THE HIGH COURT OF MEGHALAYA

WP(C) No.309/2014

M/s Chaitanya Projects,
Consultancy Pvt. Ltd.,
C-5, 2nd Floor, RK Tower,
Plot No.21-22,
Vaishali Sector 4,
Ghaziabad – 201010
represented by its Managing Director,
Mr. Sanjay Kumar Sinha,
S/o (L) Sh. Shanti Narayan Sinha,
aged about 48 years,
R/o L-203, Design Arch Gardenia
Sector-5 Vaishali, Ghaziabad,
[UP]-201012. **::::** Petitioner

-Vs-

1. The State of Meghalaya represented by the
Chief Secretary to the Govt. of Meghalaya,
Shillong.

2. The State of Meghalaya through the Principal Secretary
to the Govt. of Meghalaya, Public Works Dept. Shillong.

3. Chief Engineer,
National Highway PWD (Roads) Meghalaya,
Govt. of Meghalaya, Lower Lachumiere,
Shillong-1, Meghalaya.

4. Union of India
Ministry of Road Transports & Highways,
Through Director General (R/D),
Paryavaran Bhavan, 1,
Sansad Marg, New Delhi-110001.

5. Union of India,
National Informatics Centre through its
Director General Department of Electronics &
Information Technology, Ministry of Communications
& Information Technology, A-Block, CGO Complex,
Lodhi Road, New Delhi-110003. **::::** Respondents.

BEFORE
THE HON'BLE MR JUSTICE T NANDAKUMAR SINGH

For the Petitioner	:	Mr. SP Mahanta, Sr.Adv, Mr. R.R. Raj, Adv.
For the Respondents	:	Mr. K Khan, Addl.Sr.GA, Mr. R Deb Nath, CGC

Date of hearing : ***19.11.2015***

Date of Judgment & Order : ***02.12.2015***

JUDGMENT AND ORDER

By this writ petition, the petitioner-company is challenging the impugned letter/order dated 23.08.2013 for black listing the petitioner-company and also for debarring the petitioner-company from future participation in any tender for a period of five years and also the impugned memorandum dated 03.12.2013 for debarring the petitioner-company from future participation in any tender under the PWD for a period of five years w.e.f. 23.08.2013 (from the date of issuing the impugned black listing dated 23.08.2013).

2. Heard Mr. SP Mahanta, learned senior counsel assisted by Mr. R.R. Raj, learned counsel for the petitioner-company, Mr. K Khan, learned Addl.Sr.GA appearing for the respondents No. 1-3 and Mr. R Deb Nath, learned CGC appearing for the respondents No.4 & 5.

3. The concise facts of the case leading to the filing of the present writ petition as well as the case of the respondents in their affidavit-in-opposition are briefly noted. The petitioner-company is incorporated under the provisions of the Company Act, 1956 and is a premier Consultancy Engineering Company in India precisely for providing Civil Engineering Consultancy to the Govt. and specialized construction services to Semi Govt. and Private Organizations. It is also stated in the writ petition that the petitioner-company is a leading International Consultancy Organization specialized in Highways and Bridges, Structures, Urban and Regional Infrastructure Development, Water Supply, Water Resources Development and Management, Traffic and Transportation, Institutional Strengthening and

Capacity Building and Socio-Economic and Environmental Impact Assessment. The petitioner-company was allotted the work for consultancy service for detailed project preparation for upgradation to 2-Lane of State Road stretches from Nongstoin-Rongjeng-Tura to provide link to Tura within the State (Tentative Length = 201.00 km) at the contract price/fee of Rs.1,16,58,000.00 (Rupees one crore sixteen lakhs fifty eight thousand only) vide letter of acceptance being No.PW/CE/NH/5/2006/40 dated 20.04.2009. The said work was to be completed by 02.12.2009. The petitioner-company submitted Draft Final Project Report to the respondent No.3 (Chief Engineer) vide letter dated 29.09.2009. The Draft Final Project Report was sent to the site Executive Engineer for verification and the Chief Engineer forwarded the Draft Final Report to the Ministry intimating that the minor observations made by the Executive Engineer would be incorporated by the Consultant in the Final Report as contained in his letter dated 01.12.2009.

4. During a meeting in the Ministry on 17.12.2009, the Draft Final Report was discussed in the Ministry and the issues discussed were to be incorporated in the Final Report desired to be submitted by January, 2010. However, as per terms of Reference (TOR) 60 days time was stipulated for submission of Final Report from the date of approval of Draft Final Report. The Final Report was submitted to the Chief Engineer vide letter dated 24.02.2010. The Chief Engineer sent the Final Report to the Executive Engineer concerned for verification and accordingly, the Chief Engineer in his letter dated 17.05.2010 informed the petitioner-company to include the cost of land acquisition also in the cost estimate which was further included. The Chief Engineer also requested the Executive Engineer to make payments to the Consultant consequent upon his verification. The Chief Engineer having approved the Final Report with the project cost of Rs.982.46 crores forwarded the Final Report to the Ministry vide his letter dated 28.05.2010.

The petitioner-company had submitted the Final Detailed Project Report on 24.02.2010 with the modification thereof as desired by the Chief Engineer, which was approved by the Chief Engineer-respondent No.3, and forwarded the same to the respondent No.4 on 28.05.2010. Upon acceptance of the Final Detailed Project Report, the final bill for Rs.29,14,450/- (Rupees twenty nine lakhs fourteen thousand four hundred fifty only) was paid through RTGS dated 28.09.2010. Thus, the onus of the Consultant i.e. petitioner-company in respect of the above consultancy work was completely and finally discharged. However, the petitioner-company continued to associate with the project as requested by the Chief Engineer. One of the examples for such association was that during a meeting held in the Chamber of Director General Ministry on 30.07.2011, it was desired that RR Masonry Culverts be designed as RCC Box Culverts and the proposal was accordingly forwarded to the Chief Engineer giving details of GADs and reinforcement of cast-in-situ Box culverts were forwarded to the Chief Engineer vide letter of the petitioner-company dated 11.08.2011. The executing agency during construction made continued errors by way of shifting of centre lines which were intimated to the Chief Engineer under the letters of the petitioner-company dated 12.01.2012 and 03.02.2012. During a meeting in the office of the Chief Engineer, issues of detailed drawings of bridges were raised. However, it was clarified that only GADs of bridges and inclusion of rough cost estimate only was in the scope of work of the petitioner-company in the TOR (Terms of Reference).

5. Due to good performance of the petitioner-company, the respondent No.3-Chief Engineer had awarded another consultancy works vide letters dated 26.10.2010, 07.01.2011 and 24.01.2011, and a Final Detailed Project Report had been submitted for all those three projects which was approved by the respondent No.3-Chief Engineer and the Ministry

concerned. To the utter shock and surprise, the petitioner-company received an envelope containing the Show Cause Notice dated 23.05.2013 and letter/order dated 17.06.2013 for blacklisting the petitioner-company. Immediately, the petitioner-company submitted its reply to the respondent No.3-Chief Engineer and the respondent No.3-Chief Engineer had admitted his fault in blacklisting the petitioner-company without giving any chance to respond to the show cause notice. The said error was regretted by the respondent No.3-Chief Engineer under his letter dated 24.07.2013. For easy reference the said letter dated 24.07.2013 (*Annexure-13 to the writ petition*) is quoted hereunder:-

"*GOVERNMENT OF MEGHALAYA*
OFFICE OF THE CHIEF ENGINEER P.W.D. (ROADS)
NATIONAL HIGHWAYS, MEGHALAYA, SHILLONG

No.PW/CE/NH/5/2006/117 Dated, Shillong the 24th July, 2013.

To,

M/s Chaitanya Project Consultancy Pvt. Ltd.
C-5, 2nd Floor, RK Tower, Plot No.21-22,
Sector-4 Vaishali, Ghaziabad (UP)-201012
Fax No.0120 4110472
E-mail-shalpur@yahoo.com
abhijit@gmail.com

Sub: Consultancy works awarded by State PWD thereof.

Ref: No.CPC/Gen/213/32 Dt.17.07.2013

Sir,

With reference to the subject mentioned above, I am to state that through some clerical error the show cause notice and the impugned order was dispatched on the same date and the same envelop the error is regretted. However, your request to reply to the show cause notice is hereby accepted and your early reply is awaited.

Moreover, in addition to the above, you are requested to attend to all the observations raised for various Consultancy projects undertaking by your Firm as shown below:-

1. 2-laning of Nongstoin-Domiasiat road via Wahkaji (Tentative length=66.00 km) = vide letter No.PW/CE/NH/SARDP/18/2009/67 Dt.8th March 2013(copy enclosed)
2. 2-laning of Mawthabah-Wahkaji-Phlangdilion-Ranikor Road Phase-A (Tentative length=35.00 Km) = vide letter No.PW/CE/NH/SARDP/11/2010/44 Dt.8th March 2013(copy enclosed)

3. 2-laning of Mawshynrut-Athiabari (Harim)= vide letter No.PW/CE/NH/SARDP/19/2009/48

road Phase-B (Tentative length=38.00 Km) Dt.29th November, 2013(copy enclosed)

This is for your information and necessary action.

Enclo: as above.

Yours faithfully,
Sd/-
(C.W. Momin)
Chief Engineer NH PWD (Roads)
Meghalaya, Shillong"

6. After receiving the said letter dated 24.07.2013, the petitioner-company submitted the detailed reply vide letter dated 29.07.2013 to the respondent No.3-Chief Engineer. The said reply dated 29.07.2013 (*Annexure-14 to the writ petition*) reads as follows:-

"***Head Office***
C-5, 2nd Floor, RK Tower, Plot No.21-22,
Sector-4 Vaishali, Ghaziabad UP -201012 (INDIA)
Phone No.+ 91-120-4120472, 32234
Fax: + 91-120-411042
E-mail: chaitanya.projects@gmail.com

Chaitanya Projects Consultancy Pvt. Ltd. *Ref: CPC/Gen/2013/33*
***(An ISO 9001: 2008 Certified Company**)* *Date: 29.07.2013*

(Architecture & Urban Planning, Highways & Bridges
Survey & Geotech Investigation, GIS Application)

To,
The Chief Engineer (NH),
PWD Roads Meghalaya,
Lower Lachumiere,
Shillong, Meghalaya,
Fax:0364-2226429

Sub: Consultancy works awarded by State PWD thereof.

Ref: 1. Your letter PW/CE/NH/5/2006/113 dt.Shillong 23rd May 2013
2. Your letter PW/CE/NH/5/2006/114 dt.Shillong 17th June 2013
3. Our letter No.CPC/Gen/2013/32 dt.17.07.2013
4. Your letter No.PW/CE/NH/5/2006/117 dt.Shillong 24th July 2013

Dear Sir,

1. This has reference to your letter dated 24th July 2013

2. As you are aware that the contract for "consultancy services for detailed project preparation for upgradation to two lane of state road stretches from Nongstoin-Rongjeng-Tura to provide link to Tura within the state (Tentative length-201 Kms)" was awarded to M/s Chaitanya Projects Consultancy Pvt. Ltd. on 20.04.2009 for a contract amount of Rs.1,16,58,000.00/-. The Draft Final Report was submitted to you on 29.09.2009. Subsequent to the submission of Draft Final Report, it was sent to the site Executive Engineers for verification and the same was also forwarded to Ministry intimating that the minor observations made by the Executive Engineers would be incorporated by the Consultant in the Final Report as contained in your letter dt.01.12.2009. During a meeting in the Ministry on 17.12.2009, the Draft Final Report was discussed in the Ministry and the issues discussed were to be incorporated in the Final Report desired to be submitted by Jan. 2010. However, as per TOR 60 days time was stipulated for submission of Final Report from the date of approval of Draft Final Report.

3. The Final Report was submitted to you vide our letter dt.24.02.2010. The Final Report was sent by you to Executive Engineers concerned for verification and subsequent to the verification of the Final Report by the concerned Executive Engineers, you had informed us to include the cost of Land Acquisition also in the cost estimate as contained in your letter dt.17.05.2010. You had also requested the Executive Engineers to make payments to us consequent upon their verification. The Final Report was then approved by you with the project cost of Rs.982.462 crores and was forwarded to Ministry vide your letter dated 28.05.2010. Consequent upon acceptance of our Final Report, the final bill for Rs.29,14,450/- was paid through RTGS dt.28.09.2010, thus our onus in respect of above consultancy work was completely discharged.

4. Further to the approval of Final Report on 28.05.2010, you had conveyed the observations of the Ministry vide your letter dt.30.06.2013, mainly proposing replacement of smaller span slab culverts by NP-4 pipe culverts. HP culverts were not proposed by the consultant as they were likely to be blocked by rolling boulders during rainy season, making it very troublesome and dysfunctional. However, incompliance to your above letter, the revised cost estimate was submitted to you vide our letter dt.05.07.2010.

5. In the meantime tenders were floated and thereafter you had desired that we should revise the cost estimate as per rates quoted by the lowest bidder as contained in your letter dt.18.10.2010. However, such was not the practice, and we had sent you the reply in our letter dt.21.10.2010 that the rates quoted by the lowest bidder were not logical in respect of items 3.01(a) & 3.01(b). Also it was recommended that the abnormally high rate quoted by the lowest bidder for item of

reinforcement need be negotiated before consideration of the award of work. If the above issues are settled and rate of item of reinforcement is reasonably negotiated, the price offered by the lowest bidder at 4.98% above the estimated cost will come down avoiding the necessity of revision of cost estimate.

6. Despite the consultancy work completely discharged much earlier, we continued our association with the project as could be seen from the correspondence made by you to us and our prompt response to your requirements. Further, during a meeting held in the Chamber DG Ministry on 30.07.2011, it was desired that the RR masonry culverts be designed as RCC Box culverts and the proposal was accordingly submitted to you giving details of GADs and reinforcement of cast-in-situ Box culverts vide our letter dt.11.08.2011. The executing agency during construction made continued errors by way of shifting of Centre lines which were intimated to you in our letters dt.12.01.2012 & 03.02.2012. Further, the SDO in his telephonic communication desired modification of curves which was also complied by us and reported to you vide our letter dt.16.02.2012.

7. During a meeting in the office of the Chief Engineer, issue of detailed drawings of bridges was raised. However it was clarified that only GADs of bridges and inclusion of rough cost estimate only was in the scope of our work in the TOR.

8. Thereafter, to address various site issues our engineer visited the site in May 2012 on your request, it was noted that the bypass of Samanda from Km.24 to Km.26 was realigned in view of a proposal of expansion of airport at Tura, subsequent to approval of our Final Report.

9. We were also intimated by you in your letter dt.06.08.2012 & 16.10.2012, that the crust thickness provided in our Final Report was inadequate in view of the inclement weather conditions and heavy traffic reported by the executing agency, and proposed to provide a crust of 770mm thickness. However, it was clarified that the traffic data was erroneous and the proposed crust thickness in our Final Report was inconformity with IRC guidelines in our letter dt.24.08.2012 & 06.11.2012. In addition, it was advised in our letter dt.07.09.2012 that the pavement design if considered necessary by you in view of traffic data suggested by the executing agency in the year 2011, the pavement thickness may be altered after the approval of Ministry.

In view of the above it may kindly be appreciated there is no legitimate reason for issuing the show cause notice to us. The facts may kindly be reviewed in light of our above submission. It is therefore requested that the show cause notice may be revoked and no further action in this regard may be proposed.

Thanking You,
Yours faithfully,
For Chaitanya Projects Consultancy Pvt.Ltd

Sd/-
S.K. Sinha
(Director)"

7. Inspite of submitting the detailed reply dated 29.07.2013 by the petitioner-company, the respondent No.3-Chief Engineer did not consider the said reply submitted by the petitioner-company dated 29.07.2013. The respondent No.3-Chief Engineer again issued the impugned letter/order dated 23.08.2013 reiterating the earlier blacklisting order dated 17.06.2013 stating that the petitioner-company did not respond to the letter dated 24.07.2013 (letter of regret) and that the petitioner-company is blacklisted in the State of Meghalaya for poor performance and is debarred from future participation in any tender for a period of five years. The impugned letter/order dated 23.08.2013 (*Annexure-15 to the writ petition*) reads as follows:-

"*GOVERNMENT OF MEGHALAYA*
OFFICE OF THE CHIEF ENGINEER P.W.D. (ROADS)
NATIONAL HIGHWAY, MEGHALAYA, SHILLONG

No.PW/CE/NH/5/2006/117A Dated, Shillong the 23rd August, 2013.

To,
M/s Chaitanya Project Consultancy Pvt. Ltd.
C-5, 2nd Floor, RK Tower, Plot No.21-22,
Sector-4 Vaishali, Ghaziabad (UP)-201012
Fax No.0120 4110472
E-mail-shalpur@yahoo.com
abhijit@gmail.com

Sub: Blacklisting of your firm etc.

Ref: No.PW/CE/NH/5/2006/117 Dt.24.07.2013

Sir,

With reference to the subject mentioned above, kindly refer to this office letter No. under reference regarding the reply to the show cause notice. In this connection, I am to inform you

that as you have not been response to the letter, therefore your Firm M/s Chaitanya Projects Consultancy Pvt. Ltd. is blacklisted in the State of Meghalaya for poor performance and is debarred from future participation in any tender for a period of 5 (five) years.

Yours faithfully,
Sd/-
(L. Passah)
Chief Engineer NH PWD (Roads)
Meghalaya, Shillong"

8. The said impugned letter/order dated 23.08.2013 was followed by the impugned memorandum dated 03.12.2013 that the petitioner-company is debarred from participation in any tender under the PWD, Meghalaya for a period of five years w.e.f. 23.08.2013 as a consequence of the impugned letter/order dated 23.08.2013 for blacklisting the petitioner-company.

9. The respondents filed their affidavit-in-opposition wherein, the State respondents did not deny that the said show cause notice dated 23.05.2013 and the first letter/order dated 17.06.2013 for blacklisting the petitioner-company were sent to the petitioner-company in the same envelope. Therefore, it is clear from the admitted fact that the first letter/order dated 17.06.2013 for blacklisting the petitioner-company was issued without giving any show cause notice to the petitioner-company inasmuch as the show cause notice dated 23.05.2013 was received by the petitioner-company after the petitioner-company was blacklisted under the earlier letter/order dated 17.06.2013. It is the further case of the petitioner-company that the second impugned letter/order dated 23.08.2013 for blacklisting the petitioner-company by reiterating the earlier letter/order dated 17.06.2013 for blacklisting the petitioner-company was issued about a year after the back dated impugned letter/order dated 23.08.2013 for blacklisting the petitioner-company inasmuch as in the letter of the respondent No.3-Chief Engineer

dated 02.12.2013 to the concerned Executive Engineer did not mention that the petitioner-company had already been blacklisted vide the impugned letter/order dated 23.08.2013.

10. From the aforesaid facts, it is clear that no show cause notice was issued to the petitioner-company before issuing the first letter/order dated 17.06.2013 for blacklisting the petitioner-company. It is also admitted fact that the respondents did not issue any show cause notice other than the show cause notice dated 23.05.2013 which was received by the petitioner-company after the petitioner-company had already been blacklisted by the first letter/order dated 17.06.2013 and also that the impugned second letter/order dated 23.08.2013 for blacklisting the petitioner-company is only a reiteration of the letter/order dated 17.06.2013. Thus there is a clear violation of natural justice inasmuch as post-decisional hearing cannot subserve the rules of natural justice in the given case. We may refer to the decisions of the Apex Court in ***(i) H.L. Trehan & Ors v. Union of India & Ors: (1989) 1 SCC 764; (ii) Shekhar Ghosh v. Union of India & Anr.: (2007) 1 SCC 331 and; (iii) K.I. Shephard & Ors v. Union of India & Ors: (1987) 4 SCC 431***.

Para 12 & 13 of the *SCC* in ***H.L. Trehan's*** case ***(Supra)*** read as follows:-

> "*12. It is, however, contended on behalf of CORIL that after the impugned circular was issued, an opportunity of hearing was given to the employees with regard to the alterations made in the conditions of their service by the impugned circular. In our opinion, the post-decisional opportunity of hearing does not subserve the rules of natural justice. The authority who embarks upon a post-decisional hearing will naturally proceed with a closed mind and there is hardly any chance of getting a proper consideration of the representation at such a post-decisional opportunity. …..*
>
> *13. The view that has been taken by this Court in the above observation is that once a decision has been taken, there is a tendency to uphold it and a representation may not yield any fruitful purpose. Thus, even if any hearing was given to the*

employees of CORIL after the issuance of the impugned circular, that would not be any compliance with the rules of natural justice or avoid the mischief of arbitrariness as contemplated by Article 14 of the Constitution. The High Court, in our opinion, was perfectly justified in quashing the impugned circular."

Para 14 of the *SCC* in ***Shekhar Ghosh's*** case ***(****Supra****)*** reads as follows:-

"*14. A post-decisional hearing was not called for as the disciplinary authority had already made up its mind before giving an opportunity of hearing. Such a post-decisional hearing in a case of this nature is not contemplated in law. The result of such hearing was a foregone conclusion*."

Paras 15 & 16 of *SCC* in ***K.I. Stephard's*** case ***(****Supra****)*** read as follows:-

"*15. Fair play is a part of the public policy and is a guarantee for justice to citizens. In our system of Rule of Law every social agency conferred with power is required to act fairly so that social action would be just and there would be furtherance of the well-being of citizens. The rules of natural justice have developed with the growth of civilization and the content thereof is often considered as a proper measure of the level of civilization and Rule of Law prevailing in the community. Man within the social frame has struggled for centuries to bring into the community the concept of fairness and it has taken scores of years for the rules of natural justice to conceptually enter into the field of social activities. We do not think in the facts of the case there is any justification to hold that rules of natural justice have been ousted by necessary implication on account of the time frame. On the other hand we are of the view that the time limited by statute provides scope for an opportunity to be extended to the intended excluded employees before the scheme is finalised so that a hearing commensurate to the situation is afforded before a section of the employees is thrown out of employment.*

16. We may now point out that the learned Single Judge of the Kerala High Court had proposed a post-amalgamation hearing to meet the situation but that has been vacated by the Division Bench. For the reasons we have indicated, there is no justification to think of a post-decisional hearing. On the other hand the normal rule should apply. It was also contended on behalf of the respondents that the excluded employees could now represent and their cases could be examined. We do not think that would meet the ends of justice. They have already been thrown out of employment and having been deprived of livelihood they must be facing serious difficulties. There is no justification to throw them out of employment and then given

them an opportunity of representation when the requirement is that they should have the opportunity referred to above as a condition precedent to action. It is common experience that once a decision has been taken, there is a tendency to uphold it and a representation may not really yield any fruitful purpose."

11. Mr. SP Mahanta, learned senior counsel appearing for the petitioner-company by placing heavy reliance on the decisions of the Apex Court in ***(i) M/s Erusian Equipment & Chemical Ltd. v. State of West Bengal & Anr: (1975) 1 SCC 70; (ii) Raghunath Thakur v. State of Bihar & Ors: (1989) 1 SCC 229; and (iii) Patel Engineering Limited v. Union of India & Anr: (2012) 11 SCC 257*** contended that there cannot be order for blacklisting in violation of the principles of natural justice or in other words, without issuing show cause notice and also without giving an opportunity of submitting show cause statement. The Apex Court in ***M/s Erusian Equipment & Chemical Ltd.*** case ***(****Supra****)*** held that:

"*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*."

The Apex Court in ***Raghunath Thakur's*** case ***(****Supra****)*** held that:

"*4. Indisputably, no notice had been given to the appellant of the proposal of black-listing 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 black-listing any person. In so far as the contention that there is no requirement specifically of giving any notice is concerned, the respondent is right. But it is an implied principle of the rule of law that any order having civil consequence should be passed only after following the principles of natural justice. It has to be realised that black-listing 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 that view of the matter, the last portion of the order in so far as it directs black-listing of the appellant in respect of future contracts, cannot be sustained in law. In the premises, that portion of the order directing that the appellant be placed in the black-list in respect of future contracts under the Collector is set aside. So far as the cancellation of the bid of the appellant is concerned, that is not affected. This order will, however, not prevent the State Government or the appropriate authorities from taking any future steps for blacklisting the appellant if the Government is so entitled to do in accordance with law, i.e. after giving the appellant due notice and an opportunity of making representation. After hearing the appellant, the State Government will be at liberty to pass any order in accordance with law indicating the reasons therefor. We, however, make it quite clear that we are not expressing any opinion on the correctness or otherwise of the allegations made against the appellant. The appeal is thus disposed of."

The Apex Court in ***Patel Engineering Limited*** case ***(****Supra****)*** held that:

"13. The concept of "blacklisting" is explained by this Court in ***Erusian Equipment & Chemicals Ltd. v. State of W.B.: (1975) 1 SCC 70*** *as under: (SCC p.75, para 20)*

> *"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."*

14. The nature of the authority of the State to blacklist the persons was considered by this Court in the abovementioned case and took note of the constitutional provision (Article 298) which authorizes both the Union of India and State to make contracts for any purpose and to carry on any trade or business. It also authorises the acquisition, holding and disposal of property. This Court also took note of the fact that the right to make a contract includes the right not to make a contract. By definition, the said right is inherent in every person capable of entering into a contract. However, such a right either to enter or not to enter into a contract with any person is subject to a constitutional obligation to obey the command of Article 14. Though nobody has any right to compel State to enter into a contract, everybody has a right to be treated equally when State seeks to establish contractual relationships. The effect of excluding a person from entering into a contractual relationship with State would be to deprive such person to be treated equally with those, who are also engaged in similar activity.

> *15. It follows from the above Judgment in* ***Erusian Equiptment case: (1975) 1 SCC 70*** *that the decision of State or its instrumentalities not to deal with certain persons or class of persons on account of the undesirability of entering into the contractual relationship with such persons is called blacklisting. State can decline to enter into a contractual relationship with a person or a class of persons for a legitimate purpose. The authority of State to blacklist a person is a necessary concomitant to the executive power of the State to carry on the trade or the business and making of contracts for any purpose, etc. There need not be any statutory grant of such power. The only legal limitation upon the exercise of such an authority is that State is to act fairly and rationally without in any way being arbitrary–thereby such a decision can be taken for some legitimate purpose. What is the legitimate purpose that is sought to be achieved by the State in a given case can vary depending upon various factors.*"

12. Judicial review generally speaking, is not directed against a decision, but is directed against the decision-making process. The Apex Court in ***Narayan Govind Gavate & Ors v. State of Maharashtra & Ors: (1977) 1 SCC 133*** held that it is also clear that, even a technically correct recital in an order or notification stating that the conditions precedent to the exercise of a power have been fulfilled may not debar the Court in a given case from considering the question whether, in fact, those conditions have been fulfilled. And, a fortiori, the Court may consider and decide whether the authority concerned has applied its mind to really relevant facts of a case with a view to determining that a condition precedent to the exercise of a power has been fulfilled. If it appears, upon an examination of the totality of facts in the case, that the power conferred has been exercised for an extraneous or irrelevant purpose or that the mind has not been applied at all to the real object or purpose of a power, so that the result is that the exercise of power could only serve some other or collateral object, the Court will interfere.

The Apex Court in ***Ranjit Thakur v. Union of India & Ors: (1987) 4 SCC 611*** held that Judicial review generally speaking, is not directed against a decision, but is directed against the "decision making

process". The question of the choice and quantum of punishment is within the jurisdiction and discretion of the Court-Martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the Court-Martial, if the decision of the Court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognised grounds of judicial review. In ***Council of Civil Service Unions v. Minister for the Civil Service: (1984) 3 WLR 1174 (HL): (1984) 3 All ER 935, 950*** Lord Deplock said:

> *"Judicial Review has I think developed to a stage today when without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds upon which administrative action is subject to control by judicial review. The first ground I would call 'illegality', the second 'irrationality' and the third 'procedural impropriety'. That is not to say that further development on a case by case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of 'proportionality' which is recognized in the administrative law of several of our fellow members of the European Economic Community". ….."*

13. The Apex Court in ***State of NCT of Delhi & Anr v. Sanjeev Alias Bittoo: (2005) 5 SCC 181*** held that administrative action is stated to be referable to broad area of governmental activities in which the repositories of power may exercise every class of statutory function of executive, quasi-legislative and quasi-judicial nature. The scope of judicial review of administrative orders is rather limited. The consideration is limited to the legality of decision-making process and not legality of the order per se. The

test is to see whether there is any infirmity in the decision-making process and not in the decision itself.

14. The Apex Court in ***Haryana Financial Corporation & Anr v. Jagdamba Oil Mills & Anr: (2002) 3 SCC 496*** held that the obligation to act fairly on the part of the administrative authorities was evolved to ensure the rule of law and to prevent failure of justice. This doctrine is complementary to the principles of natural justice which the quasi-judicial authorities are bound to observe. Lord Diplock in ***Secy. of State for Education and Science v. Metropolitan Borough Council of Tameside: 1977 AC 1014: (1976) 3 All ER 665: (1976) 3 WLR 641, All ER at p. 695f***). The Court cannot substitute its judgment for the judgment of administrative authorities in such cases. Only when the action of the administrative authority is so unfair or unreasonable that no reasonable person would have taken that action, can the Court intervene. It would be beneficial to quote the classic passage from the judgment of Lord Greene M.R. in ***Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn.: (1947) 2 ALL ER 680: (1948) 1 KB 223 (CA): (All ER pp. 682H-683A)***

> "*It is true the discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology commonly used in relation to exercise of statutory discretions often use the word 'unreasonable' in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with the discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting 'unreasonably'. Similarly, there may be something so absurd that no sensible person could ever dream that it lay within the powers of the authority*."

15. The Apex Court in ***Mahabir Auto Stores & Ors v. Indian Oil Corporation & Ors: (1990) 3 SCC 752*** held that procedure followed in taking decision should be reasonable, fair and just. Para 19 of the SCC in ***Mahabir Auto Stores*** case ***(Supra)*** reads as follows:-

> "*19. Such transaction should continue as an administrative decision with the organ of the State. It may be contractual or statutory but in a situation of transaction between the parties for nearly two decades, such procedure should be followed which will be reasonable, fair and just, that is, the process which normally be accepted (sic is expected) to be followed by an organ of the State and that process must be conscious and all those affected should be taken into confidence*."

16. For the foregoing discussions, this Court is of the considered view that the respondents issued the impugned letter/order dated 23.08.2013 in clear violation of the rules of natural justice and also that the procedure followed by the respondents in issuing the impugned letter/order dated 23.08.2013 is not fair, reasonable and just. Accordingly, the impugned letter/order dated 23.08.2013 and the impugned memorandum dated 03.12.2013 which is the consequence of the impugned letter/order dated 23.08.2013 are hereby set aside and quashed.

17. Writ petition is allowed.

JUDGE

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