

IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO. 247 OF 2004.

- (1) Shree Tirumala Services,
through its Proprietor
Shri M. Channaiah, 811,
Zuarinagar.
- (2) Shri M. Channaiah,
Proprietor, r/o Zuarinagar. ... Petitioners.

Versus

- (1) Goa Shipyard Limited,
Vasco-da-Gama.
- (2) Union of India through
its Secretary, Ministry
of Defence, North Block,
New Delhi. ... Respondents.

Mr. M.S. Sonak, Advocate for the Petitioners.

Mr. M.S. Usgaonkar, Senior Advocate with Mr. S.
Usgaonkar, Advocate for the Respondent No. 1.

Mr. V.P. Thali, Senior Central Government Standing
Counsel for the Respondent No. 2.

Coram : S.A. BOBDE AND
N.A. BRITTO, JJ.

Date : 30th June 2004.

ORAL JUDGMENT. (PER BOBDE, J.)

Rule, returnable forthwith. Heard by consent.

2. The petitioner challenges the Order, dated 8th May 2004, by which the respondent Goa Shipyard Limited had decided to suspend business dealings with him. It is clear that for all practical purposes the Order amounts to an Order of blacklisting.

3. It appears that the respondents found several irregularities in the functioning of the petitioner, who

was working as a contractor. The irregularities in question pertain to the employment of additional workmen and, thus, overcharging the respondents. This is alleged to have been done during the period from 1993 to 1996.

4. Initially, the respondents had blacklisted the petitioner without issuing any show cause notice or without affording an opportunity to explain his case. This Order was challenged before this Court. The respondents withdrew the Order. The petitioner withdrew that petition, being Writ Petition No. 122 of 2004. Thereafter a show cause notice has been issued on 21st March 2004 and a reply has been tendered by the petitioner on 7th April 2004.

5. Mr. Sonak, the learned counsel for the petitioner, submitted that the petitioner is seriously prejudiced by the fact that the impugned decision is taken by the respondent by only accepting the report by the C.B.I. and without an independent application of mind by the General Manager, Commercial, who took the decision on behalf of the respondent.

6. Having gone through the matter, it does appear to us that the respondent has been strongly and entirely influenced by the fact that the C.B.I.

has filed a charge-sheet against the petitioner. In fact, the earlier Order of blacklisting, dated 26th February 2004 was entirely based on the report of the C.B.I. and the blacklisting was done because "certain irregularities committed by you have been established/proved by the C.B.I. in its report". Even in the Order presently impugned the decision to blacklist the petitioner appears to have been taken on the basis of the report of the C.B.I.. In paragraph 4(i) of the Order the petitioner has been found to have committed certain irregularities "as reported by the C.B.I. after an investigation". In sub-paragraph (ii) the Officer has observed that the C.B.I. has after a thorough investigation filed a charge-sheet in the year 2003 and that in the course of investigation it obtained the statements of a large number of persons and has seized a large number of documents on the basis of which allegations have been made. Interestingly the Officer states that "therefore, there is strong justification to believe prima facie that there are grounds for the allegations made by the C.B.I. against the petitioner and the denial of the allegations made by the C.B.I. in its charge-sheet cannot be straightaway accepted". It is clear from the Order that there is no discussion whatsoever of the Officer having applied his mind to the material gathered by the C.B.I. and referred to in its charge-sheet and the reply of the petitioner to such

material. It is almost as if the respondent has abdicated and surrendered its judgment to the report of the C.B.I. and has accepted as proved all the allegations against the petitioner.

7. We do not intend to say that the report of the C.B.I. could not have been taken into account. But, we are of opinion that the reply of the petitioner in response to the show cause notice including the facts allegedly found by the C.B.I. ought to have been taken into account by the respondent and the matter should have been decided on an independent application of mind by the respondent. Officer of the respondent was indeed duty bound to apply his own mind to the case.

8. Mr. Sonak, the learned counsel for the petitioner relied on, and in our view rightly, the Judgment of the Supreme Court in **State of U.P. and others v. Maharaja Dharmander Prasad Singh and others**, reported in (1989) 2 S.C.C. 505, where the Supreme Court has observed as follows:-

"55. It is true that in exercise of powers of revoking or cancelling the permission is akin to and partakes of a quasi-judicial complexion and that in exercising of the former power the authority must bring to bear an unbiased mind, consider impartially the objections raised by the aggrieved party and decide the matter consistent with the principles of natural justice. The authority cannot permit

its decision to be influenced by the dictation of others as this would amount to abdication and surrender of its discretion. It would then not be the authority's discretion that is exercised, but someone else's. If an authority "hands over its discretion to another body it acts ultra vires". Such an interference by a person or body extraneous to the power would plainly be contrary to the nature of the power conferred upon the authority. De Smith sums up the position thus:-

The relevant principles formulated by the courts may be broadly summarised as follows. The authority in which a discretion is vested can be compelled to exercise that discretion, but not to exercise it in any particular manner. In general, a discretion must be exercised only by the authority to which it is committed. That authority must genuinely address itself to the matter before it; it must not act under the dictation of another body or disable itself from exercising a discretion in each individual case. In the purported exercise of its discretion it must not do what it has been forbidden to do, nor must it do what it has not been authorised to do. It must act in good faith, must have regard to all relevant considerations and must not be swayed by irrelevant considerations, must not seek to promote purposes alien to the letter or to the spirit of the legislation that gives it power to act, and must not act arbitrarily or capriciously. Nor where a judgment must be made that certain facts exist can a discretion be validly exercised on the basis of an erroneous assumption about those facts. These several principles can conveniently be grouped in two main categories: failure to exercise a discretion, and excess or abuse of discretionary power. The two classes are not, however, mutually exclusive."

9. We are satisfied that in the present case the

Officer of the respondent has not applied his own mind to the material produced by the C.B.I. and the reply to the show cause notice given by the petitioner and has, therefore, virtually handed over his discretion to another body. We are, therefore, of view that the Officer has acted ultra vires in arriving at his decision. Indeed the Officer could not have so surrendered his own judgment and implicitly accepted the report of the C.B.I..

10. In this view of the matter, we are inclined to, and do hereby set aside the impugned Order. The respondent shall be at liberty to take a decision upon the show cause notice issued by it afresh without issuing any show cause notice or accepting any reply. The petitioner shall, however, be at liberty to produce such additional material, as may be advised, before the respondent. The respondent shall take a decision within a period of 10 days from today. The decision in this regard should be taken by the authority competent to take such decision. Rule made accordingly. A true copy of the Order authenticated by the Court Sheristedar be given.

(S.A. BOBDE)
JUDGE.

(N.A. BRITTO)
JUDGE.

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