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SHOW CAUSE NOTICE MUST CLEARLY MENTION THE INTENTION TO BLACKLIST THE NOTICEE– A CASE STUDY OF UMC TECHNOLOGY PVT LTD VS. FOOD CORPORATION OF INDIA

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CIVIL APPEAL NO. 3687 OF 2020 (Arising out of S.L.P. (C) No. 14228 of 2019) decided on November 16, 2020.

BENCH – S. Abdul Nazeer, BR Gavani, JJ

1. FACTS :

- On 25.11.2016, the Food Corporation of India (FCI) issued tender inviting bids for the appointment of a recruitment agency to conduct the process of recruitment. Appellant was one of the bidders. He was selected and appointed for a term of 2 years w.e.f. 14.2.2017. While the appellant was conducting the examination, the question paper was leaked. Against this conduct of the Appellant, FCI issued a show-cause notice to the appellant and after due deliberation, passed an order to terminate a contract of service with the appellant and to blacklist him from participating in any future tenders of the FCI for a period of 5 years.
- Aggrieved by this order, the appellant approached the Madhya Pradesh High Court, where his challenge was dismissed.
- The Appellant, then, approached the Supreme Court against the judgment passed by the High Court of Madhya Pradesh.

2. ISSUE:

Whether the FCI was entitled and justified in blacklisting the appellant for 5 years from participating in its future tenders?

3. MAJOR FINDINGS OF THE CASE:

- The counsel for Appellant submitted that FCI has no power to blacklist the appellant. Clause 10 of the “Disqualification Conditions” merely lays down the eligibility criteria and does not grant any power of future blacklisting. This clause was not even mentioned in the show cause notice dated 10.4.2018 issued by the FCI. Also, the contents of the show cause notice were not such that the appellant could have anticipated that order of

Blacklisting was being contemplated by the FCI. Therefore, in case of the absence of valid show-cause notice, the consequent blacklisting order cannot be sustained.

- Clause 10 of the Disqualification is:
10. Bidder who have been blacklisted or otherwise debarred by FCI or central/State Govt. or any central/State PSU/Statutory Corporations, will be ineligible during the period of such blacklisting.
10.1. Any Bidder whose contract with FCI or central/state Govt. or any central/state PSU/Statutory Corporations has been terminated before the expiry of the contract period for breach of any terms and conditions at any point of time during the last five years, shall be ineligible.
10.2. Bidders whose earnest money deposit and/or Security Deposit have been forfeited by the FCI or central/State Govt. or any Central/State PSU/Statutory Corporations, during the last five years, for breach of any terms and conditions, shall be ineligible
- The counsel for Respondent submitted that, due to the negligent act of the appellant, the whole recruitment process had to be scrapped and the FCI lost the faith of the public in the recruitment process of the FCI. Moreover, the appellant has breached the terms of the contract by leaking the question paper. The blacklisting order was made as per the bid document and due process of law was followed in dealing the case of the appellant.

4. DECISION:

Supreme Court held that the blacklisting order dated 9.1.2019 passed by the Corporation is *ultra vires* and contrary to the principle of natural justice. The basic principle of natural justice is that before adjudication starts, the authority concerned should give to the affected party notice of the case against him so that he can defend himself. Such notice should be adequate, containing all the grounds of action and penalty proposed. Specifically, when it is a severe case of blacklisting a person by a State Corporation, a valid, particularized, and unambiguous show cause notice is mandatory. Getting blacklisted by any Government Corporation has grave effects on the reputation of the person and his future business. The person

will no longer be considered reliable by any other Corporations as well. It directly hits the creditability of an individual.

The court relied on the case of *Nasir Ahmad v. Assistant Custodian General, Evacuee Property, Lucknow*, [(1980) 3 SCC 1], where it was held that “*if the notice doesn't mention the grounds of action against the affected person, a reasonable opportunity of being heard is not duly granted.*”

In the present case, the appellant has gone through drastic implications after being declared blacklisted as several other governmental corporations have also terminated their contracts with him. The Court highlighted the ratio in *Erusian Equipment & chemical Ltd. v. State of West Bengal*, [(1975) 1 SCC 70], “*the order of blacklisting has the effect of depriving a person of equality of opportunity in the matter of public contract. It involves civil consequences. It prevents a person from the privilege and advantage of entering into a lawful relationship with the Government for purpose of gains. 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.*”

Similar view was taken in *Raghunath Thakur v. State of Bihar*, [(1989) 1 SCC 299], it was held that an order having civil consequences should be passed only after following the principle of natural justice and it is an elementary principle of natural justice that parties affected by any order should have right of being heard and making representations against the order.

In *Gorkha Security Services v. Government (NCT Delhi)*, [(2014) 9 SCC 105], The Court affirmed that blacklisting is equivalent to the civil death of a person as it debars a person from participating in government tenders, thereby denying him to profess his business. Such an order has a stigma attached to it. Therefore, before passing any such order, it must be preceded by a valid show-cause notice. 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 defend. This implies that all the alleged breaches and defaults alleged to be committed by the appellant, and the nature of action proposed to be taken, must be laid down so that he gets an opportunity to rebut the same.

Keeping in consideration the above-mentioned case laws, it can be deduced that a show-cause notice must be unambiguous and particularly spell out the intention on the part of the issuer of the notice to blacklist the noticee, it is essential for ensuring that the person against whom the penalty of blacklisting is intended to be imposed, has an adequate opportunity to show cause against his possible blacklisting. Therefore, delivering a valid show cause notice is critical and a failure to comply with this requirement will be equivalent to a denial of reasonable opportunity of being heard especially when it is a case of blacklisting which follows grave consequences.

After going through the contents of the show cause notice in issue in the present case, it can be seen that action of blacklisting was neither expressly proposed nor could it have been inferred from the language employed by the FCI. It only contains a vague statement of the alleged leakage of the question paper. There was nothing in the notice which could give the appellant the impression that the action of blacklisting was being proposed. This is especially true since the appellant was under the belief that the FCI was not even empowered to take such an action against it. The mere existence of a clause in the Bid Document, which mentions blacklisting as a bar against eligibility, cannot satisfy the mandatory requirement of a clear mention of the proposed action in the show cause notice. Had the FCI expressed its mind in the show cause notice to blacklist, the appellant could have filed a suitable reply for the same. Therefore, the order of blacklisting the appellant clearly traversed beyond the bounds of the show cause notice which is impermissible in law and consequently, the order of blacklisting against the appellant should be scrapped and nullified.