2026:AHC:172511-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - C No. - 6335 of 2022

Aarambh Agro Purposes Co-Operative Society Ltd and another
.....Petitioner(s)

Versus

State of U.P. and 13 others
.....Respondent(s)

Counsel for Petitioner(s)	:	Bipin Bihari, Neeraj Kumar, Rupesh Kumar Ram
Counsel for Respondent(s)	:	C.S.C., Mohd. Naushad Siddiqui, Rajesh Kumar Yadav, Saiyad Iqbal Ahmed, Sudhanshu Srivastava

Reserved
A.F.R.

Court No. - 2

HON'BLE J.J. MUNIR, J.
HON'BLE INDRAJEET SHUKLA, J.

Delivered by Hon'ble Indrajeet Shukla, J.

1. Heard Sri Bipin Bihari, learned counsel for the petitioners, Sri Roopesh Tiwari, learned Standing counsel appearing for respondent nos. 1 to 6, and Sri Sudhanshu Srivastava, learned counsel appearing for respondent no. 8. However, despite service of notice, private respondents nos. 9 to 12 have not put in appearance.

2. Under challenge is, the order dated 05.10.2019 passed by the third respondent/Regional Food Controller (R.F.C.) Moradabad Region, Moradabad, blacklisting/debarring the petitioner for an indefinite period and demand notice dated 06.03.2021, issued by the Secretary, Krishi Utpadan Mandi Samiti, District Rampur, demanding Mandi Fee and development cess amounting to Rs.4,08,191/- in lieu of the use of the

procurement center for the purchase of wheat during the period of 2019-20.

Factual Matrix

3. The factual matrix of the case is being delineated as under:

3.1. Petitioner no.1 is a society registered under the provisions of the Multi State Cooperative Societies Act, 2002 (for short, 'the Act, 2002') having registration No.MSCS/CR/1024/2014. Since its registration, the Committee of Management of the Society comprised of one Durga Shankar Balwant Singh as the President and 11 Directors/Executive Members. The term of the Committee of Management expired in the year 2019. Fresh elections to the Committee of Management were held on 15.03.2019, where petitioner no.2-Ritu Meena, was elected as the President who took charge of the Committee of Management. The newly elected Committee of Management was recognized by the Central Registrar, Department of Agriculture and Cooperation, Ministry of Agriculture, Krishi Bhawan, New Delhi.

3.2 The case of the petitioner is that the new incumbent/President informed the Central Registrar, Cooperative Societies, New Delhi about the change of address of the Society to 'Khurja Jewar Road, Jahangirpur near Ramleela Maidan, Gautam Buddh Nagar', vide letter placed on record as Annexure No.3 at Page No. 40.

3.3 Further, the pleaded case of the petitioner is that, after the second elections held in the year 2019, respondent nos. 9 to 12 forged certain agreements showing the erstwhile President, Sri Durga Shankar Balwant Singh, as the President of the Society, who had purportedly transferred the authority to respondent no.9 (Mohd. Sadab Husain), to operate the business on behalf of the Society in District Rampur, vide agreement dated 02.04.2019. Based on the aforesaid stratagem, they succeeded in obtaining a procurement order from the 4th respondent/Regional Food and Civil Supply Officer, Moradabad Region, Moradabad.

3.4 Further, it has been pointed out that a joint affidavit dated 10.04.2019 of respondent no.4/Regional Food and Civil Supply Officer, Moradabad, and respondent no.10/Mohd. Yaseen has been brought on record as Annexure No.4, which purportedly constitutes an agreement between the State officials and the private respondents to carry on the business of procurement of wheat.

3.5. The District Magistrate, Rampur, approved 11 purchasing centers in District Rampur for procurement of wheat in favour of the petitioner-Society, purportedly operated by the private respondents, vide order dated 24.04.2019.

3.6. Pursuant to the authority conferred under the agreement dated 10.04.2019 coupled with the procurement order issued on 24.04.2019 by the District Magistrate, respondent no.9, Mohd. Sadab Husain, purchased wheat from farmers at 11 centers.

3.7. Respondent no.9 portrayed himself in the capacity of Secretary/President of the Society, thus, a show cause notice dated 26.08.2019 was issued by the Regional Food Controller, Moradabad Region, Moradabad, seeking explanation that why the petitioner should not be blacklisted or debarred. The show cause notice dated 26.08.2019 issued to respondent no.9, Mohd. Sadab husain, appears to have been replied to, whereafter the impugned order dated 05.10.2019 debarring the petitioner-Society for an indefinite period was passed.

3.8. The details of the 'noticee', as mentioned in the show cause notice are stated as '**Shri. Sadab Husain- Sachiv/adhyaksh',** which is annexed as Annexure no. 7, to the writ petition. This would show that the show cause notice has not been issued to petitioner-Society or its elected President/office bearer of the Committee of Management duly recognized by the Central Registrar. Thus, the said show cause notice cannot be said to be a notice to the petitioner-Society by any stretch of imagination; rather, it is a product of fraud and collusion between the State officials and private respondents.

3.9. Petitioner no.2/Ritu Meena, claiming herself to be the President of the Society, lodged a First Information Report bearing Case Crime No.14/2020 under Sections 420, 467, 468, 471 of IPC, Police Station

Kotwali, District Rampur against respondent nos. 9 to 12, wherein after investigation a chargesheet has been submitted.

3.10. The Petitioner has emphasized similar criminal antecedents for the private respondent who claimed himself to be the President of the Society and succeeded in obtaining permission for procurement of wheat at 11 centers in Rampur in the name of petitioner-Society, despite not being a member or office bearer. The criminal background, as narrated in paragraph 17 of the writ petition, is reproduced as under:

> *"I- C.C.No. 289/2020 under sections 420, 467, 468, 471 I.P.C. at P/S-Bhagatpur.*
> *II- C.C.No. 318/2020 under sections 420, 467, 468, 471 I.P.C. at P/S-Dilari.*
> *III- C.C.No. 593/2020 under sections 420, 467, 468, 471 I.P.C. at P/S-Mundapandey.*
> *IV- C.C.No. 458/2020 under sections 420, 467, 468, 471 I.P.C. at P/S-Thakurdwara.*
> *V- C.C.No. 558/2020 under sections 420, 406 I.P.C. at P/S- Kundarki.*
> *VI- C.C.No. 0076/2021 under sections 420, 406 I.P.C. at P/S- Bhojpur, District Moradabad."*

3.11. After registration of the FIR, the Regional Food Controller, Moradabad Region, Moradabad, stopped the payment to respondent no.10/Mohd. Yaseen and respondent no.9/Mohd. Sadab Husain, but nothing substantial has been done thereafter.

3.12. In this background, the Secretary, Krishi Utpadan Mandi Samiti, Milak, District Rampur, issued the impugned letter dated 06.03.2021 asking for a sum of Rs.4,08,191.60/- which includes Mandi Fee of Rs.2,58,991/- and development cess charge of Rs.1,47,200/-.

3.13. The further pleadings are that one Shaukat Ali has also staked a claim for Rs.11,22,176/- towards handling charges, and M/S Kemary Transport Company has demanded transportation charge of Rs.28,09,440/-.

Submissions on behalf of Petitioner

4. Learned counsel for the petitioner submitted that no payment has been made to the account of the petitioner-Society or its recognized Chairman/President of the Committee of Management. It was only after service of the demand notice for Mandi fee, that petitioner-Society came to know about the order of blacklisting/debarment, and that too for an indefinite period. The fraud practiced is writ large. The petitioner is a victim of fraud practiced by private respondents in collusion with the State officials. The Petitioner filed an exhaustive representation before the Regional Food Controller, Moradabad Region, Moradabad, for revocation of the blacklisting/debarment order dated 05.10.2019 and further demanded money so that the demand of Mandi Tax as well as several other demands raised by various stakeholders, could be satisfied but same went in vain.

5. The further submission is, the private respondents hatched a conspiracy in collusion with the official respondents in obtaining the purchase centers and permission to procure wheat from the farmers, thus, they deceived the farmers, institution and brought disrepute to the petitioner-Society.

6. Learned counsel for the petitioner strenuously urged that, despite petitioner no.1 being a registered society with recognition of petitioner no.2 as its President by the Central Registrar they could not receive the price of wheat. Further, petitioners have not been afforded any opportunity of hearing and no show cause notice preceding the order of blacklisting has been served.

7. The petitioner, who is the sufferer and victim of the alleged fraud has not been afforded even a post decisional hearing, as the order of debarment for an indefinite period has not been reconsidered despite the representation submitted by the petitioner.

8. The procurement of wheat in the name of the petitioner-Society is without any authority of law or agreement. Respondent nos.9 to 12, who are neither office bearers nor members of the Society, have been

permitted to procure wheat from the specified centers in the Mandi area of District Rampur.

9. The First Information Report bearing Case Crime No.14/2020 under Sections 420, 467, 468, 471 of IPC, Police Station Kotwali, District Rampur, found favour with the Investigating Officer and private respondents have been charge-sheeted. The Investigating Officer while filing the chargesheet categorically recorded about information furnished by Central Registrar, Cooperative Societies, New Delhi who had informed that it was petitioner no.2 Reetu Meena, who was the President of the Society at the relevant time i.e., after 15.03.2019, and that the private respondent, Sadab Husain, and the other respondents are not office bearers, of petitioner no.1/Society, as is evident from a bare perusal of Annexure no.2 to the rejoinder affidavit filed by the petitioner.

10. The show cause notice issued to respondent no.9/Sadab Husain in the capacity of President/Secretary dated 26.08.2019 cannot be regarded show cause notice issued to the petitioner-Society inasmuch as the recognition by the Central Registrar of the elections held on 15.03.2019, electing petitioner no.2 as President negates the claim of Sadab Husain to be in any capacity related to the petitioner-Society, much less as its President. This simply indicates that the principles of natural justice by granting opportunity of audience to petitioner-Society has been violated.

Submission on behalf of State-Respondents

11. Refuting the claim set up by the petitioner, learned Standing Counsel invited the attention of the Court to the counter affidavit, wherein it has been mentioned that the procurement of wheat is governed by the purchase policy for the year 2019-20, in terms of the Government Order dated 06.03.2019. The Petitioner applied for permission to purchase wheat crop for the year 2019-20 through respondent no.9/Mohd. Sadab Husain. Accordingly, permission was granted after due verification of the documents enclosed therewith and in turn the District Magistrate, Rampur, allotted 11 purchase centers to the petitioner-Society in District Rampur.

12. The Petitioner-Society purchased a total quantity of 2,568.60 metric tonnes of wheat, out of which 1,335 metric tonnes of wheat were supplied to the Food Corporation of India. Out of this bulk 1203.6 metric tonnes of wheat was found to be of standard quality during the checking and remainder 131.4 metric tonnes, substandard quality. Thus, the quantity of wheat having been found substandard, was rejected by the Food Corporation of India. The petitioner-Society, therefore, failed to supply the total quantity purchased of purchased wheat to the Food Corporation of India.

13. The procurement policy indicates that Multi-State Cooperative Societies which have been debarred/blacklisted or against whom First Information Report has been lodged would not be permitted procurement of wheat. The procurement policy also provides that the Multi–State Cooperative Societies at the district level would be shortlisted by the District Magistrate and at the State level by the Commissioner, Food and Civil Supply, U.P.

14. The procurement policy/Government Order dated 06.03.2019, having been brought on record as Annexure No.CA-1, indicates that the District Magistrate would be the Nodal Officer for the procurement of wheat and under his direction and supervision the purchase of wheat would be regulated. Relevant Clause no. 4.1 of the said procurement policy is reproduced as under:

> *"4.1 नोडल अधिकारी व जिला खरीद अधिकारी की नियुक्ति:*
> *जनपद में गेहूं क्रय हेतु जिलाधिकारी, नोडल अधिकारी होंगे, उनके निर्देशन एवं पर्यवेक्षण में गेहूँ क्रय कराया जायेगा। जिलाधिकारी द्वारा जनपद के किसी वरिष्ठ अधिकारी को, जो कम से कम अपर जिलाधिकारी स्तर के हों. जिला खरीद अधिकारी एवं जिला खाद्य विपणन अधिकारी को अपर जिला खरीद अधिकारी नामित किया जायेगा। इसी प्रकार प्रत्येक उप जिलाधिकारी को गेहूँ क्रय व भण्डारण के निमित्त तहसील/परगना हेतु नोडल अधिकारी नामित किया जायेगा, जिसके साथ इस कार्य में क्षेत्रीय विपणन अधिकारी द्वारा समन्वय रखा जायेगा। मण्डलायुक्त, सम्भागीय खाद्य नियंत्रक, जिलाधिकारी, जिला खरीद अधिकारी, सभी नोडल अधिकारी एवं क्रय संस्थायें यह सुनिश्चित करेंगी, कि गेहूँ खरीद एवं केन्द्रीय पूल में भण्डारण का कार्य सुचारू रूप से चलता रहे तथा किसी भी कारण से गेहूँ खरीद प्रभावित न होने पाये।"*

15. Clause 19.4 of the procurement policy/Government Order dated 06.03.2019 provides that the price of wheat to registered societies, Multi State Cooperative Societies and farmer producer organization/farmer

producer companies would be paid after delivery of wheat to the Central Pool, on the basis of the production of bill/acknowledgment produced. The said clause further says that, if any liability against aforesaid institutions arises in future, it can be recovered first from the security, and in case of a shortfall as arrears of land revenue. Clause no.19.4 is extracted as below:

> "19.4 पंजीकृत सोसाइटीज, मल्टी स्टेट को-आपरेटिव सोसाइटीज व फारमर्स प्रोड्यूसर आर्गनाइजेशन / फारमर्स प्रोड्यूसर कम्पनीज को भुगतान गेहूँ के केन्द्रीयपूल में डिलीवरी हो जाने के पश्चात् एक्नालेजमेण्ट के आधार पर बिल प्रस्तुत करने पर किया जाय और भा०खा०नि० में बिल प्रस्तुत कर भुगतान लेने की कार्यवाही की जाय। पंजीकृत सोसाइटी व मल्टी स्टेट को-आपरेटिव सोसाइटीज, एफ०पी०ओ०/एफ०पी०सी० को भारत सरकार की कास्ट शीट में अनुमन्य सोसाइटी कमीशन नियमानुसार देय होगा एवं प्रशासनिक व्यय में भारत सरकार द्वारा अनुमन्य 2.5 प्रतिशत धनराशि खाद्य विभाग अस्थाई रूप से जमानत के रूप में अपने पास रखेगा। भारत सरकार द्वारा कास्टशीट को अन्तिम रूप दिये जाने पर यदि संस्थाओं की कोई तत्समय देयता निकलेगी तो उसे इस रूकी धनराशि से समायोजित भी किया जा सकेगा। इस रूकी धनराशि पर खाद्य विभाग द्वारा संस्थाओं को किसी प्रकार का ब्याज नहीं दिया जायेगा। यदि इन संस्थाओं पर भविष्य में कोई देयता केन्द्र/राज्य सरकार की निकलती है एवं उसकी प्रतिपूर्ति रूकी हुई धनराशि से नहीं हो पाती है तो इन संस्थाओं के विरूद्ध भू राजस्व के बकाये की भांति रिकवरी सर्टिफिकेट निर्गत कराकर नियमानुसार वसूली की जा सकेगी।"

16. Likewise, Clauses 8.1 and 8.4 of the procurement policy are also relevant giving details of procurement procedure. The same are extracted as under:

> *"8.1 ई-उपार्जन (ई-प्रक्योरमेन्ट):-*
> *रबी विपणन वर्ष 2019-20 में समस्त क्रय एजेन्सियां, पंजीकृत सहकारी समितियां, मल्टी सेक्टोरल/मल्टी सेक्टोरल सोसाइटी, प्रोड्यूसर आर्गेनाइजेशन (एफ0पी0ओ0) एवं फारमर्स प्रोड्यूसर कम्पनीज (एफ०पी०सी०), भारतीय खाद्य निगम एन०आई०सी० द्वारा विकसित सॉफ्टवेयर पर आन-लाइन गेहूँ क्रय की प्रक्रिया को अनिवार्य रूप से अपनाएंगे। कृषक की भूमि एवं गेहूँ के बोये गये रकबे का सत्यापन राजस्व विभाग के भूलेख संबंधी वेबसाइट से लिंकेज देकर ऑनलाइन कराया जायेगा। खसरा/कृषक द्वारा गेहूँ के बोये गये रकबे के बारे में दी गयी घोषणा का ऑनलाइन सत्यापन न हो पाने की स्थिति में राजस्व विभाग के आफलाइन सत्यापन को भी मान्यता दी जा सकती है। इस संबंध में विस्तृत निर्देश आयुक्त, खाद्य तथा रसद द्वारा अलग से निर्गत किये जायेंगे। एन0आई0सी0 के सहयोग से क्रय व्यवस्था से जुड़े समस्त अधिकारियों/कर्मचारियों को प्रशिक्षण भी दिलवाया जायेगा परन्तुः-*
> *i.सीमान्त व लघु कृषक अग्रेतर आदेशों तक ऑनलाइन/ऑफलाइन सत्यापन से मुक्त रहेंगे, इनसे जनपद की उत्पादकता के आधार पर गेहूँ क्रय किया जा सकेगा। ऐसे कृषकों का गेहूँ बगैर सत्यापन के क्रय किया जा सकेगा।*
> *ii. उपरोक्त के अतिरिक्त कोई कृषक जो अधिकतम 100 कुं0 गेहूँ क्रय केन्द्र पर बेचना चाहता है, अग्रेत्तर आदेशों तक ऑनलाइन/ऑफलाइन सत्यापन से मुक्त रहेगा।*
> *8.4 गेहूँ खरीद का प्रत्येक विवरण ई-उपार्जन माड्यूल पर करना होगा, केवल उसी खरीद को मान्यता दी जाएगी जो ऑनलाइन फीड होगी।"*

17. It has been further emphasized that the First Information Report by petitioner no.2, being the President of the Society has been lodged on 23.01.2020, that is after passing the order of debarment/blacklisting dated 05.10.2019. The entire effort of petitioner-Society is to shirk from their responsibility of paying the Mandi fee as well as the price of embezzled wheat that was never supplied to the Food Corporation of India.

18. The submission advanced on behalf of State officials, particularly respondent no.4, is that the respondent no.4 acted in bona fide belief on the agreement dated 02.04.2019, by virtue of which respondent no.9 acquired the right to carry on business on behalf of Society and there was no occasion to disbelieve this agreement as the President Durga Shankar Balwant Singh had executed the said agreement. The entire business was carried out in the name of petitioner-Society and at no point of time any objection was raised by petitioner-Society. It was after the embezzlement of wheat purchased and the debarment order having been passed that the petitioner-Society took a somersault and lodged an FIR to shirk off their responsibility. The agreement to purchase wheat stands denied.

19. The record reflects that respondent no.9/Mohd. Sadab Husain not being a member of the Society or in any of the capacity of an office bearer, was not entitled to receive the procurement orders of wheat. The pleaded case of State-respondents is that an agreement was produced by said Sadab Husain, according to which work was distributed amongst the members of the Society, and, according to that, Sadab Husain was given the work of a few districts, including district Rampur. Respondent nos.9 and 10 applied for permission on the basis of the agreement dated 02.04.2019. In the application submitted on behalf of petitioner-Society through respondent no.9 and 10, the office address was mentioned as MMMIGA/194 MDA Colony, Akta Vihar, Moradabad, U.P. and during the whole purchase season all correspondence was exchanged at aforesaid address. Now the petitioner-Society is attempting to shift liability upon respondent no.9 and 10 which is without any foundation.

20. The shortcomings in the supply of wheat to the Food Corporation of India at the end of petitioner-Society through respondent no.9 are indicated in the order of blacklisting/debarment, for all times to come with stipulation that:

> *"8. the details uploaded on the online portal the petitioner society purchased total 2568.60 metric ton wheat. The petitioner supplied a quantity of 1335 metric ton wheat to FCI, but out of the same 1203.6 metric ton wheat was found off standard qualify during checking by Quality Inspector and remaining wheat about 131.4 metric ton was of sub standard quality, therefore, the same was rejected by FCI. It is further stated that the remaining 1203 metric ton wheat was never supplied to FCI. The petitioner society failed to supply the total purchased wheat to FCI and also failed to provide the details of the remaining wheat quantity of 1335 including the rejected quantity. As there was shortfall in the quantity of wheat supplied by petitioner society to FCI show cause notice dated 28.08.2019 was issued to petitioner society to explain the irregularities committed in purchase of wheat for the season 2019-20."*

Submission on behalf of Respondent-Mandi Samiti

21. Sri Sudhanshu Srivastava, learned counsel for Mandi Samiti submitted that the procurement order permitting the petitioner to operate at 11 centers in the Mandi was issued by the District Magistrate and the business having been carried out in the name of petitioner-Society, petitioner is liable for payment of Rs.82,452/- as development cess and Rs.3,01,198/- as Mandi fees in lieu of wheat purchased from the farmers at purchase centers of Mandi Samiti District Rampur. It was further submitted that the petitioner has duly been served the demand notices but failed to satisfy the said liability and is now shifting the burden fastened against it by the law.

Question for Determination

22. Hence, the question that arises for our determination is whether the blacklisting of a firm or society or contractor can be made in perpetuity particularly when service of notice itself is not established and the action violative of the principles of natural justice.

Analysis

23. Having heard learned counsel for the parties and perused the record, it comes out that elections to petitioner-Society were held on 15.03.2019 and thereafter, the Central Registrar, has recognized the new incumbent/Committee of Management, where petitioner no.2 is the President for the next five years, his term expiring in the year 2024.

24. After the newly elected Committee of Management took charge on 15.03.2019, Durga Shankar Balwant Singh, being the erstwhile President of the Committee of Management, had no authority to execute the agreement dated 02.04.2019 or any agreement whatsoever in favour of Respondent No. 9, which could form the basis for authorizing the purchase of wheat in terms of the Procurement Policy, 2019 on behalf of the Society binding them. The letter issued by the Central Registrar unequivocally establishes that Petitioner No. 2 had assumed the office of President pursuant to the elections held on 15.03.2019, i.e., prior to the execution of the agreement dated 02.04.2019. Thus, at the relevant time, Durga Shankar Balwant Singh, the erstwhile President of the Committee of Management of the petitioner-Society, had no authority to execute any agreement authorizing the purchase of wheat on behalf of the petitioner-Society. The charge sheet filed in the case registered against the private respondents, although not conclusive proof of the fraud allegedly perpetrated by them, is nevertheless indicative of the existence of a prima facie case.

25. The respondent-State officials relied upon an agreement entered into between Durga Shankar Balwant Singh and respondent no.9/Mohd. Sadab Husain dated 02.04.2019 in order to demonstrate that by virtue of this agreement respondent no.9 had an authority to enter into business of procurement of wheat on behalf of the petitioner-Society. The said agreement is available on record from Page 35 to 47 of the counter affidavit filed by the State. The State-respondents further pleaded in paragraph no.7 of the counter affidavit that respondent nos.8 to 11 also obtained permission for sale purchase in district Bijnor and Moradabad through NAFED for the year 2019-20 and that, at no point in time, was

any dispute with respect to his authority to enter into business on behalf of petitioner-Society ever raised.

26. In our writ jurisdiction, the Court is not equipped with tools to find out whether any agreement/document is forged or genuine, but what the attending circumstances indicate is that the erstwhile President, Durga Shankar Balwant Singh, had no authority to execute the agreement on 02.04.2019 after a new incumbent/elected Committee of Management had taken charge pursuant to elections held on 15.03.2019, a fact not disputed by the parties.

27. The submission of learned counsel for the petitioner that the impugned order, blacklisting the petitioner's firm does not mention the period, and, therefore, this is nothing but a 'permanent blacklisting' not permissible under law also appears to carry weight. This submission must now be examined in the light of authoritative pronouncements.

28. This Court had an occasion to test the validity of an order of permanent blacklisting in the case of **M/S Vindhyawasini T. Transport Vs. State of U.P. and others, 2018: AHC:27938-DB** and observed that debarment can never be permanent. The time period should invariably be mentioned in the order of debarment, though it would depend upon the nature of defiance, breach or offences committed by the erring person/firm/contractor. The relevant excerpts are reproduced as under:

> *"9. A Full Bench by majority view in* ***V. Punnen Thomas v. State Of Kerala, AIR, 1969 Ker. 81,*** *held that a mere refusal to afford a man the prospect of doing profitable or unprofitable business with the Government, of entering into advantageous relationships with the Government as it has been put, entails no civil consequences however serious a blow that might be to the person concerned.*
>
> *10. Differing from majority view, Justice Mathew (as he then was) observed in his dissenting judgment, as under:*
>
> > *"14. Government has right like any private citizen to enter into contracts with any person it chooses and no person has a right fundamental or otherwise to insist that Government must enter into a contractual relation with him. …*
> >
> > *15. A contractual relationship presupposes a consensus of two minds. If Government is not willing to enter into contract with a person, I do not think that Government can be forced to do so. It is one thing to say that Government, like any other private citizen can enter into*

contract with any person it pleases, but a ***totally different thing to say that Government can unreasonably put a person's name in a blacklist and debar him from entering into any contractual relationship with the Government for years to come.*** *In the former case, it might be said that Government is exercising its right like any other private citizen, but* ***no democratic government should with impunity pass a proceeding which will have civil consequences to a citizen without notice and an opportunity of being heard.*** *The reason why the proceeding for blacklisting the petitioner and debarring him from taking Government work for ten years was passed, is that he committed irregularities in connection with the tender of the contract work. ... An ex parte adverse adjudication that the petitioner committed irregularities in connection with the tender for working down timber from Udumbandhola Block No. 1 by Government on the report of some petty officer* ***without notice and an opportunity of being heard to the petitioner and putting his name in the blacklist and debarring him from 'taking any Government work for ten years' by way of punishment, appear to me, to be against all notions of fairness in a democratic country."***

(emphasis added)

11. Justice Mathew further held that "Reputation can be viewed both as an interest of personality and as an interest of substance, viz., as an asset" and quoted following words of Roscoe Pound:

"On the one hand there is the claim of the individual to be secured in his dignity and honour as part of his personality in a world in which one must live in society among his fellow-men. On the other hand there is the claim to be secured in his reputation as a part of his substance in that in a world in which credit plays so large a part the confidence and esteem of one's fellow-men may be a valuable asset." (See: Interest of Personality' 28 Harvard Law Review, pp. 445, 447).

12. Finally, Justice Mathew said:

"As the memorandum in question ***casts a stigma on the reputation of the petitioner, which is both an interest of personality and an interest of substance,*** *and as it is attended with civil consequences to the petitioner, and* ***as it operates as a punishment for an alleged irregularity,*** *I think, the memorandum should have been proceeded by notice and an opportunity of being heard. If anybody were to say that Ext. P-1 is an administrative proceeding and so no notice or opportunity of being heard was required and that no interference under Article 226 is possible, I would answer him in the high and powerful words of Mr Belloc, 'you have mistaken the hour of the night: it is already morning'." (p. 89) (emphasis added)*

13. In ***Erusian Equipment and Chemicals Ltd v. State of West of Bengal, 1975 (1) SCC 70,*** *Court concluded:*

"The Government is a government of laws and not of men. It is true that neither the petitioner nor the respondent has any right to enter into a contract but they are entitled to equal treatment with others

who offer tender or quotations for the purchase of the goods. This privilege arises because it is the Government which is trading with the public and the democratic form of Government demands equality and absence of arbitrariness and discrimination in such transactions. Hohfeld treats privileges as a form of liberty as opposed to a duty. ***The activities of the Government have a public element and, therefore, 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."***

(emphasis added)

14. In ***Erusian Equipment & Chemicals Ltd. v. State of W.B. (supra)*** *Court also observed:*

"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.***

Exclusion of a member of the public from dealing with a State in sales transactions has the effect of preventing him from purchasing and doing a lawful trade in the goods in discriminating against him in favour of other people*. 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."*

(emphasis added)"

16. In ***Southern Painters Vs. Fertilizers and Chemicals Travancore Ltd. And Another, 1994 Supp (2) SCC 699****, Court held in para 8 and 9 as under:*

"8. The minority view of Justice Mathew is now the law. The majority view in V. ***Punnen Thomas case i****s not good law and must be considered to have been, impliedly, overruled by the* ***Erusian case (1975) 1 SCC 70, 75. Indeed, in Joseph Vilangandan v. Executive Engineer, Buildings & Roads (PWD) Division, Ernakulam (1978) 3 SCC 36, 41*** *it was held:*

"The majority judgment of the Kerala High Court, inasmuch as it holds that a person is not entitled to a hearing, before he is blacklisted, must be deemed to have been overruled by the decision of this Court in ***Erusian Equipment*** *".*

17. Relying upon aforesaid judgments, in ***P. Nageshwar and others Vs. Government of Andhra Pradesh and Another 1994 Supp (2) SCC 693*** *Court held that delisting of tenderer resulting in denial to participate in tender process without any opportunity is in clear violation of principles of natural justice. Court held that withholding of tender of such tenderers was not justified. Delisting of Contractor from the list would have been done only after complying with principles of natural justice. Such order even on the basis of Vigilance report without giving opportunity was held, bad in law. Similar view was taken in* ***Patel Engg. Ltd. v. Union of India, (2012) 11 SCC 257.*** *In view of the above exposition of law, it is clear that for a proposed* *action to be taken an impugned order of blacklisting should always be preceded by an appropriate show cause notice.*

29. This Court in **A.K. Construction Company v. Union of India and Others (Writ-C No.20223 of 2024 decided on July 19, 2024),** after considering the authority of the Supreme Court in **M/s Kulja Industries Limited -v- Chief Gen. Manager W.T. Proj. BSNL & Ors. (Civil Appeal No. 8944 of 2013),** held:

> *14. Upon a perusal of the relevant paragraphs above, it is evident that the judgement brings forward several critical principles concerning the judicial scrutiny of decisions to blacklist contractors by governmental or public authorities. First, the inherent power to blacklist a contractor is vested in the entity awarding the contract, typically the State or its instrumentalities. This authority does not necessarily require explicit statutory authorisation but must conform to fairness and reasonableness. <u>It is also to be noted that any governmental or public authority's decision to blacklist a contractor is open to judicial review, ensuring adherence to natural justice principles, particularly audi alteram partem and the doctrine of proportionality. This means courts can examine such decisions to ensure they are just and balanced. Further, before blacklisting a contractor, the entity must provide a fair hearing, allowing the contractor to present their case and defend against the allegations or reasons for blacklisting.</u> The decision to blacklist must also be reasonable, fair, and proportionate to the gravity of the alleged offence or breach, avoiding arbitrariness or discrimination. <u>Additionally, actions by State authorities, including blacklisting decisions, must pass the reasonableness test under Article 14 of the Indian Constitution, which ensures equality before the law and prevents arbitrary State actions.</u> Furthermore, precedents and legal standards established in prior judicial decisions, such as Erusian Equipment & Chemicals Ltd. -v- State of W.B., reported in (1975) 1 SCC 70 and subsequent cases like Radha krishna Agarwal and Ors. -v- State of Bihar & Ors., reported in (1977) 3 SCC 457, shed light on the legal framework guiding the judicial review of blacklisting decisions. <u>These principles collectively aim to ensure that the power to blacklist is exercised judiciously, upholding fairness, reasonableness, and proportionality while safeguarding contractors' rights to a fair hearing and defense.</u>*
>
> *<u>Emphasis added</u>*

30. The legal position is well settled that an order of blacklisting cannot be passed without affording an opportunity of hearing by way of a show-cause notice and, in any event, cannot ordinarily be made for an indefinite period. The law in this regard has been explained by the Supreme Court in the cases of ***Erusian Equipment and Chemicals Vs. State of W.B., (1975) 1 SCC 70; Joseph Vilangadan Vs. The Executive***

Engineer (PWD) Earnakulam & Ors., (1978) 3 SCC 36; Raghunath Thakur Vs. State of Bihar, (1989) 1 SCC 229; Gorkha Security Services Vs. State (N.C.T. of Delhi), (2014) 9 SCC 105; Kulja Industries Ltd. Vs. Chief General Manager, Western Telecom Project, BSNL, (2014) 14 SCC 731; M/S Daffodills Pharmaceuticals Ltd. Vs. State of U.P., (2020) 18 SCC 550; Vetindia Pharmaceuticals Ltd. Vs. State of U.P. & Anr., (2021) 1 SCC 804; U.M.C. Technologies Pvt. Ltd. Vs FCI & Anr., 2021 (2) SCC 551.

31. The Supreme court in **M/s. Erusian Equipment & Chemicals Ltd. v. State of West Bengal & Anr. (1975) 1 SCC 70,** has held that the purpose of serving a show cause notice is to afford the person opportunity to meet the allegations which were the basis for the authority to act, who was contemplating blacklisting. In **M/s. Erusian Equipment & Chemicals Ltd. (supra)** it was held:

> *"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."*

32. The Supreme Court in **Gorkha Security Services v. Government (NCT of Delhi) and Others, (2014) 9 SCC 105,** has dealt with the 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 and held that a show cause notice proposing blacklisting must specifically indicate such proposed action, as blacklisting entails serious civil consequences and the affected party must be put to clear notice to enable an effective response. The relevant excerpts are reproduced as under:

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

33. The Supreme Court in **Kulja Industries Ltd. v. Chief General Manager, Western Telecom Project Bharat Sanchar Nigam Limited and others, (2014) 14 SCC 731,** has observed:

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

34. The Supreme Court has followed the same principle in **Vetindia Pharmaceuticals Ltd. v. State of Uttar Pradesh and Another, (2021) 1 SCC 804,** and held that the show cause notice must clearly indicate that the contemplated action is blacklisting and observed:

> *13. This Court in Kulja Industries Ltd. v. Western Telecom Project BSNL [Kulja Industries Ltd. v. Western Telecom Project BSNL, (2014) 14 SCC 731] , despite declining to interfere with an order of blacklisting, but noticing that an order of permanent debarment was unjustified, observed:(SCC p. 744, para 28) 28.2. Secondly, because while*

determining the period for which the blacklisting should be effective the respondent Corporation may for the sake of objectivity and transparency formulate broad guidelines to be followed in such cases. Different periods of debarment depending upon the gravity of the offences, violations and breaches may be prescribed by such guidelines. While it may not be possible to exhaustively enumerate all types of offences and acts of misdemeanour, or violations of contractual obligations by a contractor, the respondent Corporation may do so as far as possible to reduce if not totally eliminate arbitrariness in the exercise of the power vested in it and inspire confidence in the fairness of the order which the competent authority may pass against a defaulting contractor.

Conclusion

35. Upon marshaling the material on record, it comes out that respondent nos.9 to 12 could not enter in agreement of wheat purchase under the aegis of petitioner-Society, since they were not office bearers/part of Committee of Management at the relevant point of time.Thus, the notice allegedly issued having been issued to respondent no.9, Mohd. Sadab Husain, describing him as “Sachiv/Adhyaksh”, before the order of blacklisting is a farce and cannot be termed to be a notice to petitioner-Society. Thus, the impugned order of blacklisting is one in flagrant violationa of principles of natural justice.

36. The petitioner-Society, represented by its duly elected President, was never served with a valid notice or afforded an effective opportunity to explain the allegations before the order of blacklisting was passed. Since blacklisting entails serious civil consequences, such denial of a meaningful opportunity of hearing vitiates the impugned order for being in clear violation of the principles of natural justice attracting the famous latin maxim ‘*audi alteram partem’.*

37. Debarment has been recognized as a method of disciplining deviant suppliers; however, an order of debarment can never be for an indefinite period as it is in the present case. Therefore, in the light of settled legal principles, the Court must balance the need to protect public interest with procedural fairness, ensuring that administrative measures such as blacklisting are neither excessively punitive nor devoid of reasoned legal justification. An indefinite blacklisting order cannot be

legally justified as it carries serious civil consequences, and therefore, must be based on clear reasons, a defined duration, and adherence to principles of natural justice. The impugned order is against the principle of law established by the Supreme Court in **Kulja industries ltd. (supra) and Vetindia Pharmaceuticals Ltd. (supra).**

38. The entire concept of blacklisting is required to be examined with a holistic approach. An order of blacklisting/debarment of a particular firm is a punishment that carries civil consequences and if imposed for an indefinite period/for all times to come, can be concluded as civil or commercial death for the entity. An order for blacklisting is, accordingly, required to be passed taking into consideration all aspects and should not be passed in a casual and cavalier manner.

39. There can be no doubt that blacklisting of a firm or a contractor visits him/it with adverse civil consequence. No one can be blacklisted without opportunity and more so, it cannot be in perpetuity.

40. A perpetual blacklisting that too without affording a valid and effective opportunity of hearing, cannot be sustained in the eyes of law as held by Supreme Court in the cases of **Gorkha Security Services, Kulja Industries Ltd, Vetindia Pharmaceuticals Ltd and M/s Erusian Equipment & Chemicals Ltd (supra).**

41. At this juncture, we are privileged to take note of Article 144 of the Constitution of India which reads as follows:

> ***"144. Civil and judicial authorities to act in aid of the Supreme Court***
> *All authorities, civil and judicial, in the territory of India shall act in aid of the Supreme Court."*

42. Thus, the law authoritatively declared by the Supreme Court is binding upon all authorities including the State and its officials, either civil or judicial, in view of the Constitutional mandate enshrined under Article 144 of the Constitution of India.

43. We are afraid that the State authorities in the present case, have acted in flagrant disregard of the aforesaid constitutional mandate by violating the law laid down by the Supreme Court that blacklisting cannot be imposed in perpetuity, more so in absence of a valid show

cause notice preceding an order for blacklisting being served upon person/firm/ contractor concerned.

44. The impugned order dated 05.10.2019 having been passed blacklisting/debarring the petitioner for indefinite period is hereby quashed.

45. Since the petitioner-Society itself did not undertake or indulge in the procurement of wheat during the Rabi Marketing Season 2019-20, and its name was allegedly utilised by the private respondents, the petitioner-Society cannot be held liable for the payment of mandi fees and development charges demanded through notice dated 06.03.2021 issued by the Secretary, Krishi Utpadan Mandi Samiti, District Rampur. However, the fact remains that the market area was utilised for procurement of wheat and the proceeds arising therefrom are stated to have been received by the State officials and are still lying in government treasury.

46. The Mandi Samiti cannot be held at fault for permitting procurement of wheat within its market area pursuant to the order passed by the District Magistrate, Rampur, who was the Nodal Officer in terms of the Government Order dated 06.03.2019. In any event, the legitimate claim of the Mandi Samiti cannot be permitted to be frustrated, and the aforesaid amount shall accordingly be liquidated by respondent no. 4. Thus, respondent no. 4/ Regional Food Controller (R.F.C.), Rampur is directed to liquidate the claim made under the notice dated 06.03.2021 in favour of Krishi Utpadan Mandi Samiti, District Rampur forthwith.

47. The writ petition is **allowed** in terms of the aforesaid orders.

48. No order as to costs.

(Indrajeet Shukla,J.) (J.J. Munir,J.)

August 17, 2026
Mohit