



**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**W.P.(C) No. 37383 of 2021**

**Shri Artatran Bhuyan**

....

**Petitioner**

**-Versus-**

**State of Odisha and others**

....

**Opposite Parties**

**Advocates appeared in this case:**

For Petitioner

: Mr. Gouri Mohan Rath, Advocate

For Opposite Parties

: Ms. Aishwarya Dash,  
Additional Standing Counsel

**CORAM:**

**HON' BLE THE CHIEF JUSTICE**

**AND**

**HON'BLE MR. JUSTICE MURAHARI SRI RAMAN**

**J U D G M E N T**

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**Date of Hearing : 17<sup>th</sup> July, 2025**

**Date of Judgment : 24<sup>th</sup> July, 2025**  
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**HARISH TANDON, CJ.**

1. The writ petition is at the behest of a blacklisted contractor challenging the order dated 10<sup>th</sup> August, 2021 passed by the Chief Engineer (Mechanical), Water Resources, Odisha by which he was debarred from participating in any future tender for a period of five years from the date of the said order.



2. The writ petition contains the narration of the facts and is primarily founded upon an assertion that the authorities proceeded with the pre-determined mind as the petitioner flagged several misdeeds against the officials in dealing with the tenders floated from time to time by the said department and also acted contrary to the provisions relatable to blacklisting of a contractor contained in Odisha Public Works Department Code (“OPWD Code”).

3. The genesis of the initiation of a show cause notice originated on an incident of entering into the office premises of the Mechanical Division beyond the office hours at 7.15 P.M. by the proprietor of M/s. Urmila Steel Fabrication and an attempt to snatch away some important online tender papers from the estimator of the said division by the said proprietor. Immediately an FIR was registered on 25<sup>th</sup> March, 2021 in Nayapalli Police Station reporting the aforesaid incident of 24<sup>th</sup> March, 2021 and the investigation was undertaken by the Investigating Officer after verifying the truthfulness of the statements contained in the said FIR on the basis of the CCTV footage. The Investigating Officer submitted the charge sheet and the said matter is still pending before the jurisdictional Court.



4. A preliminary inquiry was conducted and a show cause notice was issued to the petitioner on 22<sup>nd</sup> April, 2021, but instead of filing a response, the petitioner approached this Court by filing W.P.(C) No. 16786 of 2021 challenging the said show cause notice being not in conformity with the provisions relating to blacklisting of a contractor contained in OPWD Code. This Court refused to interfere with the said show cause notice and dismissed the said writ petition. Since no reply was filed, the proposal was forwarded to the Government for initiating a process for blacklisting of the petitioner on perceived misbehavior/threatening the departmental supervisory officer while he was discharging his duties and finalizing the tender process.

5. After getting the approval, a further show cause notice was issued on 16<sup>th</sup> July, 2021 seeking reply from the petitioner as to why he should not be blacklisted. The petitioner responded to the said 2<sup>nd</sup> show cause notice and took a specific plea that the initiation of a proceeding for blacklisting is tainted with malice being an outcome of several complaints having lodged against the officials of their misdeeds in relation to several contracts. It was further highlighted that the proceeding against some of the



officials were also initiated, but no final decision has been taken thereupon. It is further indicated in the said reply that the CCTV footage would reveal the truth and, therefore, the same is required to be provided to the petitioner. Apart from the same, the report of the preliminary inquiry which formed the basis of the initiation of the said proceeding and the recording of the statements of several persons should also be forwarded to the petitioner, so that the comprehensive reply can also be made.

6. Instead of submitting all the documents to the petitioner, the proceeding for blacklisting the petitioner was proceeded with and the impugned order was passed on the basis of the statements of seven numbers of co-employees. The order impugned reveals that the petitioner obstructed the staff to discharge their public duties and tried to forcibly peruse the financial documents in respect of different participants of the tender and also misbehaved with several employees which is found to be true as the charge sheet was submitted by the Investing Officer after investigation on the basis of an FIR lodged against the petitioner.

7. The counsel for the petitioner vociferously submitted that the impugned order of blacklisting against the petitioner for a



period of five years from the date of the said order, i.e. 10<sup>th</sup> August, 2021 is an act of malice founded upon the earlier complaints made against the officials of the said department in awarding the contracts to several persons and, therefore, the order, blacklisting the petitioner, is liable to be quashed and set aside. It is fervently submitted that the order impugned in the writ petition is an outcome of a pre-determined mind and in blatant violation of the principles of natural justice as the documents which is relied upon by the authority in passing the impugned order was never supplied to the petitioner despite a request having made in this regard. It is thus submitted that debarment from participating in a future tender not only deprives a person an opportunity to participate in a public contract, but involves serious civil consequences amounting to civil death and, therefore, the authorities ought to have followed not only the provisions of the OPWD Code, but also the principle of natural justice, which in the instant case is apparently lacking.

8. Per contra, the Additional Standing Counsel submitted that because of the serious misdeeds of the petitioner beyond the office hours, i.e. 7.15 P.M. on 24<sup>th</sup> March, 2021, the proceeding for



blacklisting the petitioner was initiated following all the procedures provided in the OPWD Code and, therefore, the order impugned in the instant writ petitioner does not suffer from any infirmity and/or illegality. It is further submitted that the authorities followed the principles of natural justice upon issuing a show cause notice to the petitioner inviting his reply to the alleged misdeed and the response to the said show cause was not found satisfactory on the basis of the materials available to the authorities. It is strenuously argued that once the recourses to the provisions of OPWD Code in issuing the show cause notice is undertaken by the authority and the reply was given by such contractor, it fulfills the principle of natural justice as held by the apex Court in the case of *State of Odisha and others vs. Panda Infraproject Limited* reported in (2022) 4 SCC 393. It is further submitted that the impugned order reflects the elaborate reasons and, therefore, the plea of pre-determined mind is unsustainable. To buttress the aforesaid submission, reliance is placed upon the judgment of the apex Court in the case of *Grosans Pharmaceuticals (P) Ltd. vs. State of U.P. and others*, reported in (2001) 8 SCC 604. The counsel for the State further relies upon



the investigation done by the Investigating Officer on the FIR having lodged for the incident happened on 24<sup>th</sup> March, 2021 wherein the Investigating Officer has found the ingredients under the charging sections and submitted the charge sheet before the jurisdictional Court for trial, which would corroborate the misdeed of the petitioner in threatening the officers and interfering in discharging their official duties. It is thus submitted that no case for interference is warranted in the instant case.

**9.** On the backdrop of the aforesaid facts emerged from the record, the point involved in the instant writ petition is whether the order dated 10<sup>th</sup> August, 2021 issued by the authority warrants interference having not only violative of the principles of natural justice, but also departed from the provisions relatable thereto for the blacklisting contained in OPWD Code.

**10.** It is beyond cavil of doubt that a fundamental principle embraced in a civilized jurisprudence is that a person cannot be condemned nor can be affected by any action without affording a reasonable opportunity to defend himself. The person against whom any action is taken affecting his right is entitled to know the reason for initiation of such proceeding, so that an adequate



opportunity is given to him to respond. It is, therefore, essential to issue a notice containing the grounds on which the authority intended to proceed against the person with clarity, precision and explicit as an ambiguous narration of grounds is regarded as denial of an opportunity. The aforementioned principles assume greater importance in the context of blacklisting of a person as it invites not only civil death, but debarment of a person an opportunity to participate in the matter of a public contract. In this regard, the Courts of the country have highlighted the implied principle of rule of law that every order having an impact on civil consequences should adhere to the principles of natural justice. It is thus an elementary principle of natural justice that a party who suffers the adverse consequences of deprivation to participate in public contract is afforded with adequate and reasonable opportunity to defend.

**11.** Once the statutory provisions are placed for blacklisting of a person or in other words debarment from participating in a contractual field with the Government or its instrumentalities, the strict adherence thereto should be ensured. Therefore, the notice to show cause must clearly and explicitly contain the incident, which





led to the initiation of the proceeding in pursuit of blacklisting a person from participating in a future tender. One of the cardinal principles in this regard is an adequate opportunity to defend should not only be ensured, but seems to be ensured by providing all the materials which forms the foundation of misdeeds or misbehavior or an act contemplated in the statutory provision.

**12.** In *Grosos Pharmaceuticals (P) Ltd.* (supra), the apex Court was considering a case where the contractor who was engaged in a small scale industry of manufacturing and selling drugs was found to have committed several irregularities and the vigilance report corroborated the same. The show cause notice was issued and adequate opportunity to defend was provided and the challenge was made on the ground of non-adherence of the principles of natural justice. The challenge was further founded upon the non-speaking order, which was found by the apex Court untenable on the facts discerned from the record in the following paragraphs.

*“2. Learned counsel appearing for the appellant, urged that seeing the nature and seriousness of the order passed against the appellant, the respondent ought to have supplied all the materials on the basis of which the*



*charges contained in the show cause notice were based along with show cause notice and in the absence of supply of materials, the order impugned is against the principles of natural justice. We do not find any merit in this contention. Admittedly, the appellant has only contractual relationship with the State government and the said relationship is not governed by any statutory Rules. There is no statutory rule which requires that an approved contractor cannot be blacklisted without giving an opportunity of show cause. It is true that an order blacklisting an approved contractor results in civil consequences and in such a situation in the absence of statutory rules, the only requirement of law while passing such an order was to observe the principle of audi alteram partem which is one of the facet of the principles of natural justice. The contention that it was incumbent upon the respondent to have supplied the material on the basis of which the charges against the appellant were based was not the requirement of principle of audi alteram partem. It was sufficient requirement of law that an opportunity of show cause was given to the appellant before it was blacklisted. It is not disputed that in the present case, the appellant was given an opportunity to show cause and he did reply to the show cause which was duly considered by the State Government. We are, therefore, of the view that that the procedure adopted by the respondent while blacklisting the appellant was in conformity with the principles of natural justice.*

*3. It was then urged that the impugned order blacklisting the appellant does not contain any reasons*



*and, therefore, the order is invalid. We do not find any merit in the submission. The High Court summoned the entire record and found that elaborate reasons were recorded by the State Government while passing the order blacklisting the appellant. The High Court further recorded a positive finding that the State Government has passed the impugned order after recording elaborate reasons and summary of which is contained in the impugned order.”*

13. In the case of ***Panda Infraproject Limited*** (supra), the order of blacklisting debarring the participant in a bid for any work undertaken by the Government of Odisha for an indefinite period was challenged by the contractor on two-fold grounds. Firstly, there was a violation of the principles of natural justice and secondly, the permanent debarment offended the principle of proportionality. In the said given case, the contractor was awarded a contract for construction of a flyover over the railway level crossing and a ten-metre slab of the flyover collapsed at the level crossing, which resulted in loss of one life and the injuries to 11 other persons. A high-level inquiry was conducted and a committee in the comprehensive report found that the said contractor did not submit the formwork design and adopted his own arrangement, which led the collapse of a junk from the under-



construction flyover. The report further revealed that the quality assurance has not been maintained in terms of the codes and manuals as well as agreement and a lot of discrepancies in the workmanship were found. A show-cause notice was issued, which was duly replied by the contractor and ultimately, the contractor was blacklisted with immediate effect for rest of his life.

**13.1.** The apex Court, in the backdrop of the gravity of a misdeed, held that an order of blacklisting after service of show-cause notice and reply duly filed meets the requirement of the natural justice and, therefore, it cannot be perceived that the authorities proceeded with predetermined mind. However, the apex Court on the doctrine of proportionality held that the blacklisting for rest of the period or permanently is too harsh and reduced the period of blacklisting to five years from the date of the order of blacklisting.

**13.2.** The law enunciated in the above report exposts that before a person is blacklisted, he must be afforded an opportunity of hearing, being a fundamental principle of natural justice and the period of blacklisting must be judged in a rational and reasonable manner in commensurate with the charges leveled against the



contractor. The debarment to participate in a public contract permanently is against the doctrine of proportionality as no person would be deprived of or be subjected to prejudice for all time to come.

14. Blacklisting of a contractor has an impact on the privilege and advantage of entering into a lawful relationship with the Government or its instrumentality for his livelihood in the form of a gain. It is an ardent duty of the Government to ensure a fair, transparent and reasonable action by giving a person an adequate opportunity to represent its case. It is a solemn duty of the Government while making a public procurement for constructing a social and economic infrastructure for a systematic growth at all levels and, therefore, a person, who is found to have indulged in unethical practices or done some misdeeds, tantamounting to a misconduct, the blacklisting is one of the effective tools to eliminate such defiant bidders from the selection process. It further ensures to inculcate a sense of discipline by putting a sanction on the firms from trading and entering into the public contracts. Although such powers are inhere and ingrained into the Government or its officials, it also brings a greater responsibility



in adhering to the principle of fair play, providing an equal opportunity to defend and above all, maintain the proportionality in awarding the tenure of debarment in commensurate with the misdeed/misconduct of the contractor.

**15.** On the doctrine of proportionality, the judgment of the apex Court in case of ***Coimbatore District Central Cooperative Bank vs. Coimbatore District Central Cooperative Bank Employees Association*** reported in ***(2007) 4 SCC 669*** can be gainfully applied wherein it is held that though the doctrine of proportionality is a principle of the administrative law, but that does not give unhindered power to the authorities to use a ‘sledge-hammer to crack a nut’. It is further highlighted that the punishment should not be too extreme than the gravity of crime as the writ court seldom interferes with the imposition of penalty in the form of blacklisting provided the method or a manner in which a decision-maker has ordered his priorities in reaching a conclusion or arriving at a decision.

**16.** It is to be borne in mind that the order of blacklisting not only causes prejudice to the commercial person *in praesenti* but



have a dent to carry for all time to come having a resultant effect of a civil death.

17. Precisely for such reason, the apex Court in case of ***Panda Infraproject Limited*** (supra) reduced the period of blacklisting having found opposed to the doctrine of proportionality despite the grave and serious lapses found against the contractor and reduced the same to five years with an avowed object of avoiding the permanent civil death in a commercial field.

18. Although in the instant case, the blacklisting is for a definite duration i.e. five years, but there is no fetter on the part of the Court to apply the doctrine of proportionality apart from the principles of natural justice to be adhered to. The narration of facts as adumbrated hereinbefore does not create any ambiguity in our mind that the contractor was served with the copy of the show-cause notice and adequate opportunity to file reply was afforded to him. In fact, the reply was given disclosing several material facts relating to the misdeeds of the officials against whom he blew the whistle and action has been taken by the higher official being the outcome of the present misconduct. The CCTV footage put at the relevant portion of the office and the statements of seven persons



were duly recorded, which leads to impeccable evidence that the petitioner entered into the office and left the same. A plea was taken that reliance was put on the CCTV footage and the statements of seven persons, which were never supplied to the petitioner, tantamount to violation of the principles of natural justice, the authority did not accept the same and solely on the basis of the facts, passed an order of blacklisting for a period of five years.

**18.1** In *Panda Infraproject Limited* (supra), the apex Court ruled out the plea of natural justice, the moment the show-cause notice was given and adequate opportunity to give reply was afforded. Going by the ratio as laid down in the said report, we do not find that the challenge on the ground of violation of the principles of natural justice is sustainable. However, we find some discrepancies in the charge sheet submitted by the investigating officer on the basis of an FIR lodged by the officials, the copies thereof have been heavily relied upon by the contesting opposite parties so far as the time of entering into the office and leaving the same. The show-cause discloses that the petitioner entered at around 7.15 P.M. after the official hours and tried to snatch away





some important online tender paper files from the estimators and also misbehaved with them. On the other hand, the charge sheet discloses that the CCTV footage revealed that the petitioner entered into the office at 6.53 P.M. on 24<sup>th</sup> March, 2021 and left the same at 6.55 P.M. Such being the discrepancies noticed as no CCTV was installed inside the office room, we cannot rule out the allegation of misconduct having allegedly committed within two minutes inside the office room.

**18.2** Based upon the discrepancies, we feel that imposition of debarment for a period of five years is too harsh and offends the doctrine of proportionality. Nearly four-year period has elapsed when the matter is pending before this Court and, therefore, we feel that it would cause a greater hardship if the order of blacklisting is allowed to operate a full period of five years. The petitioner has already been deprived to participate in any tender from the date of the order of blacklisting until the date of this Judgment, which in our opinion, has percolated a message in the petitioner a sense of responsibility and to maintain an orderly behavior while dealing with the Government officials.



19. On *Ex debito justitiae*, we set aside the remaining period of blacklisting taking into account that the said order of blacklisting shall be operative till the date of this judgment.

20. Accordingly, the writ petition is disposed of. No order as to costs.

I agree.

***(M.S. Raman)***  
***Judge***

***(Harish Tandon)***  
***Chief Justice***

*Arun Mishra/M. Panda*