

**HIGH COURT OF MEGHALAYA**  
**AT SHILLONG**

WP(C) No. 386 of 2023

Date of Decision: 29.02.2024

---

M/s A.S. Transportation,  
A sole proprietorship having its head office  
at S.R. Mazumdar Lane, SMC Road, Meherpur,  
Silchar and represented herein by its Propreitor  
Msst. Husna Barbhuiya, daughter of Jahur Uddin  
Barbhuiya, Age-33 years, resident of Niz Ambikapur,  
Pt.-10, Meherpur, Silchar in the District- Cachar,  
Assam. PIN-788015

:::: Petitioner

-Vs-

1. The Union of India,  
Represented by the Secretary to the Department of  
Food & Public Distribution, Ministry of Consumer  
Affairs, Food & Public Distribution, Government  
of India, Krishi Bhawan, New Delhi, PIN-110001

2. Food Corporation of India,  
Represented by the Chairman & Managing  
Director, Barakhamba Lane, New Delhi,  
PIN-110001

3. General Manager,  
Food Corporation of India, Regional Office, NEF  
Region, Mawroh, Mawlai, Shillong Meghalaya,  
PIN-793008

4. Deputy General Manager (Regional),  
Food Corporation of India, Regional Office, NEF

Region, Mawroh, Mawlai, Shillong, Meghalaya,  
PIN-793008

5. Deputy General Manager (Finance),  
Food Corporation of India, Regional Office, NEF  
Region, Mawroh, Mawlai, Shillong, Meghalaya,  
PIN-793008

6. Assistant General Manager,  
Food Corporation of India, Regional Office, NEF  
Region, Mawroh, Mawlai, Shillong, Meghalaya,  
PIN-793008

::::Respondents

---

**Coram:**

**Hon'ble Mr. Justice H. S. Thangkhiew, Judge**

---

**Appearance:**

For the Petitioner/Appellant(s) : Mr. M. Nath, Sr. Adv. with  
Mr. D.I. Kapil, Adv.  
Ms. C. Nongkhlaw, Adv.

For the Respondent(s) : Mr. B.K. Singh, Adv. with  
Ms. S.Rumthao, Adv.

---

i) Whether approved for reporting in Law journals etc.: Yes/No

ii) Whether approved for publication in press: Yes/No

---

**JUDGMENT AND ORDER (ORAL)**

1. The petitioner on 28.08.2023, had participated and submitted its bid for the work of "*Handling & Transport contract on regular basis for*

*transportation of foodgrains/allied materials etc. from RH Kumarghat to FSD Kumarghat via weighbridge (and vice versa) including loading/unloading/handling of food grains/allied materials etc. at RH/FSD Kumarghat, Tripura. (Godown Capacity: 6264 MT)”,* which was tendered by the FCI on 07.08.2023. Immediately after submission of its bids, the petitioner realized that it had quoted an unrealistically low rate for the work and as such, requested the respondents to allow it to withdraw its bid. The said offer for withdrawal was not acceded to by the respondents, and by way of the impugned order dated 15.11.2023, the contract of the petitioner was terminated and at the same time, the petitioner debarred from participating in any future tenders of the respondent for a period of 2(two) years. Being aggrieved with the debarment, without affording an opportunity of being heard, the petitioner is before this Court by way of the instant writ petition.

2. Mr. M. Nath, learned Senior counsel assisted by Mr. D.I. Kapil, learned counsel for the petitioner has submitted that the action of the respondents in not allowing the withdrawal of the petitioner's tender, inspite of a specific request, and the representations which were preferred after the Letter of Acceptance of Tender dated 20.10.2023, had been issued, is highly arbitrary and unreasonable. He submits that the subsequent action in terminating the contract vide the impugned order dated

15.11.2023, and at the same time debarring the petitioner from participating in any future tenders of the respondent for a period of 2(two) years, which amounts to blacklisting, had been done without affording the petitioner any chance to show cause or to be heard. In support of his submissions, the learned Senior counsel has cited the following decisions.

- (i) *South Eastern Coalfields Limited & Ors. vs. S. Kumar's Associates AKM (JV) reported in (2021) 9 SCC 166.*
- (ii) *UMC Technologies Private Limited vs. Food Corporation of India & Anr. reported in (2021) 2 SCC 551.*
- (iii) *Judgment and order dated 2<sup>nd</sup> December, 2015 passed in Ms Chaitanya Projects vs. State of Meghalaya, WP(C) No. 309 of 2014.*

3. Learned Senior counsel has also contended that, debarment being no different from blacklisting, the denial of any opportunity to show cause has affected the entire business prospects of the petitioner, who is engaged in this kind of business only. He therefore prays that, the impugned order by which the contract is terminated and the petitioner debarred from participating in future tenders with the respondent Corporation be set aside and quashed.

4. Mr. B.K. Singh, learned counsel for the respondent in reply to the submissions, has drawn the attention of this Court to the clauses in the

General Information to Tenderers and submits that, clause 7(iv) has specifically provided that, on the tenderer's failure after the communication of acceptance of the tender, to furnish security deposit, the contract shall be summarily terminated, that any losses or damages suffered will be recovered from the contractor, and that the contractor will also be debarred from participating in any future tenders of the Corporation for a period of 2(two) years. He also submits that in the Tender Submission Undertaking signed by the petitioner at Para – 8(l) thereof, it has been clearly stated that, no opportunity shall be given to the tenderer to alter, modify or withdraw any offer at any stage after submission of the tender. He therefore contends that, the petitioner being bound by the terms as aforementioned, and having sought withdrawal after being the successful bidder, no relief is available, or permissible and the writ petition is liable to be dismissed.

5. Having heard the learned counsel for the parties and having perused the materials as placed, it is first noted from the submissions that, the petitioner is more aggrieved with the debarment for a period of 2(two) years, which has been argued to be the same penalty as one of the blacklisting. As has been held by the Supreme Court, in the case of ***Patel Engineering Ltd. vs. Union of India*** reported in (2012) 11 SCC 257, *the decision of the 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. In the instant case, the petitioner has been debarred from participating in future tenders with the respondent Corporation, as per clause 7(iv), contained in the General Information to Tenderers, which reads as follows.*

***“7. Security Deposit***

- (iv) In the event of the Tenderer’s failure, after the communication of acceptance of the tender by the Corporation, to furnish the requisite Security Deposit under clause 7(i)a by the due date or requisite Security Deposit in the form of Bank Guarantee under 7(i)b & 7(i)c including extension period (applicable to submission of BG only), his Contract shall be summarily terminated besides forfeiture of the Earnest Money and the Corporation shall proceed for appointment of another contractor. Any losses or damages arising out of and incurred by the Corporation by such conduct of the contractor will be recovered from the contractor, without prejudice to any other rights and remedies of the Corporation under the Contract and Law. The contract will also be debarred from participating in any future tenders of the Corporation for a period of two years. After the completion of prescribed period of two years, the party may be allowed to participate in the future tenders of FCI provided all the recoveries/dues have been effected by the Corporation and there is no dispute pending with the contractor/party”.***

***[Emphasis supplied]***

6. The term ‘debarment’ therefore, as to whether it would tantamount to blacklisting, as has been sought to be made out by the petitioner, would necessarily have to be viewed from the impact such debarment would have on the petitioner, in the light of the law as laid down by the Supreme Court, and whether its effect would be the same. In the case of *Patel Engineering Ltd. vs. Union of India (supra)*, the Supreme Court at Paras – 13, 14 and 15, held as follows.

*“13. The concept of “blacklisting” is explained by this Court in Erusian Equipment & Chemicals Limited v. State of W.B. 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 authorises both the Union of India and the States 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 the State to enter into a contract, everybody has a right to be treated equally when the State seeks to establish contractual relationships. The effect of excluding a person from entering into a contractual*

*relationship with the 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 Equipment case that the decision of the 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. The State can decline to enter into a contractual relationship with a person or a class of persons for a legitimate purpose. The authority of the 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 the 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.”*

7. In the instant case looking into the consequences, the debarment of the petitioner has the same effect as blacklisting, though this term has not been used in clause 7(iv) thereof, inasmuch as, the petitioner has been prevented by the impugned order from entering into a contract or tendering his offer for any work with the respondent Corporation for a period of 2(two) years. Apart from the loss of potential future business, the aspect of being stigmatized by the debarment, also cannot be overlooked. As such, in the considered view of this Court, the debarment of the petitioner in the facts of the instant case amounts to blacklisting.



8. In the case of *UMC Technologies Private Limited (supra)*, as cited by the petitioner, the Supreme Court at Paras – 13, 14, 15 and 19, has held as follows.

*“13. At the outset, it must be noted that it is the first principle of civilised jurisprudence that a person against whom any action is sought to be taken or whose right or interests are being affected should be given a reasonable opportunity to defend himself. The basic principle of natural justice is that before adjudication starts, the authority concerned should give to the affected party a notice of the case against him so that he can defend himself. Such notice should be adequate and the grounds necessitating action and the penalty/action proposed should be mentioned specifically and unambiguously. An order travelling beyond the bounds of notice is impermissible and without jurisdiction to that extent. This Court in Nasir Ahmad v. Assistant Custodian General, Evacuee Property has held that it is essential for the notice to specify the particular grounds on the basis of which an action is proposed to be taken so as to enable the noticee to answer the case against him. If these conditions are not satisfied, the person cannot be said to have been granted any reasonable opportunity of being heard.*

*14. Specifically, in the context of blacklisting of a person or an entity by the state or a state corporation, the requirement of a valid, particularized and unambiguous show cause notice is particularly crucial due to the severe consequences of blacklisting and the stigmatization that accrues to the person/entity being blacklisted. Here, it may be gainful to describe the concept of blacklisting and the graveness of the consequences occasioned by it. Blacklisting has the effect of denying a person or an entity the privileged opportunity of entering into government contracts. This privilege arises*

*because it is the State who is the counterparty in government contracts and as such, every eligible person is to be afforded an equal opportunity to participate in such contracts, without arbitrariness and discrimination. Not only does blacklisting take away this privilege, it also tarnishes the blacklisted person's reputation and brings the person's character into question. Blacklisting also has long-lasting civil consequences for the future business prospects of the blacklisted person.*

*15. In the present case as well, the appellant has submitted that serious prejudice has been caused to it due to the Corporation's order of blacklisting as several other government corporations have now terminated their contracts with the appellant and/or prevented the appellant from participating in future tenders even though the impugned blacklisting order was, in fact, limited to the Corporation's Madhya Pradesh regional office. This domino effect, which can effectively lead to the civil death of a person, shows that the consequences of blacklisting travel far beyond the dealings of the blacklisted person with one particular government corporation and in view thereof, this Court has consistently prescribed strict adherence to principles of natural justice whenever an entity is sought to be blacklisted.*

*19. In light of the above decisions, it is clear that a prior show cause notice granting a reasonable opportunity of being heard is an essential element of all administrative decision-making and particularly so in decisions pertaining to blacklisting which entail grave consequences for the entity being blacklisted. In these cases, furnishing of a valid show cause notice is critical and a failure to do so would be fatal to any order of blacklisting pursuant thereto."*

9. The ratio of the above noted judgment clearly points the fact that, compliance with the Principles of Natural Justice are essential, notwithstanding the conditions contained in the Instructions to Bidders, which in the above quoted referred case, was with regard to bidders, who had been blacklisted or debarred. The petitioner therefore will surely be entitled to be heard, inasmuch as, an order which has civil consequences must be consistent with the Principles of Natural Justice.

10. In this view of the matter therefore, the respondent Corporation is to afford adequate opportunity to the petitioner to represent against the debarment, as given in the impugned order dated 15.11.2023.

11. Accordingly, in view of the observations and directions given herein above, the part of the impugned order debarring the petitioner contained at Para – 7 thereof, is set aside and will be subject to orders that will be passed by the respondent Corporation, after affording an opportunity of hearing.

12. Writ petition is allowed to the extent indicated above, and is disposed of.

13. No order as to costs.

**Judge**

Meghalaya  
29.02.2024  
“D.Thabab-PS”