Gorkha Security Services vs Govt. Of Nct Of Delhi & Ors on 4 August, 2014

Equivalent citations: 2014 (5) ADR 856, AIR 2014 SUPREME COURT 3371, 2014 AIR SCW 4586, AIR 2014 SC (CIVIL) 2233, (2015) 2 MAD LW 193, (2014) 4 PAT LJR 386, 2014 (9) SCC 105, (2014) 4 JCR 170 (SC), (2014) 143 FACLR 591, (2014) 5 ALL WC 4545, 2014 (3) KLT SN 53 (SC)

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Bench: A.K. Sikri, J.Chelameswar

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLANT JURISDICTION
CIVIL APPEAL NOS. 7167-7168 OF 2014
[Arising out of Special Leave Petition (Civil) No. 38898-38899 of 2013)

GORKHA SECURITY SERVICES .....APPELLANT(S)

VERSUS

GOVT. OF NCT OF DELHI & ORS. .....RESPONDENT(S)

J U D G M E N T

A.K. SIKRI, J.

Leave granted.

2) Present appeals raise an interesting question of law pertaining to the form and content of show cause notice, that is required to be served, before deciding as to whether the noticee is to be blacklisted or not. We may point out at the outset that there is no quarrel between the parties on the proposition that it is a mandatory requirement to give such a show cause notice before black listing. It is also undisputed that in the present case the show cause notice which was given for alleged failure on the part of the appellant herein to commence/ execute the work that was awarded to the appellant, did not specifically propose the action of blacklisting the appellant firm. The question is as to whether it is a mandatory requirement that there has to be a stipulation contained in the show

cause notice that action of blacklisting is proposed? If yes, is it permissible to discern it from the reading of impugned show cause notice, even when not specifically mentioned, that the appellant understood that it was about the proposed action of blacklisting that could be taken against him?

3) The factual narration, leading to the impugned action viz. of blacklisting the appellant firm does not require much elaboration. Stating the following events would serve the purpose of addressing the issue at hand.

4) The appellant, which is a partnership firm, was awarded the contract vide letter of award dated 1.9.2011 for providing security services in Shri Dada Dev Matri Avum Shishu Chiktsalaya, Dabri, New Delhi (hereinafter referred to as the 'hospital). This hospital is under the administration of Respondent No. 1 viz. Government of NCT of Delhi. The contract was for a period of 1 year i.e. from 2.9.2011 to 1.9.2012. The payment was required to be made contractually to the appellant on monthly basis. Though the contract was upto 1.9.2012, the appellant continued to provide services even thereafter. The case of the appellant is that it has not been given any payment after the expiry of the contract period though it worked till 31.7.2013.

5) It appears that the respondents had issued a communication dated 4.8.2012, in continuation of their earlier letter dated 17.10.2011, requiring the appellant to submit the valid EPF/ ESIC certificate, list of persons deployed along with copies of their educational certificates, police verification report, medical examination report etc. and to make the payment of prescribed minimum wages to the workers through ECS or by cheque and deposit the EPF/ESIC and service tax etc. This communication further mentioned that inspite of the lapse of a long period the appellant had failed to submit the requisite documents/ information and was not making full payment of minimum prescribed wages to its workmen/ security guards nor was providing the statutory benefits like EPF/ ESIC. Certain other deficiencies in the performance of the contract were also alleged therein. The appellant, in the first instance, sent the letter dated 7.8.2012 in response to the aforesaid notice, stating that it had obtained the EPF and ESIC numbers in respect of deployed security personnel and deposited their contributions towards EPF & ESIC with the concerned authorities. Proof in support of this was also furnished in the form of photocopies of consolidated challans with the bills. The appellant specifically maintained that it had made payment to the workers as per Minimum Wages Act.

6) Detailed reply to the notice dated 4.8.2012 was given by the appellant on 17.8.2012 wherein photocopies of bio-data in respect of deployed 32 security personnel alongwith police verification report as well as list of security personnel along with their date of birth, educational qualifications, addresses and EPF & ESIC numbers were given. Other issues mentioned in notice dated 4.8.2012 were also addressed.

7) The respondent authorities, however, were not satisfied with the reply which resulted in serving of the show cause notice dated 6.2.2013 upon the appellant detailing various lapses, which the appellant had allegedly committed. Since the entire dispute revolves around the nature of action that was stipulated therein and was proposed to be taken, we would like to reproduce that part of the show cause notice in verbatim:

"And whereas, by the above act and omissions, the firm has not only failed to provide minimum wages and extend the statutory benefits and abide by the labour laws, but also failed to provide satisfactory services and failed to submit the required information/ document, as and when called for and also being pre-requisite under the tender terms and conditions, and have rendered this hospital at the risk by deputing the less security personnels that too without prior intimation of the credentials of the deployed staff and police verification, as such liable to be levied the cost accordingly.

Therefore, you are directed to show case within 7 days of the receipt of this notice, as to why the action as mentioned above may not be taken against the firm, beside other actions as deemed fit by the competent authority.

(emphasis supplied)".

8) The appellant furnished detailed reply dated 25.4.2013 to the aforesaid show cause notice taking the position that the appellant firm had adhered to and complied with all the obligations contained in the contract signed between the parties and it was the respondent who had defaulted in making the payment to the appellant inspite of various reminders issued. It was thus maintained that there was no violation of the terms and conditions of the agreement on the part of the appellant and the respondents were requested to withdraw the show cause notice and make the payment due to the appellant within 15 days with interest at the rate of 18% from the date it became payable.

9) On receipt of the aforesaid reply, respondents sent another communication dated 30.5.2013 calling upon the appellant to submit certain documents. This was adverted to by the appellant in the form of reply dated 8.6.2013 reiterating the position taken earlier viz. the appellants were adhering to all the statutory obligations and submitting documents with the department. The appellant again insisted that respondents who were not releasing the payment and instead threatening the appellant to terminate the contract.

10) First communication which was received, thereafter, by the appellant was letter dated 30.7.2013 informing the appellant that the contract of the appellant would stand terminated from 31.8.2013 (A.N.) and the appellant was directed to wind up its work and hand over the charge to the in-charge outsourcing for further arrangements. The appellant took exception to this move on the part of the respondent vide its letter dated 31.7.2013 alleging that the contract was sought to be terminated without assigning any valid reasons which was unjustified, that too when no payment was made for the services rendered by the appellant. By another letter dated 14.8.2013, the appellant repeated its request for release of payment.

11) At this juncture impugned order dated 11.9.2013 was passed by the respondents wherein the respondents maintained that the appellant had violated the terms and conditions of the Contract

Labour Laws and had also not complied with certain other requirements stipulated in the agreement between the parties. In view thereof, vide this order, various penalties were imposed upon the appellant in the following form:-

> (i) A penalty of Rs. 3000/- (Rupees Three Thousand only) under clause 27
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> (c) of the T&C, on account of public complaints.
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> (ii) A penalty of Rs. 41,826/- (Rupees Forty One Thousand Eight Hundred Twenty Six only) under Clause 27 (c) (a) (i) on account of unsatisfactory performance and not abiding by the statutory requirements.
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> (iii) A penalty of forfeiture of performance guarantees amounting to Rs.

3,70,000/- (Rupees Three Lac Seventy Thousand only) submitted at the commencement of contract.

(iv) A penalty of blacklisting the firm M/s Gorkha Security for a period of 4 years from the date of this order, from participating the tenders in any of the department of Delhi Government/ Central Government/ Autonomous Body under the Government.

(v) Since, the firm has made the payment of wages @ Rs. 4,000/- per month per person which is less than the prescribed rates of minimum wages, and submitted no proof of payment of wages, EPF and ESI etc. in spite of opportunities given over the years, hence, it is ordered to release the payment only @ Rs. 4,000/- per month per person plus applicable taxes after deducting the penalty imposed at 1 & 2 above and withhold rest of the payment of bills to the extent of amount over and above Rs. 4,000/- per month per person, till the payment of full wages to the employees and submissions of the proof of disbursing minimum prescribed wages and depositing the EPF and ESI contributions in respect of each deployed employees who have actually deployed and worked in this hospital duly verified by the authorities concerned.

12) The appellant preferred an appeal dated 23.9.2013, against the aforesaid order, to the Principal Secretary (H&FW). However, it did not evoke any response from the Secretary and in these circumstances the appellant approached the High Court of Delhi by filing the Writ Petition under Article 226 of the Constitution of India, seeking quashing of the orders dated 11.9.2013. The said order was assailed by the appellant primarily on the following grounds:-

> (i) The show-cause notice dated 6.2.2013 made no reference to the proposed blacklisting of the appellant and, therefore, the appellant had no opportunity to make a representation in this regard;
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> (ii) No opportunity of personal hearing was given to the appellant before passing the impugned order; and

(iii) There was no ground for blacklisting the appellant since no term of the agreement was breached by it.

13) The learned Single Judge of the High Court did not find any merit in any of the aforesaid grounds and dismissed the writ petition by reason of the judgment dated 25.10.2013. It was held that the State had the power to blacklist a person, which was 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., as held in Patel Engineering Ltd. v. Union of India; (2012) 11 SCC 257. In this judgment, the Supreme Court had also taken the view that there is no inviolable rule that a personal hearing has to be given to the affected party before taking a decision. Referring to the terms and conditions of the contract, as contained in the NIT, which form part of the agreement, and particularly Clause 27 (a) (ii), the Court noticed that there was specific power reserved by the respondent to black list the defaulting contractor for a period of 4 years. In view of that power it held that the appellant was rightly blacklisted. In so far as argument of the appellant that show cause notice did not specifically refer to the proposed action of black listing, that plea was rejected in the following terms:

"It would thus be seen that the contract between the parties specifically empowered the respondents to blacklist the appellant firm. Therefore, when the show cause notice received by the appellant expressly mentioned of such action as may be deemed appropriate by the Competent Authority, the appellant could easily visualize that the action proposed by the Competent Authority could include blacklisting of the appellant-firm. Considering the express terms of the contract between the parties, it was not necessary for the respondent to specifically refer to the proposed blacklisting in the show cause notice issued to the appellant. The purpose of show cause notice is primarily to enable the noticee to meet the grounds on which an action is proposed against it and such grounds were fully detailed in the show cause notice issued to the appellant. In fact, even prior to issue of the show cause notice, the appellant was aware of the issues between the parties through the notice dated 4.8.2012. It would, therefore, be difficult to say that the appellant did not know what case it had to meet while responding to the show-cause notice. In any case, the appellant did respond to the show cause notice without claiming the ambiguity in the said notice and, therefore, it is not open to it to assail the impugned order on the ground that there was no specific reference to the proposed blacklisting of in the said notice".

14) Not satisfied with the aforesaid outcome, the appellant preferred Letters Patent Appeal before the Division Bench of the High Court. However, it has met the same fate in as much as the High Court has dismissed the appeal vide impugned judgment dated 29.11.2013 affirming the view taken by the learned Single Judge.

15) It is in this backdrop, question which has arisen for our consideration in the present case is as to whether action of blacklisting could be taken without specifically proposing/ contemplating such an action in the show cause notice? To put it

otherwise, whether the power of blacklisting contained in Clause 27 of the NIT, was sufficient for the appellant to be on his guards, and to presume that such an action could be taken even though not specifically spelled out in the show cause notice?

16) We have heard the learned Counsel for the parties appearing on the either side on the aforesaid aspects, in detail. Before we proceed to answer the question we may restate and highlight the legal position about which there is neither any dispute, nor can there be as there is no escape from the below stated legal principle:

Necessity of serving show cause notice as a requisite of the Principles of Natural Justice:

17) 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. Way back in the year 1975, this court in the case of M/s. Erusian Equipment & Chemicals Ltd. v. State of West Bengal & Anr.; (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. This is clear from the reading of Para Nos. 12 and 20 of the said judgment. Necessitating this requirement, the court observed thus:

"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.

> 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".

Again, in Raghunath Thakur v. State of Bihar and Ors.;(1989) 1 SCC 229 the aforesaid principle was reiterated in the following manner:-

> "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. In that view of the matter, the last portion of the order insofar as it directs blacklisting of the appellant in respect of future contracts, cannot be sustained in law. In the premises, that portion of the order directing that the appellant be placed in the blacklist in respect of future contracts under the Collector is set aside. So far as the cancellation of the bid of the appellant is concerned, that is not affected. This order will, however, not prevent the State Government or the appropriate authorities from taking any future steps for blacklisting the appellant if the Government is so entitled to do in accordance with law i.e. after giving the appellant due notice and an opportunity of making representation. After hearing the appellant, the State Government will be at liberty to pass any order in accordance with law indicating the reasons therefor. We, however, make it quite clear that we are not expressing any opinion on the correctness of otherwise of the allegations made against the appellant. The appeal is thus disposed of." Recently, in the case of Patel Engineering Ltd. v. Union of India and Anr.; (2012) 11 SCC 257 speaking through one of us (Jasti Chelameswar, J.) this Court emphatically reiterated the principle by explaining the same in the following manner:

> "13. The concept of "blacklisting" is explained by this Court in Erusian Equipment & Chemicals Ltd. v. State of W.B. as under:

> "20. Blacklisting has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for purposes of gains."

> 14. The nature of the authority of the State to blacklist the persons was considered by this Court in the abovementioned case and took note of the constitutional provision (Article 298), which authorises both the Union of India and the States to make contracts for any purpose and to carry on any [pic]trade or business. It also authorises the acquisition, holding and disposal of property. This Court also took note of the fact that the right to make a contract includes the right not to make a contract. By definition, the said right is inherent in every person capable of entering into a contract. However, such a right either to enter or not to enter into a contract with any person is subject to a constitutional obligation to obey the command of Article 14. Though nobody has any right to compel the State to enter into a contract, everybody has a right to be treated equally when the State seeks to establish contractual relationships. The effect of excluding a person from entering into a contractual relationship with the State would be to deprive such person to be treated equally with those, who are also engaged in similar activity.
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> 15. It follows from the above judgment in Erusian Equipment case that the decision of the State or its instrumentalities not to deal with certain persons or class of persons on account of the undesirability of entering into the contractual relationship with such persons is called blacklisting.

The State can decline to enter into a contractual relationship with a person or a class of persons for a legitimate purpose. The authority of the State to blacklist a person is a necessary concomitant to the executive power of the State to carry on the trade or the business and making of contracts for any purpose, etc. There need not be any statutory grant of such power. The only legal limitation upon the exercise of such an authority is that the State is to act fairly and rationally without in any way being arbitrary—thereby such a decision can be taken for some legitimate purpose. What is the legitimate purpose that is sought to be achieved by the State in a given case can vary depending upon various factors."

18) Thus, 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 Cause Notice

19) 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.

20) 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;
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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.

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. Discussion with reference to the instant case:

> 21) With the aforesaid statement of law, now let us proceed with the present case scenario.
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> 22) It would be necessary to take note of the relevant portion of clause 27 of the NIT under which umbrage is taken by the respondents to justify their action, and even appealed to the High Court. Clause 27 (a) (c) (a) reads as under:
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> “a…. (sic) In case the contractor fails to commence/ execute the work as stipulated in the agreement or unsatisfactory performance or does not meet the statutory requirements of the contract, Department reserves the right to impose the penalty as detailed below:-
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> (i) 20% of cost of order/ agreement per week, upto two weeks' delays.
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> (ii) After two weeks delay Principal Employer reserves the right to cancel the contract and withhold the agreement and get this job carried out preferably from other contractor(s) registered with DGR and then from open market or with other agencies if DGR registered agencies are not in a position to provide such Contractor(s). The difference if any will be recovered from the defaulter contractor and also shall be blacklisted for a period of 4 years from participating in such type of tender and his earnest money/ security deposit may also be forfeited, if so warranted.”

23) It is clear from the reading of the aforesaid clause that when there is a failure on the part of the contractor to comply with the express terms of the contract and/ or to commit breach of the said terms resulting into failure to commence/ execute the work as stipulated in the agreement or giving the performance that does not meet the statutory requirements of the contract, the Department has a right to impose various kinds of penalties as provided in the aforesaid clause. These penalties are of the following nature:-

(i) Penalty in the form of 20% of cost of orders/ agreement per week, upto delay of 2 weeks.

(ii) If the delay is beyond 2 weeks then:

a) To cancel the contract and withhold the agreement. In that event, Department has right to get the job carried out from other contractor at the cost of the defaulter contractor;

b) To black list the defaulter contractor for a period of 4 years;

c) To forfeit his earnest money/ deposits, if so warranted.

24) In the present case, it is obvious that action is taken as provided in sub clause 2(ii). Under this clause, as is clear from the reading thereof, the Department had a right to cancel the contract and withhold the agreement. That has been done. The Department has also a right to get the job which was to be carried out by the defaulting contractor, to be carried out from other contractor(s). In such an event, the Department also has a right to recover the difference from the defaulting contractor. This clause, no doubt, gives further right to the Department to blacklist the contractor for a period of 4 years and also forfeit his earnest money/ security deposit, if so required.

25) It is thus apparent that this sub-clause provides for various actions which can be taken and penalties which can be imposed by the Department. In such a situation which action the Department proposes to take, need to be specifically stated in the show cause notice. It becomes all the more important when the action of black listing and/ or forfeiture of earnest money/ security deposit is to be taken, as the clause stipulates that such an action can be taken, if so warranted. The words “if so warranted”, thus, assume great significance. It would show that it is not necessary for the Department to resort to penalty of black listing or forfeiture of earnest money/ security deposit in all cases, even if there is such a power. It is left to the Department to inflict any such penalty or not depending upon as to whether circumstances in a particular case warrant such a penalty. There has to be due application of mind by the authority competent to impose the penalty, on these aspects. Therefore, merely because of the reason that clause 27 empowers the Department to impose such a penalty, would not mean that this specific penalty can be imposed, without putting

the defaulting contractor to notice to this effect.

26) 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. In the present case, however, reading of the show cause notice does not suggest that noticee could find out that such an action could also be taken. We say so for the reasons that are recorded hereinafter.

27) In the instant case, no doubt show cause notice dated 6.2.2013 was served upon the appellant. Relevant portion thereof has already been extracted above. This show cause notice is conspicuously silent about the blacklisting action. On the contrary, after stating in detail the nature of alleged defaults and breaches of the agreement committed by the appellant the notice specifically mentions that because of the said defaults the appellant was "as such liable to be levied the cost accordingly". It further says "why the action as mentioned above may not be taken against the firm, besides other action as deemed fit by the competent authority".

It follows from the above that main action which the respondents wanted to take was to levy the cost. No doubt, notice further mentions that competent authority could take other actions as deemed fit. However, that may not fulfil the requirement of putting the defaulter to the notice that action of blacklisting was also in the mind of the competent authority. Mere existence of Clause 27 in the agreement entered into between the parties, would not suffice the aforesaid mandatory requirement by vaguely mentioning other "actions as deemed fit".

28) As already pointed out above in so far as penalty of black listing and forfeiture of earnest money/ security deposit is concerned it can be imposed only, "if so warranted". Therefore, without any specific stipulation in this behalf, respondent could not have imposed the penalty of black listing.

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 pre-judicially 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 Justice Krishna Iyer in the case of Chairman, Board of Mining Examination and Anr. v. Ramjee; 1977 (2) SCC 256:

"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.

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.... 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 ASG 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 ASG 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 Corporation and Anr. v. Kailash Chandra Ahuja; (2008) 9 SCC 31.

"21. From the ratio laid down in B. Karunakar1 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 [pic]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.

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 [pic]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.

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.

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 ASG. 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 black listing 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.

34) For the aforesaid reasons, we are of the view that the impugned judgment of the High Court does not decide the issue in correct prospective. The impugned order dated 11.9.2013 passed by the respondents blacklisting the appellant without giving the appellant notice thereto, is contrary to the principles of natural justice as it was not specifically proposed and, therefore, there was no show cause notice given to this effect before taking action of blacklisting against the appellant. We, therefore, set aside and quash the impugned action of blacklisting the appellant. The appeals are allowed to this extent. However, we make it clear that it would be open to the respondents to take any action in this behalf after complying with the necessary procedural formalities delineated above.

35) No costs.

.....J. [J.CHELAMESWAR] .....J. [A.K. SIKRI] New Delhi.

August 4, 2014.