

**IN THE LAHORE HIGH COURT
LAHORE.
JUDICIAL DEPARTMENT.**

W.P.No.9910 of 2014

M/s. Habib Rafiq Pvt. Ltd. Vs. Govt. of Punjab etc.

J U D G M E N T

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| Date of Hearing | 05.05.2014 |
| Petitioner by: | Mr. Shahzad Rabbani, Advocate for petitioner. |
| Respondents by | Syed Nayyer Abbas Rizvi, Addl.A.G.; Mr. Shan Gull, Addl.A.G. and Miss Hina Hafeez Ullah Ishaq, Assistant Advocate General for the respondents. |

ABID AZIZ SHEIKH-J. Through this constitutional petition, the petitioner has assailed the order dated 04.04.2014 passed by respondent No.2 whereby the petitioner has been blacklisted for a period of three years.

2. Brief facts are that the petitioner is a company engaged in construction business. The petitioner and respondent No.2 entered into a time bound contract agreement dated 17.06.2010 (Contract) for the construction and maintenance work of Emergency Services Academy at Thokar Niaz Baig, Lahore. Despite two extensions granted, the work under contract could not be completed within time. The petitioner filed a suit on 02.04.2012 for declaration and permanent injunction on the ground that it is the respondent No.2, who breached the contract by not releasing the Mobilization advance, it was inter-alia prayed in the suit that the respondents be restrained from terminating the Contract and encashing the guarantee and also to release the funds. During pendency of the suit the contract agreement was finally rescinded vide letter dated 15.05.2012 along with forfeiture of performance guarantee submitted by the petitioner. Respondent No.2 vide letter dated 31.10.2012 also blacklisted the petitioner company for a period of 3 years from

participating in future tendering in the Province of Punjab. The petitioner being aggrieved previously filed W.P.No.475/2013. The matter came up for hearing on 11.02.2014, when with the consent of the parties, the impugned order was set aside and the matter was remanded to the authority with direction to give hearing to the petitioner and pass a speaking order after recording contentions of the petitioner. After remand of case, respondent No.2 passed order dated 04.04.2014 whereby the petitioner was again blacklisted for a term of 3 years; hence, this Constitutional petition.

3. The learned counsel for the petitioner contends that the impugned order of blacklisting has been passed under Rule 19 of the Punjab Procurement Rules, 2009 (**“PPRA, 2009”**). Submits that under Rule 19 of PPRA, 2009, no mechanism and procedure has been prescribed by the procurement agency, for blacklisting the contractor, therefore, the impugned order is not sustainable. Adds that despite the fact that this was the main contention of the petitioner in the reply filed before respondent No.2, however, the same was neither considered nor adjudicated in the impugned order by respondent No.2. Further submits that petitioner was earlier blacklisted for a period of three years on 31.10.2012 and after remand of the case by this Court on 11.02.2014 with consent of parties, the respondent No.2 without excluding the period, during which the petitioner already remained blacklisted, again blacklisted the petitioner for a period of three years, which amounts to double jeopardy against the petitioner. Contends that nonperformance of a contract does not automatically entail blacklisting of a company as it is yet to be determined by competent Court of law, where matter is already pending, as to who was in breach of the contract. Submits unless default is determined by Court of competent jurisdiction, the petitioner cannot be blacklisted by respondent No.2. Further submits that the petitioner company is renowned construction company having vast experience of 50 years and more than 8000 employees, the blacklisting of the petitioner will entail serious consequences of commercial killing of the company

besides attaching stigma to the company and its management, therefore, the impugned order amounts to violation of Article 4, 9, 18 and 10 A of the Constitution of Islamic Republic of Pakistan, 1973. Adds that the impugned order of blacklisting is not under the terms and conditions of contract but under the PPRA 2009, therefore, the arbitration is not an adequate alternative remedy available to the petitioner and this petition is maintainable. Submits that in any case, respondent No.2 does not figure anywhere in the contract, therefore, he is not a competent authority to blacklist the petitioner under the contract. Concludes that in any case, the petitioner was never in default of his performance previously, therefore, it cannot be said that there is consistent failure of performance on part of the petitioner under PPRA 2009 for passing orders of blacklisting of Petitioner Company. Submits that the punishment is also not proportionate to the alleged default. Reliance is placed on Atlas Cables Pvt. Ltd. vs. Quetta Electric Supply Company Ltd. (PLD 2011 Quetta 67); Canara Bank, Plaintiff v. M/s. Studywell and others (AIR 1994 Delhi 308); Bhim Sain, petitioner v. Union of India and another (AIR 1981 Delhi 260) and Tristar Shipping Lines Limited v. Government of Pakistan etc. (1997 CLC 1475). In response to question of maintainability of the petition against the Government of Punjab, he submits that the main grievance of the petitioner being against respondent No.2, who is a statutory body, this petition is maintainable against respondent No.2 and not hit by the provision of Section 79 of the Civil Procedure Code, 1908 (CPC) and Article 174 of the Constitution of Islamic Republic of Pakistan, 1973 (Constitution).

4. Conversely, for the respondents, the learned Addl. A.Gs. assisted by the learned Assistant Advocate General raised preliminary objection on the maintainability of this petition, on the ground that the Government of Punjab being not sued through Province of Punjab, this writ petition is not maintainable under Section 79 of CPC read with Article 174 of the Constitution. Reliance is placed on the case reported as Hafiz Ikram Saeed vs State (2013 SCMR 1045); Government of Blochistan,

CWPP&H Department and others v. Nawabzada Mir Tariq Hussain Khan Magsi and others (2009 SCMR 115), Haji Abdul Aziz vs. Government of Balochistan through Deputy Commissioner, Khuzdar (1999 SCMR 16), Province of the Punjab through Member Board of Revenue Lahore and others vs. Muhammad Hussain through Legal Heirs and others (PLD 1993 SC 147), Deputy Commissioner/Registrar, Sialkot and 2 others vs. Hamid Khalidi and 4 others (1987 CLC 2360). Adds that this petition is also not maintainable being disputed question of fact is involved and having alternate remedy available under the PPRA, 2009 and also being remedy of arbitration available under the contract. Reliance is placed on the cases reported as Abdul Qayyum Khan vs. Government of Punjab, L.G. and Rural Development Department through Secretary and another (PLD 2003 SC 536), Mumtaz Ahmad vs. Zila Council, Sahiwal through Administrator and others (1999 SCMR 117), Messrs Airport Support Services vs. The Airport Manager, Quaid-e-Azam International Airport, Karachi and others (1998 SCMR 2268), Sabir Rehman vs. Secretary to Government of NWFP Forestry, Fisheries, Wildlife Department at Civil Secretariat, Peshawar and 7 others (2002 CLC 1446), Syed Bhais Pvt. Ltd. through Director vs. Government of Punjab through Secretary Local Government and 3 others (PLD 2012 Lah 52) and Syed Wajahat Ali vs. Govt. of KPK through Secretaries Industries and 3 others (2013 YLR 2132). On merits, it is argued that the impugned order is well reasoned, and also fulfills the requirements of rule of natural justice. Contends that the petitioner failed to perform the contract within time agreed, hence caused loss of Rs.238.470 million to the public exchequer. Adds that blacklisting of the petitioner for a period of three years is commensurate with the loss to the public exchequer.

5. I have given my anxious consideration to the arguments of the learned counsel for the parties and perused the record with their able assistance.

6. The close scrutiny of record shows that petitioner entered into a contract agreement dated 17.06.2010 for the construction and

maintenance work of Emergency Academy services at Thokar Niaz Baig, Lahore. The project contract could not be completed within time, despite extensions, therefore, the same was rescinded on 15.05.2012 along with forfeiture of security amount. The respondent No.2 vide order dated 31.10.2012, also blacklisted the petitioner and forbidden it to participate in the future tendering in the Province of Punjab. The petitioner being aggrieved, filed W.P.No.475/2013, which was disposed of with the consent of the parties on 11.02.2014 in terms that the impugned order was set aside and the matter was remanded to the competent authority with the direction to give hearing to the petitioner and pass a speaking order after recording petitioner's contentions. After remand, the respondent No.2 again blacklisted the petitioner vide order dated 04.04.2014 for fresh term of three years.

7. Admittedly, the contract between the parties is dated 17.06.2010, therefore, the procurement rules applicable in the present case is PPRA, 2009. The Blacklisting of Supplier and Contractors is provided under Rule 19 of PPRA 2009, which is reproduced hereunder:

“Blacklisting of suppliers and contractors.- The procuring agencies shall specify a mechanism and manner to permanently or temporarily bar, from participating in their respective procurement proceedings, suppliers and contractors who either consistently fail to provide satisfactory performances or are found to be indulging in corrupt or fraudulent practices. Such Barring action shall be duly publicized and communicated to the PPRA:

Provided that any supplier or contractor who is to be blacklisted shall be accorded adequate opportunity of being heard.

The bare perusal of Rule 19 *ibid* shows that other than providing adequate opportunity of hearing, the procuring agency is required to specify a mechanism and manner to permanently or temporarily bar the supplier and contractor from participating in their respective procurement proceedings who consistently fail to provide satisfactory performance.

Similar provision also exists under Rule 21 of the Punjab Procurement Rules, 2014.(PPRA, 2014).

8. The words “mechanism” and “manner” are not defined in PPRA 2009, therefore, ordinary dictionary meaning of these words will be relevant. The Word “mechanism” in Oxford dictionary New 8th Edition is defined as “a method or a system for achieving” “mechanism for dealing with complaints from the general public”. Similarly word “manner” is defined in Oxford dictionary New 8th Edition is “the way that something is done or happens”. The ordinary dictionary meaning of these words denotes that procuring agency is required to prescribe method and system for dealing with complaints against contractors and suppliers for their temporary and permanent blacklisting.

9. This fact is not disputed by the respondents that till date no “mechanism” and “manner” under Rule 19 of PPRA, 2009 has been specified by respondent No.2 for blacklisting any supplier or contractor. The learned counsel for the respondents tried to argue that as petitioner is already given hearing, there was no need for prescribing mechanism and manner under Rule 19 *ibid*. This argument is not tenable, the words ‘mechanism’ and ‘manner’ under Rule 19 *ibid* are used in addition to requirements of adequate opportunity of being heard under the aforesaid rule. It is settled law that redundancy cannot be attributed to legislature and every word used in statute and rules must have meaning. In this context reliance is placed on M/s. V.N. Lakhani and Co. vs. M.V.Lakhotoi Express and others (PLD 1994 SC 894) and Mh Aslam vs. Land Acquisition Collector (1994 MLD 1340). The blacklisting of a contractor or supplier under Rule 19 of PPRA 2009, would entail serious consequences of forbidding the contractor/supplier from participating in the future tendering, which will not only result in deprivation from its business activities but will amount to commercial killing of the company. Blacklisting will also tarnish its reputation, credibility and honour in the business community. Therefore, such disaster step of blacklisting of contractor/supplier cannot be resorted to without

observing fair trial and due process of law as envisaged in Article 4 and 10-A of the Constitution. The word “mechanism” and “manner” used in Rule 19 *ibid* are not meaningless rather it denote due process and fair procedure which include adjudication by impartial and independent authority, prescribing fair criteria, proportionate duration of punishment and structuring of discretion of the authorities exercising power of blacklisting. The word “shall” used in Rule 19 *ibid* also makes it mandatory and obligatory for the Procuring agency to provide such fair and transparent mechanism and manner of Blacklisting. It is settled law that act should be done accordingly to relevant rules or not at all. Reliance is placed on Syed Abdul Aziz Nasir Haqani vs. R.O. for Presidential Election (Chief Election Commissioner) Islamabad (1994 CLC 648) and Muhammad Siddique Farooqi vs. Azad Jammu Kashmir Government through its Chief Secretary Muzaffarabad and others (1994 (AJK) PSC 218) and Salahuddin and 7 others vs. Bibi Zubaida and others (1994 MLD 2464).

10. As consequences of blacklisting a person are of great magnitude, it warrant that before taking such action there should be a fair and proper trial through an impartial Court or Tribunal by providing such person reasonable opportunity to defend the allegations made against the person. This Court in Messrs Yousaf Sugar Mills vs. Trust Leasing Corporation and others (2006 CLD 1191) while dealing with matter of blacklisting of a company held as under:-

“The preventing a company from the privilege and advantages of entering into a lawful relationship with the bank for the purpose of Article 18 of the Constitution. The consequences of blacklisting a person are of great magnitude and warrant that before taking such action there should be a fair and proper trial, through an impartial Court or Tribunal by providing such person defend the allegations made against him. The effect of placement of a person’s name on the list that facility of finance is extended to such person, only after recording reasons, according to para 2(a)(ii) of the prudential Regulations. It has the effect of negating the facility to a borrower in

the ordinary course. If the name of a person is bought on the list without any verification, it will adversely effect the reputation as well as the business of such borrower. The Honorable Supreme Court of Pakistan in the case of “New Jubilee Insurance Corporation v. National Bank of Pakistan Karachi” PLD 1999 SC 1126, held that when an act or order inflicts civil consequences on a person in respect of his reputation or property which is harmful to his interest, he is entitled to be heard before such an action or order is taken or passed. It will be appropriate to reproduce relevant part of the judgment:-

“It may be pointed out thus the fall out of the blacklisting of the appellant is to prevent it from the privilege and advantage of entering into lawful relationship with the respondent for the purpose of gains which is violative of Article 18 of the Constitution, which lays down that subject to such qualifications, if any, as may be prescribed by law, every citizen shall have the right to enter upon any lawful profession or any lawful trade or business. The blacklisting of a company/firm/person, tarnishes the reputation of it/has, as to its/his credibility to honour its/his commitments which may dissuade other parties from entering into contracts which warrant that before taking such an action, there should be material on record prima facie to indicate that the delinquent Insurance Company’s refusal to pay claim was not warranted in the circumstances of the case.”

In this regard reliance is also placed on New Jubilee Insurance Corporation vs. NBP Karachi (PLD 1999 SC 1126), Messrs M.A. Aleem Khan through Chairman vs Province of the Punjab (PLD 2006 Lah 84), Messrs Nizami Construction Company vs Chief Executive Officer, Gujranwala (2005 CLC 366), Messrs Al-Noor Construction Co. vs Cantonment Board Peshawar (2004 CLC 1647), The Crescent Star Insurance Co Limited vs National Bank f Pakistan (2002 CLD 433), Tristar Shipping Lines Limited vs Government of Pakistan (1997 CLC 1475), Messrs Rajput Builders and others vs National Security Insurance Co. (1992 CLC 818) and Atlas Cables (PVT) Ltd vs Quetta Electric Supply Company Ltd (PLD 2011 Quetta 67), Arian Equipment and Chemicals Ltd. vs. State of West Bengal and others (AIR 1975 SC 266),

M/s V.K Dewan and Co. Vs. Municipal Corporation of Dehli and others (AIR 1994 Delhi 304) and Pretam Pipes Syndicate vs. Tamal Nado (AIR 1986 Mad 310).

11. The order of respondent No.2 without specifying any “mechanism” and “manner” under Rule 19 *ibid* also amounts to exercise of discretion in unbridled and unstructured manner. The discretion with the authority, without a uniform yardstick or formula is a loose jumble of haphazard human subjectivity, which is inescapably susceptible to error, arbitrary, *ex facie* discriminatory, highly irrational and illogical decisions. The administrative compulsion and wisdom to structure discretion as in Rule 19 *ibid* is to remove human subjectivity from exercise of discretion. Constitutional and jurisprudential importance of structured discretion is that it nursed the requirement of due process, fairness and fair trial and safeguards the unbridled discretion against voice of discrimination and arbitrariness. In this context reliance is placed on Muhammad Ashraf Tiwana and others vs. Pakistan and others (2013 SCMR 1159). The Division Bench of this Court in Tanveer Ahmad Khan vs. Registrar Lahorel High Court Lahore and 3 others (PLD 2013 Lah 386) while dealing with a question of structuring of discretion held as under:

“The need to have intelligent objective criteria or smart parameters, therefore, cannot be over emphasized. Such criteria or parameters are tools for the selecting authority to logically fashion its discretion. Reliance is placed on Tariq Aziz-ud Din and others (2010 SCMR 1301) Corruption in Haji Arrangements in 2010 (PLD 2011 SC 963). Muhammad Yasin v. Federation of Pakistan through Secretary, Establishment Davison, Islamabadf and others (PLD 2012 SC 132). Messrs Gadoon Textile Mills and 814 others vs WAPDA and others (1997 SCMR 641) and Muhammad Iqbal Khokhar and 3 others vs. The Government of the Punjab, through the Secretary to Government of the Punjab, Lahore and 2 others (PLD 1991 SC 35). On the concept of institutional discretion, this Court has held in Liaqat Ali Chughtai v.Federation of Pakistan through Secretary Railways and 6 others (2012 PLC (C.S.) 1062):-

.....On an institutional level, structuring the discretion is to protect the institution and the public from the vice of arbitrariness. It is to filter whims, vagaries, caprice, surmises and volatility attached to human behavior, translated into human dissection. These vices are a breeding ground for corruption, nepotism and favouritism. These vices are like termites and if permitted to exist. Weaken the foundations of democratic public institutions. Reference at this stage is made to the case of Aman Ullah Khanf and others vs. The Federal Government of Pakistan through Secretary, Ministry of Fifnace, Islamabad and others (PLD 1990 SC 1092 at page 1147, relevant part of para 62 reads as under:-

“Wherever wide-worded powers conferring discretion exist, there remains always the need to structure the discretion and it has been pointed out in the Administrative Law Text by Kenneth Culp Davis that the structuring of discretion only means regularizing it, organizing it, producing order in it so that decision will achieve the high quality of justice. **The seven instruments that are most useful in the structuring of discretionary power are open plans, open policy statements, open rules, open findings, open reasons, open precedents and fair informal procedure.** Somehow, in our context, the wide worded conferment of discretionary powers or reservation of discretion without framing rules to regulate its exercise, has been taken to be an enhancement of the power and it gives that impression in the first instance but where the authorities fail to rationalize it and regulate it by Rules, or Policy statements or precedents the Courts have to intervene more often, than is necessary, apart from the exercise of such power appearing Arbitrary, and capricious at times.”

The above principles have been consistently reiterated in the cases of Chairman, regional Transport Authority, Rawalpindi v. Pakistan Mutual Insurance Company Limited Rawalpindi (PLD1991 SC 14) Director Food, N-W.F.P and another v. Messrs Madina Flour and General Mills (Pvt) Ltd and 18 others (PLD 2001 SC 1) Chief Secretary Punjab and others v. Abdul Raoof Dasti, (2006 SCMR 1876), Abdul Wahab and another v. Secretary, Government of Balochistan and another (2009 SCMR 1354) and Delhi Trnsport Corporation v D.T.C. Mazdoor Congress and others (AIR 1991 SC 101).

12. The next question which would arise for consideration is as to whether in absence of mandatory requirement of mechanism and manner under rule *ibid*, the impugned order dated 04.04.2014 is arbitrary or not. As discussed below, I have no manner of doubt that the impugned order is completely arbitrary. Earlier, in Writ Petition No.475/2013 the case was remanded with consent of the parties, with specific direction that speaking order be passed after considering the contentions of the petitioner. The record shows that the petitioner, *inter alia*, specifically raised objections that no rules have been framed under Rule 19 of the PPRA, 2009 for blacklisting the petitioner, therefore, no blacklisting order can be passed. This contention was also raised through a written application before respondent No.2, which is also placed on record of this petition. This contention of the petitioner was neither recorded nor considered or decided in the impugned order despite order of this Court dated 11.02.2014. I have also noted that the petitioner was initially blacklisted for a period of three years on 31.10.2012 and remained blacklisted for almost 16 months till date when the case was remanded with consent of parties on 11.02.2014. On remand while passing the impugned order dated 04.04.2014 the period during which the petitioner already remained blacklisted was not excluded and petitioner was again blacklisted for another period of three years, which amounts to double jeopardy in clear violation of Article 13 of the Constitution. The respondent tried to argue that further three years blacklisting commensurate with loss caused to exchequer, this ground is misconceived, as according to rule 19 *ibid* the blacklisting is based on failure to perform and not amount of loss unilaterally determined by the respondent No.2. Even otherwise the respondent No.2 is neither a competent authority under the contract to determine the loss on the part of the petitioner nor to penalize it for such loss under the contract. The finding of respondent No.2 to unilaterally determine the loss and then also penalize the petitioner for such loss, makes respondent No.2 a judge of its own cause, especially when the matter is still pending before the Civil Court and admittedly none of the parties have invoked the arbitration clause/proceeding for the determination of their respective liability. Further as per Rule 19 of PPRA, 2009 a contractor can be

blacklisted who has consistently failed to provide satisfactory performance. This fact is not disputed between the parties that prior to the contract in question dated 17.06.2010, the petitioner have not defaulted in any other previous contract relating to the respondents. In absence of failure to provide satisfactory performance in any other contract, it cannot be said that the petitioner has consistently failed to provide satisfactory performance; therefore, the order of blacklisting is not within the parameters of Rule 19 *ibid*. Further, no time period is prescribed in PPRA, 2009 for blacklisting the contractor, therefore, in the absence of any time period under the rules, the blacklisting of the petitioner company for a fresh term of three years is not only arbitrary but also without lawful authority. The learned Law Officers tried to justify the impugned order dated 04.04.2014 on the ground that the time period is prescribed under the purchase manual. I am afraid this arguments is misconceived as neither in the contract nor under the PPRA, 2009 purchase manual has made applicable to the petitioner. In any case once PPRA, 2009 was promulgated which specifically provide provision for blacklisting of suppliers and contractors, the conflicting provision of purchase manual are deemed to be repealed and cannot be applied. Reliance is placed on M/s. Tank Steel and Re-Rolling Mills Pvt. Ltd. Dera Ismial Khan and others vs. F.O.P etc. (PLD 1996 SC 77) and Muhammad Yousaf Ali Shah vs. Federal Land Commissioner Govt. of Pakistan Rawalpindi and two others (1995 CLC 369). Further it is settled law that officer exercising power under a statute, should follow it strictly and cannot borrow the provision from other statute. Reliance is placed on Mst. Ayesha Bibi vs. Nazir Ahmed and 10 others (1994 SCMR 1935). At this juncture, it is also pragmatic to refer the letter dated 07.03.2013 written by the Republic Engineering Corporation (PVT) Ltd. (the Engineer under the Contract) to respondent No.2 in response to its query dated 06.03.2013 for blacklisting the petitioner. For facility, the relevant extract of the aforementioned letter is reproduced below:-

“Please note that the Contract has been rescinded as per Clause-60 under the instructions of Project Steering Committee. The referred clause was invoked after fulfilling all the

contractual requirements. However, there is no provision for blacklisting of the Contractor in the Contract’.

In the aforesaid letter it was specifically advised by the Engineer, that there is no provision of blacklisting of the contractor in the contract but said opinion was ignored while passing the impugned order. The perusal of the impugned order also shows that despite the fact that the petitioner’s contract is of year 2010 and its previous blacklisting on 31.10.2012 was also under PPRA, 2009, therefore, after the remand, the petitioner’s case was required to be decided as per the law applicable at the relevant time i.e. PPRA, 2009, but the respondent No.2 applied PPRA, 2014, without any reasoning and lawful justification. It is well settled principle of law that where law is amended during pendency of an action, case is required to be decided under old law unless specifically provided in the amended law. Reliance is placed on Khudadai Dad alias Mama and others vs State and others(PLD 1997 Quetta 69) and Muhammad Sarwar Khan vs Muhammad Azam Khan and others(1997 CLC 500). No doubt, the petitioner was given hearing by the respondent No.2 before passing the impugned order but the principle of natural justice must be followed not merely as a formality but as a well-meaning and effective requirement of law, which includes passing of a speaking and well-reasoned order as mandated under Section 24 A of the General Clauses Act, 1897. In view of above discussion, it cannot be said that impugned order is speaking and well-reasoned.

13. As far as **preliminary objection** raised by the learned Law Officers that this petition is hit by Section 79 CPC and Article 174 of the Constitution is concerned, the perusal of the petition and its prayer shows that the petitioner has not challenged any act of the Government of Punjab rather he has only assailed the order dated 04.04.2014 passed by respondent No.2. Respondent No.2 is admittedly a statutory body, constituted under the “Punjab Emergency Services Act, 2006.” (**Act**). Under Section 4 of the Act, the Punjab Emergency Services shall be a body corporate which has the power to enter into contract and may sue or

be sued in its own name. As no relief has been claimed against the Government of Punjab in this petition, therefore, Government of Punjab is merely a proforma respondent and even if the petition has been wrongly filed against Government of Punjab, the same being maintainable against respondent No.2, which is a statutory body, it cannot be dismissed on this ground alone. In this regard reliance is placed on Salah ud Din and 2 others vs. Frontier Sugar Mills and Distiliary Ltd and 10 others (PLD 1975 SC 244) and Muhammad Younas Sheikh vs. Correx Enterprises and others (2007 MLD 508). The case law relied upon by the respondents in support of their arguments that this petition is hit by Section 79 CPC read with Article 174 of the Constitution is inapt to the facts and circumstances of the present case. It is expedient to briefly examine the case law referred by the respondents. Province of the Punjab through Member Board of Revenue Lahore and others vs. Muhammad Hussain through Legal Heirs and others (PLD 1993 SC 147), the Pakistan was sued through Chief Settlement Commissioner which was held to be illegal as Chief Settlement Commissioner did not exist after repeal of law, 1974 and MBR could not represent Pakistan, in Hfaiz Ikram Saeed vs. State (2013 SCMR 1045) the petition was filed by the Province of Punjab through Prosecutor General which petition was dismissed by the High Court and the august Supreme Court set aside the order of High Court and allowed the Government to file petition through Secretary Prosecution, in Govt. of Balohistan vs. Nawabzada Mir Tariq Hussain Kha Magsi and others (2010 SCMR 115), the Province of Balochistan was sued through Collector/D.C. instead of Secretary; hence the suit was found not maintainable, in Haji Abdul Aziz vs. Govt. of Balohistan through Deputy Commissioner (1999 SCMR 16) the suit filed against Government of Punjab through D.C. whereas in Deputy Commissioner Sialkot and others vs. Hamid Khaldi and others (1987 CLC 2360) the suit was filed against the public functionaries without impleading Province of Punjab as party. In none of the cases referred above, the petition was filed against a statutory body which could be sued independently of the Provincial Government or the Federal Government,

whereas in the present case, the petitioner has impugned the order of respondent No.2 which is a statutory body constituted under the Act, therefore, against respondent No.2 the writ is maintainable regardless whether the same is maintainable against Government of Punjab or not.

14. The other objection of the respondent that there is factual inquiry involved and being arbitration clause available, this petition is not maintainable, is also without substance. As far as the order for blacklisting the petitioner is concerned, the same being challenged on the touchstone that mechanism and manner under Rule 19 of PPRA, 2009 are not framed and it is also violative of fair trial and due process of law under Article 4, 9, 10-A and fundamental rights of the petitioner and its management under the Constitution; the petition is not hit by any factual controversy. The other objection regarding availability of remedy of arbitration proceedings, it is suffice to say that the blacklisting was not done under the contract but the same has been ordered under PPRA, 2009 by respondent No.2. Therefore remedy of arbitration under clause 65 of the Contract is not available against such decision of blacklisting passed by respondent No.2. In any case the impugned order being without jurisdiction and the question involved in this petition requires interpretation of rules and enforcement of provisions of Articles 4, 9, 10-A and 18 of the Constitution, therefore, despite departmental remedy, if any, this constitutional petition is maintainable. Reliance is placed on Nawabzada Muhammad Amir Khan vs. The Controller of Estate Duty (2)Pakistan, through Secretary Ministry of Finance etc. (PLD 1961 SC 119), The Burmah Oil Company(Pakistan Trading) Ltd,Chittagong vs The Trustees of the Port of Chittagong (PLD 1962 SC 113), Nagina Silk Mill, Lyallpur vs. The I.T.O. A-Ward Lyallpur and the I.T.A. Tribunal Pakistan (PLD 1963 SC 322), Messrs Usmania Glass sheet Factory Ltd, Chittagong vs Sales Tax Officer, Chittagong (PLD 1971 SC 205), Muhammad Hussain Munir and others vs. Sikandar and others (PLD 1974 SC 139), Sindh Employees Social Secretary Institution vs. Dr. Mumtaz Ali Taj (PLD 1975 SC 450), Messrs Julian Hoshang Dinshaw

Trust and others vs. Income Tax Officer, Circle XVII South Zone, Karachi and others (1992 SCMR 250), Parvez Iqbal and 2 others vs Provincial Transport Authority, Sindh and another (1996 CLC 182), Republic Motors Ltd vs Income Tax Officer and others (1990 PTD 889), Pakistan Industries vs. Assistant Collector Central Excise and Land Customs Karachi & another (NLR 1992 Tax 10), The Fecto Cement Limited vs. The Collector of Customs Appraisement and another (1994 MLD 1136), Messrs Kamran Industries vs the Collector of Customs (Export) with floor Customs House, Karachi and 4 others (PLD 1996 Kar 68), Hudaybia Textile Mills Limited and 3 others vs Banking Tribunal, Lahore and others, (PLD 1996 Lah 219), Adil Polypropylene Products Ltd vs. The Federation of Pakistan etc. (1997 MLD 2189), Muhammad Khan and 2 others vs. Karim Bakhsh and 2 others (NLR 1997 CLJ 363), Tawakal General Export Corporation and another vs. The Collector of Customs (Export) Karachi and 2 others (PLD 1992 Kar 199), Messrs Haroon Brothers vs. Drugs Registration Board and another (1992 CLC 1017), and Messrs Chenab Cement Product Pvt) Ltd v/s Banking Tribunal, Lahore and others (PLD 1996 Lahore 672).

15. In sequel of above discussion, this petition is **allowed** and the impugned order dated 04.04.2014 of blacklisting the petitioner company, is set aside. However, this judgment will not preclude the respondents from prescribing a fair and transparent mechanism and manner of blacklisting under the relevant Procurement rules and proceed in the matter strictly in accordance with law.

(ABID AZIZ SHEIKH)
JUDGE

Approved for reporting

Judge

Raza