AFR

Court No. - 21 **RESERVED**

Case :- WRIT - C No. - 18052 of 2022

Petitioner :- M/S Nsoft (India) Services Pvt. Ltd.
Respondent :- Purvanchal Vidhyut Vitaran Nigam Ltd. And Another
Counsel for Petitioner :- Ujjawal Satsangi,Shagun K. Saran
Counsel for Respondent :- Udit Chandra

connected with

Case :- WRIT - C No. - 18053 of 2022

Petitioner :- M/S Bcits Pvt. Ltd.
Respondent :- Purvanchal Vidhyut Vitaran Nigam Ltd. And Another
Counsel for Petitioner :- Ujjawal Satsangi
Counsel for Respondent :- Udit Chandra

Hon'ble Manoj Kumar Gupta,J.
Hon'ble Dr. Yogendra Kumar Srivastava,J.

(Per Hon'ble Dr. Yogendra Kumar Srivastava, J)

1. The two writ petitions arise out of similar set of facts and seek to raise challenge to notices bearing date 18.6.2022 directing the petitioners to show cause in respect of the proposed action of blacklisting/debarment. Accordingly, with the consent of the parties, the two petitions have been heard and are being disposed of by means of a common order.

2. Heard Sri Prashant Chandra, learned Senior Counsel assisted by Sri Kartikeya Dubey and Sri Ujjawal Satsangi for the petitioners and Sri Udit Chandra, learned counsel for the respondents.

3. Pleadings have been exchanged between the parties in both the petitions.

4. At the very outset, it would be relevant to take notice of the fact that the writ petitioner in Writ C No. 18053 of 2022 (M/S Bcits Pvt. Ltd vs. Purvanchal Vidhyut Vitaran Nigam Ltd. And Another) had approached this Court earlier in **Writ C No. 15363 of 2022 (M/s Bcits Pvt. Ltd. vs. Purvanchal Vidhyut Vitaran Nigam Ltd. And Another)** seeking to challenge notice dated 18.5.2022 whereby the petitioner had been directed to show cause in respect of a proposed

action of blacklisting/debarment.

5. The writ court allowed the writ petition by means of a judgement dated 26.5.2022 taking into consideration the fact that in the aforestated notice the authority concerned had already recorded its conclusion with regard to explanation furnished by the petitioner earlier and had found the same to be unsatisfactory. The Court held that since the respondent authority had already expressed its mind, the exercise which was to follow would be an empty formality. Accordingly, the notice was quashed leaving it open to the respondent corporation to issue a fresh notice in accordance with law, if so advised.

6. Against a similarly worded notice bearing same date i.e. 18.5.2022, the petitioner in Writ C No. 18052 of 2022 (M/S Nsoft (India) Services Pvt. Ltd. vs. Purvanchal Vidyut Vitaran And Another) had also preferred an earlier petition being **Writ C No. 17169 of 2022 (M/s Nsoft India Services vs. Purvanchal Vidyut Vitaran And Another)** and following the judgement in Writ C No. 15363 of 2022 (M/s Bcits Pvt. Ltd. vs. Purvanchal Vidhyut Vitaran Nigam Ltd. And Another), the writ petition was disposed of in the same terms by means of a judgment dated 16.6.2022.

7. It is pursuant to the judgments in the earlier round of litigation, referred to above, that the respondent no.2 issued notices dated 18.6.2022 bearing Reference No. 162/PuVVNL(Varanasi)/ Commercial/Billing and Reference No. 161/PuVVNL(Varanasi)/ Commercial/Billing respectively, against the petitioners in the two writ petitions, in terms of which they were directed to show cause as to why in the light of the facts stated in the notices, the petitioner firms be not blacklisted/debarred for a period of two years.

8. Challenging the aforesaid notices, the present petitions have been filed.

9. Counsel appearing for the respondents has raised a preliminary objection by submitting that the notices dated 18.6.2022 which are sought to be challenged only direct the petitioners to answer the

charges which have been levelled against the petitioner firms with a further mention as to why it should not be blacklisted for a period of two years and the decision whether to blacklist the petitioners or not would be taken only after objection to the show cause notices have been submitted by the petitioners and in view thereof, the present petitions are premature and not maintainable.

10. Learned Senior Counsel appearing for the petitioners while assailing the show cause notices dated 18.6.2022 issued by the respondent no.2, submits as under:

10.1 The notices dated 18.6.2022 though stated to be for the purpose of giving the petitioners a show cause, is infact in the nature of an order which has been issued with premeditation with malice writ large in issuing the said notices.

10.2 The notices are founded on incorrect and incomplete facts which have been selectively stated to prejudice the petitioners. The entire exercise sought to be undertaken is arbitrary and opposed to the mandate of Article 14 of the Constitution.

10.3 The show cause notices conveniently conceal the factum of issuance of earlier notices which had been suitably responded by the petitioners. The successive show cause notices issued for the self-same reasons go to show that the respondent authority is proceeding with premeditation to somehow punish the petitioners.

10.4 The tenor of the notices is indicative of the fact that the respondent authority has already made up its mind to pass an order of blacklisting against the petitioners and therefore, the entire exercise which is proposed to be undertaken in furtherance of the notice would be an empty formality and a futile exercise. To support his submission, learned Senior Counsel has placed reliance upon the decisions in **Siemens Ltd. vs. State of Maharashtra & Others**[1] and **Oryx Fisheries Pvt. Ltd vs. Union of India & Others**[2]**.**

10.5 An attempt has also been made to draw attention of the Court to

1 (2006) 12 SCC 33
2 (2010) 13 SCC 427

the merits of the case and the defence which is sought to be put up by the petitioner firms in response to the imputations made in the show cause notices.

11. The respondents have filed counter affidavits in both the petitions in which it has been categorically averred that the notices dated 18.6.2022 simply call upon the petitioner firms to submit an explanation for violation of the various conditions under the agreement. It is submitted that the notices have been issued strictly in accordance with the liberty granted by this Court in terms of the judgements dated 26.5.2022 and 16.6.2022 passed in the earlier writs being Writ C No. 15363 of 2022 and Writ C No. 17169 of 2022, respectively.

12. It is further submitted that the first part of the notices contains statement of imputations regarding alleged breaches and default committed by the petitioners with specific details having been given so as to enable the petitioners to precisely know the exact case or allegations levelled against them in order to enable them to give a reply to the allegations. The second part of the notices indicates the punishment which is proposed, in case the replies submitted by the petitioners are held to be not satisfactory, and also the quantum of punishment which the respondent authorities propose to impose on the petitioners. It has been averred that in the entire show cause notice there is no whisper of any premeditation as alleged by the petitioners. It has been further averred that the respondent authorities have issued the show cause notice with an open mind calling upon the petitioners to submit reply to the allegations which have been levelled and it is only after reply of the petitioners is submitted that the authority would take a decision whether to drop the show cause notice or to pass an order with regard to blacklisting of the petitioners.

13. On behalf of the respondents, reliance is sought to be placed on the decision in the case of **Gorkha Security Services vs. Government (NCT of Delhi) & Others**[3] for the proposition that in order to fulfill

3 (2014) 9 SCC 105

the requirements of principles of natural justice, a show cause notice in addition to proposing the penalty/action proposed to be taken is also required to state the materials/grounds on the basis of which the department proposes to take the action.

14. Rival contentions which have been raised across the bar would require appreciation of the parameters under which a show cause notice particularly in reference to a proposed order of blacklisting/debarment may be issued and the circumstances under which the validity of a show cause notice may be assailed in writ jurisdiction.

15. The maintainability of a writ petition against a show cause notice was subject matter of consideration in the case of **Siemens Ltd.** wherein it was held that ordinarily a writ court may not exercise its discretionary jurisdiction in entertaining a writ petition questioning a notice to show cause unless it is without jurisdiction; however, when a notice is issued with premeditation, writ petition would be maintainable. Referring to the earlier decisions in **State of U.P. vs. Brahm Datt Sharma**[4] **Special Director vs. Mohd. Ghulam Ghouse**[5]**, Union of India vs. Kunisetty Satyanarayana**[6]**, K.I. Shephard vs. Union of India**[7] and **V.C., Banaras Hindu University vs. Shrikant**[8]**,** it was observed as follows:-

> "9. Although ordinarily a writ court may not exercise its discretionary jurisdiction in entertaining a writ petition questioning a notice to show cause unless the same inter alia appears to have been without jurisdiction as has been held by this Court in some decisions including *State of U.P. v. Brahm Datt Sharma*, *Special Director v. Mohd. Ghulam Ghouse* and *Union of India v. Kunisetty Satyanarayana*, but the question herein has to be considered from a different angle viz. when a notice is issued with premeditation, a writ petition would be maintainable. In such an event, even if the court directs the statutory authority to hear the matter afresh, ordinarily such hearing would not yield any fruitful purpose. (See *K.I. Shephard v. Union of India*.) It is evident in the instant case that the respondent has clearly made up its mind. It explicitly said so both in the counter-affidavit as also in its purported show-cause notice.
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> 10. The said principle has been followed by this Court in *V.C., Banaras Hindu University v. Shrikant*, stating: (SCC p. 60, paras 48-49)
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> > "48. The Vice-Chancellor appears to have made up his mind to impose the punishment of dismissal on the respondent herein. A

4 (1987) 2 SCC 179
5 (2004) 3 SCC 440
6 (2006) 12 SCC 28
7 (1987) 4 SCC 431
8 (2006) 11 SCC 42

> post-decisional hearing given by the High Court was illusory in this case.
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> 49. In *K.I. Shephard v. Union of India* this Court held: (SCC p. 449, para 16)
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> > '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.' "
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> (See also *Shekhar Ghosh v. Union of India*[9] and *Rajesh Kumar v. D.C.I.T.*[10])
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> 11. A bare perusal of the order impugned before the High Court as also the statements made before us in the counter-affidavit filed by the respondents, we are satisfied that the statutory authority has already applied its mind and has formed an opinion as regards the liability or otherwise of the appellant. If in passing the order the respondent has already determined the liability of the appellant and the only question which remains for its consideration is quantification thereof, the same does not remain in the realm of a show-cause notice. The writ petition, in our opinion, was maintainable."

16. The question as to what would be the proper contents of a notice to show cause, so as to be in consonance with the principles of natural justice was considered in the case of **Oryx Fisheries** (supra) and it was observed that the notice directing show cause must state the charges only and not definite conclusions of alleged guilt otherwise the entire proceeding would stand vitiated by unfairness and bias. It was stated thus:-

> "24. … It is well settled that a quasi-judicial authority, while acting in exercise of its statutory power must act fairly and must act with an open mind while initiating a show-cause proceeding. A show-cause proceeding is meant to give the person proceeded against a reasonable opportunity of making his objection against the proposed charges indicated in the notice.
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> 25. Expressions like "a reasonable opportunity of making objections" or "a reasonable opportunity of defence" have come up for consideration before this Court in the context of several statutes. A Constitution Bench of this Court in *Khem Chand v. Union of India*[11], of course in the context of service jurisprudence, reiterated certain principles which are applicable in the present case also.
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> 26. S.R. Das, C.J. speaking for the unanimous Constitution Bench in *Khem Chand* held that the concept of "reasonable opportunity" includes various safeguards and one of them, in the words of the learned Chief Justice, is : (AIR p. 307, para 19)
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> > "(a) An opportunity to deny his guilt and establish his innocence, which he can only do if he is told what the charges levelled against him are and the allegations on which such charges are based;"
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> 27. It is no doubt true that at the stage of show cause, the person proceeded against must be told the charges against him so that he can

9 (2007) 1 SCC 331
10 (2007) 2 SCC 181
11 AIR 1958 SC 300

> take his defence and prove his innocence. It is obvious that at that stage the authority issuing the charge-sheet, cannot, instead of telling him the charges, confront him with definite conclusions of his alleged guilt. If that is done, as has been done in this instant case, the entire proceeding initiated by the show-cause notice gets vitiated by unfairness and bias and the subsequent proceedings become an idle ceremony.
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> 28. Justice is rooted in confidence and justice is the goal of a quasi-judicial proceeding also. If the functioning of a quasi-judicial authority has to inspire confidence in the minds of those subjected to its jurisdiction, such authority must act with utmost fairness. Its fairness is obviously to be manifested by the language in which charges are couched and conveyed to the person proceeded against.
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> 29. …
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> 30. ...
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> 31. It is of course true that the show-cause notice cannot be read hypertechnically and it is well settled that it is to be read reasonably. But one thing is clear that while reading a show-cause notice the person who is subject to it must get an impression that he will get an effective opportunity to rebut the allegations contained in the show-cause notice and prove his innocence. If on a reasonable reading of a show-cause notice a person of ordinary prudence gets the feeling that his reply to the show-cause notice will be an empty ceremony and he will merely knock his head against the impenetrable wall of prejudged opinion, such a show-cause notice does not commence a fair procedure especially when it is issued in a quasi-judicial proceeding under a statutory regulation which promises to give the person proceeded against a reasonable opportunity of defence.
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> 32. Therefore, while issuing a show-cause notice, the authorities must take care to manifestly keep an open mind as they are to act fairly in adjudging the guilt or otherwise of the person proceeded against and specially when he has the power to take a punitive step against the person after giving him a show-cause notice.
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> 33. The principle that justice must not only be done but it must eminently appear to be done as well is equally applicable to quasi-judicial proceeding if such a proceeding has to inspire confidence in the mind of those who are subject to it."

17. The scope of judicial review in matters relating to challenge to show-cause notice was subject matter of consideration in **Union of India and another Vs. Vicco Laboratories**[12], and while holding that non-interference at the stage of issuance of show-cause notice is the normal rule, it was stated that where a show-cause notice is issued either without jurisdiction or in an abuse of process of law, the writ court would not hesitate to interfere even at the stage of issuance of show-cause notice. The observations made in the judgment in this regard are as follows:-

> "31. Normally, the writ court should not interfere at the stage of issuance of show-cause notice by the authorities. In such a case, the parties get ample opportunity to put forth their contentions before the

12 (2007) 13 SCC 270

> authorities concerned and to satisfy the authorities concerned about the absence of case for proceeding against the person against whom the show-cause notices have been issued. Abstinence from interference at the stage of issuance of show-cause notice in order to relegate the parties to the proceedings before the authorities concerned is the normal rule. However, the said rule is not without exceptions. Where a show-cause notice is issued either without jurisdiction or in an abuse of process of law, certainly in that case, the writ court would not hesitate to interfere even at the stage of issuance of show-cause notice. The interference at the show-cause notice stage should be rare and not in a routine manner. Mere assertion by the writ petitioner that notice was without jurisdiction and/or abuse of process of law would not suffice. It should be prima facie established to be so. Where factual adjudication would be necessary, interference is ruled out."

18. The principle that a writ petition should normally not be entertained against mere issuance of show-cause notice was reiterated in **Commissioner of Central Excise, Haldia Vs. M/S. Krishna Wax (P) Ltd.**[13] and it was held that the concerned person must first raise all the objections before the authority which had issued a show-cause notice and the redressal in terms of the existing provisions of law could be taken resort to if an adverse order was passed against such person.

19. A similar view had been taken in a decision in **Malladi Drugs and Pharma Ltd. Vs. Union of India**[14]**,** and the judgment of the High Court dismissing the writ petition against a show-cause notice was upheld.

20. Again in **Union of India and others Vs. Coastal Container Transporters Association and others**[15], while examining the scope of powers under Article 226 with regard to quashment of a show-cause notice, it was held that the same would not be permissible unless there is lack of jurisdiction or violation of principles of natural justice.

21. In the two cases before us, the factum of service of the notices dated 18.06.2022 by the respondent-Corporation on the petitioners requiring them to show cause as to why an order of blacklisting be not passed, is not in dispute. It is rather sought to be argued that since the show cause notice specifies the imputations, the same is indicative of the fact that the respondent authority has already made its mind to pass an order of blacklisting against the petitioners and that the notices are,

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13 (2020) 12 SCC 572
14 (2020) 12 SCC 808
15 (2019) 20 SCC 446

therefore premeditated and the entire exercise proposed to be undertaken in furtherance thereof would be an empty formality.

22. In **Gorkha Security Services**[3] (supra), the question pertaining to the form and content of a show cause notice that is required to be served before deciding as to whether the noticee is to be blacklisted or not was subject matter of consideration and it was held that it is a mandatory requirement to give such a show cause notice to mention that action of blacklisting is proposed so as to provide adequate and meaningful opportunity to show cause against the same. Accordingly, it was observed that this would require the statement of imputations detailing out the alleged breaches and defaults so that the noticee gets an opportunity to rebut the same. The guidelines laid down as to the contents of show cause notice pursuant to which an order of blacklisting may be passed, in the aforesaid decision, are in the following terms:-

> "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 blacklisting, this requirement becomes all the more imperative, having regard to the fact that it is harshest possible action.
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> 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:
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> (i) The material/grounds to be stated which according to the department necessitates an action;
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> (ii) Particular penalty/action which is proposed to be taken. It is this second requirement which the High Court has failed to omit.
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> We may hasten to add that even if it is not specifically mentioned in the show-cause notice but it can clearly and safely be discerned from the reading thereof, that would be sufficient to meet this requirement."

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3 (2014) 9 SCC 105

23. The manner in which a show cause notice is to be issued to constitute a valid basis of a blacklisting order in the context of government contracts and tenders was subject matter of consideration in a recent decision in the case of **UMC Technologies Private Ltd. Vs. Food Corporation of India and another**[16] and after explaining the principles in regard to the same in detail, it was held that it is essential for the notice to specify the particular grounds on which an action is proposed to be taken so as to enable the noticee to answer the case against him and in the absence of the same a person cannot be said to be granted a reasonable opportunity of being heard. It was stated thus:-

> "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. Custodian General, Evacuee Property [Nasir Ahmad v. Custodian General, Evacuee Property, (1980) 3 SCC 1] 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.
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> 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, particularised and unambiguous show-cause notice is particularly crucial due to the severe consequences of blacklisting and the stigmatisation 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."

24. The adverse impact of an order of blacklisting and the need for strict observance of the principles of natural justice before passing of an order of blacklisting was emphasized in **M/s Erusian Equipment**

16 (2021) 2 SCC 551

& Chemicals Ltd. Vs. State of West Bengal and another[17] and it was observed as follows:-

> "12...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.
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> 15...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".
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> xxx
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> 17...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.
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> xxx
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> 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.
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> 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."

25. 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.**[18] 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

17 (1975) 1 SCC 70
18 (1989) 1 SCC 229

> 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..."

26. 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.**[19] 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.

27. 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.**[20] 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."

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19 AIR 2001 SC 3707
20 (2014) 14 SCC 731

28. The aforesaid legal position has been recently considered in **M/s Baba Traders Vs. State of U.P. and others**[21] and **Amit Kumar Vs. State of U.P. and another.**[22]

29. It would therefore be seen that an order of blacklisting has the effect of depriving a person equality of opportunity in the matter of public contract and in a case where the State acts to the prejudice of a person it has to be supported by legality. The activities of the State having the public element quality must be imbued with fairness and equality.

30. 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 becomes imperative before passing of any such order of blacklisting.

31. It would therefore follow as a legal proposition that in order for a show cause notice to constitute a valid basis for passing of an order of blacklisting, the notice must spell out the imputations specifying the alleged breaches and defaults indicating the intent of the issuer of the notice to blacklist the noticee so as to ensure that the noticee has an adequate informed and meaningful opportunity to rebut the allegations and to show cause against the proposed blacklisting.

32. In order to ensure conformity with the principles of natural justice, a show cause notice is required to specify as to what would be the consequences if the noticee does not satisfactorily meet the grounds on which the action is proposed. The notice apart from being adequate is also required to state the grounds necessitating the action and the

21 2019 (11) ADJ 516 (DB)
22 2020 (10) ADJ 264 (DB)

penalty proposed is also required to be mentioned specifically and unambiguously. A show cause notice, particularly in a case where it proposes to impose an order of blacklisting, is required to adhere to the principles of natural justice and for the said reason is to fulfill the twin requirements of stating in unambiguous terms the grounds which according to the department necessitates an action, and also the penalty which is proposed to be taken in case the noticee is unable to furnish an adequate response to the grounds stated in the notice.

33. The principle of *audi alteram partem* has been held to be a *sina qua non* and a basic tenet underlying the principles of natural justice. In **Re K. (H.) (an infant)**[23]**, Lord Parker C.J.**, described natural justice as 'a duty to act fairly'. The rule of 'fair hearing' requires that the party which is likely to be visited with adverse consequences is given an opportunity to meet the case against it effectively. Right to 'fair hearing' or 'reasonable opportunity of hearing' casts a sacrosanct obligation on the adjudicatory authority to ensure fairness in procedure and action. It covers within its fold every stage through which an administrative adjudication passes – starting from notice to final determination.

34. Procedural fairness requires that persons liable to be affected by a proposed administrative decision be given adequate notice of what is proposed so that they are not taken unfairly by surprise, and also that they are in a position to make representation against the proposed action; to appear at the hearing or the inquiry; and to effectively answer the charges which they have to meet. A proper hearing must always include an opportunity to know the opposing case. We may refer to the observations of **Lord Denning** in **Kanda vs. Government of Malaya**[24]**,** which are as follows:-

> "If the right to be heard is to be a real right which is worth anything, it must carry with it a right in the accused man to know the case which is made against him. He must know what evidence has been given and what statements have been made affecting him: and then he must be given a fair opportunity to correct or contradict them."

35. The right to know and to effectively respond to the charges has

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23 [1967] 1 All E.R. 226
24 [1962] AC 322

been recognized as a fundamental feature of any administrative adjudicatory process. It is a fundamental principle of fairness that a party should have prior notice of the case against him and an opportunity to properly respond to the same. The charges are to be made known specifically and with particularity so as to ensure that the party liable to be affected is not taken by surprise, and has an effective opportunity of putting forward its defence.

36. The contention raised on behalf of the petitioners that the issuance of the show cause notice is an empty formality for the reason that imputations have been stated in the notice which are indicative that the authority concerned has already made up its mind, cannot be accepted for the reason that the grounds/imputations specified in the notice are with a view to elicit the response of the petitioners in respect of the grounds on which the action is proposed. Needless to say, it is open to the petitioners to rebut the allegations specified in the notice by submitting their reply and it would be incumbent upon the respondent authority to accord consideration to the same and thereafter, pass an order affording reasonable opportunity to the petitioners.

37. The respondents have taken a categorical stand in their counter affidavits that the show cause notices have been issued with an open mind calling upon the petitioners to submit reply to the allegations which have been levelled and it is only after replies of the petitioners are submitted that the authority would take a decision whether to drop the show cause notice or to pass an order with regard to blacklisting.

38. It is legally well settled that mere issuance of show cause notice does not amount to an adverse order, which may be held to affect the rights of the parties. The necessity for issuing a show cause notice and the requirement of specifying the grounds on which the action is proposed is in fact a necessary prerequisite, so as to ensure that the noticee is aware of the grounds on which action is proposed and has an adequate opportunity to rebut the same. If the show cause notice does not specifically state the grounds on which it is being issued and the proposed action, the noticee would be taken by surprise and would not

have adequate opportunity to rebut the allegations during the course of inquiry which is to follow.

39. We are of the view that the challenge to the show cause notices in the instant petitions is premature for the reason that the mere indication of the grounds and the penalty proposed, would not give rise to a cause of action, as it is open to the petitioners to present their case and rebut the imputations, whereupon it would be incumbent upon the respondent authority to proceed with the inquiry and pass an appropriate speaking and reasoned order after giving adequate opportunity to the petitioners and ensuring due compliance of the principles of natural justice. The outcome of the inquiry which is proposed in terms of the show cause notice would only be a matter of conjecture at this stage, inasmuch as it is equally possible that after considering the response of the petitioners and holding due inquiry, the respondent authority may drop the proceeding or may reject the reasons given by the noticee. It is only upon conclusion of the proceedings where any order is passed by the respondent authority which is prejudicial to their interest, the petitioners may have cause of action to raise a challenge to the same.

40. Having regard to the aforestated facts and circumstances, we are of the view that the challenge raised to the show cause notices, at this stage, is premature.

41. Accordingly, we are not inclined to exercise our extraordinary jurisdiction under Article 226 of the Constitution of India to interfere in the matter.

42. It would be open to the petitioners to submit their response to the show cause notices dated 18.6.2022, within a period of two weeks from date whereupon the concerned respondent authority would be expected to conclude the proceedings within a further period of two weeks, after affording proper opportunity of hearing to the petitioners and according due consideration to the defence set up by the petitioners in the replies to the show cause notices and pass reasoned and a speaking orders thereupon.

43. The petitions stand **disposed of** accordingly.

Order Date :- 2.9.2022
Kirti

(Dr. Y.K. Srivastava, J) (Manoj Kumar Gupta, J)