

(2015) 04 BOM CK 0263

In the Bombay High Court

Case No : Writ Petition No. 1563 of 2015

Universal Transport Service and Others

APPELLANT

Vs

Maharashtra State Warehousing Corporation and Others

RESPONDENT

Date of Decision : 30-04-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2015) 04 BOM CK 0263

Hon'ble Judges : B.P. Dharmadhikari, J;S.B. Shukre, J

Bench : Division Bench

Advocate : N.A. Padhye, for the Appellant; N.R. Saboo, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

B.P. Dharmadhikari, J.—By this petition, filed under Articles 226 and of the Constitution of India, petitioner -227 Firm through its partners seeks a writ for quashing and setting aside the show cause notice dated 07.03.2013 and an order dated 16.03.2015 blacklisting it, as also its communication dated 17.03.2015 and 19.03.2015. A relief of declaration that rejection of financial bid submitted by the petitioner in a tender floated meanwhile is illegal and bad, is also sought. This court has while issuing notice in the matter on 24.03.2015, observed that work order if issued, shall be subject to its order in the matter. On 01.04.2015, this Court granted stay to the work order dated 19.03.2015 till 08.04.2015. On 08.04.2015, this Court allowed amendment to writ petition and gave parties time till 10.04.2015 to complete their pleadings. On 10.04.2015, parties were heard and matter came to be closed for passing of orders. While doing so, stay order granted on 01.04.2015 has been recalled and work resumed by respondent No. 4 has been subjected to further orders of this Court in the matter and at the risk of respondents.

2. Respondent No. 1 before this Court is the Maharashtra State Warehousing Corporation, which invited tender for transporting food grains. Respondent No. 2

is its Chairman, while respondent No. 3 is Regional Manager at Nagpur. Respondent No. 4 is the other contractor company to whom work has been allotted added as party on 08.04.2015.

3. We have heard Shri N.A. Padhye, learned Counsel for the petitioner, Shri N.R. Saboo, learned Counsel for respondent Nos. 1 to 3 and Shri R.N. Dhorde, learned Senior Counsel with Shri Kute and R. Dhande, learned Counsel for respondent No. 4. By their consent the matter is taken up for final disposal by issuing Rule and making the same returnable forthwith.

4. Respondent Nos. 1 to 3 had floated an e-tender for handling and transportation of food grains at its Chandrapur centre. Petitioner being the lowest bidder got it for a period from 01.12.2010 to 30.11.2012. It was extended thereafter till 15.12.2012. Petitioner was supposed to unload food grains at Railway siding and transport it to godowns and warehouse of respondent Nos. 1 to 3, where it was to be cleaned and stored. Petitioner was supposed to get that work done through employees provided by Mathadi Board. It is its contention that Mathadi Board supplied inadequate and incompetent labour and had not paid any attention to the request made by the petitioner to provide additional labour force. Godowns where cleaning of food grains was to be done, were also in bad shape and needed repairs. Still it completed the work to the satisfaction of respondent Nos. 1 to 3.

5. On 04.09.2012, petitioner came across another tender notice for very same work in Chandrapur, Wardha and Gadchiroli districts. Later on Chandrapur centre was deleted without any reason. On 13.10.2012, fresh tender was issued for Chandrapur and as there was single offer, respondents extended the last date initially upto 08.11.12 and thereafter upto 17.11.2012. Petitioner had submitted his bid on 01.11.2012, and on 17.11.2012, he submitted a fresh but reduced bid. Tenders were opened on 11.12.2012, but, petitioners bid was not considered. Respondents accepted bid of respondent No. 4. Petitioner lodged his protest on 14.12.2012, inviting attention to government resolution dated 26.11.2012, and pointed out to the respondent Nos. 1 to 3 their obligation to consider the lowest tender. Petitioners contention was rejected by respondent Nos. 1 to 3 on 26.11.2012 itself. Thereafter petitioner got knowledge that respondent Nos. 1 to 3 accepted the rates quoted by respondent No. 4, though it was 186% above the scheduled rate. Petitioner again lodged protest by sending its representation to the State Government as also to the Food Corporation of India.

6. Petitioner submits that it was deliberately kept away from this tender process. Food Corporation of India asked for re-tender on 03.01.2013 as rates quoted were high,. Respondent Nos. 1 to 3 who felt aggrieved by this act and stance of petitioner, issued it a show cause notice dated 07.03.2013 and it was blacklisted on 04/06.04.2013. Petitioner states that the show cause notice made reference to certain reports of respondent No. 3, but, its copy was not made available to petitioner. Due to this blacklisting, petitioner was kept away from the bidding process. Petitioner points out that earlier also a show cause notice dated

04.07.2011 was served upon it, only on the basis of a newspaper report. Petitioner contends that in 2013, this 2011 issue was unnecessarily again raised. Petitioner sent reply to the show cause notice dated 07.03.2013 on 22.03.2013, and impugned order dated 4-6/04.2013 was questioned by it in Writ Petition No. 2554/2013, before this Court on 14.08.2013. This Court quashed and set aside that order, as action was taken without giving any opportunity to the petitioner. Respondent Nos. 1 to 3 agreed to hear the petitioner and hence, on 14.08.2013, the impugned order of blacklisting was set aside. On 11.09.2013, petitioner remained present for hearing before the respondents. It filed written submissions on that day. On 28.01.2014, respondents passed fresh order blacklisting petitioner and withholding its security deposit and debarring it from participating in any of the tenders in next two years. According to the petitioner, this order did not contain any application of mind to reply filed in detail by it. After this order, in the month of October, 2014 respondents released the balance amount of the bills of petitioner. In December, 2014 respondent Nos. 1 to 3 floated a tender for handling and transportation of goods from railway station to its godowns for Chincholi, Chandrapur, Wardha and Malkapur centre. The last date for submitting tender was 22.02.2015. Clause 11 of the said e-tender does not permit blacklisted contractor to compete. Petitioner challenged the said order dated 28.01.2014 in Writ Petition No. 7187/2014 and by interim order, this Court allowed the petitioner to participate in tender process. During the pendency of said Writ Petition, another e-tender was issued for period 2015-17 for handling and transportation of food grains for Chandrapur and Malkapur centers. Last date for submission of those tenders was 12.02.2015. Petitioner applied for it on 12.02.2015 and after completing all the formalities submitted the bid. It was also given acknowledgment. Bids were to be opened on 16.02.2015.

7. Petitioner requested this Court in Writ Petition No. 7187/2014 to allow it to participate in tender process. Respondent Nos. 1 to 3 then made a statement that tenders would not be processed till 20.02.2015. This was accordingly recorded by the Court in its order dated 18.02.2015. Writ Petition was allowed on 24.02.2015. On that date this Court clarified that though the matter was remitted back to respondent No. 2 for passing of reasoned order, it had not restrained the respondents from proceeding further with the tender process. In the background of this order dated 24.02.2015, petitioner was called for hearing on 27.02.2015, when petitioner submitted additional submissions. On 17.03.2015, at around 3 p.m. petitioner received e-mail informing it that its bid was rejected during technical evaluation due to administrative reasons. Petitioner wrote back on 18.03.2015 and made enquiries on 19.03.2015. Petitioner was informed that an order blacklisting it was passed on 16.03.2015, and the same was sent by post. Case of petitioner is, respondents did not proceed further with the tender process after 24.02.2015 till 16.03.2015 only to eliminate the petitioner from the process. Thereafter instant writ petition came to be filed on 23.03.2015 and its filing was communicated to the respondents through e-mail. It is further contended that impugned order dated 16.03.2015 issued by the

respondents and sent by them through post to petitioner differs from one sent vide e-mail. According to the petitioner, said order was ready on 07.03.2015 itself.

8. Shri Padhye, learned counsel appearing on behalf of petitioner submits that in the impugned order dated 16.03.2015, material subsequent to issuance of show cause notice also finds consideration. Defence expressly raised on this line while giving reply is pointed out. Show cause notice dated 07.03.2013 on the basis of which action has been taken is read out to show communication dated 14.02.2013 and submission of a report in obedience thereto on 27.02.2013 by the Regional Manager to point out that this report finds consideration in the impugned order but its copy was never made available to it.

9. He also points out that though non-payment of wages of Mathadi labour is taken as a ground, as bills of petitioner were not cleared and entire payment has been made in October, 2014, this ground is also without any substance. Attention is invited to certificate dated 20.06.2013, by which Mathadi Board declared that petitioner had cleared all its dues and no amount was outstanding. It is submitted that petitioner fulfilled the terms and conditions as noted in communication dated 07.05.2014 sent by the In-charge Deputy Manager, Chandrapur to respondent No. 1 at Pune.

10. According to Shri Padhye, learned counsel, though respondent Nos. 1 to 3 are aware of the procedure to be followed, with oblique motive, initially without extending any opportunity to the petitioner, a order blacklisting it came to be passed on 04-06/04/2013. After it was set aside, though opportunity of hearing was extended, a second order of blacklisting was passed on 28.01.2014 without recording any reasons. This was done deliberately to keep the petitioner out of consideration for long time. Last order then came to be passed on 16.03.2015, again with a view to eliminate the petitioner from the competition. The material not referred in show cause notice and subsequent to its date, was deliberately included to see that the Court quashes and sets aside the said order and matter is remitted back to itself for fresh consideration. According to him, all this was done deliberately with a view to cause prejudice to the petitioner.

11. He argues that the defence of the petitioner about inadequate number of Mathadi labour or not releasing payments to it, have not been discussed. Petitioner made complaints to Mathadi Board against said labour and also sought additional work force, but, Mathadi Board did not add to workers and did not allow the petitioner to engage outside labours, though respondent No. 4 was given that permission. The petitioner had informed about non-payment of wages to respondent Nos. 1 to 3 and labour problems faced by it. Cheques issued by the petitioner for paying wages of Mathadi labours were dishonoured, as respondent Nos. 1 to 3 did not release bills, however, lateron very same cheques have been honoured. On the aspect of cleaning of food grains, he submits that about 7000 M.T. of wheat lying at Wardha from 2009-10, came to Chandrapur in 2012. The stock was in very bad condition. A show cause notice was issued by

the respondent No. 1 to its Junior Superintendent in connection with this stock of wheat on 8.11.2012 itself. It mentions that wheat received at Chandrapur from Wardha was infested and there was powder formation. About 50 bags were badly damaged. The said wheat was valued at Rs. 2,71,94,500/-. Godown at which cleaning work was to be done and this wheat was to be stored was inspected by the Area Manager of FCI, who found that conditions prevailing therein were not proper and fit for healthy storage. Large quantity of stacks had major and minor pest infestation. Wheat crop of the year 2012-13 was also suffering from waste flour formation and due to over all un-hygenic conditions, said depot was found worst. Negligence of storing superintendent was found the real cause for this position. FCI therefore, withheld an amount of Rs. 2,66,93,707.60/-, which according to it was cost of 1749.26 M.T. of wheat for crop of year 2009-10. This quantity was reflected as closing balance for September, 2012. According to Shri Padhye, learned counsel looking to the conditions of godown, it was not possible even to undertake cleaning operations effectively.

12. He points out that in so far as damage to food grains on account of rains is concerned, there were heavy rains on 25.06.2011 and the damage was reported only on the basis of newspaper report. There was and is no other material. Work of petitioner at Arjuni Morgaon depot never formed part of show cause notice and as such, could not have been considered to blacklist it.

13. Shri Padhye, learned Counsel has invited our attention to stand of petitioner in reply to show cause notice to show that it was not allotted proper labour for the job. He further invites our attention to reply dated 10.07.2011 to demonstrate that rains came for short time, but, wheat was not damaged. This was certified by the Resident Deputy Collector and officers of respondents. He has also submitted that in railway rake, 0.13 M.Ts. of wheat were received in excess and it was also properly accounted for by the petitioner. Respondents who any how wanted to eliminate the petitioner, paid no heed to various representations made by it and took no steps to resolve the problems faced by him. He also submits that Mathadi Board never took any action against the petitioner.

14. He submits that there was no delay in filing of the second petition before this Court against the order of blacklisting. After orders passed on 28.01.2014, payments were released to petitioner in October, 2014. Respondent Nos. 1 to 3 were then assuring that the petitioner would be restored as bidder by withdrawing the said order, and hence, petitioner did not approach this Court immediately. However, when tender was published in December, 2014 petitioner was constrained to approach this Court.

15. The rates quoted by respondent No. 4 were exorbitant and petitioner expressed readiness and willingness to work at 1.55% above the scheduled rate. He invites attention to various complaints against respondent No. 4 by the Trade Union to submit that respondent No. 4 employed outside or private labour, clandestinely in night hours to expedite the work and to avoid the liability of

payments of demurrage to railways. Attention has been invited to various complaints made by the said Union i.e. Rashtrawadi General Kamgar Santh, (Mathadi) against respondent No. 4. He has also invited attention to document at Annexure-PP1, filed with additional affidavit on 16.04.2015, to demonstrate how independent contractors like Sunil R. Mantri and respondent No. 4 have used trucks of each other to comply with the tender requirement of possessing 30 trucks with associates and 10 trucks of its own. According to him exorbitant rates have been paid to respondent No. 4 by respondent Nos. 1 to 3 and FCI has taken its note on 03.01.2013. This led to cancellation of contract between respondent Nos. 1 to 3 and respondent No. 4 necessitating fresh tender invitation.

16. Shri N.R. Saboo, learned Counsel appearing for respondent Nos. 1 to 3 relies upon the material on record to substantiate the action of blacklisting. He submits that respondent No. 4 was also having contract earlier at Chandrapur and 5 to 6 notices were issued to it by FCI alleging transit loss. He submits that the said transit loss was explained by respondent No. 4 as said loss took place during unloading operations at Railway siding. In this background, he points out that along with additional affidavit, petitioner has submitted documents showing complaints against said respondent. Those complaints are based upon mostly paper news or then on complaints by Labour Union. Chart submitted by respondent No. 4 denying transit loss is also pressed into service by him. He submits that the alleged complaints against respondent No. 4 by the Trade Union are not addressed to respondent Nos. 1 to 3, and they are on the subject of wage revision. Mathadi rates have already been revised by the Mathadi Board on 22.07.2014, w.e.f. 01.04.2014, as such there is no loss to respondent Nos. 1 to 3. He further submits that paper news also does not carry any merit. He, however, adds that if there is any loss found, it shall be recovered from respondent No. 4.

17. While dealing with petitioners blacklisting, he submits that the petitioner had contract for Chandrapur from 01.12.2010 to 15.12.2012 and for Arjuni Morgaon from 01.10.2011 to 30.09.2013. There were 3 types of complaint against it; first one was about non-payment of wages to Mathadi labour and its levy to Board; second one was about not cleaning food grains; while third one was relating to damage to food grains. It also got published items in newspaper which spoiled image of respondent No. 1 Corporation. It was initially blacklisted on 04.04.2013, and then after hearing on 28.01.2014. This blacklisting was to continue for a period of two years. Last order has been passed on 16.02.2015. Thus, when tender was awarded to respondent No. 4, petitioner was already blacklisted.

18. Writ Petition No. 7187/2014 was not filed within reasonable time of blacklisting, but, it came to be filed after 11 months i.e. on 18.12.2014, and only with a view to create obstacles in tender process. The tender process then undertaken was required to be canceled and fresh tenders were invited on 23.01.2015. As per terms and conditions thereof, since petitioner was blacklisted, it was not qualified to participate. Hence participation of petitioner in

that tender process or receiving computer developed/generated acknowledgments by itself does not cloth it with any legal right. Moreover, Writ Petition No. 7187/2014 was very much pending, hence, on 16.02.2015 technical bids of all were opened. After order of this Court dated 24.02.2015, petitioner was heard on 03.03.2015 and fresh orders blacklisting it were passed for period of one year on 16.03.2015.

19. Shri Saboo, learned Counsel for respondents has invited our attention to the impugned order dated 16.03.2015, to show how it proceeds systematically after framing issues. Show cause notice looked into was dated 06.07.2011. In April/ May, 2011, Mathadi Board had requested respondent No. 1 to pay wages of Mathadi labours directly to it, as suggested by the petitioner and accepted by the Mathadi Board. Reference to cheques issued by the petitioner to Mathadi Board, its dishonour, two similar instances while performing contract for Arjuni Morgaon depot were all relevant and have been therefore, looked into. On 26.08.2012, petitioner was informed about powder formation in wheat stock at Chandrapur and to get it sieved immediately. Petitioner was informed that he had stopped the work of sieving. This was reported on 22.10.2012, and the visit by the team and the quality or standard of wheat stock was also pointed out to it. Again on 29.10.2012, it was asked to clean wheat stock properly and not to avoid its obligations. It was called upon to complete this exercise within one month. As petitioner failed to do so, the action was rightly taken against him.

20. Our attention is also invited to show cause notice dated 29-30/06/2011 on damage caused to several thousand quintals of wheat due to rains at Chandrapur on 25.06.2011. Petitioner did not arrange for necessary number of trucks and labour to unload the rakes. As rains were expected, petitioner was advised not to unload the wheat stock on platform. Petitioner disregarded those instructions and also failed to cover the unloaded stock so as to save it from rains. It did not collect wheat on goods platform or in godowns, and did not discharge his obligation. Similar show cause notice was again required to be issued for not paying Mathadi labour working at Arjuni Morgaon on 11.01.2012. On 27.02.2013, Senior Regional Manager, Nagpur Region informed that petitioner was called upon to sieve and separate wheat stock at Chandrapur on various occasions between February, 2012 to December, 2012. The delivery of said stock was refused by the District Supply Officer, Chandrapur. In February, 2013 about 1173 M.T. of wheat stock was lying at Chandrapur, and after selection of respondent No. 4 as contractor, petitioner out of vengeance got a damaging news item published. After publication of that news item, local Drugs and Food Administration seized 1173 MT stock and after testing report about it, stocks were found not fit for human consumption. It was reported that petitioner had avoided to discharge its duties.

21. Shri Saboo, learned Counsel appearing on behalf of respondent Nos. 1 to 3 submits that thus, taking over all view of the matter, the order of blacklisting cannot be faulted with.

22. Shri Dhorde, learned Senior Counsel with Shri Kute and Shri Dhande, learned Counsel representing respondent No. 4 points out judgment reported at Patna Regional Development Authority and others Vs. M/s. Rashtriya Pariyojana Nirman Nigam and others, (1996) 5 AD 86 : AIR 1996 SC 2074 : (1996) 2 ARBLR 270 : (1996) 6 JT 113 : (1996) 4 SCALE 488 : (1996) 4 SCC 529 : (1996) 2 SCR 377 Supp , to urge that on 12.01.2012, petitioner was not qualified. He also invites attention to various notices served upon petitioner on 29.06.2011, 22.06.2011 and 02.07.2011. In so far as the complaint against respondent No. 4 by the Trade Union is concerned, respondent No. 4 submits that the office bearer of the said Trade Union is a close relative of petitioner. It is further submitted that the total contract awarded to respondent No. 4 is worth Rs. 13 Crores only, and hence, contention of petitioner that respondent No. 4 would make profit of Rs. 10 Crores is ridiculous. Respondent No. 4 had offered rate of 359% above the rate quoted in tender. Petitioner has now offered rate at 155% after releasing it's diminishing chances due to blacklisting and with a view to unsettle the contract, anyhow. He relies upon a judgment reported at Jagdish Mandal Vs. State of Orissa and Others, (2008) 2 CTLJ 538 : (2007) 14 SCC 517 : (2006) 10 SCR 606 Supp . He also relies upon affidavit filed by respondent No. 4, particularly paragraph No. 11 to demonstrate that rates offered by it were not exorbitant and how rates in adjacent establishments of respondents from 1 to 3 vary from 288% to 551% above the tendered rates. He submits that, petitioner was served with about 26 notices and petitioner has not paid Mathadi labour at all. It did not pay any attention to the notices and opportunities made available and as such action of blacklisting taken against petitioner is not unwarranted. The impugned order particularly paragraph No. 4 is pressed into service to show how it did not complete the cleaning work of food grains and because of it FCI has withheld amount of Rs. 53,65,892/-, otherwise payable by it to respondent Nos. 1 to 3. This incomplete work was done by respondent No. 4, and as such, this fact itself sufficiently proves the propriety of blacklisting. Reply of respondent No. 4 in paragraph No. 40 is relied upon to demonstrate this cleaning work done by the said respondent. Letter dated 26.04.2013, sent by the respondent Nos. 1 to 3 to respondent No. 4 to clean 25000 bags of wheat within 8 days, is also pressed into service to substantiate this contention. Agreement of petitioner with respondent Nos. 1 to 3 is relied upon to demonstrate how rates offered even by the petitioner were above the tendered rate. It is submitted that these rates were for period 2012 to 2014. Revised rates of wages determined by Mathadi Board on 17.07.2013 are also pointed out with certificate of Mathadi Board that respondent No. 4 is regular in paying wages. A chart about work done by respondent No. 4 from 23.03.2015, prepared on 01.04.2015 is also relied upon by Shri Dhorde, learned Senior Counsel. He therefore, submits that with oblique motive issue of blacklisting has been intermixed with allotment of tender to respondent No. 4.

23. Shri Padhye, learned Counsel for petitioners in reply argument states that profit made by respondent No. 4 would be about Rs. 5 Crores and petitioner is

ready and willing to work at rate offered by it. He further states that complaints against respondent No. 4 are by a Trade Union and none of its office bearers, including the President are related to petitioner. He also submits that the petitioner is ready and willing to file an affidavit to this effect.

24. Facts and arguments noted by us supra show that the petitioner has been blacklisted on 28.01.2014 for a period of two years. Though the orders of blacklisting were set aside by this Court on two occasions, lastly i.e. on 16.03.2015, it has been again blacklisted. Thus, at all relevant times, petitioner was blacklisted. It is not in dispute that a blacklisted contractor is not eligible to participate in tender process. Petitioner has not pointed out any interim orders which enabled it to participate in the impugned tender process. The arguments that orders of this Court setting aside the blacklisting relate back to the date of order of blacklisting may sound attractive, but, the contracts entered into by respondent Nos. 1 to 3 with others in the meanwhile cannot be undone. Similarly, if after giving opportunity of hearing as ordered by this Court, the petitioner is again disqualified/blacklisted, it may again relate back to the date of original order.

25. The Impugned order dated 16.03.2015 shows that it is in furtherance of a show cause notice dated 02.07.2011, as also 04.07.2011 and 30.06.2011. First show cause notice dated 30.06.2011 is issued by the Regional Manager at Nagpur while notice dated 02.07.2011 and 04.07.2011 are by Head Office. It also carries reference to Show cause notice dated 20.02.2013 issued by Chandrapur and Gadchiroli District Mathadi Labour Board to the petitioner on 20.02.2013 and a final show cause notice served upon the petitioner on 07.03.2013. The fact that the petitioner was given contract at Chandrapur from 01.12.2010 to 20.11.2012 finds mention in this final order. As grievance of the petitioner is, that the material not contained in show cause notice has been used to black list him, it will be proper to consider the last of show cause notices i.e. Show cause notice dated 07.03.2013 first. It carries reference to earlier show cause notices and correspondence between the parties. It points out that Mathadi Board has in its show cause notice dated 20.02.2013 informed the petitioner that cheques issued by him towards wages of Mathadi labours were dishonoured. The petitioner was called upon to show cause as to why Criminal Complaint/ First Information Report should not be filed against him but, it failed to take any cognizance thereof. As wheat got damaged due to rains, a show cause notice was issued to him on 25.06.2011 and along with it, a show cause notice for not paying wages for Mathadi labours was also served. Because of petitioner's negligence, a News item was published in the Newspaper on 27.06.2011 and in relation to it also a show cause notice was issued. The petitioner did not pay wages and levy of Mathadi labours and when Respondent Nos. 1 to 3 inquired with Mathadi Board, it was informed that two months wages and levy was in arrears. The reply given by the petitioner was not satisfactory and hence final warning was served upon it. Even after this, a show cause notice dated 07.11.2012 was required to be issued for not paying Mathadi labour

charges and levy in relation to work at Arjuni Morgaon. The news item also caused loss of reputation to the respondents. This show cause notice also mentions receipt of 7000 Tonnes of wheat from Wardha depot at Chandrapur depot and instructions dated 28.01.2012 to the petitioner to get it cleaned. Further instructions to expedite the work dated 29.10.2012 also find mention but, petitioner cleaned only 887 MT (17759 bags) of wheat. The Regional Manager on 14.03.2014 had called for report after inquiry and said report was received on 27.02.2015. The report indicated that the petitioner was negligent in handling his work. In the background of dishonour of cheques issued to Mathadi Board towards months of November and December 2012, petitioner was called upon to explain why its name should not be put in black list. This show cause notice, therefore, mentions not only work at Chandrapur godown but, also work at Arjuni Morgaon godown. The reply to this show cause notice is submitted by the petitioner on 22.03.2013. This reply shows an averment that facts mentioned in show cause notice were false and it was issued with malafide intentions to damage reputation of the petitioner. It is mentioned in this reply that staff by name Srinivas Ramgiri expelled from work by the petitioner had sought certain information under RTI from the respondents for irregularities in handling tender for the year 2012-14 and because of that demand, show cause notice came to be served upon the petitioner long after completion of tender work i.e. after 15.12.2012. It is further submitted that the petitioner completed contract work to the satisfaction of the respondents and payment to be released by Warehousing Corporation could have been used by it to clear the wages and levy charges of Mathadi Board. As bills were not released within time, there were some difficulties. It is further mentioned that news item published in relation to damage to wheat because of alleged negligence of the petitioner was not depicting correct picture. The petitioner alleges that Mathadi workers were not carrying out their work efficiently and workers were not available in adequate number with Mathadi Board. The Additional Collector present on the spot did not notice any irregularity in the work of the petitioner. It was ready and willing to clean the wheat and as Mathadi Board could not provide labour, work was lagging behind. The space available in godown was inadequate, unsuitable and hence, not sufficient to carry out the work of cleaning of grain efficiently. The officers of respondents had found work done by the petitioner to the mark, considering these problems.

26. Thus, this show-cause notice and reply thereto reveal that the final order dated 16.03.2015 cannot be viewed only in the backdrop of first show cause notice or then the order of black listing dated 04/06.4.2013. The impugned order shows a finding that on 11.09.2013, respondent Nos. 1 to 3 deposited amount of wages and levy for the period from May, 2013 to August, 2013, totaling to Rs. 2,65,396/- with the Mathadi Board, Chandrapur. Mathadi Mandal, Bhandara on 29.10.2013 pointed out non payment for the month of September, 2013 for Arjuni Morgaon godown. Respondent Nos. 1 to 3 deducted that amount of Rs. 64,647/- from the security deposit of petitioner and paid it to Mathadi Board. The

said communication dated 29.10.2013 is produced before the Court by respondents. Contention of petitioner that this work at Arjuni Morgaon or non payment of Mathadi wages being subsequent to first show cause notice and order of blacklisting dated 28.01.2014, cannot be looked into, is misconceived and erroneous.

27. At this stage it is necessary to look into the order dated 4/6.04.2013 passed by respondent Nos. 1 to 3, by which the petitioner was first blacklisted for a period of three years. By said orders, his payments were withheld and because of adverse news item which affected the reputation of respondent Nos. 1 to 3, he was disqualified from participation in any tender for a period of three years. This order is in furtherance of show cause notice dated 07.03.2013 and events mentioned supra, which are subsequent to said date, could not and did not enter zone of consideration at that juncture.

28. Impugned order dated 16.03.2015, contains reference to total 20 documents, out of which first 13 are prior to April, 2013. 13th document is the order of blacklisting/ disqualifying petitioner dated 06.04.2013, mentioned supra. Then reference is to High Court orders dated 14.08.2013 and a letter of respondent Nos. 1 to 3 dated 26.08.2013. Then there is reference to submissions filed by the petitioner on 11.09.2013. Those submissions which run into almost 13 pages, reply to show cause notice dated 07.03.2013 carry reference to later communication dated 26.08.2013, and observes that later communication appears to be in continuation of the show cause notice dated 27.03.2013. The impugned order then makes reference to hearing and letter of petitioner dated 11.09.2013 at Sr. No. 17. Sr. No. 18 is orders of this Court in Writ Petition No. 7187/2014 dated 24.02.2015. At Sr. No. 19 is communication sent on 27.02.2015 to petitioner and last document at Sr. No. 20 is written submission of petitioner dated 02.03.2015. By communication dated 22.02.2015, petitioner was called upon to file additional submissions and the same are filed on 02.03.2015. In additional submissions, petitioner has reiterated its earlier stand and made grievance about the tender process in which it participated on 12.02.2015. Petitioner also pointed out that it has already suffered blacklisting for almost 22 months.

29. In this background, when impugned order dated 16.03.2015 is looked into, it follows that it does not restrict itself to material considered while passing first order dated 04/06.04.2013. It appears to be an independent and fresh order of blacklisting which considers earlier performance of petitioner in the background of its later conduct and disqualifies it or blacklists it for a period of one year. It is, therefore, not possible to read this order as an order passed in continuation of an old or first show cause notice.

30. Relevant question therefore is, whether petitioner was given due opportunity for the new material looked into in this order. That new material is report submitted by the Regional Manager on 27.02.2015 and non payment of Mathadi labour at Arjuni Morgaon or communication of Bhandara Mathadi Board about it.

Payments made by respondent Nos. 1 to 3 to Bhandara Mathadi Board and Chandrapur Mathadi Board, thereafter also appear to be subsequent events.

31. Perusal of order dated 06.04.2013 shows that after service of final notice dated 16.08.2011, petitioner failed to clear payments of labour and levy charges of Chandrapur Mathadi Board, though he was finally warned. By the said order his security deposit and payments of work done were kept in abeyance/suspended because of damage caused to wheat and consequential star question raised in State Assembly, damage to the image of respondent Nos. 1 to 3 and news item and it was prohibited from undertaking any work at any godown of respondent Nos. 1 to 3 for a period of three years. This order was later on substituted by another order dated 28.01.2014. After that order on 07.05.2014, the office at Chandrapur sent proposal for releasing petitioner's Bank Guarantee and security deposit. Its Stores Manager and In-charge Deputy Manager at Chandrapur has given "no dues certificate" mentioning there was no complaint of any nature by Mathadi board and certificate of railways as also Mathadi board were annexed by the petitioner. It is further mentioned in it that as per letter dated 17.04.2013, amount of Rs. 2,79,974/- was payable by petitioner towards demurrage and wharfage, but, as it was not so paid, it needed to be paid by respondent Nos. 1 to 3. That amount was therefore, directed to be adjusted/appropriated out of amounts to be refunded to the petitioner.

32. The petitioner has contended that it did not receive report dated 28.01.2012 submitted by the Nagpur Office and by Chandrapur Office about cleaning of 17759 bags of wheat by petitioner. However, later developments show irrelevance of this stand. Impugned action has been taken after giving petitioner an opportunity on 16.03.2015. It is already seen that it refers to order dated 06.04.2013 blacklisting the petitioner and then subsequent correspondence. It does not in any way mention any show cause notice issued to petitioner thereafter.

33. Respondent Nos. 1 to 3 while replying to the additional affidavit and reply filed by the petitioner on 08.04.2014 in this petition, submitted on 10.04.2015 the details of action taken even against the respondent No. 4 M/s. S.K. Transline. They have pointed out that the rail transit loss (RTL) depends upon 8 factors and in certain matters responsibility thereof has been fixed on the contractor. It has withheld an amount of Rs. 19,50,346/- from bill of respondent No. 4 for the month of January, 2015 against RTL for a period from November 2014 and December 2014, and an amount of Rs. 5,94,746/- against RTL of January, 2015. It has called for the explanation of the said respondent on 16.03.2015. Necessary documents in this respect are produced by them on record.

34. Order of this Court disposing off the W.P. 7187 of 2014 on 24.02.2015 shows that impugned action of blacklisting therein taken on 28.01.2014 was conceded to be legally wrong by the respondents 1 to 3 and hence, it was set aside to enable them to evaluate the defence contained in the written submissions filed by petitioner before those respondents and to pass a reasoned order. Thus at-

least till then the respondents 1 to 3 were following further the earlier line of action i.e., proceeding to complete the action taken first on 04/06.04.2013 against the petitioner. This Court on 24.02.2015 clarified that the respondents 1 to 3 were free to proceed and complete the tender process initiated on 23.01.2015 then ongoing for next financial years and it was not made subject to outcome of such evaluation. Hence, participation of petitioner therein was expressly ruled out. Petitioner thus stood eliminated from that tender and this has attained the finality. Fact that the petitioner is reinstated by setting aside the order of blacklisting in proceedings remitted back by this Court, therefore, ceased to be relevant and lost its bearing on the said tender. Petitioners can not now seek participation in that tender and attempt to unsettle the contract between respondents 1 to 3 on one hand and respondent 4 on the other. Present challenge is necessarily limited to order of blacklisting. Hence contentions having bearing on the work-order dated 19.03.2015 and prayers in relation thereto are liable to be rejected.

35. After orders of this Court dated 24.02.2015, the respondents 1 to 3 have issued a notice dated 27.02.2015 giving petitioner an opportunities to submit his additional defence, if any. Respondents have forwarded it by mentioning tender No. 1 of 2015 for year 2015 -2017 for transportation of food grains for Chandrapur center. It mentions WP 7187/2014 as reference No. 1 while E-mail dated 25.02.2015 sent by petitioner as reference No. 2. It points out that petitioner was heard by the Chairman and Managing Director on 11.09.2013 and an order dated 28.01.2014 was then passed. It also states that High Court had not directed any opportunity of hearing to be given to petitioner on 24.02.2015, but still, if it wanted to add anything more, it was called upon to appear before said authority on 03.03.2015.

36. Order of blacklisting dated 04/06.04.2013 was first in point of time and for period of three years. It was set aside and respondents 1 to 3 were to apply mind afresh to it. It points out show cause notice No. 91 dated 11.01.2012 which is about Arjuni Morgaon. This order, thus, makes reference to petitioner's performance at Arjuni Morgaon and it was therefore aware that it was to be considered while passing fresh orders. In second order passed on 28.01.2014, again the show cause notice for non payment to Mathadi labour at Arjuni Morgaon finds mention at sr. No. 8. Later order dated 28.01.2014 blacklists petitioner for two years i.e., upto 28.01.2016. Earlier blacklisting till 06.04.2016 is curtailed by about 2-5 months in later order. In its additional submissions dated 03.03.2015, the petitioner has pointed out that it has already undergone blacklisting for 22 months till then. Thus petitioner could not participate in any tender process since April, 2013 till date i.e., for about 2 years. Impugned order now blacklists or disqualifies it for period of one year i.e., upto 16.03.2016. Thus it again adds to the period stipulated in earlier order dated 28.01.2014.

37. Consideration by us above clearly shows that the Mathadi board at Chandrapur was not in position to provide workers in required number to either

the petitioner or even to the respondent No. 4. Respondent No. 4 was required to arrange additional work force privately to honour its commitment. Similarly though the fact that wages of Mathadi labour or levy of Mathadi Board was not paid or the cheque was dishonoured are proved, the contention that bills of the petitioner were not cleared within time by the respondents 1 to 3 is not seriously in dispute. Fact that wheat received from Wardha depot at Chandrapur was old crop and sub-standard or not suitable is not in dispute. Show cause notice was also issued by the respondent No. 1 to its Junior Superintendent for said wheat on 8.11.2012. Petitioner was supposed to clean it but absence of a suitable place in godown appeared to be an obstacle in it. On 04.10.2012 itself the godown was seen in bad condition by the Food Corporation of India. When the food and drugs department found the stock of wheat unfit for human consumption and seized it, the petitioner can not be blamed at all. Use of this fact by the respondents 1 to 3 against petitioner is itself wrong and unbecoming on its part. There is no question of respondents 1 to 3 suffering any loss of reputation in the matter. Moreover the respondents have not charged petitioner with any misconduct alleging that its negligence contributed to the deterioration of the stocks.

38. Neither respondent No. 4 nor Petitioner ever took recourse to any legal remedy to procure more Mathadi labour or then, the private labour. Amount payable to Bhandara Mathhadi Board was paid by the respondents 1 to 3 after October, 2013 by deducting it from the bill and security deposit of the petitioner. Thus, the bills of petitioner were not cleared till then. Such payment to Mathadi Board was also made by the respondents 1 to 3 on 11.09.2013. But then this was before the second order of blacklisting dated 28.01.2014. Petitioner was never given any express opportunity to explain why these subsequent events should not be used to its prejudice in proposed blacklisting. Knowledge of these developments to petitioner is not a valid excuse to deny it this chance. Even if it is presumed that the subsequent conduct also does not show any improvements by the petitioner, that is not sufficient to negate it an opportunity to explain. However, we are not inclined to again place back the matter before the respondents 1 to 3 to grant said opportunity to the petitioner. The Petitioner has already suffered the pangs of blacklisting in practical for over last two years as it could not compete in any tender process during this time. In this situation, taking overall view of the matter, as we find the order of blacklisting dated 16.03.2015 unsustainable, it is accordingly quashed and set aside.

39. Thus writ petition is partly allowed and impugned order dated 16.02.2015 blacklisting the petitioner is quashed and set aside. However, it stands dismissed as against the respondent No. 4. Rule is made absolute accordingly with no orders as to costs.