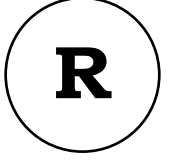




IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF APRIL, 2024



BEFORE

THE HON'BLE MR JUSTICE M.NAGAPRASANNA

WRIT PETITION NO. 20520 OF 2021 (GM-RES)

BETWEEN:

M/S. SUJAL PHARMA
(A PROPRIETORSHIP FIRM)
NAVKAR MANSION, NO.44
4TH CROSS, DEVANTHACHAR STREET
CHAMRAJPET
BENGALURU – 560 018
REPRESENTED BY ITS PROPRIETOR
MR. VIJAY KUMAR B. BHOJANI.

...PETITIONER

(BY SRI PRITHVEESH M.K., ADVOCATE)

AND:

KARNATAKA STATE MEDICAL SUPPLIES
CORPORATION LIMITED
(EARLIER KNOWN AS KARNATAKA STATE DRUGS
LOGISTICS AND WARE HOUSING SOCIETY
NO.01, DR.SIDDAIAH PURANIK ROAD
MAGADI ROAD, KHB COLONY
BENGALURU - 560 079
REPRESENTED BY ITS
MANAGING DIRECTOR.

...RESPONDENT

(BY SRI SUMANA BALIGA M., ADVOCATE)





THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE LIST OF BLACKLISTED FIRM DATED 29.10.2021 ISSUED BY THE RESPONDENT IN SO FAR AS THE PETITIONER FIRM IS CONCERNED VIDE SL.NO.10 IN RESPECT OF THE YEAR 2021-22 VIDE ANNEXURE-A.

THIS WRIT PETITION, COMING ON FOR PRELIMINARY HEARING, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The petitioner is before this Court calling in question an order dated 29-10-2021 issued by the respondent blacklisting the firm of the petitioner.

2. Heard Sri M.K. Prithveesh learned counsel appearing for the petitioner and Smt. M. Sumana Baliga, learned counsel appearing for the respondent.

3. Facts, in brief, germane are as follows:-

The petitioner claims to be a proprietorship concern engaged in the business of pharmaceutical distribution. During the onset of COVID-19, quotations were invited by the respondent/Karnataka State Medical Supplies Corporation Limited (hereinafter referred to as 'the Corporation' for short) for supply of 5000 ml cans of Hand Sanitizers. The petitioner as a distributor submits its quotation on 25-03-2020 for supply



of the said quantity of Hand Sanitizers in respect of available quantity of 2000 units at the rate of Rs.2500/- per unit inclusive of GST. The quotation submitted by the petitioner was in respect of Hand Sanitizers manufactured by one M/s Glint Cosmetics Private Limited.

4. Pursuant to the submission of quotation, purchase order was issued by the Corporation to the petitioner for supply of 10,000 quantity of Hand Sanitizers with unit packing of 5000 ml at a price of Rs.2500/- . The total value was thus Rs.2.5 crores. In terms of the said purchase order, the petitioner supplied the product on two dates i.e., on 06-04-2020 and 29-04-2020 and placed two invoices of the quantity of supply at the warehouse, Gulbarga and warehouse at Belgavi. After the nation-wide lock down was relaxed in the month of June 2020, the Corporation required the petitioner to execute an agreement in respect of the aforesaid purchase order and in compliance with the said requirement the petitioner signed the agreement on 04-06-2021 in the standard form. On 16-04-2021, the petitioner receives a replacement notice of certain quantities of Hand Sanitizers on the ground that they were declared as not of standard quality. On



12-07-2021, a second replacement notice was received on similar terms like the earlier notice dated 16-04-2021. The petitioner then submits a representation seeking reports upon which the product was said to be of bad quality. The reports are not furnished. What comes about is an order on 29-10-2021 blacklisting several firms including the petitioner. The name of the petitioner is found at Sl.No.10 in the said list for the year 2021-22 in respect of Hand Sanitizers of 5000 ml product. It is this blacklisting that has driven the petitioner to this Court in the subject petition.

5. The learned counsel for the petitioner would vehemently contend that no notice was issued to the petitioner prior to the firm being blacklisted on the issue of shoddy quality of supply of Hand Sanitizers. The supplies were made on two dates in the year 2020 and the fault was found on 16-04-2021, close to one year after the supply allegedly based on a report. The report was not furnished. When the report was sought what comes about is the order of blacklisting.

6. Per contra, learned counsel representing the Corporation /respondent would defend the action by taking this



Court through the statement of objections. The learned counsel would submit that sample was sent to the Drugs Control Department. The Drugs Control Department found that the quality of Hand Sanitizer was very poor. Though the petitioner is not the manufacturer who had manufactured the Hand Sanitizers, but it would be equally liable for distributing a poor quality Hand Sanitizer. It is her submission that though the manufacturer is also blacklisted, it has not challenged it. Therefore, the petitioner being blacklisted cannot challenge the action. She seeks dismissal of the petition.

7. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

8. The afore-narrated facts are not in dispute; they in fact lie in a narrow compass. The petitioner submitting a quotation and the Corporation issuing a purchase order for the quantity of Hand Sanitizers are all a matter of record. The supply was made on two dates i.e., on 06-04-2020 and 29-04-2020. Replacement notice comes about after a year on 16-04-2021. The replacement notice was replied to by the petitioner



seeking the reason for such replacement or the report upon which replacement notice was issued on 16-04-2021. The reason ostensibly is on the score that the Drugs Control Department has found that the samples sent to the Department were not of standard quality. But, the report was not furnished to the petitioner. Two such replacement notices were issued to the petitioner and several others. The reply of the petitioner is also appended to the petition. No reply is furnished. But, what comes about is the impugned order of blacklisting the firm of the petitioner on 29-10-2021. The petitioner then submits a representation to recall the blacklisting order on 02-11-2021. Since the order was passed by then it was of no avail.

9. The solitary contention of the petitioner is prior to blacklisting order, no opportunity of hearing was afforded to the petitioner. The defence of the respondent/Corporation is that two replacement notices were already issued which would clearly indicate poor quality of Hand Sanitizers. According to the learned counsel this would suffice. The submission of the learned counsel for the Corporation is noted only to be rejected. The two notices that were sent were replacement notices. They did not indicate anywhere that the firm of the



petitioner would be blacklisted. It is trite law that an order of blacklisting has several economic and civil consequences and therefore, any order that would ensue civil consequences cannot be passed except after complying with the principles of natural justice.

10. It becomes apposite to refer to the law laid down by the Apex Court from time to time with regard to blacklisting without affording an opportunity of hearing. The Apex Court in the case of **ERUSIAN EQUIPMENT AND CHEMICALS LIMITED v. STATE OF WEST BENGAL**¹ has held as follows:

"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.

21. With regard to the case of the petitioners, it is made clear that the authorities will give an opportunity to the petitioners to represent their case and the authorities will hear the petitioners as to whether their name should be put on the blacklist or not. This is made clear that the decision on this question will not have any effect on the proceedings pending in Calcutta High Court where the petitioner has challenged the adjudication proceedings

¹ (1975) 1 SCC 70



under the Foreign Exchange Regulations Act. Any decision of the authorities on the blacklisting will have no effect on the correctness of any of the facts involved in those proceedings.”

The Apex Court in the case of **KULJA INDUSTRIES LIMITED v. CHIEF GENERAL MANAGER, WESTERN TELECOM PROJECT BHARAT SANCHAR NIGAM LIMITED**² has held as follows:

“17. That apart, the power to blacklist a contractor whether the contract be for supply of material or equipment or for the execution of any other work whatsoever is in our opinion inherent in the party allotting the contract. There is no need for any such power being specifically conferred by statute or reserved by contractor. That is because “blacklisting” simply signifies a business decision by which the party affected by the breach decides not to enter into any contractual relationship with the party committing the breach. Between two private parties the right to take any such decision is absolute and untrammelled by any constraints whatsoever. The freedom to contract or not to contract is unqualified in the case of private parties. But any such decision is subject to judicial review when the same is taken by the State or any of its instrumentalities. This implies that any such decision will be open to scrutiny not only on the touchstone of the principles of natural justice but also on the doctrine of proportionality. A fair hearing to the party being blacklisted thus becomes an essential precondition for a proper exercise of the power and a valid order of blacklisting made pursuant thereto. The order itself being reasonable, fair and proportionate to the gravity of the offence is similarly examinable by a writ court.

18. The legal position on the subject is settled by a long line of decisions rendered by this Court starting

² (2014) 14 SCC 731



with Erusian Equipment & Chemicals Ltd. v. State of W.B. [(1975) 1 SCC 70] where this Court declared that blacklisting has the effect of preventing a person from entering into lawful relationship with the Government for purposes of gains and that the authority passing any such order was required to give a fair hearing before passing an order blacklisting a certain entity. This Court observed: (SCC p. 75, para 20)

"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."

Subsequent decisions of this Court in Southern Painters v. Fertilizers & Chemicals Travancore Ltd. [1994 Supp (2) SCC 699: AIR 1994 SC 1277]; Patel Engg. Ltd. v. Union of India [(2012) 11 SCC 257: (2013) 1 SCC (Civ) 445]; B.S.N. Joshi & Sons Ltd. v. Nair Coal Services Ltd. [(2006) 11 SCC 548]; Joseph Vilangandan v. Executive Engineer (PWD) [(1978) 3 SCC 36] among others have followed the ratio of that decision and applied the principle of audi alteram partem to the process that may eventually culminate in the blacklisting of a contractor.

19. Even the second facet of the scrutiny which the blacklisting order must suffer is no longer res integra. The decisions of this Court in Radhakrishna Agarwal v. State of Bihar [(1977) 3 SCC 457: (1977) 3 SCR 249]; E.P. Royappa v. State of T.N. [(1974) 4 SCC 3: 1974 SCC (L&S) 165]; Maneka Gandhi v. Union of India [(1978) 1 SCC 248]; Ajay Hasia v. Khalid Mujib Sehravardi [(1981) 1 SCC 722: 1981 SCC (L&S) 258]; Ramana Dayaram Shetty v. International Airport Authority of India [(1979) 3 SCC 489] and Dwarkadas Marfatia and Sons v. Port of Bombay [(1989) 3 SCC 293] have ruled against arbitrariness and discrimination in



every matter that is subject to judicial review before a writ court exercising powers under Article 226 or Article 32 of the Constitution."

The Apex Court in the case of **GORKHA SECURITY SERVICES v. GOVERNMENT (NCT OF DELHI)**³ has held as follows:

"Necessity of serving show-cause notice as a requisite of the principles of natural justice

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.

17. Way back in the year 1975, this Court in Erusian Equipment & Chemicals Ltd. v. State of W.B. [Erusian Equipment & Chemicals Ltd. v. State of W.B., (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 paras 12 and 20 of the said judgment. Necessitating this requirement, the Court observed thus: (SCC pp. 74-75)

"12. Under Article 298 of the Constitution the executive power of the Union and the State shall

³ (2014) 9 SCC 105



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."

18. Again, in *Raghunath Thakur v. State of Bihar* [(1989) 1 SCC 229] the aforesaid principle was reiterated in the following manner: (SCC p. 230, para 4)



"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 or otherwise of the allegations made against the appellant. The appeal is thus disposed of."



19. Recently, in *Patel Engg. Ltd. v. Union of India* [*Patel Engg. Ltd. v. Union of India*, (2012) 11 SCC 257 : (2013) 1 SCC (Civ) 445] speaking through one of us (*Jasti Chelameswar, J.*) this Court emphatically reiterated the principle by explaining the same in the following manner: (SCC pp. 262-63, paras 13-15)

"13. The concept of 'blacklisting' is explained by this Court in *Erusian Equipment & Chemicals Ltd. v. State of W.B.* [*Erusian Equipment & Chemicals Ltd. v. State of W.B.*, (1975) 1 SCC 70] as under: (SCC p. 75, para 20)

'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 ["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.”(Erusian Equipment case [Erusian Equipment & Chemicals Ltd. v. State of W.B., (1975) 1 SCC 70] , [(1975) 1 SCC 70], SCC p. 74, para 12)] and took note of the constitutional provision (Article 298) [**“298.Power to carry on trade, etc.—**The executive power of the Union and of each State shall extend to the carrying on of any trade or business and to the acquisition, holding and disposal of property and the making of contracts for any purpose:Provided that—(a) the said executive power of the Union shall, insofar as such trade or business or such purpose is not one with respect to which Parliament may make laws, be subject in each State to legislation by the State; and(b) the said executive power of each State shall, insofar as such trade or business or such purpose is not one with respect to which the State Legislature may make laws, be subject to legislation by Parliament.”] , which authorises both the Union of India and the States to make contracts for any purpose and to carry on any 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. [“17. 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. The 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, there should be fairness and equality. The State need not enter into any contract with any one but if it does so, it must do so fairly without discrimination and without unfair procedure. Reputation is a part of a person's character and personality. Blacklisting tarnishes one's reputation.**”(Erusian Equipment case [Erusian Equipment & Chemicals Ltd. v. State of W.B., (1975) 1 SCC 70] , [(1975) 1 SCC 70], SCC p. 75, para 17)]] 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.

15. It follows from the above judgment in Erusian Equipment case [Erusian Equipment & Chemicals Ltd. v. State of W.B., (1975) 1 SCC 70] 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."

20. 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 Engg. [Patel Engg. Ltd. v. Union of India, (2012) 11 SCC 257 : (2013) 1 SCC (Civ) 445]

Contents of the show-cause notice

21. *The central issue, however, pertains to the requirement of stating the action which is proposed to be taken. The fundamental purpose behind the serving of show-cause notice is to make the noticee understand the precise case set up against him which he has to meet. This would require the statement of imputations detailing out the alleged breaches and defaults he has committed, so that he gets an opportunity to rebut the same. Another requirement, according to us, is the nature of action which is proposed to be taken for such a breach. That should also be stated so that the noticee is able to point out that proposed action is not warranted in the given case, even if the defaults/breaches complained of are not satisfactorily explained. When it comes to blacklisting, this requirement becomes all the more imperative, having regard to the fact that it is harshest possible action.*

22. *The High Court has simply stated that the purpose of show-cause notice is primarily to enable the noticee to meet the grounds on which the action is proposed against him. No doubt, the High Court is justified to this extent. However, it is equally important to mention as to what would be the consequence if the noticee does not satisfactorily meet the grounds on which an action is proposed. To put it otherwise, we are of the opinion that in order to fulfill 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 which according to the department necessitates an action;

(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 clearly and safely be discerned from the reading thereof, that would be sufficient to meet this requirement.”

In a recent judgment, the Apex Court in the case of **UME TECHNOLOGIES PRIVATE LIMITED v. FOOD CORPORATION OF INDIA**⁴ has held as follows:

“13. At the outset, it must be noted that it is the first principle of civilised jurisprudence that a person against whom any action is sought to be taken or whose right or interests are being affected should be given a reasonable opportunity to defend himself. The basic principle of natural justice is that before adjudication starts, the authority concerned should give to the affected party a notice of the case against him so that he can defend himself. Such notice should be adequate and the grounds necessitating action and the penalty/action proposed should be mentioned specifically and unambiguously. An order travelling beyond the bounds of notice is impermissible and without jurisdiction to that extent. This Court in Nasir Ahmad v. Custodian General, Evacuee Property [Nasir Ahmad v. Custodian General, Evacuee Property, (1980) 3 SCC 1] has held that it is essential for the notice to

⁴ (2021) 2 SCC 551



specify the particular grounds on the basis of which an action is proposed to be taken so as to enable the noticee to answer the case against him. If these conditions are not satisfied, the person cannot be said to have been granted any reasonable opportunity of being heard.

14. Specifically, in the context of blacklisting of a person or an entity by the State or a State Corporation, the requirement of a valid, particularised and unambiguous show-cause notice is particularly crucial due to the severe consequences of blacklisting and the stigmatisation that accrues to the person/entity being blacklisted. Here, it may be gainful to describe the concept of blacklisting and the graveness of the consequences occasioned by it. Blacklisting has the effect of denying a person or an entity the privileged opportunity of entering into government contracts. This privilege arises because it is the State who is the counterparty in government contracts and as such, every eligible person is to be afforded an equal opportunity to participate in such contracts, without arbitrariness and discrimination. Not only does blacklisting take away this privilege, it also tarnishes the blacklisted person's reputation and brings the person's character into question. Blacklisting also has long-lasting civil consequences for the future business prospects of the blacklisted person.

... ..

19. In light of the above decisions, it is clear that a prior show-cause notice granting a reasonable opportunity of being heard is an essential element of all administrative decision-making and particularly so in decisions pertaining to blacklisting which entail grave consequences for the entity being blacklisted. In these cases, furnishing of a valid show-cause notice is critical and a failure to do so would be fatal to any order of blacklisting pursuant thereto.

... ..

21. Thus, from the above discussion, a clear legal position emerges that for a show-cause notice to constitute the valid basis of a blacklisting order, such notice must spell out clearly, or its contents be such that it can be clearly inferred therefrom, that there is



intention on the part of the issuer of the notice to blacklist the noticee. Such a clear notice is essential for ensuring that the person against whom the penalty of blacklisting is intended to be imposed, has an adequate, informed and meaningful opportunity to show cause against his possible blacklisting.

... ..

25. The mere existence of a clause in the bid document, which mentions blacklisting as a bar against eligibility, cannot satisfy the mandatory requirement of a clear mention of the proposed action in the show-cause notice. The Corporation's notice is completely silent about blacklisting and as such, it could not have led the appellant to infer that such an action could be taken by the Corporation in pursuance of this notice. Had the Corporation expressed its mind in the show-cause notice to blacklist, the appellant could have filed a suitable reply for the same. Therefore, we are of the opinion that the show-cause notice dated 10-4-2018 does not fulfil the requirements of a valid show-cause notice for blacklisting. In our view, the order of blacklisting the appellant clearly traversed beyond the bounds of the show-cause notice which is impermissible in law. As a result, the consequent blacklisting order dated 9-1-2019 cannot be sustained."

In the light of the afore-quoted judgments of the Apex Court what becomes unmistakably clear is that no order of blacklisting can be passed without at the outset complying with the principles of natural justice which would be issuing a show cause notice to anyone who is sought to be blacklisted, be it a person or a firm or a Company clearly delineating the reasons for such blacklisting and seeking a reply from the hands of



those who are sought to be blacklisted and passing an order either accepting or rejecting the reply of those who are sought to be blacklisted. It is equally settled principles of law that the order of blacklisting cannot be passed on the grounds that were not mentioned in the show cause notice.

11. If the facts obtaining in the case at hand are considered on the bedrock of the principles laid down by the Apex Court *supra*, the order of blacklisting on the face of it would become unsustainable. It is an admitted fact in the case at hand that there is no notice to show any cause issued to the petitioner as to why the firm should not be blacklisted. The impugned order comes to the petitioner as a bolt from the blue. Such bolt from the blue cannot be sustainable in law unless it is preceded by a notice for such blacklisting. At this juncture the learned counsel for the Corporation submits that the Corporation would now comply with the principles of natural justice by issuing notice and then passing necessary orders. This submission is objected to by the learned counsel for the petitioner as the Hand Sanitizers were supplied on 06-04-2020. The report from the Drugs Control Department is said to have



been obtained on 16.04.2021 and replacement notices were issued on 12-07-2021. To-day the matter is taken up in the month of April, 2024 after 4 years having elapsed after such supply. In such circumstances the remand to the concerned to comply with an order is no remedy that the Corporation can seek. In this regard, I am fortified by the judgment of the Apex Court in the case of **VETINDIA PHARMACEUTICALS LIMITED v. STATE OF UTTAR PRADESH**⁵. The Apex Court in the said case was considering an identical violation of principles of natural justice while blacklisting. The Apex Court holds that the order of blacklisting was found to be unsustainable, but considering long passage of time, the Apex Court was not inclined to remand the matter to the authorities. The Apex Court followed the judgment in the case of **DAFFODILLS PHARMACEUTICALS LIMITED v. STATE OF U.P.**⁶ wherein blacklisting order was beyond three years and therefore, it was not remitted. The Apex Court has held as follows:

"14. Since the order of blacklisting has been found to be unsustainable by us, and considering the long

⁵ (2021) 1 SCC 804

⁶ (2020) 18 SCC 550



passage of time, we are not inclined to remand the matter to the authorities. In Daffodills Pharmaceuticals [Daffodills Pharmaceuticals Ltd. v. State of U.P., (2020) 18 SCC 550 : 2019 SCC OnLine SC 1607] , relied upon by the appellant, this Court has observed that an order of blacklisting beyond 3 years or maximum of 5 years was disproportionate.

15. That brings us to the question of delay. There is no doubt that the High Court in its discretionary jurisdiction may decline to exercise the discretionary writ jurisdiction on the ground of delay in approaching the court. But it is only a rule of discretion by exercise of self-restraint evolved by the court in exercise of the discretionary equitable jurisdiction and not a mandatory requirement that every delayed petition must be dismissed on the ground of delay. The Limitation Act stricto sensu does not apply to the writ jurisdiction. The discretion vested in the court under Article 226 of the Constitution therefore has to be a judicious exercise of the discretion after considering all pros and cons of the matter, including the nature of the dispute, the explanation for the delay, whether any third-party rights have intervened, etc. The jurisdiction under Article 226 being equitable in nature, questions of proportionality in considering whether the impugned order merits interference or not in exercise of the discretionary jurisdiction will also arise. This Court in Basanti Prasad v. Bihar School Examination Board [Basanti Prasad v. Bihar School Examination Board, (2009) 6 SCC 791: (2009) 2 SCC (L&S) 252] , after referring to Moon Mills Ltd. v. M.R. Meher [Moon Mills Ltd. v. M.R. Meher, AIR 1967 SC 1450], Maharashtra SRTC v. Balwant Regular Motor Service [Maharashtra SRTC v. Balwant Regular Motor Service, (1969) 1 SCR 808 : AIR 1969 SC 329] and State of M.P. v. Nandlal Jaiswal [State of M.P. v. Nandlal Jaiswal, (1986) 4 SCC 566] , held that if the delay is properly explained and no third-party rights are being affected, the writ court under Article 226 of the Constitution may condone the delay, holding as follows : (Basanti Prasad case [Basanti Prasad v. Bihar School Examination Board, (2009) 6 SCC 791 : (2009) 2 SCC (L&S) 252] , SCC p. 796, para 18)



"18. In the normal course, we would not have taken exception to the order passed by the High Court. They are justified in saying that a delinquent employee should not be permitted to revive the stale claim and the High Court in exercise of its discretion would not ordinarily assist the tardy and indolent person. This is the traditional view and is well supported by a plethora of decisions of this Court. This Court also has taken the view that there is no inviolable rule, that, whenever there is delay the Court must refuse to entertain a petition. This Court has stated that the writ court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution may condone the delay in filing the petition, if the delay is satisfactorily explained."

In the light of the issues arising in the case at hand standing answered by the Apex Court which would cover the issue on all fours and the fact that four years have passed by after the supply and the order of blacklisting, I deem it appropriate to give a quietus to the issue and not remit the matter back to the hands of the respondent as the Hand Sanitizers that were supplied have naturally dried up by efflux of time.

12. For the aforesaid reasons, the following:

ORDER

- (i) Writ Petition is allowed and the order dated 20.10.2021 passed by the respondent stands quashed insofar as the petitioner is concerned.



- (ii) This order would not come in the way of any other proceedings being initiated by the respondent in accordance with law, if available in law.

**Sd/-
JUDGE**

BKP
List No.: 1 SI No.: 73