of the Directors of the petitioner company, as also a member of CII Core group of defense Industry, had been interacting with the Ministry on various aspects of private sector involvement in defense Industry, This was more so after the Government decision to open up the sector to private investment . Mr. Kataria is stated to have sought an appointment with the Addl. Secretary on morning of 13th July, 2001. He met the Addl. Secretary in the evening in the office and left certain papers concerning development of resistores. The additional Secretary recorded that Mr. Kataria thanked and expressed gratitude for the contract that had been awarded to him. Mr, Kataria is stated to have been meeting the official for quite some time in his personal capacity and also as a member of CII Core group. Mr. Kataria was also member of CII delegation to London at CII seminar, which had been addressed by the Additional Secretary. Mr. Kataria had expressed the desire to call on the officer socially. The Addl. Secretary states that he did not refuse since it would have appeared rude to do so. On the morning of 14-7-2001. Mr. Kataria visited the officer at the house. After courtesies were exchanged, he got up to leave and left a paper bag, which the official noted had bundle of currency notes estimated to be Rs. 50,000/- or

Rs. One lakh, depending on whether they were notes of Rs. 50/- or Rs. 100. The Addl. Secretary records in his note that he asked Mr. Kataria to immediately pick up his bag and leave the house, telling him that this was a fit case to be reported to the Authorities and that the contracts given to his company needed to be reviewed for possible cancellation. The Addl. Secretary had duly informed the CVO as well as the Joint Secretary (Establishment) and put up the note on 16-7-2001. as 14th and 15th were holidays.

12. Based on the above report, from the Addl. Secretary, the Secretary of the defense Production and Supplies noted that relationships with companies, awarded the contracts was governed by DCS & D Manual, which provides for suspension and banning of business dealing with the firms which have been involved in offences of moral turpitude or have been guilty of malpractices, such as, bribery, corruption etc. The Secretary, Therefore, noted that after the Raksha Mantri has seen the papers, the CVO be asked to take immediate steps in accordance with DCS & D Manual for suspension or banning or business dealings with Mr. Kataria or the company in which he may be a Director.

13. The defense Minister, however, was of the view that facts were clear and established beyond doubt. He decided Mr. Kataria and his companies be straightway and immediately banned. C.I.I, be Informed about what has been done so that their organisation as also the Core group, should never again engage in such an effort. All contracts already awarded to Mr. Kataria and his companies be cancelled Invoking the provision relating to seeking to influence the award of contract. The impugned order was thereupon passed following the above directions and orders given by the Raksha Mantri.

14. The question which arising for consideration is whether in the facts and circumstances as noted, the respondent could without giving a show cause notice or an opportunity of being heard, cancel the contracts and pass the impugned order ?

15. Learned Senior counsel submitted that thus Impugned action was ex facie violation of rules of natural Justice and was liable to be quashed. He submitted that principles of natural justice could be not be given a go by. He relied on S.L. Kapoor Vs. Jagmohan and Others, . This was a case where New Delhi Municipal Committee was superseded by the Lt. Governor in exercise of powers u/s 238 (1) of the Punjab Municipal Act. The main contention of the appellant in challenge was that the order of supersession was passed in complete violation of the principles of natural justice and total disregard of fair play. The Court, found that no opportunity had been given to the Municipal Committee to explain any fact or circumstances on the basis of which action was proposed. Adverting to the correspondence between the New Delhi Municipal Committee and other Authorities about the subject matter of the allegations, it found that the information given was for entirely different purposes and could not be regarded as putting the party to notice. The Court observed as follows :

"That the admitted or undisputed facts would have led to the same conclusion whether principles of natural justice are observed or not is absolutely no ground for its exclusion. A separate showing of prejudice caused is not necessary. The non-observance of natural justice is in Itself a prejudice caused. But the finding that principles of natural justice have not been observed does not mean that writ will necessarily issue. The Court may not issue its writ to compel the observance of natural justice, not because it is not necessary to observe natural justice but because Courts do not issue futile writs."

The Supreme Court further concluded in para 24 of the Judgment as under :

"In our view the principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had been observed. The non-observance of natural justice is Itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary. It ill comes from a person who has denied justice that the person who has been denied Justice is not prejudiced. As we said earlier, where on the admitted or Indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the Court may not issue its writ to compel the observance of natural Justice, not because it is not necessary to observe natural justice but because Courts do not issue futile writs. We do not agree with the contrary view taken by the Delhi High Court in the Judgment under appeal.",

16. Again in Raghunath Thakur Vs. State of Bihar and Others, , the Supreme Court held as under :

"4. Indisputably, no notice had been given to the appellant of the proposal of blacklisting the appellant. It was contended on behalf of the State Government that there was no requirement in the rule of giving any prior notice before blacklisting any person. Insofar as the contention that there is no requirement specifically of giving any notice is concerned, the respondent is right. But it is an implied principles of the rule of law that any order having civil consequence should be passed only after following the principles of nature justice. It has to be realized that blacklisting any person in respect of business ventures has civil consequence for the future business of the person concerned in any event. Even if the rules do not express so, it is an elementary principle of natural justice that parties affected by any order should have right of being heard and making representations against the order." In M/s. Southern Painters Vs. Fertilizers and Chemicals Travancore Ltd. and another, , the Supreme Court relied on the earlier judgment in Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and Another, , and held as under :

"11. The deletion of the appellant's name from the list of approved contractors on the ground that there were some vigilance report against it, could only be done consistent with and after due compliance with the principles of natural justice. That not having been done, it requires to be held that appellant was not Justified. In our opinion, the High Court was not justified in dismissing the writ

petition."

17. In *Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and Another*, , the Supreme Court held as under :

"14, The State can enter into contract with any person it chooses. No person has a fundamental right to insist that the Government must enter into a contract with him. A citizen has a right to earn livelihood and to pursue any trade. A citizen has a right to claim equal treatment to enter into a contract which may be proper, necessary and essential to his lawful calling.

15. The blacklisting order does not pertain to any particular contract. The blacklisting order involves civil consequences. It casts a slur. It creates a barrier between the persons blacklisted and the Government in the matter of transactions. The black lists are "instruments of coercion."

16. In passing an order of blacklisting the Government department acts under what is described as a standardized code. This is a code for internal instruction. The Government departments make regular purchases. They maintain list of approved suppliers after taking into account the financial standard of the firm, their capacity and their past performance. The removal from the list is made for various reasons. The grounds on which blacklisting may be ordered are if the proprietor of the firm is convicted by Court of law or security considerations to warrant or if there is strong justification for believing that the proprietor or employee of the firm has been guilty of malpractices such as bribery, corruption, fraud, or if the firm continuously refuses to return Government dues or if the firm employs a Government servant, dismissed or removed on account of corruption in a position where he could corrupt Government servants. The petitioner was blacklisted on the ground of been guilty of malpractices such as bribery, corruption, fraud. The petitioners were blacklisted on the ground that there were proceedings pending against the petitioners for alleged violation of provisions under the Foreign Exchange Regulations Act.

19. Where the State is dealing with individuals in transactions of sales and purchase of goods, the two important factors are that an individual is entitled to trade with the Government and an individual is entitled to a fair and equal treatment with others. A duty to act fairly can be interpreted as meaning a duty to observe certain aspects of rules of natural Justice. A body may be under a duty to give fair consideration to the facts and to consider the representations but not to disclose to those persons details of Information in its possession. Sometimes duty to act fairly can also be sustained without providing opportunity for an oral hearing, It will depend upon the nature of the interest to the affected , the circumstances in which a power is exercised and the nature of sanctions Involved therein.

20. Blacklisting has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for purposes of gains. The fact that a disability is created by the order of blacklisting indicates

that the relevant authority is to have an objective satisfaction. Fundamentals of fair play require that the person concerned should be given an opportunity to represent his case before he is put on the blacklist."

18. The Court again in Joseph Vilangandan Vs. The Executive Engineer, (PwD), Ernakulam and Others, , reiterated the observations made in Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and Another, .

19. Relying on the aforesaid judgments and principles laid down. Mr. Jaitley submitted that the impugned action was vocative of the provision of DCS & D Manual which require the Competent Authority to give a show cause notice to the firm in breach. It also violates para 5.18.4 inasmuch as contracts concluded before the issue of the banning order are not to be affected by the banning order. In the instant case, the banning order has covered supplies of contracts already concluded i.e. entered into. Petitioner has goods to the value of Rs. 47.60 lakhs which were manufactured and are tying ready for dispatch. Counsel submitted that the goods manufactured are to the exact specifications and if these were not lifted they would have no commercial value, Counsel submitted that the petitioner had been denied an opportunity of offering any Explanation. Further, the impugned order gave no particulars of the person whom Mr. Kataria met nor the time, date thereof. The person who is alleged to have made the allegations has not come forward for authentication. No material evidence or affidavit of the concerned officer has been produced or filed. Counsel submitted that the petitioner's company had excellent credentials and has nearly 200 employees on rolls. The banning orders tantamounts to civil death of the petitioner and all those associated with it. Counsel submits that it appeared to be a male fide act at the behest of vested interests i.e. the lobby of Arms dealers canvassing for import of assemblies, to discredit the petitioner. Counsel also submitted that despite the ban order, the Ordnance Factory at Khamaria and others were availing of petitioner's services for servicing their equipment.

20. Learned counsel for the petitioner, Therefore, submitted that the impugned order and cancellation of contracts were not sustainable and deserve to be quashed , as prayed for.

21. Learned Additional Solicitor General Mr. K.K. Sud with Mr. Jayant Bhushan.

Advocate justified the cancellation of orders and the banning order as passed. He submitted that the petitioner's Director had indulged in a corrupt practice by attempting to offer money to a senior functionary of the Ministry. Such conduct and practices deserved to be sternly dealt with. It was a case which called for immediate and swift action. The defense Minister had, Therefore, rightly decided that the contract should be immediately cancelled and the companies of Mr. Kataria should be banned forthwith in all future deals. The entry of Mr. Kataria be also banned in the Ministry as also of the representatives of his company. Mr. Sud submitted that such an action was fully warranted to curb the menace of corruption. He submitted that the incident took place on 14-7-2001. The officer

promptly complained the matter verbally on 14th itself and in writing on 16th July, 2001. as 14th and 15th July. 2001 were holidays. Mr. Sud next contended that in such a case observance of the principles of natural justice, by giving a notice to show cause would have been a mere formality as the Explanation, if any could only be of denial by the petitioner. The Competent authority would have been again left with the choice of either accepting the word of Addl. Secretary or that of the Additional Director of the petitioner. Mr. Sud submitted that the words of a responsible officer, as against that of the petitioner's Additional Director, should be given credence, Mr. Sud further submitted that it would be extremely unlikely rather impossible, for someone calling on a Senior Officer to have carried cash in a packet leaving the same inadvertently, in the drawing room of the officer. He submits that only one conclusion was possible i.e., petitioner's Additional Director was attempting to bribe the officer of the respondent. Mr. Sud submitted that the respondent had relied on clause 21 of Schedule B of the Terms and Conditions, whereunder the power of cancellation could be exercised dehors the powers of banning. The said clause did not provide for any show cause notice to be given prior to cancellation.

22. Learned Additional Solicitor General and the Central Government Standing Counsel Mr, Jayant Bhushan relied on the following judicial pronouncements in support of their contention that the rules of natural justice were flexible and could be excluded in appropriate cases and those of urgency. In R.S. Dass Ors. Vs. Union of India (UOI) and Others, , the Supreme Court observed as under :

"25. It is well established that rules of natural justice are not rigid rules, they are flexible and their application depends upon the setting and the background of statutory provision, nature of the right which may be affected and the consequences which may entail, its application depends upon the facts and circumstances of each case. These principles do not apply to all cases and situations. Applications of these uncodified rules are often excluded by express provision or by implication. In Union of India and Another Vs. Tulsiram Patel and Others, , a Constitutional Bench of this Court considered the scope and extent of applicability of principles of natural justice to administrative actions. Madon, J. summarized the position of law on this point and observed as follows (SCC p. 479, SCC (L & S) p. 753 (at p. 1462 of AIR) (para 101)

So far as the audi alteram partem rule is concerned, both in England and in India, it is well established that where a right to a prior notice and an opportunity to be heard before an order is passed, would obstruct the taking of prompt action, such a right can be excluded. This right can also be excluded where the nature of the action to be taken, its object and purpose and the scheme of the relevant statutory provisions warrant its exclusion; nor can the audi alteram partem rule be invoked if importing it would have the effect of paralysing the administrative process or where the need for promptitude or the urgency of taking action so demands, as pointed out in Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another,"

Again in Shiv Sagar Tiwari Vs. Union of India and others, the Supreme Court observed as follows (Paras 46 and 47. at p. 2736 of AIR):

"48. May it also be stated that it is well settled that requirements of natural justice can be moulded in such a way as to take care of two basic facets of this principle : (1) to make known the nature of accusation; and (2) to give opportunity to state the case, as accepted by this Court in Hira Nath Mishra and Others Vs. The Principal, Rajendra Medical College, Ranchi and Another, . In The Bihar School Examination Board Vs. Subhas Chandra Sinha and Others, , it has been even held that no hearing is required to be given to the candidates before cancelling the examination where mass copying was indulged, if a case for the same was otherwise made out. Present is also a case of large scale out of turn allotments, and so, on principle no hearing at all might have been given. But we did not go to that extent and gave even personal hearing to many among those who chose to appear pursuant to the notice published in the newspaper, which alone was feasible. All the allottees liable to be adversely affected being in Delhi and being well educated, newspaper publication was definitely sufficient to enable them to know what they must have been informed. Indeed, the employees concerned were knowing much aliunde also.

49. Natural justice is after all "no unruly horse, no lurking land mine" as characteristically stated by Krishna Iyer, J. in The Chairman, Board of Mining Examination and Chief Inspector of Mines and Another Vs. Ramjee, . Its unnatural expansion without reference to these realities can be "exasperating" as observed by the learned Judge. It is also worthwhile to remember, as stated in para 24 of S.L. Kapoor Vs. Jagmohan and Others, that where on admitted or indisputable facts only one conclusion is possible, the Court may not compel the observance of natural justice, as it would be futile to do so. The real point for determination for us has been whether the incumbent got the allotment as per his turn or he jumped the queue, on the face of our rejection to depart from the existing policy requiring eviction of those also included in categories VI and X. This we got examined well and have felt satisfied at the work undertaken by the Committee in this regard."

23. Learned counsel also placed reliance on State of Maharashtra and Others Vs. Prabhu, as also State of Karnataka Vs. Surender Kotiankar, . In State of Maharashtra (supra) the Court observed that where the Government or an authority passes an order contrary to rules or law, it becomes amenable to correction by the Court in exercise of writ jurisdiction. But one of the principles inherent in it is that the exercise of power should be for the sake of justice, then the Court may restrain from exercising the power. One of the yardsticks for it is if the quashing of the order results in greater harm to the society, then the Court may restrain from exercising the power.

In M.P. Mittal Vs. State of Haryana and Others, , the Court observed that it has always power to refuse relief where the petitioner seeks to Invoke its writ jurisdiction in order to secure a dishonest advantage or to perpetuate of unjust

gain. Counsel Therefore, submitted that the present case being one where the petitioner's Director had indulged in corrupt practices, interest of justice and public interest demanded that the Court does not come to the petitioner's rescue in the exercise of writ jurisdiction even if it felt that the order has been passed contrary to the provisions of DCS & D Manual or the principles of natural justice had not been fully observed. Lastly, learned counsel relied on the judgment passed by this Bench in Kamlesn Aggarwal v. Union of India. In the cited case, the agencies given to the petitioner therein by the National Savings Organisation and the agency for sale of National Saving Certificates, had been terminated without any notice or an opportunity being given to the petitioner to explain her case. Petitioner had urged violation of principles of natural justice. This Bench, it was urged, while relying on the observations in Shiv Sagar Tiwari Vs. Union of India and others, case dismissed the writ petition, keeping in mind interest of the small depositors and public at large.

24. Let us consider firstly whether the facts and circumstances of this case would bring it within the class of cases where the Court would not compel observance of the rules of natural justice. Based on dictum as laid down in R.S. Dass Ors. Vs. Union of India (UOI) and Others, , S.L. Kapoor Vs. Jagmohan and Others, and Shiv Sagar Tiwari Vs. Union of India and others, , the position which emerges is that the Court would not compel observance of rules with natural justice in cases :

(i) where giving of notice would obstruct taking of prompt action and the matter is urgent and requires prompt action. Inaction or delay would paralyse the administrative process/machinery.

(ii) where on indisputable or admitted facts, only one conclusion was possible and it would be futile to issue a writ or compel observance of principles of natural justice.

(iii) where observance of principles of natural justice is excluded by express provisions of statute or by implication.

Secondly, whether the petitioner ought to be denied relief in the exercise of writ jurisdiction even though the impugned order was not sustainable on the ground, that quashing of the order and granting relief under writ jurisdiction, would do greater harm to society and would be prejudicial to public interest.

25. For consideration of the above, some of the essential facts and circumstances may be recapitulated :--

(I) Petitioner company, which has a small manufacturing unit had been registered with the Ministry of defense for over a decade and a half. It has developed expertise in indigenous research and development and claims credit for developing and producing hi-tech equipment and spares required for the equipment in use by the armed forces. Petitioner's assertion is that it has developed Variable Speed Gears assemblies, required for the Bofor Guns.

Admittedly, the respondents had been considering the indigenous replacement of the said assembly and had invited tenders thrice, in which the petitioner was the lowest bidder. Petitioner claims that the cost of Variable Speed Gears as developed by the petitioner for the total number of Bofor Guns would only be Rs. 150 crores as against the alternate replacement by import of electrical assembly, which would cost Rs. 1500/- crores. Petitioner, Therefore, claims that the highly resourceful and influential import lobby of arms dealers, engaged in the import of equipments, are opposed to the petitioner's pioneering efforts for indigenisation and want to scuttle the entire effort. Petitioner is a recipient of two national awards for successful indigenisation of defense stores. Petitioner undoubtedly had been successful in obtaining an order of supply of 61 VSGs worth about Rs. 5,43 crores.

There is yet another aspect. Petitioner's former employee Mr. Naresh Kataria had ceased to be in employment w.e.f. April, 2000. He had been appointed as Additional Director w.e.f. January, 2001 to look after the petitioner's interests in Confederation of Indian Industries (CII) and to deal with select vendors. Mr. Naresh Kataria individually was member of core group of CII, dealing with defense industry. Mr. Kataria had also incorporated and floated his own company M/s. K.G. Global Pvt. Ltd. for dealing in defense goods. Petitioner has also produced on record an order placed by respondents for supplies, on M/s. K.G. Global Pvt. Ltd. Petitioner's case is also that Mr. Kataria was thus engaged in promoting his own company and would have his own private agenda.

26. Coming to the alleged incident of 14-7-2001, petitioner's case is that none of its Directors including Mr. Kataria. Officers or personnel had been deputed or authorised to offer bribe, as claimed by the respondent.

The cancellation of all orders as well as banning order for future contracts and dealings against the petitioner company was unwarranted. The said orders had been passed without granting an opportunity to the petitioner to show cause against it. Petitioner would have explained and set out its defense. Petitioner claims that it neither gave any instructions nor authorised the attempt to bribe. The incident as per the Respondent occurred on 14-7-2001. However, the formal order was placed on the petitioner company on 18-7-2001.

Curiously, the perusal of the records, including the complaint, as lodged by the concerned functionary, shows that the said Mr. Kataria on the previous afternoon i.e. on 13-7-2001, had thanked the official for the award of the contract. Mr. Kataria is reported to have said that this would enable the company to contribute to the defense industry over a long period of time. This tends to show at least that the decision to award contract to the petitioner was already taken, even though order may have been formally issued on 18-7-2001. Petitioner's submission is that since the decision to place the order was already taken as per respondent there was no occasion for petitioner to offer inducement or bribe, Alternatively, if the decision to award was taken on 18-7-2001, then it was taken despite the alleged Incident of 14-7-2001.

27. In view of the foregoing discussion and the undermentioned factors, namely :--

(i) Petitioner's sustained effort to develop indigenously the assembly for VSGs for the Bofor guns and its successful testing and placement of an order on the petitioner, the possible opposition to such a move by those , interested in importing the electrical assembly, reported to be costing Rs. 1500/- crores as against the Rs. 150/- crores for the indigenously developed VSGs assemblies, the resultant saving in foreign exchange etc. are factors which could result in petitioner antagonizing the lobby of arm dealers engaged in importing equipment and spares.

The possible role of Mr. Kataria, who had ceased to be in petitioner's regular employment and had set up his own company, on whom an order had been placed by respondent the possibility of said Mr. Kataria having his own agenda or acting otherwise than on behest of petitioner cannot be ruled out. The non-lodging of a report or holding an enquiry into it has resulted in the incident not being thoroughly investigated and truth or falsity of the allegations not being established. This was not a case of an emergent nature, where affording an opportunity to explain, would have paralysed or prejudiced the administration.

28. In the above facts and circumstances, the decision taken by the defense Minister of cancelling all contracts and banning of dealings with the petitioner firm without giving an opportunity to show cause to the petitioner firm, cannot be sustained. This was certainly not a case, which could be called an iron and shut case, where only one conclusion as to the guilt of the petitioner was possible. This was certainly a case, where an Explanation from the petitioner ought to have been called for to exactly determine the participative role of the petitioner. Whether Mr. Kataria had acted on behalf of the petitioner or was pursuing his own agenda etc. needed to be enquired into.

29. Coming to the cases cited by the respondent it would be seen that in Shiv Sagar Tiwari Vs. Union of India and others, , the Supreme Court had noted that there were numerous cases of out of turn allotment and public notice in newspapers had been taken out and those who were going to be affected could have availed of the chance by appearing in response to the public notice. In the said case, the requirement of natural justice was said to have been satisfied by public notices being taken out and without individual service of notices. As noted earlier, it is also not one of those cases, as visualized in R.S. Dass Ors. Vs. Union of India (UOI) and Others, , where following the principles of natural justice would have had effect of paralysing the administrative process or where the need for promptitude or urgency of taking action, so demanded.

As for the case of Kamlesh Aggarwal v. Union of India and another (C.W. No. 3510/ 2001), decided by this Bench, wherein the termination was upheld without giving a show cause notice, the same is distinguishable on facts. In Kamlesh Aggarwal's case, an FIR had been duly registered and a charge-sheet under

Sections 406/420, IPC had been filed against Kamlesh Aggarwal after due investigation. Not only this, Kamlesh Aggarwal had remained in custody for a period of nearly six months. As per the terms the award of agency, it was required to be carried out by the agent personally or under personal supervision. The absence and non-availability of petitioner therein for such a long period, was by itself a sufficient reason to terminate the contract and nothing more was required. Respondent had also made an enquiry, which revealed diversion of investment and other breaches of terms and conditions in the operation of the agencies. In these circumstances, and to maintain public confidence in the working of the public schemes, the termination of the agencies without show cause notice was upheld by this Bench. In the instant case, no inquiry or investigation had been carried out.

In view of the foregoing discussion and keeping in mind the judicial pronouncements of the Supreme Court and the principles enunciated in *S.L. Kapoor Vs. Jagmohan and Others*, , *Raghunath Thakur Vs. State of Bihar and Others*, and *Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and Another*, , the impugned order dated 6-8-2001 and all other consequential orders cancelling the contracts of the petitioner and banning the dealings with the petitioner issued by Subordinate/offices/agencies department/authorities under the Ministry of defense without issuance of show cause notice and giving an opportunity to the petitioner to explain its case, are hereby quashed and set aside. Respondent shall, however, be at liberty to issue fresh show cause notices or take action in accordance with the terms and conditions of the contract on the same cause of action, for alleged breach/ violation of the terms and conditions of the contract.

The writ petition is allowed in the above terms.