



AFR

Court No. - 21

Case :- WRIT - C No. - 30556 of 2019

**Petitioner :-** M/S Baba Traders

**Respondent :-** State Of U.P. And 3 Others

**Counsel for Petitioner :-** Dhiraj Srivastava, Sri B.K. Srivastava  
(Sr. Adv.)

**Counsel for Respondent :-** C.S.C., K.R. Singh

Hon'ble Pradeep Kumar Singh Baghel, J.

Hon'ble Dr. Yogendra Kumar Srivastava, J.

(Per : Dr. Yogendra Kumar Srivastava, J.)

1. Heard Sri B.K. Srivastava, learned Senior Counsel assisted by Sri Dhiraj Srivastava, learned counsel for the petitioner and Sri K.R. Singh, learned counsel appearing for the second, third and the fourth respondents.

2. The present petition seeks to challenge the order dated 13.05.2019 passed by the third respondent/Vice Chairman, Gorakhpur Development Authority, Gorakhpur whereby the petitioner has been blacklisted for the purposes of allotment of contract of work by the Gorakhpur Development Authority and a penalty of Rs.20 lacs has been imposed. A further prayer is made for disposal of a representation made in this regard by the petitioner before the third respondent.

3. The facts of the case, as per the pleadings in the writ petition, in brief, are that the petitioner is a contractor registered with the Gorakhpur Development Authority engaged for the purposes of construction work for the past several years, and was directed by the respondent authorities to complete the work of construction of a culvert on a drain on urgent basis. It has been averred that after completion of the work some of the bricks used temporarily for supporting the concrete remained left over, and taking that to be the basis the impugned order dated 13.05.2019 has been passed by the third respondent blacklisting the petitioner permanently and imposing Rs.20 lacs as penalty

for the alleged use of old bricks in the construction work.

4. With the consent of the parties the writ petition is taken up for disposal as per the Rules of the Court.

5. Contention of the learned Senior Counsel appearing for the petitioner is that the impugned order of blacklisting dated 13.05.2019 has been passed against the petitioner without giving any show cause notice and opportunity of hearing hence the same is in gross violation of principles of natural justice.

6. It has been pointed out that the order of blacklisting which has been passed is not for any specified period of time and any such order having a permanent effect is not sustainable. It is also submitted that the impugned order does not refer to any enquiry which could be said to form basis of the order of blacklisting and that the effect of the order is not only stigmatic but it also has adverse civil consequences and as such cannot be legally sustained.

7. Sri K.R. Singh, learned counsel appearing for the second, third and the fourth respondents has not been able to point out from the order impugned that the same has been passed pursuant to any fact finding enquiry or that the petitioner was given any show cause notice or opportunity of hearing before passing of the order of blacklisting. There is no material on record to show that the principles of natural justice were complied with before passing of the order.

8. In order to appreciate the contentions of the parties we may advert to the meaning of “blacklist” and “blacklisting” and in this regard reference may be drawn to the enunciation of the aforementioned terms in the legal dictionaries.

9. The term “**blacklist**” has been defined in **Black's Law Dictionary**<sup>1</sup> in the following manner:-

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1 Black's Law Dictionary, 9<sup>th</sup> Edition

“To put the name of (a person) on a list of those who are to be boycotted or punished.”

10. **Wharton's Law Lexicon**<sup>2</sup> refers to the term “**blacklist**” as follows:-

“The term given to any list of persons with whom the person or body compiling the list advises no one should have dealings of the character indicated. Thus the list of defaulters on the Stock Exchange is so named, and various societies and individuals also publish lists with a similar purpose.”

11. The terms “**blacklist**” and “**blacklisting**” have been described in **Advanced Law Lexicon** by **P. Ramanatha Aiyar**<sup>3</sup> in the following manner:-

“**Black list** is a list of persons or firms against whom its compiler would warn the public, or some section of the public; a list of persons unworthy of credit, or with whom it is not advisable to make contracts. Thus, the official list of defaulters on the Stock Exchange is a blacklist. To put a man's name on such a blacklist without lawful causes is actionable; and the further publication of such a list will be restrained by injunction. A list of persons, firms companiesboycotted or punished.”

“**Blacklisting** is a part of the paraphernalia of strike. It may be said to represent the malignant hate and revenge of the parties resorting to it. In its purpose and effects it is closely allied to a boycott. A “blacklist” is defined to be a list of the persons marked out for special avoidance, antagonism, and enmity on the part of those who prepare the list or those among whom it is intended to circulate, as where a trade union blacklists workmen who refuse to conform to it rules; but it is most usually resorted to by combined employers, who exchange lists of their employees who go on strikes, with the agreement that none of them will employ the workmen whose names are on the lists, and comes within the meaning of what is termed a 'conspiracy'.

List of companies, products or people that are undesirable and to be avoided. In the USA the term means more specifically the denial of work to certain people on the grounds of their past beliefs or actions.”

12. In the celebrated case of **Quinn Vs. Leathem**<sup>4</sup> which is a case on economic tort and relates to the tort of "conspiracy to injure", it was stated by **Lord Lindley**, as follows:-

“...Black lists are real instruments of coercion, as every man

<sup>2</sup> Wharton's Law Lexicon, 17<sup>th</sup> Edition

<sup>3</sup> Advanced Law Lexicon by P. Ramanatha Aiyar Volume 1, 6<sup>th</sup> Edition

<sup>4</sup> (1901) UKHL 2

whose name is on one soon discovers to his cost,..."

13. The issue with regard to the entitlement to a notice to be heard before blacklisting came up in the case of **M/s Erusian Equipment & Chemicals Ltd. Vs. State of West Bengal & Anr.**<sup>5</sup> and referring to the powers of the State under Article 298 of the Constitution of India<sup>6</sup> to carry on trade or business, it was held that the exercise of such powers and functions in trade by the State is subject to Part III of the Constitution and the State while having the right to trade has the duty to observe equality and cannot choose to exclude persons by discrimination. The relevant observations made in the judgment are as follows:-

“12. Under Article 298 of the Constitution the executive power of the Union and the State shall extend to the carrying on of any trade and to the acquisition, holding and disposal of property and the making of contracts for any purpose. The State can carry on executive function by making a law or without making a law. The exercise of such powers and functions in trade by the State is subject to Part III of the Constitution. Article 14 speaks of equality before the law and equal protection of the laws. Equality of opportunity should apply to matters of public contracts. The State has the right to trade. The State has there the duty to observe equality. An ordinary individual can choose not to deal with any person. The Government cannot choose to exclude persons by discrimination. The order of blacklisting has the effect of depriving a person of equality of opportunity in the matter of public contract. A person who is on the approved list is unable to enter into advantageous relations with the Government because of the order of blacklisting. A person who has been dealing with the Government in the matter of sale and purchase of materials has a legitimate interest or expectation. When the State acts to the prejudice of a person it has to be supported by legality.

13. But for the order of blacklisting, the petitioner would have been entitled to participate in the purchase of cinchona. Similarly the respondent in the appeal would also have been entitled but for the order of blacklisting to tender competitive rates.

14. The State can enter into contract with any person it chooses. No person has a fundamental right to insist that the Government must enter into a contract with him. A citizen has a right to earn livelihood and to pursue any trade. A citizen has a right to claim equal treatment to enter into a contract which

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5 (1975) 1 SCC 70

6 the Constitution

may be proper, necessary and essential to his lawful calling.

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

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

17. The Government is a Government of laws and not of men. It is true that neither the petitioner nor the respondent has any right to enter into a contract but they are entitled to equal treatment with others who offer tender or quotations for the purchase of the goods. This privilege arises because it is the Government which is trading with the public and the democratic form of Government demands equality and absence of arbitrariness and discrimination in such transactions. Hohfeld treats privileges as a form of liberty as opposed to a duty. The activities of the Government have a public element and, therefore, there should be fairness and equality. The State need not enter into any contract with any one but if it does so, it must do so fairly without discrimination and without unfair procedure. Reputation is a part of a person's character and personality. Blacklisting tarnishes one's reputation.

18. Exclusion of a member of the public from dealing with a State in sales transactions has the effect of preventing him from purchasing and doing a lawful trade in the goods in discriminating against him in favour of other people. The State can impose reasonable conditions regarding rejection and acceptance of bids or qualifications of bidders. Just as exclusion of the lowest tender will be arbitrary, similarly exclusion of a person who offers the highest price from participating at a public auction would also have the same aspect of arbitrariness.

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

20. Blacklisting has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for purposes of gains. The fact that a disability is created by the order of blacklisting indicates that the relevant authority is to have an objective satisfaction. Fundamentals of fair play require that the person concerned should be given an opportunity to represent his case before he is put on the blacklist.”

14. The aforementioned proposition that no order of blacklisting could be passed without affording opportunity of hearing to the affected party was reiterated in the case of **Raghunath Thakur Vs. State of Bihar & Ors.**<sup>7</sup> wherein it was stated as follows:-

“4. Indisputably, no notice had been given to the appellant of the proposal of blacklisting the appellant. It was contended on behalf of the State Government that there was no requirement in the rule of giving any prior notice before blacklisting any person. Insofar as the contention that there is no requirement specifically of giving any notice is concerned, the respondent is right. But it is an implied 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 blacklisting any person in respect of business ventures has civil consequence for the future business of the person concerned in any event. Even if the rules do not express so, it is an elementary principle of natural justice that parties affected by any order should have right of being heard and making representations against the order...”

15. The exercise of the executive power of the State or its instrumentalities in entering into a contract with private parties flowing from Article 298 of the Constitution including the power

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7 (1989) 1 SCC 229

to enter or not into a contract came up for consideration in the case of **Mahabir Auto Stores & Ors. Vs. Indian Oil Corporation & Ors.**<sup>8</sup> and it was held that the decision of the State or any of its instrumentalities to enter or not into a contract being an administrative action the same would be open to a challenge on the ground of violation of Article 14 of the Constitution and would also be subject to the power of judicial review. The observations made in the judgment are as follows:-

“12. It is well settled that every action of the State or an instrumentality of the State in exercise of its executive power, must be informed by reason. In appropriate cases, actions uninformed by reason may be questioned as arbitrary in proceedings under Article 226 or Article 32 of the Constitution. Reliance in this connection may be placed on the observations of this Court in *Radha Krishna Agarwal v. State of Bihar* (1977) 3 SCC 457. It appears to us, at the outset, that in the facts and circumstances of the case, the respondent company IOC is an organ of the State or an instrumentality of the State as contemplated under Article 12 of the Constitution. The State acts in its executive power under Article 298 of the Constitution in entering or not entering in contracts with individual parties. Article 14 of the Constitution would be applicable to those exercises of power. Therefore, the action of State organ under Article 14 can be checked. See *Radha Krishna Agarwal v. State of Bihar* at p. 462, but Article 14 of the Constitution cannot and has not been construed as a charter for judicial review of State action after the contract has been entered into, to call upon the State to account for its actions in its manifold activities by stating reasons for such actions. In a situation of this nature certain activities of the respondent company which constituted State under Article 12 of the Constitution may be in certain circumstances subject to Article 14 of the Constitution in entering or not entering into contracts and must be reasonable and taken only upon lawful and relevant consideration; it depends upon facts and circumstances of a particular transaction whether hearing is necessary and reasons have to be stated. In case any right conferred on the citizens which is sought to be interfered, such action is subject to Article 14 of the Constitution, and must be reasonable and can be taken only upon lawful and relevant grounds of public interest. Where there is arbitrariness in State action of this type of entering or not entering into contracts, Article 14 springs up and judicial review strikes such an action down. Every action of the State executive authority must be subject to rule of law and must be informed by reason. So, whatever be the activity of the public authority, in such monopoly or semi-monopoly dealings, it

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8 (1990) 3 SCC 752

should meet the test of Article 14 of the Constitution. If a governmental action even in the matters of entering or not entering into contracts, fails to satisfy the test of reasonableness, the same would be unreasonable. In this connection reference may be made to E.P. Royappa v. State of Tamil Nadu (1974) 4 SCC 3, Maneka Gandhi v. Union of India (1978) 1 SCC 248, Ajay Hasia v. Khalid Mujib Sehravardi (1981) 1 SCC 722, R.D. Shetty v. International Airport Authority of India (1979) 3 SCC 489 and also Dwarkadas Marfatia and Sons v. Board of Trustees of the Port of Bombay (1989) 3 SCC 293. It appears to us that rule of reason and rule against arbitrariness and discrimination, rules of fair play and natural justice are part of the rule of law applicable in situation or action by State instrumentality in dealing with citizens in a situation like the present one. Even though the rights of the citizens are in the nature of contractual rights, the manner, the method and motive of a decision of entering or not entering into a contract, are subject to judicial review on the touchstone of relevance and reasonableness, fair play, natural justice, equality and non-discrimination in the type of the transactions and nature of the dealing as in the present case.

x x x x x

18. ...we are of the opinion that decision of the State/public authority under Article 298 of the Constitution, is an administrative decision and can be impeached on the ground that the decision is arbitrary or violative of Article 14 of the Constitution of India on any of the grounds available in public law field. It appears to us that in respect of corporation like IOC when without informing the parties concerned, as in the case of the appellant-firm herein on alleged change of policy and on that basis action to seek to bring to an end to course of transaction over 18 years involving large amounts of money is not fair action, especially in view of the monopolistic nature of the power of the respondent in this field. Therefore, it is necessary to reiterate that even in the field of public law, the relevant persons concerned or to be affected, should be taken into confidence. Whether and in what circumstances that confidence should be taken into consideration cannot be laid down on any strait-jacket basis. It depends on the nature of the right involved and nature of the power sought to be exercised in a particular situation. It is true that there is discrimination between power and right but whether the State or the instrumentality of a State has the right to function in public field or private field is a matter which, in our opinion, depends upon the facts and circumstances of the situation, but such exercise of power cannot be dealt with by the State or the instrumentality of the State without informing and taking into confidence, the party whose rights and powers are affected or sought to be affected, into confidence. In such situations most often people feel aggrieved by exclusion of knowledge if not taken into confidence.”

16. The requirement of grant of opportunity to show cause before blacklisting was restated in the case of **Gronsons Pharmaceuticals (P) Ltd. & Anr. Vs. State of Uttar Pradesh & Ors.**<sup>9</sup> and it was held that since the order blacklisting of an approved contractor results in civil consequences, the principle of *audi alteram partem* is required to be observed.

17. The power to blacklist a contractor was held to be inherent in the party allotting the contract and the freedom to contract or not to contract was held to be unqualified in the case of private parties; however when the party is State, the decision to blacklist would be open judicial review on touchstone of proportionality and the principles of natural justice. The relevant observations made in this regard in the case of **M/s Kulja Industries Limited Vs. Chief General Manager, W.T. Project, BSNL & Ors.**<sup>10</sup> are as under:-

“17. That apart, the power to blacklist a contractor whether the contract be for supply of material or equipment or for the execution of any other work whatsoever is in our opinion inherent in the party allotting the contract. There is no need for any such power being specifically conferred by statute or reserved by contractor. That is because “blacklisting” simply signifies a business decision by which the party affected by the breach decides not to enter into any contractual relationship with the party committing the breach. Between two private parties the right to take any such decision is absolute and untrammelled by any constraints whatsoever. The freedom to contract or not to contract is unqualified in the case of private parties. But any such decision is subject to judicial review when the same is taken by the State or any of its instrumentalities. This implies that any such decision will be open to scrutiny not only on the touchstone of the principles of natural justice but also on the doctrine of proportionality. A fair hearing to the party being blacklisted thus becomes an essential precondition for a proper exercise of the power and a valid order of blacklisting made pursuant thereto. The order itself being reasonable, fair and proportionate to the gravity of the offence is similarly examinable by a writ court.”

18. The aforementioned judgment has taken note of the fact that the principle of *audi alteram partem* has been held to be

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9 AIR 2001 SC 3707

10 (2014) 14 SCC 731

applicable to the process that may eventually culminate in the blacklisting of a contractor in the earlier judgments in **M/s Southern Painters Vs. Fertilizers & Chemicals Travancore Ltd. & Anr.**<sup>11</sup>, **Patel Engineering Ltd. Vs. Union of India**<sup>12</sup>, **B.S.N. Joshi & Sons Ltd. Vs. Nair Coal Services Ltd. & Ors.**<sup>13</sup>, **Joseph Vilangandan Vs. The Executive Engineer (PWD), Ernakulam & Ors.**<sup>14</sup>.

19. It was held that even though the right of the petitioner may be in the nature of a contractual right, the manner, the method and the motive behind the decision of the authority whether or not to enter into a contract is subject to the powers of judicial review on the touchstone of fairness, relevance, natural justice, non-discrimination, equality and proportionality. In this regard reference was made to earlier decisions in **Radha Krishna Agarwal & Ors. Vs. State of Bihar & Ors.**<sup>15</sup>, **E.P. Royappa Vs. State of Tamil Nadu & Anr.**<sup>16</sup>, **Maneka Gandhi Vs. Union of India & Anr.**<sup>17</sup>, **Ajay Hasia & Ors. Vs. Khalid Mujib Sehravardi & Ors.**<sup>18</sup>, **Ramana Dayaram Shetty Vs. International Airport Authority of India & Ors.**<sup>19</sup> and **Dwarkadas Marfatia and Sons Vs. Board of Trustees of the Port of Bombay**<sup>20</sup>.

20. The legal position governing blacklisting in USA and UK was also considered and it was noticed that in USA the term “debarment” is used by the statutes and the courts and comprehensive guidelines have been issued in this regard. It was also taken note of that though “debarment” is recognised as an effective tool for disciplining deviant contractors but the debarment is never permanent. The observations made in the

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11 1994 Supp (2) SCC 699

12 (2012) 11 SCC 257

13 (2006) 11 SCC 548

14 (1978) 3 SCC 36

15 (1977) 3 SCC 457

16 (1974) 4 SCC 3

17 (1978) 1 SCC 248

18 (1981) 1 SCC 722

19 (1979) 3 SCC 489

20 (1989) 3 SCC 293

judgment in this respect are as follows:-

“21. The legal position governing blacklisting of suppliers in USA and UK is no different. In USA instead of using the expression “blacklisting” the term “debarring” is used by the statutes and the courts. The Federal Government considers “suspension and debarment” as a powerful tool for protecting taxpayer resources and maintaining integrity of the processes for federal acquisitions. Comprehensive guidelines are, therefore, issued by the government for protecting public interest from those contractors and recipients who are non-responsible, lack business integrity or engage in dishonest or illegal conduct or are otherwise unable to perform satisfactorily. These guidelines prescribe the following among other grounds for debarment:

(a) Conviction of or civil judgment for.—

(1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction;

(2) Violation of Federal or State antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging;

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice; or (4) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects your present responsibility;

(b) Violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program, such as.—

(1) A wilful failure to perform in accordance with the terms of one or more public agreements or transactions;

(2) A history of failure to perform or of unsatisfactory performance of one or more public agreements or transactions; or

(3) A wilful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction;

(c) x x x x x

(d) Any other cause of so serious or compelling a nature that it affects your present responsibility.

22. The guidelines also stipulate the factors that may influence the debarring official’s decision which include the following:

a) The actual or potential harm or impact that results or may result from the wrongdoing.

b) The frequency of incidents and/or duration of the wrongdoing.

c) Whether there is a pattern or prior history of wrongdoing.

d) Whether contractor has been excluded or disqualified by an agency of the Federal Government or have not been allowed to participate in State or local contracts or assistance agreements on a basis of conduct similar to one or more of the causes for debarment specified in this part.

(e) Whether and to what extent did the contractor plan, initiate or carry out the wrongdoing.

(f) Whether the contractor has accepted responsibility for the wrongdoing and recognized the seriousness of the misconduct.

(g) Whether the contractor has paid or agreed to pay all criminal, civil and administrative liabilities for the improper activity, including any investigative or administrative costs incurred by the government, and have made or agreed to make full restitution.

(h) Whether contractor has cooperated fully with the government agencies during the investigation and any court or administrative action.

(i) Whether the wrongdoing was pervasive within the contractor's organization.

(j) The kind of positions held by the individuals involved in the wrongdoing.

(k) Whether the contractor has taken appropriate corrective action or remedial measures, such as establishing ethics training and implementing programs to prevent recurrence.

(l) Whether the contractor fully investigated the circumstances surrounding the cause for debarment and, if so, made the result of the investigation available to the debarring official.”

23. As regards the period for which the order of debarment will remain effective, the guidelines state that the same would depend upon the seriousness of the case leading to such debarment.

24. Similarly in England, Wales and Northern Ireland, there are statutory provisions that make operators ineligible on several grounds including fraud, fraudulent trading or conspiracy to defraud, bribery etc.

25. Suffice it to say that ‘debarment’ is recognised and often used as an effective method for disciplining deviant suppliers/contractors who may have committed acts of omission and commission or frauds including misrepresentations, falsification of records and other breaches of the regulations under which such contracts were allotted. What is notable is that the ‘debarment’ is never permanent and the period of debarment would invariably depend upon the nature of the offence committed by the erring contractor.”

21. In **Patel Engineering Ltd. Vs. Union of India**<sup>8</sup>, referring to the authority of the State and its instrumentalities to enter into contracts in view of the power conferred under Article 298 of the Constitution it was taken note of that the right to make a contract includes the right to not to make a contract; however, such right including the right to blacklist which could be exercised by the State is subject to the constitutional obligation

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8 (2012) 11 SCC 257

to obey the command of Article 14. The observations made in the judgment in this regard are being extracted below:-

“13. The concept of “blacklisting” is explained by this Court in *Erusian Equipment & Chemicals Limited 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 State to blacklist 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 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 judgment in *Erusian Equipment* case 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 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.”

22. The applicability of the principle of *audi alteram partem* and the necessity of issuance of a show cause notice before passing of an order of blacklisting and the prejudice caused for the reason of failure of giving notice was reiterated in **Gorkha**

**Security Services Vs. Government (NCT of Delhi) & Ors.**<sup>21</sup>,

and it was stated as follows:-

“16. It is a common case of the parties that the blacklisting has to be preceded by a show cause notice. Law in this regard is firmly grounded and does not even demand much amplification. The necessity of compliance with the principles of natural justice by giving the opportunity to the person against whom action of blacklisting is sought to be taken has a valid and solid rationale behind it. With blacklisting many civil and/or evil consequences follow. It is described as “civil death” of a person who is foisted with the order of blacklisting. Such an order is stigmatic in nature and debars such a person from participating in government tenders which means precluding him from the award of government contracts.

17. Way back in the year 1975, this Court in *Erusian Equipment & Chemicals Ltd. v. State of W.B.* [(1975) 1 SCC 70], highlighted the necessity of giving an opportunity to such a person by serving a show cause notice thereby giving him opportunity to meet the allegations which were in the mind of the authority contemplating blacklisting of such a person...

x x x x x

20. ...there is no dispute about the requirement of serving show-cause notice. We may also hasten to add that once the show-cause notice is given and opportunity to reply to the show-cause notice is afforded, it is not even necessary to give an oral hearing. The High Court has rightly repudiated the appellant's attempt in finding foul with the impugned order on this ground. Such a contention was specifically repelled in *Patel Engineering (supra)*.

**Contents of show-sause notice**

21. The central issue, however, pertains to the requirement of stating the action which is proposed to be taken. The fundamental purpose behind the serving of show-cause notice is to make the noticee understand the precise case set up against him which he has to meet. This would require the statement of imputations detailing out the alleged breaches and defaults he has committed, so that he gets an opportunity to rebut the same. Another requirement, according to us, is the nature of action which is proposed to be taken for such a breach. That should also be stated so that the noticee is able to point out that proposed action is not warranted in the given case, even if the defaults/breaches complained of are not satisfactorily explained. When it comes to black listing, this requirement becomes all the more imperative, having regard to the fact that it is harshest possible action.

22. The High Court has simply stated that the purpose of show cause notice is primarily to enable the noticee to meet the grounds on which the action is proposed against him. No doubt, the High Court is justified to this extent. However, it is equally

important to mention as to what would be the consequence if the noticee does not satisfactorily meet the grounds on which an action is proposed. To put it otherwise, we are of the opinion that in order to fulfil the requirements of principles of natural justice, a show cause notice should meet the following two requirements viz:

- (i) The material/grounds to be stated on which according to the Department necessitates an action;
- (ii) Particular penalty/action which is proposed to be taken. It is this second requirement which the High Court has failed to omit.

we may hasten to add that even if it is not specifically mentioned in the show cause notice but it can be clearly and safely be discerned from the reading thereof, that would be sufficient to meet this requirement.

x x x x x

27. We are, therefore, of the opinion that it was incumbent on the part of the Department to state in the show cause notice that the competent authority intended to impose such a penalty of blacklisting, so as to provide adequate and meaningful opportunity to the appellant to show cause against the same. However, we may also add that even if it is not mentioned specifically but from the reading of the show cause notice, it can be clearly inferred that such an action was proposed, that would fulfill this requirement...

x x x x x

29. No doubt, rules of natural justice are not embodied rules nor can they be lifted to the position of fundamental rights. However, their aim is to secure justice and to prevent miscarriage of justice. It is now well established proposition of law that unless a statutory provision either specifically or by necessary implication excludes the application of any rules of natural justice, in exercise of power prejudicially affecting another must be in conformity with the rules of natural justice.

30. We are conscious of the following words of wisdom expressed by this Court through the pen of Krishna Iyer, J. in *Board of Mining Examination v. Ramjee* (1977) 2 SCC 256 (pp. 258 & 262, paras 1, 13 & 14)

“1. If the jurisprudence of remedies were understood and applied from the perspective of social efficaciousness, the problem raised in this appeal would not have ended the erroneous way it did in the High Court. Judges must never forget that every law has a social purpose and engineering process without appreciating which justice to the law cannot be done. Here, the socio-legal situation we are faced with is a colliery, an explosive, an accident, luckily not lethal, caused by violation of a regulation and consequential cancellation of the certificate of the delinquent shot-firer, eventually quashed by the High Court, for processual solecisms, by a writ of certiorari.

x x x x x

13. Natural justice is no unruly horse, no lurking land mine,

nor a judicial cure all. If fairness is shown by the decision-maker to the man proceeded against, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice, without reference to the administrative realities and other factors of a given case, can be exasperating. We can neither be finical nor fanatical but should be flexible yet firm in this jurisdiction. No man shall be hit below the belt – that is the conscience of the matter.

14. ...we cannot look at law in the abstract or natural justice as a mere artefact. Nor can we fit into a rigid mould the concept of reasonable opportunity.”

31. When it comes to the action of blacklisting which is termed as “civil death” it would be difficult to accept the proposition that without even putting the noticee to such a contemplated action and giving him a chance to show cause as to why such an action be not taken, final order can be passed blacklisting such a person only on the premise that this is one of the actions so stated in the provisions of NIT.

#### **The “prejudice” argument**

32. It was sought to be argued by Mr. Maninder Singh, learned Additional Solicitor General appearing for the respondent, that even if it is accepted that show-cause notice should have contained the proposed action of blacklisting, no prejudice was caused to the appellant in as much as all necessary details mentioning defaults/prejudices committed by the appellant were given in the show-cause notice and the appellant had even given its reply thereto. According to him, even if the action of blacklisting was not proposed in the show-cause notice, reply of the appellant would have remained the same. On this premise, the learned Additional Solicitor General has argued that there is no prejudice caused to the appellant by non-mentioning of the proposed action of blacklisting. He argued that unless the appellant was able to show that non-mentioning of blacklisting as the proposed penalty has caused prejudice and has resulted in miscarriage of justice, the impugned action cannot be nullified. For this proposition he referred to the judgment of this Court in *Haryana Financial Corpn. v. Kailash Chandra Ahuja* (2008) 9 SCC 31 (pp. 38, 40-41, & 44, paras 21, 31, 36 & 44)

“21. From the ratio laid down in *ECIL v. B. Karunakar* (1993) 4 SCC 727 it is explicitly clear that the doctrine of natural justice requires supply of a copy of the inquiry officer’s report to the delinquent if such inquiry officer is other than the disciplinary authority. It is also clear that non-supply of report of the inquiry officer is in the breach of natural justice. But it is equally clear that failure to supply a report of the inquiry officer to the delinquent employee would not ipso facto result in the proceedings being declared null and void and the order of punishment non est and ineffective. It is for the delinquent employee to plead and prove that non-supply of such report had caused prejudice and resulted in miscarriage of justice. If

he is unable to satisfy the court on that point, the order of punishment cannot automatically be set aside.

x x x x x

31. At the same time, however, effect of violation of the rule of audi alteram partem has to be considered. Even if hearing is not afforded to the person who is sought to be affected or penalised, can it not be argued that 'notice would have served no purpose' or 'hearing could not have made difference' or 'the person could not have offered any defence whatsoever'. In this connection, it is interesting to note that under the English law, it was held few years before that non-compliance with principles of natural justice would make the order null and void and no further inquiry was necessary.

x x x x x

36. The recent trend, however, is of 'prejudice'. Even in those cases where procedural requirements have not been complied with, the action has not been held ipso facto illegal, unlawful or void unless it is shown that non-observance had prejudicially affected the applicant.

x x x x x

44. From the aforesaid decisions, it is clear that though supply of report of the inquiry officer is part and parcel of natural justice and must be furnished to the delinquent employee, failure to do so would not automatically result in quashing or setting aside of the order or the order being declared null and void. For that, the delinquent employee has to show 'prejudice'. Unless he is able to show that non-supply of report of the inquiry officer has resulted in prejudice or miscarriage of justice, an order of punishment cannot be held to be vitiated. And whether prejudice had been caused to the delinquent employee depends upon the facts and circumstances of each case and no rule of universal application can be laid down."

33. When we apply the ratio of the aforesaid judgment to the facts of the present case, it becomes difficult to accept the argument of the learned Additional Solicitor General. In the first instance, we may point out that no such case was set up by the respondents that by omitting to state the proposed action of blacklisting, the appellant in the show-cause notice has not caused any prejudice to the appellant. Moreover, had the action of blacklisting being specifically proposed in the show-cause notice, the appellant could have mentioned as to why such extreme penalty is not justified. It could have come out with extenuating circumstances defending such an action even if the defaults were there and the Department was not satisfied with the explanation qua the defaults. It could have even pleaded with the Department not to blacklist the appellant or do it for a lesser period in case the Department still wanted to black list the appellant. Therefore, it is not at all acceptable that non-mentioning of proposed blacklisting in the show-cause notice has not caused any prejudice to the appellant. This apart, the extreme nature of such a harsh penalty like blacklisting with severe consequences, would itself amount to causing prejudice to the appellant."

23. In **B.C. Biyani Projects Pvt. Ltd. Vs. State of M.P. & Ors.**<sup>22</sup> referring to the earlier judgment in the case of **M/s Kulja Industries Limited** it was held that an order of blacklisting for an indefinite period was not permissible in law. The observations made in the judgment in this regard are as follows:-

“7. In *Kulja Industries Limited v. Chief General Manager, Western Telecom Project Bharat Sanchar Nigam Limited and others*, (2014) 14 SCC 731, this Court held in paragraph 25 of the report that “debarment” cannot be permanent and the period of “debarment” would invariably depend upon the nature of the offence committed by the erring contractor. Paragraph 25 of the report reads as follows :

“25. Suffice it to say that “debarment” is recognised and often used as an effective method for disciplining deviant suppliers/contractors who may have committed acts of omission and commission or frauds including misrepresentations, falsification of records and other breaches of the regulations under which such contracts were allotted. What is notable is that the “debarment” is never permanent and the period of debarment would invariably depend upon the nature of the offence committed by the erring contractor.”

8. As mentioned above, the order for blacklisting the appellant is a permanent one. This is impermissible in law.”

24. It would be apposite to refer to a Full Bench judgment of the Kerala High Court in the case of **V. Punnen Thomas Vs. State of Kerala**<sup>23</sup> as an interesting stage in the course of development of law on the subject wherein it was held by a majority view that the Government can refuse to deal with any person without giving reason or for any reason it thinks fit and the principle of *audi alteram partem* would not be attracted.

25. Justice Mathew (as he then was) gave a dissenting view stating as follows:-

“14. Government has right like any private citizen to enter into contracts with any person it chooses and no person has a right fundamental or otherwise to insist that Government must enter into a contractual relation with him. See 1958 Ker LT 334=(AIR 1958 Ker 333). In AIR 1959 SC 490 the Supreme Court observed;

"There is no discrimination, because it is perfectly open to the Government, even as it is to a private party, to choose a

22 2017 (3) AWC 2840 (SC)

23 AIR 1969 Ker 81 (FB)

person to their liking to fulfil contracts which they wish to be performed."

In that case, there was no question of the legality of putting a person's name in black-list. The only question was whether for breach of a contract by Government, the remedy of the petitioner there, was to approach the Supreme Court under Article 32 of the Constitution. A citizen, I think, has the right "to earn his livelihood by any lawful calling; to pursue any livelihood or avocation; and for that purpose to enter into all contracts which may be proper, necessary, and essential to his carrying out to a successful conclusion the purposes above mentioned ..... In the privilege of pursuing an ordinary calling or trade, and of acquiring, holding and selling property, must be embraced the right to make all proper contracts in relation thereto". (See *Allgeyer v. State of Louisiana*. (1897) 165 US 578, 589, 591).

15. A contractual relationship presupposes a consensus of two minds. If Government is not willing to enter into contract with a person, I do not think that Government can be forced to do so. It is one thing to say that Government, like any other private citizen, can enter into contract with any person it pleases, but a totally different thing to say that government can unreasonably put a person's name in a black-list and debar him from entering into any contractual relationship with the government for years to come. In the former case, it might be said that Government is exercising its right like any other private citizen, 'but no, democratic government should with impunity pass a proceeding which will have civil consequences to a citizen without notice and an opportunity of being heard. The reason why the proceeding for blacklisting the petitioner and debarring him from taking government work for ten years was passed, is that he committed irregularities in connection with the tender of the contract work..."

26. An *ex parte* adverse adjudication without notice and opportunity of being heard and putting the petitioner on the blacklist and debarring him from work by way of punishment was held to be against all notions on fairness in a democratic country and in this regard the observations made by **Frankfurter, J. in Joint Anti Fascist Refugee Com. Vs. McGrath**<sup>24</sup> which were referred to are being extracted below:-

"That a conclusion satisfies one's private conscience does not attest its reliability. The validity and moral authority of a conclusion largely depend on the mode by which it was reached. Secrecy is not congenial to truth-seeking and self-righteousness gives too slender an assurance of lightness. No better instrument has been devised for arriving at truth than to

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24 (1951) 341 US 123

give a person in jeopardy of serious loss, notice of the case against him and opportunity to meet it. Nor has a better way been found for generating the feeling, so important to a popular Government, that justice has been done.”

27. The minority judgment further referred to the article of **Kenneth Culp Davis** under the title “**The Requirement of a Trial-Type Hearing**”<sup>25</sup> to draw the inference that apart from the material damage involved in the loss of the prospect of entering into the advantageous relationship with Government, a verdict of being guilty of irregularities, coming from the Government has civil consequences as it touches the reputation and standing of the contractor in the business world. The passages of the article, which have been referred, are being extracted below:-

“The plain fact is that the Courts often give legal protection to what they persist in calling 'privileges'. In doing so they commonly rely upon one or more of three ideas or on a fourth method which involves the lack of an idea. The three ideas are: (1) that constitutional principles of substantive and procedural fairness apply even when only a privilege is at stake and even when the privilege itself is not directly entitled to legal protection; (2) that privileges as well as rights are entitled to legal protection; and (3) that when a privilege is combined with another interest the combination may be a right and accordingly entitled to legal protection. The remaining method is (4) to cast logic to the winds in discussing right and privilege or to provide legal protection to a privilege without mentioning the problem of privilege.

(1) the essence of the first idea is that the government is still the government even when it is dispensing bounties, gratuities, or privileges, that we want the government to be fair no matter what its activities may be, and that often the best way to assure governmental fairness is by relying upon judicial enforcement of the usual concepts of fairness. Therefore, the basic constitutional Limitations having to do with fairness often apply even though the privileges as such are not entitled to legal protection.

But if a right is an interest which is legally protected, and if a Court gives legal protection to a privilege, does not the Court turn the privilege into a right? Even if the answer to this question is yes, the proposition still be perfectly sound that one who lacks a 'right' to a Government gratuity may nevertheless have a 'right' to fair treatment in the distribution of the gratuity. In tort law, the accident victim has no right to be helped by the passer-by who volunteers to help. Like the passer-by, the

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25 Harvard Law Review Volume 70 page 193 at p. 225

Government may refuse altogether to help applicants for gratuities, but it cannot provide the help improperly; it cannot grant or withhold on the basis of racial or religious discrimination. The federal Government could deny altogether the admission of Oklahoma to the union, but it could not admit Oklahoma improperly, that is with a condition that its capital must be at a particular place. A State can deny altogether a permit to a foreign corporation to do local business, but it cannot grant the privilege improperly, that is, on condition that suits against the corporation shall not be removed to a federal Court."

"Similarly, one who has no 'right' to sell liquor, in the sense that the State may prohibit the sale of liquor altogether, may nevertheless have a right to fair treatment when State officers grant, deny, suspend, or revoke liquor licences, The State need not grant any such licences, but if it does so, it must do so fairly — without racial or religious discrimination, and without unfair procedure."

"The fundamental proposition, stated abstractly, is that some kinds of unfairness are deemed deserving of judicial relief even when they appear in a context of privileges or gratuities. This proposition appears frequently in judicial opinions."

"Even though one may have no right to a Government gratuity one may have a right to be free from damage to reputation or position that may result from withholding of a Government gratuity in some circumstances."

28. Viewing reputation both as an interest of personality and as an interest of substance i.e. as an asset, the following passage from "**Code of Actionable Defamation**"<sup>26</sup> was extracted in the judgment, and the same is being reproduced below:-

"It may be granted that reputation in many respects differs from other forms of property and connotes certain ideas involved in the notion of 'person' or 'personality', for ..... it is certainly a very special and strictly personal type of asset: it has some analogies, no doubt, to the right of the individual to his life, his limbs, or his liberty, which are all only 'property' in a somewhat metaphorical sense. .... In so far, however, as individual honour, dignity, character, and reputation are recognised by the law as proper subjects of its protection and as being such that any injury thereto entitles the aggrieved party to the same forms of legal redresses as the invasion of property strictly so called, it is permissible to consider these rights as assets, though assets of a somewhat peculiar description."

29. Further, the extract from the article "**Interest of Personality**" by **Roscoe Pound**<sup>27</sup>, which was referred, is being

<sup>26</sup> Code of Actionable Defamation by Spencer Bower

<sup>27</sup> Harvard Law Review, pages 445 and 447

reproduced below:-

“On the one hand there is the claim of the individual to be secured in his dignity and honour as part of his personality in a world in which one must live in society among his fellow men. On the other hand there is the claim to be secured in his reputation as a part of his substance, in that in a world in which credit plays so large a part the confidence and esteem of one's fellow-men may be a valuable asset.”

30. With regard to the exercise of power of “debarment” having a serious effect and being attended with civil consequences, reference was drawn to **Australian Law Journal Volume 49**<sup>28</sup>, to state that the ultimate question was:-

"whether an exercise of the power would have a 'serious' effect on the applicant, and whether an exercise of the power was conditional on some factual determination or evaluation rather than being a completely open discretion based on policy".

31. The scope of exercise of powers by the Government in selecting the recipients for largess and the conferment of privileges was also considered and it was stated as follows:-

“The concept of privilege, gratuity, or grace is useful; we probably would invent it if our legal system were without it. Like an individual, the Government may make generous gifts, perform compassionate acts of grace, and legally recognise as privileges such interests as deserve to be something less than legal rights. A donee ought not to be allowed to compel the Government to make a gift. Nor should a supplicant for an act of grace be permitted to coerce officers to make a favourable determination in the exercise of discretionary power. Even so, the Government is not and should not be as free as an individual in selecting the recipients for largess. Whatever its activity the Government is still the Government and will be subject to restraints, inherent in its position in a democratic society. A democratic Government cannot lay down arbitrary and capricious standards for the choice of persons with whom alone it will deal.”

32. In this regard reference was drawn to “**Summary of Colloquy on Administrative Law**” by **Walter Gellhorn**<sup>29</sup>, and the extract which was referred, is being reproduced below:-

“A 'privilege' is not something to be dealt with lightly. Much of modern life, it may be said, depends on the continued enjoyment of a 'privilege'.”

<sup>28</sup> Australian Law Journal Volume 49 page 129

<sup>29</sup> The Journal of the Society of Public Teachers of Law, June 1961, page 70 at 72

33. Finally, Justice Mathew in his minority judgment drew the following conclusion:-

“As the memorandum in question casts a stigma on the reputation of the petitioner, which is both an interest of personality and an interest of substance, and as it is attended with civil consequences to the petitioner, and as it operates as a punishment for an alleged irregularity, I think, the memorandum should have been proceeded by notice and an opportunity of being heard. If anybody were to say that Ext. P-1 is an administrative proceeding and so no notice or opportunity of being heard was required and that no interference under Article 226 is possible, I would answer him in the high and powerful words of Mr. Belloc, "you have mistaken the hour of the night: it is already morning"..."

34. The question with regard to applicability of the principle of *audi alterem partem* in a matter of blacklisting of a contractor without notice by the government fell for consideration in **Joseph Vilangandan Vs. The Executive Engineer (PWD), Ernakulam & Ors.**<sup>14</sup> in a case where a petition challenging the order of blacklisting had been dismissed by a learned Single Judge of the High Court in the light of the majority decision by the Full Bench in the case of **V. Punnen Thomas** (supra), and the writ appeal filed there against had also been dismissed by the Division Bench *in limine*. The Supreme Court, hearing the appeal by special leave, upon considering the judgment in the case of **M/s Erusian Equipment & Chemicals Ltd.** (supra) held that the majority judgment in the case of **V. Punnen Thomas** must be deemed to be overruled by the decision in the case of **M/s Erusian Equipment & Chemicals Ltd.** The relevant observations made in the judgment are as follows:-

“17. The majority judgment of the Kerala High Court, inasmuch as it holds that a person is not entitled to a hearing, before he is blacklisted, must be deemed to have been overruled by the decision of this Court in Erusian Equipments (ibid) wherein it was held that (SCC p. 75, para 20) :

“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.”

35. A similar view was reiterated in **M/s Southern Painters Vs. Fertilizers and Travancore Ltd. & Anr.**<sup>11</sup>, and after referring to the minority view of Justice Mathew in the case of **V. Punnen Thomas** (supra), it was stated that the said minority view was now the law. The observations made in the judgment are as follows:-

8. The minority view of Justice Mathew is now the law. The majority view in V. Punnen Thomas case [V. Punnen Thomas Vs. State of Kerala, AIR 1969 Ker 81 : 1968 Ker LT 800 : 1968 Ker LJ 619] is not good law and must be considered to have been, impliedly, overruled by the Erusian case [Erusian Equipment & Chemicals Ltd. v. State of W.B, (1975) 1 SCC 70, 75]. Indeed, in Joseph Vilangandan v. Executive Engineer, Buildings & Roads (PWD) Division, Ernakulam [(1978) 3 SCC 36, 41 : (1978) 3 SCR 514, 518] it was held:

“The majority judgment of the Kerala High Court, inasmuch as it holds that a person is not entitled to a hearing, before he is blacklisted, must be deemed to have been overruled by the decision of this Court in Erusian Equipment & Chemicals Ltd. v. State of W.B, (1975) 1 SCC 70, 75] ....”

36. We may thus reiterate that the right to enter into a contractual relationship is inherent in every person capable of entering into a contract with a concomitant right also not to enter into a contract. The right to refuse to enter into a contract however does not vest with the State and its instrumentalities in the same manner as it vests with a private individual. The right to enter into a contract by the State flows from the power under Article 298 of the Constitution and together with it is the right not to enter into a contract and the choice to blacklist any particular person with whom the State does not wish to enter into a contract. This decision however in case it is taken by the State or any of its instrumentalities is to be made reasonably and in accord with the principles of natural justice.

37. An order of blacklisting has the effect of depriving a person of equality of opportunity in the manner of public contract and in a case where the State acts to the prejudice of a person it has

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<sup>11</sup> 1994 Supp (2) SCC 699

to be supported by legality. The activities of the State having the public element quality must be imbued with fairness and equality.

38. The order of blacklisting involves civil consequences and has the effect of creating a disability by preventing a person from the privilege and advantage of entering into lawful relationship with the government therefore fundamentals of fair play would require that the concerned person should be given an opportunity to represent his case before he is put on the blacklist. A fair hearing to the party before being blacklisted thus becomes an essential pre-condition for a proper exercise of the power and a valid order of blacklisting made pursuant thereto. The applicability of the principle of *audi alteram partem* and the necessity of issuance of show cause notice also become imperative before passing of any such order of blacklisting.

39. In the instant case order of blacklisting having been passed without issuance of a show cause notice and opportunity of hearing and having been made for an indefinite period would be in clear violation of the principle of *audi alteram partem*, and would be legally unsustainable.

40. Accordingly, the order impugned dated 13.05.2019 passed by the third respondent/Vice Chairman, Gorakhpur Development Authority, Gorakhpur whereby the petitioner has been blacklisted, cannot be legally sustained and is therefore set aside.

41. The matter is remitted back to the third respondent leaving it open to pass a fresh reasoned order after giving due notice and opportunity to the petitioner in respect of the proposed action.

42. The writ petition is allowed to the extent indicated above.

**Order Date :- 27.9.2019**

Shahroz

(Dr. Y.K. Srivastava,J.)

(P.K.S. Baghel,J.)