

**BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA**

O. A. No: 10 of 2023/ EZ

Dillip Kumar Samantara and others

..... APPLICANTS

- VERSUS-

The State of Odisha and Others

...RESPONDENTS

I N D E X

| SR. NO. | PARTICULARS | PAGE NO. | FE E |
|------------|--|-----------------|---------|
| 1. | Reply Affidavit dated: 06.05.2023 of the Respondent No: 11 along with annexure | 01 to 82 | |

CERTIFIED THAT THE COPIES ARE CORRECT

BY THE RESPONDENT NO: 11

D. N. Mahapatra
06.05.2023

THROUGH ADVOCATE

Date: 06.05.2023

BIRANCHI NARAYAN MAHAPATRA

ADVOCATE, ORISSA HIGH COURT

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**BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA**

O. A. No: 10 of 2023/ EZ

IN THE MATTER OF:

Dillip Kumar Samantara and Others.... Applicants

-Versus-

The State of Odisha and othersRespondents

**REPLY AFFIDAVIT FILED BY THE
ABOVE NAMED RESPONDENT NO: 11
TO THE COUNTER AFFADIVIT DATED
28.03.2023 OF THE RESPONDENT NO: 4
(COLLECTOR -CUM- DISTRICT
MAGISTRATE) MOST RESPECTFULLY
SHOWETH AS FOLLOWS:-**

**I Patitapaban Barik, S/O: Nakula Barik, aged about 35
years, at/Po:Tankol,-752021, P/S: Jankia, Dist: Khordha,
State: Odisha do hereby state on solemn affirmation as
under:-**

1. That I am the Respondent No: 11 of the O.A and as such I am fully conversant with the facts and proceedings of the Case.
2. That the Counter affidavit dated: 12.03.2023 of the Respondent No: 11 and the averments of the I.A No: 19 of 2023/EZ may kindly read as part and parcel of this affidavit and taken to the consideration while dispose of the O.A.
3. **JOINT INSPECTION/ VERIFICATION WAS MANTINED SECRECY TO THE LESSEE**
 - a. That the Respondent No: 4 (Collector- Cum- District Magistrate, Khordha) was issued notice to the lessee vide **letter No: 1402/dated: 02.02.2023 for joint inspection of the alleged site on 09.02.2023 at 10.A.M** with reference to the order dated: 23.01.2023 passed by this Hon'ble Tribunal in O.A No: 10 of 2023/EZ. But, the officials were not come to the site on 09.02.2023, even though the Respondent no: 11 was waiting whole day on 09.02.2023 to participate and appraise the real facts. **It is ascertained from the Counter affidavit dated: 28.03.2023 of the Respondent No: 4 that the**

joint Committed was visited to the alleged site on 13.03.2023 without any prior intimation to the lessee. The Respondent No: 11 was also not aware of the inspection dated: 13.02.2023 of the joint Committee. It is crystal clear from the inspection report of the joint Committee that they have prepared the report to file before this Hon'ble Tribunal by maintaining secrecy to the lessee. Copy of **the letter No: 1402/dated: 02.02.2023** is annexed here to as **ANNEXURE-R/11/G.**

4. JOINT INSPECTION REPORT DATED: 21.02.2023 AVAILABLE AT INTERNAL PAGE NO: 22 WITH THE AFFIDAVIT DATED: 28.03.2023 OF THE COLLECTOR, KHORDHA DOES NOT REVELS THAT THE LESSEE HAS BEEN DONE ILLEGAL MINING

- a.** That the Collector and District Magistrate, Khordha vide his office letter No: 2253/Touzi/dated: 20.02.2023 wrote to the Tahasildar, Tangi and stated there in that the

lessee illegally operating the Stone quarry in Plot No: 712, 713, 714, 716 and 717, which has been found by the inspecting team during the time of inspection on 13.02.2023 It is evident from the **Joint inspection report of the Committee that they have not observed specifically against the lessee and they have only cited in their report (at conclusion Para) to the 2 letters dated: 20.02.2023 of the Collector- Cum- District Magistrate, Khordha and the said letters (2 Nos) dated: 20.02.2023 has been addressed to the Tahasildar, Tangi.** The Collector observed/ mentioned in his 2 letters dated: 20.02.20323 **(available under internal Page No: 24 to 28 of the affidavit dated: 28.03.2023 of the Respondent No: 4)** that the Committee was found that the lessee has been done illegal Mining, but the Committee members were not observed in their report independently regarding who has been committed theft of the Minor Minerals. The Collector is saying in his 2 letters dated: 20.02.2023 that the Committee members were found that the lessee has been committed

theft of the Minor Minerals, but in the other hand the Committee members categorically stated that they were not found the illegal Mining activity during the time of spot visit. Thus, both the contents of the letters dated: 20.02.2023 of the Collector is disputed and imaginary and there is no observation of the Committee in their report dated: 21.02.2023 against the lessee. It is apt to mention here that the joint inspection team have been categorically stated in their report at internal Page No: 18 (Present Status serial No: 5 Colum) of the affidavit dated: 28.03.2023 of the Collector, Khordha that **“illegal Mining was noticed over Plot No: 712, 713, 714, 716 and 717 and during inspection there were no mining activities and no machineries found at that Place”**. *The joint Committee report dated: 21.02.2023 is itself speaking that during the time of inspection there was no mining activity by the lessee and they have not found any machinery. It is evident from the inspection report that they have only noticed illegal mining activity, but no full proof has been ascertained against the lessee in connection of the*

theft of Minor Minerals. In view of the observation of the joint Committee how the Collector is daringly saying against the lessee and the collector has no authority to say that the lessee has committed theft without any finding of the Joint Committee. But, how the Collector, Khordha was known the lessee has been done illegal mining activity taking in to consideration of the observation of the joint committee, it needs judicial scrutiny. Thus, the Collector has made an imaginary story against the lessee without basing on the sufficient material/circumstantial evidence. Prior observation of the joint Committee how the Collector was wrote a letter vide No: 2252/ dated: 20.02.2023 to the Tahasildar, Tangi to realize the dues from the lessee taking in to account of the joint Committee observation. The Joint Committee report has been prepared and finalized on 21.01.2023 which is clear from their signature date (internal Page 22 of the affidavit dated: 28.03.2023 of the Collector). It is evident from the contents of the letter No: 2252/ dated: 20.02.2023 (available

under internal Page No:28 from the first Para attached with the affidavit dated: 28.03.2023 of the Collector, Khordha) “ It is also found by the inspecting team that, the lessee Mr. Patitapaban Barik has illegally operated laterite Stone mining and excavated area of 3979 Sq. mtr. of different patches over the Plot No: 712,713,714, 716, and 717 and the quantum of extraction of lateriate and Murom is found to be 5861 Cubic Meter and 5257 Cubic Meter respectively.” How the Collector was known the lessee has done illegal activity over the aforementioned Plots in question before the finalization of the Committee report and the Committee was actually finalized the report on 21.02.2023, it is evident from their signature with date(available under internal Page No:22 of the affidavit dated: 28.03.2023 of the Collector, Khordha). In the other hand Joint Committee were no found who has done illegal Mining and they have only cited 2 disputed letters dated: 20.03.2023 of the Collector in their conclusion Para of the report. It shows from the material available on record that under the aid and advice

of the Collector, Khordha the Joint Committee was finalized their report on 21.02.2023. It is respectfully submitted here that the joint Committee categorically observed in their report that during time of the visit there was no mining activity and machinery found from the alleged Plots. But, the Collector is only misinterpreting to the finding/observations of the Joint Committee he has wrote a 2 disputed letters dated: 20.02.2023 to the Tahasildar, Tangi against the lessee.

- b.** That the Collector was also wrote an another letter No: 2253/ dated: 20.02.2023 (available under internal Page No: 25 of the affidavit dated: 28.03.2023 of the Collector) addressed to the Tahasildar, Tangi and stated there in “It is also found by the inspecting team that, the lessee Mr. Patitapaban Barik has illegally operated laterite Stone mining and excavated area of 3979 Sq. mtr. of different patches over the Plot No: 712,713,714, 716, and 717 and the quantum of extraction of lateriate and Murom is found to be 5861 Cubic Meter and 5257 Cubic Meter respectively.” How

the Collector was known the lessee has done illegal mining activity over the aforementioned Plots in question before the finalization of the Committee report and the Committee was actually finalized their report on 21.02.2023, it is evident from their signature with date (available under internal Page No:22 of the affidavit dated: 28.03.2023 of the Collector, Khordha). It shows from the material available on record that the under the aid and advise of the Collector, Khordha the Joint Committee was finalized their report on 21.02.2023.

5. THE TAHASILDAR, TANGI LODGED F.I.R AGAINST THE LESSEE ON 24.02.2023 WITHOUT MENTIONING THE DATE / TIME/ PERIOD OF OCCURRENCE WHICH CREATES MORE DOUBT / AFTER THOUGHT / COLOURED VERSION

a. That the Tahasildar, Tangi vide his letter No: 999/dated: 24.02.2023 in obedience to the order of the Collector, Khordha vide order No: 2253/dated: 20.02.2023 lodged a F.I.R against the lessee (it is available under internal Page No: 33 of the affidavit dated: 28.03.2023 of the

Collector) before the Jankia Police Station under Khordha District of Odisha. But, surprisingly Tahasildar is a responsible officer of the State without mentioning the date/time of the occurrence filed the F.I.R against the lessee on 24.02.2023 with reference to Under Section 379, 447 of IPC and read with Under Section 21 of the Mines and Minerals (Regulation of Development) Act, 1957. It is evident from the FIR registration Copy of the Police Station **(available under the internal Page No: 34 of the affidavit dated: 28.03.2023 of the Collector)** there is no date and time of occurrence has been mentioned by the Police. The FIR of the Tahasildar, Tangi Tahasil office shows that (available under internal Page No: 33 of the affidavit dated: 28.03.2023 of the Collector) without mentioning the specific date/time/period of occurrence he has filed the F.I.R by way of omnibus manner before the local Police Station. It is a matter of question without fulfilment of the mandatory parameters of law, how the Police has been registered a

criminal Case against the lessee during pendency of the O.A, it needs judicial scrutiny. The Police is only mentioned the date of occurrence (Serial No: 3 Colum of the FIR Copy) which is the FIR submission date (i.e. 24.02.2023) of the Tahasildar, Tangi. The Tahasildar has also failed to prove actual date/time/ Period of the occurrence against the lessee while filing of the FIR before the local Police Station, it is evident from the contents of the F.I.R that the Tahasildar, Tangi Tahasil office without mentioning the date/time/ Period of occurrence he has lodged the F.I.R against the lessee for eye wash of this Hon'ble Tribunal. The Tahasildar/ Collector and the Committee Members have only submitted their reports to satisfy the Applicants of the Case and the said officials have failed to establish the full proof evidence with material/circumstantial against the lessee, which is crystal clear from the Joint inspection report dated: 21.02.2023. It is a settled Principle without mentioning the specific date/time/Period of occurrence how the

Criminal offence will be made out against the person concern. The State officials have been made allegations against the lessee by way of omnibus manner and not in accordance with law. The State officials have failed to prove the allegation as raised against the lessee beyond all reasonable doubts and particularly they have not known in which date/time/period the illegal acts has been done and who has been done such activity. It is a clear Case that the State officials have been taken steps against the lessee to satisfy the law and they have not followed the procedure of law while lodging the FIR against the lessee. So, the lessee could not be held responsible for any kind of loss, damage in connection of the Environment Protection Act, 1986 and other connected Environmental law before conclusion of the Criminal Case trail. If the lessee will not held responsible/ guilty/ convict under the Criminal law before the competent Court, then he will not responsible under the Environmental law for any kind of loss, damage. The State is trust of the Sairat

Sources and the State officials have failed to protect the Same under the Statutory Provision of law and after filing of the O.A the State officials have been made unnecessary allegations against the lessee to cover up their negligent attitude. It is a settled Principle Criminal law as well as Environmental law could not be made out against the lessee according to the will and pleasure of the State and foolproof Evidence is required to fulfil the Parameter of the definition of theft/illegal Mining.

6. CRIMINAL OFFENCE COULD NOT MADE OUT WITHOUT FOLLOWING THE PROCESS OF THE SERCH / SEIZURE

a. That the Tahasildar, Tangi Tahasil office has lodged an F.I.R on 24.02.2023 against the lessee without following the mandatory process of search/ seizure of the Minor Minerals and it's Products together with all tools, equipments and vehicles used in Committing such offences. The Tahasildar has no authority under 51 (1) (ii) of the OMMC Rule, 2016 to made allegation against the lessee.

Even though the Tahasildar has not fulfilled the criteria which is envisaged under 51 (1) (ii), 51(2) (3), 54, 48 of the OMMC Rule, 2016 and read with Section 100 of Criminal Procedure Code, 1973. It is a settled Principle without found any materiel/ objectionable article from the custody of the lessee the State officials have no authority to made allegation against the lessee by way of imaginary pleading. For which the Penal provision under 51 of OMMC Rule, 2016 and any other provisions of the Indian Penal Code, 1860 Could not be attract against the lessee. Search/ seizure process is mandatory under the OMMC Rule, 2016 to make out a Criminal offence against the lessee. It is apt to mention here that the Tahasildar has made an allegation against the lessee by way of lodging F.I.R before the local Police Station on 24.02.2023 and the Police without following the due process of law registered a Case against the lessee. The State officials have been misused their official capacity without following the basic parameter of law. In the other hand the Joint Committee observed in their report dated: 21.02.2023 (available under internal

Page No: 18 Present Status Colum-5 with the affidavit dated: 28.03.2023 of the Collector) that during the time of inspection (13.02.2023) they were not found mining activity and not seen any vehicles in the spot. It presumes that the lessee has not involved any illegal acts as per the finding / observations of the Joint Committee. The lessee was not present in the place of occurrence and no machinery was also found at that Place. So, how the lessee will be held responsible for the offence regarding theft. It is crystal clear from the settled principle of law that Under Rule 51 (1) (ii), 51(2) (3), 54, 48, of the OMMC Rule, 2016 and read with Section 100 of Criminal Procedure Code, 1973 is itself clear that search / seizure/ confiscation proceeding is mandatory and seizure of the objectionable article / machinery should be made from the custody of the lessee. Criminal offence could not be attract under the definition of May be and the State officials have no authority to made allegation against the lessee by way of imaginary pleading. The Tahasildar/ Collector are duty bound to prove their allegation under the definition of

must be and they should be aware that may be and must be is quite different under the criminal jurisprudence. But, in this Case without fulfilment of the basic parameter of law the Tahasildar lodged F.I.R against the lessee. Thus, the law is enacted to punish the real culprits and not to harass the innocent Peoples. For which all the process followed by the State officials are not in accordance with law and their steps and measures may kindly declare as illegal / violation of the rule of law.

b. It is a settled Principle while making any serious allegation against any Persons before the Court of law such officials are duty bound to follow the process of law and carry out the law in its true spirit. But, in this Case none of the provisions of the OMMC Rule, 2016 and Criminal Procedure Code has been followed by the Collector before filing of his affidavit dated: 28.03.2023 in the O.A. The Collector without following the due process of law he has no authority to made allegation against the less for which he is liable to prove his allegations raised in his affidavits Under Section 101 and 106 of Indian Evidence Act, 1872 and this Hon'ble

Tribunal is also empower to find out the real truth which is envisaged U/S: 165 of Indian Evidence Act, 1872.

7. MISS-UTILIZE THE POWER AND FUNCTION OF THE POLICE / TAHASILDAR / COLLECTOR

a. Again it is respectfully submitted here that the local Police repeatedly lodged F.I.R against the lessee (as per the averments of the O.A Para-19 and another F.I.R available under internal Page No: 33 to 35 of the affidavit dated: 28.03.2023 of the Collector). The Police officials in contravention of the provision U/S: **26 of General Clauses Act, 1977 and U/S: 71 of Indian Penal Code, 1908 have been lodged series of F.I.Rs against the lessee to satisfy the Applicants of the O.A. The F.I.Rs has been lodged in the self same issues against the lessee.** One of the F.I.R is sufficient to penalize the accused as per the statutory provision of law. But, it is evident from all the FIRs contents that the police have failed to found any objectionable article/machinery/ minor minerals from the custody of the lessee. All the Criminal Cases registered against the lessee without following the process of search/seizure. It is a

settled principle without seizure from the custody of the lessee no offence will be made out under Section 379 I.P.C. But, the Police has misused his power and registered series of Cases against the lessee by violating all the rules/regulations in the self same issues/ occurrence. The Tahasildar again lodged an F.I.R against the lessee on 24.02.2023 during pendency of the Proceeding and taking into account of the orders dated: 23.01.2023 passed in the O.A. The Tahasildar lodged F.I.R on 24.02.2023 against the lessee without mentioning the date/time/period of occurrence and till date the Police has failed to make seizure of the objection article/ machinery etc. from the custody of the lessee. Surprisingly, Police has made a seizure of the vehicles, which is registered in the name of the other Persons, but not in the name of the lessee. How the lessee will be held responsible under the 379 of I.P.C. Violation of the provisions of the statutory law i.e. **U/S: 26 of General Clauses Act, 1977 is read as follows:-**

26. Provision as to offences punishable under two or more enactments. — Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of

those enactments but shall not be liable to be punished twice for the same offence and **U/S: 71 of Indian Penal Code, 1908.**

71. Limit of punishment of offence made up of several offences.—Where anything which is an offence is made up of parts, any of which parts is itself an offence, the offender shall not be punished with the punishment of more than one of such his offences, unless it be so expressly provided.

That the State officials are duty bound to comply all the parameters of U/S: 21 of Mines and Minerals (Regulation of Development) Act, 1957 and Rule: 51 of Odisha Minor Mineral Concession Rule, 2016 before initiation of any proceeding against the persons. The State officials have no authority to initiate criminal Proceeding blindly against the persons concern without found the accused/lessee from the place of occurrence or without seizure of any material/ vehicle etc from the custody of the accused persons and the Proceedings under the OMMC Rule and MMDR Act could not be initiate by way of omnibus manner.

8. THE COLLECTOR, KHORDHA FAILED TO DISCLOSE THE SOURCE FROM WHICH HE WAS

**KNOWN THAT THE LESSEE HAS BEEN DONE
ILLEGAL MINING**

a. That the Collector, Khordha how and from which source was known that the lessee has been done illegal mining over the alleged Plots without completion of the enquiry by the Police/ before submission of the charge Sheet/ prior framing of charge by the Criminal Court and before conviction order of the Competent Criminal Court. Prior prove of the charge against the lessee in the Criminal Court the Collector / Tahasildar and Joint Committee members have no authority to made allegation against the lessee and they have also not empower to impose compensations against the lessee and prior conviction order of the Criminal Court the lessee could not found guilty under the Environmental law as well as Criminal law. The Competent Criminal Court verdict is not coming till date. So, how the State will say who has done illegal mining over the Plots in question prior verdict of the Competent Criminal Court. Thus, this Hon'ble Tribunal may kindly discourage to

the State Officials including Applicants of the Case not to follow such type of back door method to get order/ orders by playing fraud and they have no authority to encroach the jurisdiction of the Criminal Court and they are completely influencing to the Criminal Court Proceedings by way of this O.A. Failing which the basic foundation of law will be collapsed.

9. THE COLLECTOR IS LIABLE TO PROVE HIS AVERMENTS OF THE AFFIDAVIT DATED: 28.03.2023 AGAINST THE LESSEE AND THIS HON'BLE TRIBUNAL IS EMPOWERING TO PUT QUESTION U/S: 165 OF INDIAN EVIDENCE ACT, 1872

a. The Collector without following the due process of law has no authority to made allegation against the lessee, for which he is liable to prove his allegations raised in his affidavit dated: 28.03.2023 with reference to Under Section 101 and 106 of Indian Evidence Act, 1872 and this Hon'ble Tribunal is also empower to find out the real truth which is envisaged U/S: 165 of Indian Evidence Act, 1872.

10. PRIOR PROVE OF THE CRIMINAL CHARGE BEFORE THE COMPETENT CRIMINAL COURT THE STATE HAS NO AUTHORITY TO CLAIM LOSS/DAMAGE AGAINST THE LESSEE

- a.** That the State is already lodged Complaint against the lessee and Police is also registered a Criminal Case against the lessee with reference to the Jankia Police Station Case No: 75/dated: 24.02.2023 prior decide of the issues involved in this Case. So, the Case of the Applicants is not maintainable at all and the State has no authority to claim loss and damage against the lessee before prove the charge/ conviction in the competent Criminal Court in connection of the theft of Minor Minerals. It is a settled principle at first the charge will be proves against the lessee basing upon the Criminal Case lodged by the State. After conviction order against the lessee by the competent Criminal Court then the State will claim loss, damage against the lessee, but at that Stage none of the authority will say the lessee has been done illegal acts against the State/ Environment during the Course of

pendency of the Criminal Case relating to the self same issues. It is evident from the proceeding of the Case that the State is promptly taken action against the lessee by invoking jurisdiction of the Criminal law. After disposal of the Criminal Case and finally, if the lessee will be convict before the competent Criminal Court, he will be held responsible for any kind of loss, damage to the Environment. So, the Environment Protection Act, 1986 and other connected laws relating to the Environment could not attract against the lessee at that stage. In this context nobody will speak who will be succeed in the competent Criminal Court. So, the lessee could not be held responsible for any kind of loss, damage in respect of the Environment prior deciding the Criminal Cases registered against him before the competent Criminal Court.

11. THE TAHSAILDAR, TANGI COLLECTED AMOUNT OF RS: 8,02,420 (EIGHT LAKHS TWO THOUSAND FOUR HUNDRED TWENTY RUPEES ONLY) FROM THE LESSEE PRIOR OPERATION OF THE STONE QUARRY AND THE LESSEE HAS NO CONCERN WITH THE LEASE AREA AND OUTSIDE THE LEASE AREA

a. That the Revenue and disaster Management Department, Government of Odisha is already collected the amounts from the lessee for the purpose of increase of the revenue for the State exchequer i.e. amounting of Rs: 107500 (One Lakhs Seven thousand five hundred rupees only) vide money Receipt No: 67/dated: 30.07.2020, Rs: 3,47,460 (Three Lakhs forty Seven thousand four hundred Sixty rupees only) vide Money receipt No: 73/dated: 07.05.2021, Rs: 3,47,460 (Three Lakhs forty Seven thousand four hundred Sixty rupees only vide Money receipt No: 79/dated: 22.03.2022 with reference to the letter No: 1066/dated: 04.05.2021 and another letter No: 09/dated: 04.01.2022 of the Tahasildar office, Tangi Tahasil. But, the lessee having regard to the terms and conditions of the Environmental Clearance/ Consent to establish as well as Mining Plan and also the lease deed has not started operation till date due to lack of CTO. So, there are no latches from the side of the lessee in connection of the lease area as well as adjacent lease area. Nobody will raise finger to the lessee for his lapse/illegality/ violation of the rule of law. Thus, the lessee has not started operation in the lease area and also not done any illegal mining outside the lease area. The lessee has not gone to the lease area and outside the lease area due to lack of Consent to operate. It is a matter of question without presence in the lease area how the lessee will do the illegal activity outside the lease area. The State machinery have failed to found who

has done the illegal mining in the outside the lease area till date. After filing of the O.A they have directly charged against the lessee in connection of the outside lease area. Such attitude of the State machinery is not permissible under the law and they are liable to prove it strictly with date/time/period of occurrence to make out an offence against the lessee. It is evident from the proceeding of the Case there is no date/time/occurrence has been proved by the State machinery and the Tahasildar is also lodged a FIR against the lessee on 24.02.2023 (available under internal Page No: 33 of the affidavit dated: 28.03.2023 of the Collector) shows that he has made allegation by way of omnibus manner and not in accordance with criminal law. Thus, the State has no authority to convict the lessee before finalization of the Criminal Case in the Competent Criminal Court. It is a settled principle during course of investigation by the Police the Collector/Tahasildar has no authority to impose Penalty and Compensation against the lessee. Prior prove of the Charge under Section 379, 447 of IPC and Section 21 of Mines and minerals (Regulation and Development) Act, 1957 before the Criminal Court the State has no authority to recovery the compensation and any others charges from the lessee **forcibly/ "By hook or by crook. It is a settled principle that lodging of FIR is not an order of conviction against the lessee. The State could not convict any persons according to their will and pleasure prior**

commencement of verdict from the competent Criminal Court and after full fledged trial the Criminal Court is only authority under the Criminal law to convict the accused of the Criminal Case. Before that the State could not Claim any loss, damage against any person relating to the self same issues pending before the competent criminal Court. But, in this Case the Tahasildar, Tangi lodged Criminal Case against the lessee on 24.04.2023 in connection of theft of minor minerals and before completion of the investigation by the Police and without obtain orders of Conviction from the competent criminal Court in respect of theft of minor minerals by the lessee how the State has been moved for recovery of the Compensation from the lessee. If the lessee will be acquit from the Criminal Case, he will not held responsible for theft of Minor Minerals as alleged by the State. So, the Respondent No: 11 has been hammered to this issues against the State and this Hon'ble Tribunal accordingly pass order in this regard. It is a constitutional obligation that no innocent people should be harassed by the State

beyond the parameter of law. In view of this the State is trying to humiliate the lessee by taking plea of the joint inspection report. Such practice should be stop and curbed with strong hand in the State of Odisha. It is evident from one of the NGT Proceeding vide O.A No: 51 of 2021/EZ, the then Collector, Ganjam Shri. Vijya Amurta Kulange (IAS) and his officials like Additional District Magistrate and others and Regional officer of the State Pollution Control Board, Berhampur, Ganjam were not put their signature in the compensation calculation report dated: 18.04.2022 (available under internal Page No: 7 of the affidavit dated: 18.04.2022 of SEIAA, Odisha which is available in the file of O.A No: 51 of 2021/EZ) in the matter of Satrughna Jena- Versus- The State of Odisha and others. Due to pendency of the Criminal Case investigation before the Police the State and SPCB officials were not put their signatures in the compensation calculation/computation report dated: 18.04.2022 which was prepared by the SEIAA, Odisha in O.A No: 51 of 2021/EZ (disposed of

Case). The said report was also not accepted by this Hon'ble Tribunal while dispose of the O.A No: 51 of 2021/EZ as per order dated: 01.09.2022. But, in this Case the Collector, Khordha and Tahasildar, Tangi by passing to the Statuary provision of criminal law they have forced to the lessee to pay the compensation, which is liable to be declare as illegal and not in accordance with law. The State will be enforce their right after disposal of the Criminal Case and if they will obtain order of Conviction regarding theft of minor Minerals by the lessee then they will be entitled to be recovery of Compensation and other dues from the lessee. But, at that stage the State could not claim loss, damage from the lessee during the Course of investigation by the Police in respect of the theft of Minor Minerals from the alleged Plots. If the State will take coercive measure against the lessee in contravention of the rule of law, it will be improper/ injustice and basic foundation of law will be collapsed.

12. THE TAHASILDAR IMPOSED PENALTY OF RS: 7, 81, 50, 803/- AGAINST THE LESSEE WITHOUT SHOW CAUSE AND OPPORTUNITY OF HEARING, FOR WHICH HE HAS VIOLATED THE HON'BLE APEX COURT OBSERVATION

- a.** That it is evident from the letter No: 1010/dated: 27.02.2023 of the Tahasildar, Tangi he has imposed Penalty and Compensation amounting of Rs: 7, 81, 50, 803(Rupees Seven Cores Eighty One lakhs Fifty thousand Eight Hundred three) only against the lessee (available under internal Page No: 31 of the affidavit dated: 28.03.2023 of the Collector). The said amount has been imposed against the lessee according to the will and Pleasure of the Thasildar and it is not imposed in accordance with law and basic parameter of the observations of the Hon'ble Apex Court which has been mentioned below. It is evident from the record that no Show Cause notice has been issued to the lessee, while passing order of Penalty and Compensation and not given opportunity of hearing to the lessee, while passing the order by the Tahasildar, Tangi. The order passed by the Tahasildar is only 4 lines and it is not a reasoned order against the lessee. The said Tahsildar is not above the law and he is duty bound to comply the principle of natural justice, which

has be clearly settled by the Hon'ble Apex Court. But, in this Case the Tahasildar Passed order against the lessee for recovery of the penalty of Rs: 7, 81, 50, 803 (Rupees Seven Crores Eighty One lakhs Fifty thousand Eight Hundred three) without giving opportunity of hearing. In this Context one of the observations of the Hon'ble Apex Court is mentioned below for ready reference of this Hon'ble Tribunal.

- b.** That the Hon'ble Apex Court observed at **Para-21** of the Judgment in the matter of **ISOLATORS AND ISOLATORS THROUGH ITS PROPRIETOR MRS. SANDHYA MISHRA-Versus- MADHYA PRADESH MADHYA KSHETRA VIDYUT VITRAN CO. LTD. & ANR decided on 18.04.2023** **With reference to the CIVIL APPEAL NOS. 2890-2891 OF 2023** read as follows:-

21. As regards the principles of law applicable to the case, we need not elaborate on various decisions cited at the Bar. Suffice it would be to take note of the decision in UMC Technologies Private Limited (supra) wherein, the substance of the other relevant decisions has also been duly noticed by this Court while explaining the principles governing such actions of debarment/blacklisting. Therein, this Court, inter alia, underscored the requirement of specific show-cause notice and

referred to the settled principles in the following terms: -

*“13. At the outset, it must be noted that it is the first principle of civilized 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*, (1980) 3 SCC 1 has held that it is essential for the notice to specify the particular grounds on the basis of which an action is proposed to be taken so as to enable the notice 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, particularized and unambiguous show-cause notice is particularly crucial due to the severe consequences of blacklisting and the stigmatization 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.

**** ***

16. The severity of the effects of blacklisting and the resultant need for strict observance of the principles of natural justice before passing an order of blacklisting

were highlighted by this Court in *Erusian Equipment & Chemicals Ltd. v. State of W.B.*, (1975) 1 SCC 70 in the following terms: (SCC pp. 74-75, paras 12, 15 & 20)

“12. ... 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.

15. ... The blacklisting order involves civil consequences. It casts a slur. It creates a barrier between the persons blacklisted and the Government in the matter of transactions. The blacklists are “instruments of coercion”.

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.”

17. Similarly, this Court in Raghunath Thakur v. State of Bihar, (1989) 1 SCC 229 struck down an order of blacklisting for future contracts on the ground of non-observance of the principles of natural justice. The relevant extract of the judgment in that case is as follows: (SCC p. 230, Para 4)

“4. ... [I]t is an implied principle of the rule of law that any order having civil consequences should be passed only after following the principles of natural justice. It has to be realized 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.”

18. This Court in Gorkha Security Services v. State (NCT of Delhi), (2014) 9 SCC 105 has described blacklisting as being equivalent to the civil death of a person because blacklisting is stigmatic in nature and

debars a person from participating in government tenders thereby precluding him from the award of government contracts. It has been held thus: (SCC p. 115, para 16) “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.”

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.” Copy of the Judgment of the Hon’ble Apex Court is annexed here to as ANNEXURE-R/11/H Series.

In view of the observations made by the Hon’ble Apex Court Specific Show Cause Notice is necessary before imposing penalty to any Persons by the administrative authority. But, in this Case no Specific show Cause notice issued by the Tahasildar, Tangi Tahasil Office to the lessee while imposing Penalty and Compensation amounting of Rs: 7,81, 50, 803(Rupees Seven Crores Eighty One lakhs Fifty thousand Eight Hundred three), it is evident from the proceeding of the Case. It is Crystal Clear from the facts of the Case that the Tahsaildar, Tangi has make a scapegoat to the lessee by virtue of the orders of the Collector, Khordha. The Tahasildar, Tangi and Collector, Khordha as a Competent/ Controlling authority under the OMMC Rule, 2016 they have failed to curb the illegal acts which has been done under their nose and they have taken personal vindictive measures after filing of the Case against the lessee (Patitapaban Barik) and their action and measures are not in accordance with law. The said officials could not shift their burden and responsibility to the lessee. During the time of illegal

mining, the field functionaries of the Tahasil office as well as Tahasildar, Collector as a competent/controlling authority under the OMMC Rule, 2016 have failed to take measures against the real culprits and they have cleverly fixed responsibility against the lessee without any valid reason.

13. JOINT INSPECTION REPORT DOES NOT REVELS WHO HAS DONE ILLEGAL MINING

a. That the joint Committee observed in their report at Serial No: 5 of the Present Status Colum (internal Page No: 18 of the affidavit dated: 28.03.2023 of the Collector) *“illegal Mining was noticed over Plot No: 712, 713, 714, 716, 717 and during inspection there were no Mining activities and no Machineries found at that Place”*. During the time of the Spot Visit they have only noticed in connection of the illegal Mining. But, who has done such illegal mining how and from which source the Collector was known the lessee has done illegal Mining activity, it needs judicial scrutiny. The Committee report is itself clears that they have not seen to the lessee during the time of Spot visit and no Machinery of the lessee was found at that time. So, how the Collector reached a conclusion that the lessee has been done illegal Mining. There is no documentary or

Circumstantial evidence available on record to shows that the lessee has been done illegal Mining in the area. It is a fact that no notice has been issued to the lessee and no point of time they have made objection to the lessee for such illegal acts before filing of the O.A. But, the Collector has made imaginary allegation against the lessee without any material/ Circumstantial evidence and after filing of the O.A the Collector, Khordha has made allegation against the lessee in connection of the mining activity in the alleged Plots.

14. JOINT COMMITTEE ONLY CITED 2 LETTERS DATED: 20.02.2023 OF THE COLLECTOR IN THEIR REPORT AT CONCLUSION PARA, BUT NOT INDEPENDENTLY OBSERVED AGAINST THE LESSEE

a. That it is evident from the Conclusion Para of the Joint Committee report dated: 21.01.2023 (available under the internal Page No: 22 of the affidavit of the Collector, Khordha) they have quoted only 2 letters dated: 20.02.2023 of the Collector and District Magistrate, Khordha. So, the Committee is also not observed independently against the lessee in their Conclusion Para of the report. It is evident from the

conclusion Para that the Committee only cited the 2 letters of the Collector. The Collector, Khordha is also counter signed on 21.02.2023 in the Said joint Committee report. So, how he is taking plea in his 2 letters dated: 20.02.2023 addressed to the Tahasildar, Tangi and stated there in the joint Committee has been found that the lessee has been committed theft from the outside the lease area. Thus, the Committee report has been prepared on 21.02.2023 under the instance of the Collector and the Committee members were influenced basing upon 2 letters dated: 20.02.2023 of the Collector and accordingly put their signature in their report dated: 21.02.2023.

15. THE HON'BLE APEX COURT OBSERVATION IN RESPECT OF THE JOINT INSPECTION REPORT AND RIGHTS OF THE PARTIES

- a.** That the Hon'ble Apex Court observed at Para-14 in the matter of Kantha Vibhag Yuva Koli Samaj Parivartan Trust and Others- Versus-State of Gujarat and Others with reference to the Civil Appeal No: 1046 of 2019 decided on 21.01.2022 as follows:-

14. *“It is first important to differentiate expert committees which are set by the courts/tribunals from those set up by the Government in exercise of executive powers or under a particular statute. The latter are set up due to their technical expertise in*

*a given area, and their reports are, subject to judicially observed restraints, open to judicial review before courts when decisions are taken solely based upon them. The precedents of this court unanimously note that courts should be circumspect in rejecting CA 1046/2019 12 the opinion of these committees, unless they find their decision to be manifestly arbitrary or mala fides. On the other hand, courts/tribunals themselves set up expert committees on occasion. These committees are set up because the fact-finding exercise in many matters can be complex, technical and time-consuming, and may often require the committees to conduct field visits. These committees are set up with specific terms of reference outlining their mandate, and their reports have to conform to the mandate. Once these committees submit their final reports to the court/tribunal, it is open to the parties to object to them, which is then adjudicated upon. The role of these expert committees does not substitute the adjudicatory role of the court or tribunal. The role of an expert committee appointed by an adjudicatory forum is only to assist it in the exercise of adjudicatory functions by providing them better data and factual clarity, **which is also open to***

challenge by all concerned parties. Allowing for objections to be raised and considered makes the process fair and participatory for all stakeholders". Copy of the Hon'ble Apex Court observations is annexed here to as **ANNEXURE-R/11/ I**. In view of this the joint inspection report filed by the Collector, Khordha with his affidavit dated 28.03.2023 is illegal and not prepared in accordance with law. The lessee is not involved any illegal act and the observations made by the joint Committee that during course of inspection they have found that there is illegal Mining over the alleged Plots. But, the Committee Members categorically observed in their report at internal Page No: 18 of the affidavit dated: 28.03.2023 of the Collector, Khordha which has been narrated in the Present Status Colum of the Serial No: 5 "illegal Mining was noticed over Plot No: 712, 713, 714, 716 & 717 and during inspection there were no Mining activities and no Machinerics found at that Place". The joint Committee report and observation is clearly shows that they have only found the illegal Mining area, but who has been done illegal mining no full proof gathered by the Committee. In the other hand the Collector was issued a letter No: 2255/dated: 20.02.2023 and

another letter No: 2253/dated: 20.02.23 addressed to the Tahasildar, Tangi and in which the Collector categorically stated that at Internal Page No: 25 and 28 of the affidavit dated: 28.03.2023 the lessee has been done illegal Mining activity and the Collector mentioned in his both the letters dated: 20.02.23 “ It is also found by the inspecting team that, the lessee Mr. Patitapaban Barik has illegally operated lateriate Stone Mining and Excavated area of 3979 Sq. Mtr of different Patches over the Plots in question. But, Surprisingly the inspecting team was found during the time of the spot visit on 13.02.2023 and they have categorically stated in their report at Colum 5 of the Present Status that during their inspection no Mining activity and no Machinerries found at that Place. Thus, it is moot question arise how and which capacity and basing on which evidence the Collector was found and reached a conclusion that the lessee has done the illegal Mining activity taking into consideration of the finding and observations of the joint Committee report dated: 21.02.2023. Prior finalization of the joint Committee report how the Collector was known the observation of the Committee and made an 2 letters dated: 20.02.2023 to the Tahasildar, Tangi and stated there in as per the observation of

the Committee the lessee has been done illegal Mining. Actually the Committee report was finalized and the Committee members including Collector were signed in the report on 21.02.2023 which is filed before this Hon'ble Tribunal with the affidavit dated: 28.03.2023 of the Collector. Before finalization of the joint Committee report the Collector wrote a 2 letters dated: 20.02.2023 to the Tahasildar, Tangi by refereeing the observations of the joint Committee, it shows the Collector has been finalized the Committee report and the other members only put their signature as a rubber Stamp and the Joint Committee is working as a mouthpiece of the Collector. It is a matter of question that the Collector how and which way and on what basis known that the lessee has done illegal mining over the plots in question. It is apt to mention here that the Committee report was finalized on 21.01.2023 and prior finalization of the report how the collector wrote a 2 letters on 20.02.2023 to the Tahasildar taking in to account of the observations of the committee dated: 21.01.2023. The Collector how and which capacity and basing on which source wrote a 2 letters to the Tahasildar prior finalization of the Committee report, it creates more doubt and role of the

collector is highly suspicious. Thus, the affidavit dated: 28.03.2023 of the Collector is a colored version to harass the lessee. The Committee report and their observation and the 2 letters dated: 20.02.2023 issued by the collector addressed to the Tahasildar is contradictory to each other. The Committee members observed in their report dated: 21.02.2023 that no mining activity has been found during the time of visit and no machinery was also found during the time of spot visit by the Committee members on 13.02.2023. In the other hand Collector observed in his 2 letters dated: 20.02.2023 that the Committee found that the lessee has been done illegal mining over the Plots in question. Before one day of the finalization of the Committee reports how the collector was known the observation of the Committee and the Committee not observed anything against the lessee and the Joint Committee is only cited the 2 disputed letters dated: 20.02.2023 of the Collector in their report conclusion Para. Therefore, the joint Committee report is not fair and it is not prepared independently to assist this Hon'ble Tribunal. The Joint Committee report has been prepared on 21.02.2023 under the instance of the Collector, Khordha to cover up the negligence of the Revenue

Department officials. So, the entire process was done with top secret to the lessee, which is clear from the materials available on record. The spot visit of the Joint Committee was fixed on 09.02.2023 and accordingly issued notice to the lessee, but on that day the Committee members were not visited to the Spot and not intimated to the lessee in connection of the further date i.e. 13.02.2023 and the Tahasildar is also by violating the principle of natural justice imposed penalty and Compensation against the lessee without giving Specific Show Cause Notice and not given the opportunity of hearing before imposing penalty against the lessee The entire Process of the State officials is not in accordance with law and the Committee members are hand in glove with the Collector has been prepared a report on 21.02.2023 to satisfy the Applicants. It is evident from the Committee report (available under internal Page No: 17 of the affidavit dated: 28.03.2023 of the Collector) that “on behalf of the petitioner, Sri Pradip Jayasingh, S/O: Gadadhar Jayasingh, At: Tankol, Tahasil: Tangi, Dist: Khordha was present during the Joint inspection.”But, they have not intimated to the lessee during the time of spot visit. It shows that the

Collector and Committee members were prepared the report to satisfy the Applicants.

16. CPCB GUIDELINE COULD NOT BE CARRYOUT WITHOUT CONSENT OF THE SEIAA/ SPCB

a. That one of the meeting was held on 17.02.2023 under the Chairmanship of the Collector-Cum- District Magistrate, Khordha (it is evident from the internal Page No: 29 to 30 of the affidavit dated: 28.03.2023) in respect of fixation of the scale of compensation for the illegal mining. The meeting was held in absence of the SPCB/ SEIAA authorities. The proceeding of the meeting has not prepared in accordance with law and SPCB/SEIAA authorities were not agreed with the decisions of the meeting. So, the statutory authorities were not put their signature in the said proceedings of the meeting. For which the Collector has filed the proceeding of the meeting with the affidavit dated: 28.03.2023 is not tenable in the eye of law, it is liable to be declare as illegal. As per the guideline of the CPCB the Collector has no authority to exercise his jurisdiction without consent of the SEIAA/SPCB.

17. That in view of the above facts and circumstances of the Case this Hon'ble Tribunal may kindly dismiss the O.A for the ends of justice.

18. That the O.A is not maintainable from the four corner of law and this Hon'ble Tribunal may kindly taken to the consideration of the averments made in the Counter affidavit dated: 12.03.2023 and I.A No: 19 of 2023/EZ, while dispose of the O.A.

19. That the Respondent No: 11 is craves leave of this Hon'ble Tribunal to file further affidavit, if necessary for proper adjudication of the matter.

BY THE RESPONDENT NO: 11

06.05.2023

THROUGH ADVOCATE

(Biranchi Narayan Mahapatra)

Date: 06.05.2023

489 (49)

BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA

Original Application No: 10 of 2023/EZ

IN THE MATTER OF

Dillip Kumar Samantara and Others.... Applicants

-Versus-

The State of Odisha and others

.....Respondents

AFFIDAVIT

I, Patitapaban Barik, S/O: Nakul Barik, aged about 35 years, at/Po: Tankul-752023, P/S: Jankia, Dist: Khordha, State: Odisha do hereby state on solemn affirmation as under:-

1. That I am Respondent No: 11 of the Case and deponent of this affidavit.
2. That I am fully conversant with the facts and circumstances of the case and therefore competent to swear this affidavit.
3. That I have read over the contents of the accompanying affidavit and the same is true and correct and is drafted on my instruction.

Patitapaban Barik
DEPONENT

VERIFICATION

Verified on this the 06.05.2023 at Berhampur that the contents of the above affidavit are true and correct. No part of it is false and nothing material has been concealed there from.

IDENTIFIED BY
Done 06.05.2023

ADVOCATE
(B.N. Mahapatra)

Patitapaban Barik
DEPONENT

Dr. K.M. Panigrahy
NOTARY

Berhampur (Ganjam)
No. *A.P. 78*
Time *12*

DECLARATION

The deponent having been identified by Advocate *B.N. Mahapatra* solemnly affirm before me this the *06.05.2023* before the Notary *Dr. K.M. Panigrahy* at *12* A.M./P.M. read over and explained to the deponent who seems perfectly to have understood the contents and ten affidavit.

Dr. K.M. Panigrahy
Notary Berhampur (Ganjam)
Regd. No.31/2000

(49) (50)

OFFICE OF THE COLLECTOR & DISTRICT MAGISTRATE: KHORDHA

Letter No. 1402 /Touzi, Dated: 02/02/2023

To

The Superintendent of Police, Khordha

The Divisional Forest Officer, Khordha

Annexure-R/11/G

Sub: Submission of inspection report of Committee as per Order Dated.23.01.2023 passed by Hon'ble NGT in Original Application No.10/2023/EZ filed by Dilip Kumar Samantray and others versus State of Odisha and others.

Madam/Sir,

In enclosing herewith the Order Dated.23.01.2023 passed by Hon'ble NGT in Original Application No.10/2023/EZ filed by Dilip Kumar Samantray and others versus State of Odisha and others, I am to inform that a joint inspection shall be made on dtd. 09.02.2023 at 10.00 a.m as per direction of Hon'ble NGT by the inspecting team. The action taken report will be submitted to the Hon'ble NGT within four weeks. Hence, you are requested to attend the inspection of the site as per schedule fixed positively.

This may be treated as EXTREMELY URGENT.

Yours faithfully,

Collector Khordha

Memo No. 1403 /Touzi, Dated. 02/02/2023

Copy along with Order Dated.23.01.2023 passed by Hon'ble NGT in Original Application No.10/2023/EZ filed by Dilip Kumar Samantray and others versus State of Odisha and others forwarded to the Chairman, SEIAA, Odisha, Bhubaneswar / Director of Mines and Geology, Bhubaneswar for information and requested to send their senior representatives to assist the Committee as and when required in this matter.

Collector Khordha

Memo No. 1404 /Touzi, Dated. 02/02/2023

Copy along with Order Dated.23.01.2023 passed by Hon'ble NGT in Original Application No.10/2023/EZ filed by Dilip Kumar Samantray and others versus State of Odisha and others forwarded to the Sub-Collector, Khordha/Regional Officer, SPCB, Odisha, Bhubaneswar/ Deputy Director of Mines, Cuttack/ Geologist, Khordha/ Tahasildar, Tangi for information and requested to remain present at the time of site visit with relevant records.

Collector Khordha

Memo No. 1405 /Touzi, Dated. 02/02/2023

Copy along with Order Dated.23.01.2023 passed by Hon'ble NGT in Original Application No.10/2023/EZ filed by Dilip Kumar Samantray and others versus State of Odisha and others forwarded to the Tahasildar, Tangi. He is directed to intimate the petitioners and the lessee to remain present at the time of spot visit.

Collector & District Magistrate
Khordha



T.C. Attached
By BEV
for R-11

2023 LiveLaw (SC) 330

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

DINESH MAHESHWARI; J., SANJAY KUMAR; J.

APRIL 18, 2023.

CIVIL APPEAL NOS. 2890-2891 OF 2023 (ARISING OUT OF SLP(C) NOS. 10362-10363 OF 2022)

ISOLATORS AND ISOLATORS THROUGH ITS PROPRIETOR MRS. SANDHYA MISHRA

versus

MADHYA PRADESH MADHYA KSHETRA VIDYUT VITRAN CO. LTD. & ANR.

Contract Process - The Supreme Court has reiterated the requirement of a specific show-cause notice before imposing penalty. Noting that the show-cause notice issued by the Madhya Pradesh Power Distribution Company (M.P. DISCOM) was only about debarment, the court remarked that the action of imposing penalty without even putting the tenderee/ appellant to notice with respect to the same, cannot be approved.

(Arising out of impugned final judgment and order dated 23-04-2021 in WP No. 12075/2020 13-12-2021 in RP No. 894/2021 passed by the High Court of M.P Principal Seat at Jabalpur)

For Petitioner(s) Mr. Vinay Navare, Sr. Adv. Mr. R.m.sharma, Adv. Mr. Prashant R. Dahat, Adv. Mr. Ashok Kotangale, Adv. Mr. T. R. B. Sivakumar, AOR

For Respondent(s) Mr. Bharat Siongh, AAG Mr. Ashis Pandey, Adv. Mr. Kshitiz Singh, Adv. Mr. Amit Pawan, AOR

JUDGMENT

DINESH MAHESHWARI, J.

Leave granted.

2. The present appeals are in challenge to the order dated 23.04.2021 as passed by the High Court of Madhya Pradesh, Principal Seat at Jabalpur in Writ Petition No. 12075 of 2020 whereby the High Court partly allowed the writ petition and while maintaining the order of debarment as passed against the appellant, modified its term of operation by making the same effective from 13.02.2020 for a period of three years, instead of being effective from 30.07.2020. The appellant has also challenged the order dated 13.12.2021 in Review Petition No. 894 of 2021, whereby the High Court dismissed the review petition against the said order dated 23.04.2021.

3. Shorn of unnecessary details, the case of the appellant has been as follows:

3.1. The appellant, being a proprietorship firm, has been in the business of manufacturing and repairing of transformers, having its plant at 83, Sector I, Industrial Area, Govindpura, Bhopal for past 30 years. The only customers of the appellant are the distribution companies (Discoms).

3.2. Two tenders, bearing numbers 494 and 532¹, were floated by the respondent Madhya Pradesh Madhya Kshetra Vidyut Vitran Company Limited². In relation to TS-494, a purchase order was issued by the respondents on 30.06.2017 for the supply of 586 distribution transformers (DTR) - Level I. The period for the supply was specified as six months starting from the third month of the purchase order issue date. However, the appellant received the purchase order through email on 13.09.2017 and physically on

¹ Hereinafter also referred to as 'TS-494' and 'TS-532' respectively.

² 'MPMKVVCL', for short.

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BY ADVOCATE

15.09.2017. The appellant made a request to the respondents to modify the delivery schedule due to delay of 75 days in the receipt of the purchase order, as also to adjust the rates as per Goods and Services Tax (GST), which came into effect on 01.07.2017.

3.3. The appellant has averred that despite receiving no response from the respondents, they had proceeded to submit drawings for approval on 04.10.2017, with the intention of commencing production. In addition, the appellant made two separate requests, dated 13.09.2017 and 18.11.2017, for modifications of the delivery schedule and adjustments of rates in accordance with GST. According to the appellant, on 28.11.2017, the department responded only to the request for approval of drawings and disregarded the request for rescheduling of supplies.

3.4. A revised order, incorporating GST, was issued by the respondents on 02.01.2018. However, the request for rescheduling of supplies made by the appellant was ignored and, instead, the order stated that the appellant was already running late in their supply schedule. Thereafter, a notice dated 13.02.2018 was issued alleging that the appellant was responsible for the delay in supply. The appellant, by letter dated 18.02.2018, responded that there was no delay on their part while again seeking modification of the delivery schedule.

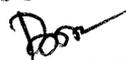
3.5. It has been the case of the appellant that despite making five separate requests to reschedule the supply, no response was received from the respondents. The appellant submitted yet another letter dated 07.03.2018, requesting for extension of time. The appellant has stated the grievance that despite their efforts to supply Level-I transformers, starting from 02.05.2018 and delivering 300 transformers, the respondents did not reschedule the supply, and instead imposed late supply penalties on the appellant's bills; and deducted penalties to the tune of over Rs. 11 lakh from the bills of the appellant for 300 transformers.

3.6. On the other hand, the appellant had received a purchase order from the respondents for the supply of 593 transformers for Tender No. TS532, which was for the supply of 63 KVA and 25 KVA level-II transformers. The total requirement for the respondents and two other Discoms was around 75,000 transformers. The purchase order was issued on 22.02.2018 by the respondents and was received by the appellant through email on 03.03.2018. According to the appellant, as for 25 KVA transformers, they submitted the drawings for approval on 19.04.2018, which were approved by the respondents on 09.05.2018. Subsequently, the appellant began manufacturing 100 transformers of Lot-1 under the contract and offered the same for inspection to the respondents through a letter dated 29.05.2018. On 04.06.2018, a stage inspection was conducted, and clearance was granted on 05.06.2018. On 22.06.2018, the appellant was directed to supply the aforementioned 63 KVA Transformers to West Zone Discom (Indore) through a purchase order, which was executed without any breach.

3.7. It has been the case of the appellant that on the intervening night of 20th and 21st August 2018, an extraordinary storm accompanied by heavy rains caused the roof of their plant to collapse. As a result, most of the raw material, which was stored for the manufacture of transformers, was destroyed. Only 50 transformers from the fourth lot of the aforementioned purchase order were saved, as they were complete in all respects and had already been packed up for delivery. These 50 transformers were supplied on 01.09.2018.

4. On 18.09.2019, the respondent No. 2 Chief General Manager (Procurement), MPMKVCL sent a letter to the appellant in relation to TS532 that they had decided to

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BY ADVOCATE

defer the balance deliveries of 593 Nos. of transformers under the said contract until further instructions. The relevant contents of said letter read as under: -

“No. MD/ MK /04/P-III/TS-494/2824 Bhopal, dated 18/09/2019

To,

M/s. Isolators & Isolators,
Plot No. 83 Sector. 1,
Industrial Area, Govindpura,
Bhopal – 462023 MP

Sub- Supply of BIS Certified Level- II/0433 KVA.2s KVA Conventional Distribution Transformer against Saubhagya Yojana – Deferment of Supply thereof.

Ref. This Order PO No. MD/MK/04/TS-532/P-III/2166 dated 22.02.2018.

Dear Sir,

The order under reference above has been placed on you or supply of BIS Certified Level-II/0433 KVA.2s KVA Conventional Distribution Transformer against Saubhagya Yojana. Against the scheduled deliveries of BIS Certified Level- II/0433 KVA.2s KVA Conventional Distribution Transformer as mentioned therein, it has been decided to defer the balance deliveries of the same ie. 593 Nos till further instructions.

The other terms and conditions shall be remain same.”

5. However, an order dated 19.11.2019 was issued by the respondent No. 2 cancelling the supply of balance quantity of 286 Level-1 transformers under TS-494. The relevant contents of said letter are reproduced as under: -

“No. MD/MK/04/P-III/3491 Bhopal, dated: 19.11.2019

To,

M/s Isolators & Isolators,
Plot No.- 83 Sector-1,
Industrial Area, Govindpura,
Bhopal-462023 (M.P.).

Sub:- Cancellation of Purchase Order No. MD/MK/04/TS494/P-III/1988 dated 30.06.2017 for supply of BIS Certified, Level-I, 11/0.433 KV, 25 KVA Conventional Distribution Transformers for unsupplied quantity.

Ref:- 01. This office RCA No. MDIMK/04/TS-494/P-III/1987 dated 30.06.2017

02. This office letter No. MD/MK/04/P-III/4872 dated 02.11.2018.

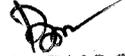
Purchase order MD/MK/04/P-III/TS-494/1988 dated 30.06.17 for supply of 586 nos. BIS Certified, Level-I, 11/0.433 KV, 25 KVA Conventional Distribution Transformers was issued to your firm. The delivery schedule of above Purchase Order was as below-

| Sep 17 | Oct 17 | Nov 17 | Dec 17 | Jan 18 | Feb 18 |
|--------|--------|--------|--------|--------|--------|
| 98 | 98 | 98 | 98 | 97 | 97 |

Your firm has not supplied any quantity even lapse of schedule period of six months i.e. up to Feb-18. After repeated telephonic requests, a letter was issued vide letter no. MD/MK/04/TS-494PIII/6099 dated 13.02.2018. Subsequently, 300 Nos. DTRs were supplied against above purchase Order and remaining 286 Nos. DTRs have not been supplied till date.

It was informed to your firm vide letter referred above for nonsupply of 25 KVA Level-I DTRs and initiating stern action against the against your firm. In addition you were also informed

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that the number of DTRs equivalent to unsupplied quantity will be purchased from other firm at the risk and cost of your firm.

As per tender clause -12 delivery and supply of material of Annexure-II of TS -494 read with clause 28 cancellation of rate contract of Annexure -II the competent authority has accorded approval for cancellation of PO NO. MD/MK/04/TS-494/P-III/1988 dated 30.06.2017 for 286 Nos. unsupplied quantity of 25 KVA DTRs with imposition of penalty.

Therefore, PO NO. MD/MK/04/TS-494/P-III/1988 dated 30.06.2017 for 286 Nos. of 25 KVA DTRs is hereby cancelled with imposition of penalty on unsupplied quantity. Other punitive action as per terms of the tender will be initiated separately."

6. Subsequently, the respondent No. 2 issued another order dated 21.11.2019 cancelling the supply of the remaining quantity of transformers under TS-532 too. The relevant contents of said letter are also reproduced as under: -

"No. MD/MK/04/P-III/3593 Bhopal, dated: 21.11.2019

To,

M/s Isolators&Isolators,
Plot No. - 83 Sector-1,
Industrial Area, Govindpura,
Bhopal-462023 (M.P.)

Sub:- Cancellation of Purchase Order No. MD/MK/04/TS-532/P-III/2166 dated 22.02.2018 for supply of BIS Certified, EELII, 11/0.433 KV, 25 KVA Conventional Distribution Transformers for unsupplied quantity.

Ref:- 01. This office RCA No. MD/MK/04/TS-4532/P-III/2092 dated 20.01.2018.

02. This office letter No MD/MK/04/P-III/2824 dated 18.09. 2019.

Purchase order MD/MK/04/P-III/TS-532/2166 dated 22.02.2018 for supply of 593 nos BIS Certified, EEL-II, 11/0. 433 KV. 25 KVA Conventional Distribution Transformers was issued to your firm. The delivery schedule of above Purchase Order was as below-

| April, 18 | May, 18 | June, 18 | July, 18 | Aug, 18 | Sep, 18 |
|-----------|---------|----------|----------|---------|---------|
| 100 | 100 | 1001 | 00 | 100 | 93 |

Firm offered 100 nos. DTRs for stage inspection against the Purchase order. The inspection was carried out on 04.06.18 and stage clearance letter was issued vide letter no. 1469 dtd 05.06.18. In general procedure, after the stage clearance, firm has to offer the material for final inspection but M/s Isolators & Isolators, Bhopal has never offered the DTRs for final inspection till date.

It was informed to your firm vide letter referred above for nonsupply of 25 KVA EEL-II DTRs and initiating stern action against your firm.

As per tender clause 04 "Delivery of materiel" of Annexure-IV of TS - 532 read with clause 17 "Cancellation/Termination of Purchase order of Annexure -III, the competent authority has accorded approval for cancellation of PO NO. MD/MK/04/TS-532/P-III/2166 dated 22.02.2018 for 593 Nos. unsupplied quantity of 25 KVA DTRs with imposition of penalty.

Therefore, PO NO. MD/MK/04/TS-532/P-III/2166 dated 22.02.2018 for 593 Nos. of 25 KVA DTRs is hereby cancelled with imposition of penalty on unsupplied quantity. Other punitive action as per terms of the tender will be initiated separately.

SD/-

Chief General Manager (Proc.)
O/o MD (CZ) MPMKVCL, Bhopal."

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7. On 26.11.2019, a notice was issued by the respondent No. 2 asking the appellant to show-cause within 15 days as to why they should not be debarred from participating in further tenders on account of non-supply of transformers. In the said notice dated 26.11.2019, the Chief General Manager (Procurement), after referring to the background aspects relating to the purchase orders issued to the appellants; the appellant's failure to effect the necessary supplies within time schedule; and cancellation of the purchase orders, stated as under: -

**** **

Your firm had offered 100 nos. DTRs for stage inspection against the Purchase order. The inspection was carried out on 04.06.18 and stage clearance letter was issued vide letter no.1469 dtd 05.06.18. In general procedure, after the stage clearance, your firm were required to offer the material for final inspection but the above DTRs were not offered by your firm for final inspection.

Therefore, the PO No. MD/MK/04/P-III/TS-532/2166 dated 22.02.18 has been cancelled vide letter no. MD/MK-04/P-III/3593 dated 21.11.2019 with imposition of penalty on unsupplied quantity. With note that other punitive action as per terms of the tender will be initiated separately.

As per Tender Clause 17 of Annexure-III. General Terms and Condition:-

The Purchaser may upon written notice of default, terminate/cancel the purchase order/contract in whole or for a part quantity with recovery of liquidate damages at the rate of 10% of ex-works price(s) of stores not delivered by them or liability on account of risk and cost, whichever is higher in the circumstances detailed hereunder:-

17.1. If in the opinion of the Purchaser, the supplier fails to deliver the material within the time specified or during the period for which extension has been granted by the Purchaser.

17.4. In pursuance to clause no. 17.1, 17.2 &17.3 above, Purchaser may debar the supplier/contractor for further business with Purchaser for a declared period on breach of the Purchase Order.

Since MPMKVCL was in urgent need of 25 KVA DTRs for completion of urgent works under Government Schemes but your firm had not complied with the provisions of tender therefore both the purchase orders MD/MK-04/P-III/TS-494/1988 dated 30.06.17 and TS-532/2166 dated 22.02.18 have been cancelled.

In view of above default on your part, this office is sending this notice asking you to clarify as to why strict action as per tender terms should not be taken against you for blatant violation of Purchase Order and for the large insensitivity shown by you to a number of government development schemes which were severely hit due to non-executing of Purchase Order issued upon your firm. Also intimate that why your firm should not be debarred as per Tender Provisions stated above. You have also been given sufficient time to supply the material but you have ignored the set timeliness persistently and knowingly.

Please submit your reply within 15 days and in case you want personal hearing then intimate to this office within 07 days from issue Of this letter, failing which, it will be presumed that you have no plausible explanation to offer in your defense and then this office would be constrained to take action towards debarment of your firm for non-performance in material supply. Hence kindly take due cognizance and send your reply within time given."

8. The appellant responded to the aforementioned notice on 30.11.2019, setting out the circumstances for which, they had been unable to undertake the supply against the purchase orders. However, the respondent issued an order dated 13.02.2020 debarring the appellant from participating in future tenders for a period of three years. A representation was made by the appellant on 27.02.2020 requesting the respondents to reconsider and recall the order dated 13.02.2020 but in vain. In the said order dated 13.02.2020, the Chief General Manager (Procurement), after recounting the background

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aspects including the said show-cause notice dated 26.11.2019, stated and ordered as under:-

**** ** *

In view of above default on your part, this office had sent a notice of debarring for violation of PO Terms & Conditions, asking you to clarify as to why strict action as per tender terms should not be taken against you for blatant violation of Purchase Order and for the large insensitivity shown by you to a number of Government Development Schemes. You were also intimated that why your firm should not be debarred as per Tender Provisions stated above. You were also given 15 day's time to furnish a reply of notice of debarring to this office personal hearing.

Your firm vide letter no.I&I/BPL/19-20/Reply/1025 dated 30.11.2019 has submitted reply to debarring notice and your firm could not produce any document/statement which restrains the firm from debarring. Your firm has violated Tender conditions as stipulated in TS-494 and TS-532.

Therefore, after given full opportunity and due consideration, the competent authority has accorded approval to recover penalty on rejected and unsupplied DTRs from the firm. Further, M/s Isolators, Bhopal and its Company/Firms should be debarred for future business for the period of 3 (Three) years.

Accordingly, your firm M/s Isolators & Isolators, Bhopal having registered office at Plot No.- 83 Sector-I, Industrial Area, Govindpura, Bhopal-462023 (M.P.) is hereby debarred for participating in tenders of MPMKVVCL for a period of 3(Three) years from the date of issuance of this letter. All of your associated concerns and their Business dealings with this company have also been banned for the same period."

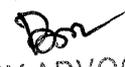
9. In the given circumstances, the appellant approached the Madhya Pradesh High Court, Principal Seat at Jabalpur by way of WP No. 7579 of 2020 challenging the aforesaid order dated 13.02.2020. The High Court, by its order dated 08.07.2020, set aside the order dated 13.02.2020 and permitted the respondents to pass a fresh order within 15 days after affording an opportunity of hearing to the appellant.

10. Thereafter, by a notice dated 16.07.2020, the appellant was called for hearing through video-conferencing on 20.07.2020. During this videoconferencing, three representatives of the appellant including its proprietor were afforded the opportunity of hearing and thereafter, the Chief General Manager (Procurement)-respondent No. 2 proceeded to pass a detailed order on 30.07.2020, while point-by-point dealing with all the relevant submissions, as made by the appellant through the letters dated 27.02.2020 and 18.07.2020 as also by the three representatives. Ultimately, the orders were maintained to the effect that penalty on rejected and unsupplied transformers shall be recovered from the appellant firm; and the appellant firm and its subsidiary/affiliated company/firms shall stand debarred from participating in tenders of MPMKVVCL for a period of three years from date of issuance of that order. The respondent No. 2 finally ordered as under: -

**** ** *

Therefore, after given full opportunity and due consideration, the competent authority has accorded approval to **recover penalty on rejected and unsupplied DTRs from the firm. Further, M/s. Isolators & Isolators, Bhopal and its subsidiary/affiliated Company/[Firms should be debarred for future business for the period of 3 (Three) years.**

Accordingly, your firm **M/s Isolators & Isolators, Bhopal having registered office at Plot No.- 83 Sector-I, Industrial Area, Govindpura, Bhopal-462023 (M.P.) is hereby debarred for participating in tenders of MPMKVVCL for a period of years from the date of issuance of this letter. All of your associated concerns and their Business dealings with this Company have also been the same period (sic).**"

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11. Later, the respondent No. 2 also issued another order dated 17.08.2020, imposing penalty on the appellant to the tune of Rs.27,98,960/- in relation to TS-532, being 10% of the ex-works price of the quantity not delivered together with GST @ 18%. The relevant contents of the said order dated 17.08.2020 read as under: -

**** **

Purchase order MD/MK/04/P-III/TS-532/2166 dated 22.02.2018 for supply of 593 nos BIS Certified, Level-II, 11/0. 433 KV. 25 KVA Conventional Distribution Transformers was issued to your firm. For not making complete supply as per the conditions of tender no. 532 and for violating the terms and conditions of the tender, this office vide letter no. MD/MK/P – III/3593 dated 21/11/2019 had imposed penalty for non-supply of 593 items and cancelled your order. As per letter no. 3593 dated 21/11/2019 your firm is liable to pay the penalty amount as under

| Sr No. | Particulars | Qty. (in nos.) | Ex-Works Price Rs. Per No. July, 18 | Freight (in Rs.) | Total (in Rs.) |
|--------|--|----------------|-------------------------------------|------------------|----------------|
| A | Ex-works + freight cost of total quantity ordered | 593 | 40,000 | 750 | 23720000 |
| B | Penalty amount (10% of the ex-works price of quantity not delivered) | - | - | - | 2372000 |
| C | GST 18% | - | - | - | 2798960 |
| D | Total penalty with GST | | Total | | 2798960 |

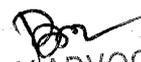
(Total penalty amount Rs. Twenty Seven lakh Ninety Eight Thousand Nine Hundred Sixty only)

Therefore, you are requested to kindly deposit the penalty amount of Rs. 27,98,960/- (Rs. Twenty Seven lakh Ninety Eight Thousand Nine Hundred Sixty only) vide demand draft in the account of the company within 15 days failing which appropriate action against your form shall be taken."

12. Being aggrieved of the aforesaid orders dated 30.07.2020 and 17.08.2020, the appellant preferred another writ petition in the High Court, being W.P. No. 12075 of 2020 that has been considered and disposed of by the impugned order dated 23.04.2021.

13. In its order dated 23.04.2021, the High Court took note of the rival submissions where on one hand, the appellant contended that the impugned orders were suffering from violation of principles of natural justice; that there was no reason recorded in the orders impugned by the respondents for taking the extreme and extraordinary measure of debarring the appellant; that after substantial supply of transformers against purchase order No. 586, cancelling the order for supply of remaining transformers was suffering from malice in law; and that the respondents had deliberately not considered the factors regarding extraordinary rainfall and storm between 20.08.2018 and 21.08.2018, resulting in damage to the plant and loss of raw material. On the other hand, it was contended on behalf of the respondents that blacklisting or debarring was ordered after giving full opportunity to the contractor, who was at fault in not supplying the material as per the terms of the contract; that there was nothing illegal or arbitrary in exercise of powers when the respondents took recourse to the relevant clauses of the purchase order; and that reliance of the appellant on *force majeure* clause was also misplaced, for no such information was furnished within 15 days, as required by the terms of the contract.

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14. Having taken note of the rival submissions, respectively in paragraphs 5 and 6 of the order impugned, in the next paragraph, the High Court proceeded to state its opinion that the order of blacklisting contained justified and plausible reasons and no case for exercising extraordinary powers under Article 226 of the Constitution of India was made out. The High Court observed that the appellant failed to substantiate the lapses in not supplying the required transformers as per contract. Thereafter, the High Court merely observed that the second order of debarment was passed on 30.07.2020 but factually, the appellant-firm was debarred by the order dated 13.02.2020 and therefore, provided a slight modification in the manner that the period of 3 years' debarment would be reckoned w.e.f. 13.02.2020. With these observations and modifications, the High Court proceeded to dispose of the writ petition filed by the appellant. The relevant passages in the order so passed by the High Court read as under: -

"7. Considering the rival contention of the parties and perusal of record, we are also of the opinion that so far as the order of blacklisting is concerned, it contains the reason and in no way we find those reasons unjustified. Considering the existing fact situation of the case, we find that the assigned reason appear to be *prima facie*, plausible and are sufficient to maintain the order of blacklisting. In the circumstances, as have been set forth before us, exercising extraordinary power under Article 226 of the Constitution of India, interference in a decision making process is not permissible when the orders have been passed after following the principle of natural justice and are supported by plausible reasons. Indubitably the petitioner's firm failed to substantiate the lapses on their part for not supplying the required transformers as per the contract. We do not find any such reason available in the case holding the orders passed by the respondents illegal and arbitrary. Therefore, interference in the matter under Article 226 of the Constitution of India is not warranted. However, we have noticed that the order of debarment has been passed on 30.07.2020 restraining the petitioner from participating in further tender proceedings of respondents, but, factually the petitioner firm was debarred vide order dated 13.02.2020, the first order, which was set aside by this Court. Accordingly, the period of three years debarment of the petitioner be considered to be reckoned w.e.f. 13.02.2020 and would be ended accordingly after completion of three years from the said date.

8. Accordingly, the petition is partly allowed modifying the order of debarment making the same effective w.e.f. 13.02.2020 till the period of three years."

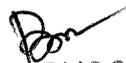
15. At this juncture, we may also take note of the fact that as against the aforesaid order dated 23.04.2021 passed in W.P. No. 12075 of 2020, the appellant had earlier approached this Court by way of SLP(C) No. 13571 of 2021 but then, sought permission to withdraw with liberty to take recourse to other appropriate remedy in accordance with law. By the order dated 24.09.2021, the said SLP(C) No. 13571 of 2021 was, accordingly, dismissed as withdrawn with liberty as prayed. Thereafter, the appellant filed a review petition in the High Court that came to be summarily rejected by the High Court with a short order dated 13.12.2021 that reads as under:-

"On hearing learned counsels, we do not find any error apparent on the face of the record that calls for any interference.

In the absence of any error on the face of the record, this review petition is dismissed."

16. Assailing the orders so passed by the High Court, learned senior counsel for the appellant has essentially put forward two principal contentions. In the first place, it has been argued that the show-cause notice dated 26.11.2019 was only about debarment but then, the respondents proceeded to pass the orders debarment of the appellant for 3 years as also imposing penalty. Even in regard to the question of penalty, according to the learned counsel, as per Clause 4 of the contract, the quantum of penalty could have been from ½% to 10% for delay in delivery but the respondents have chosen to impose the

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maximum thereof without assigning any reason as to why the highest of such quantum was chosen. In the second place, learned counsel has contended that the order debarring the appellant and the order imposing penalty both were challenged in the writ petition but the High Court chose to consider only the challenge with respect to the order of the debarment and nothing was considered about the order imposing penalty.

16.1. With reference to the facts of the case, learned senior counsel has submitted that the appellant is manufacturer of transformers and by the very nature of its product, the distribution company like the respondents are the only purchasers and that way, the present one is a case of single purchase market. The appellant had been supplying transformers to the respondents since the year 1989 without any default or difficulties and in the totality of circumstances, delay in execution of the present purchase orders, that had occurred because of the reasons and circumstances explained by the appellant, debarment for a maximum period of 3 years and imposition of maximum penalty had been highly disproportionate and too harsh. Learned counsel has particularly referred to the fact that as regards TS-494, the appellant had supplied 300 out of 586 transformers and as regards TS-532, the appellant had supplied all the 63 KVA transformers. The want of supply of other transformers had been for the reasons explained by the appellant and entire fault could not have been attributed to the appellant alone. In this regard, learned counsel has particularly underscored the submissions that by the letter dated 18.09.2019, the respondents deferred the delivery and thereafter, there was no communication for withdrawing deferment. In this background, the order cancelling contract on 21.11.2019 for want of supply could have only been considered as arbitrary and unreasonable.

16.2. The learned counsel has also relied upon the decisions of this Court in **Gorkha Security Services v. Government (NCT of Delhi) and Ors.: (2014) 9 SCC 105** and **UMC Technologies Private Limited v. Food Corporation of India and Anr.: (2021) 2 SCC 551** to submit that showcause notice must indicate the proposed action and in the show-cause notice in question, there being no indication of the proposed action of imposing penalty, the order imposing penalty remains patently illegal and deserves to be set aside.

17. In the present case, while preliminarily entertaining the petitions seeking leave to appeal, this Court had taken note of the facts regarding earlier filing of the petition, being SLP(C) No. 13571 of 2021 against the order dated 23.04.2021 passed in W.P. No. 12075 of 2020; and the appellant having withdrawn on 24.09.2021 with liberty to take recourse to other appropriate remedy in accordance with law. As noticed, thereafter, the appellant filed a review petition in the High Court that came to be summarily rejected by the High Court after finding no error apparent on the face of the record. In this backdrop, this Court had left the question of maintainability of the petitions, particularly in challenge to the original order dated 23.04.2021 open.

17.1. In regard to the above question, learned senior counsel has referred to a decision of this Court in the case of **A.P. State Financial Corporation v. C.M. Ashok Raju and Ors.: (1994) 5 SCC 359** to submit that the first order of the High Court dated 23.04.2021 cannot be said to have attained finality. He would also submit that the order dated 23.04.2021 suffered from several errors apparent on the face of record, including that the challenge to the order imposing penalty was not even gone into but, the High Court rejected the review petition without even examining the record.

18. *Per contra*, learned counsel for the respondents has duly supported the orders impugned with particular reference to Clauses 13, 14 and 15 of the conditions of purchase order No. TS-494 and Clauses 8,10 and 17 of TS-532. The learned counsel would submit that since the appellant did not comply with the terms and conditions of the contract, a

notice was issued on 13.02.2018 which was followed by the communications dated 02.05.2018, 12.06.2018, 16.08.2018 and 01.09.2018 about dispatch instructions for supply of transformers Level-I. According to the learned counsel, the appellant having failed to fulfil the terms and conditions of TS494, by the order dated 19.11.2019, the respondents rightly cancelled the said purchase order with imposition of penalty for non-supply of 286 transformers. It has been argued that the said termination order had never been challenged by the appellant and the same has attained finality. As regards the supply of 593 DTRs Level-II, the appellant was informed by the communication dated 22.02.2018 that the respondents had reserved the right to defer, reduce or reschedule the supply as per the requirement. According to the learned counsel, the appellant having failed to make the requisite supplies despite various requests, by the communication dated 18.09.2019, the appellant was informed about deferment of supply until further instructions.

19. As noticed, the aforesaid communication of deferment dated 18.09.2019 has been strongly relied upon by the learned counsel for the appellant to submit that after such communication, the respondents never issued instructions for supply or for withdrawal of such deferment and, therefore, the blame could have been shifted on the appellant. During the course of submissions, in regard to the aforesaid line of arguments, we posed pointed query to the learned counsel for the respondents and afforded him an opportunity on 28.02.2023 to take all instructions while posting the matter for further hearing. Learned counsel for the respondents has endeavoured to submit that the said communication dated 18.09.2019 is of no adverse impact on the validity of the orders passed against the appellant. As regards the said communication dated 18.09.2019 and the contentions of the appellant on that basis, the learned counsel for the respondents has further submitted the additional written submissions and having regard to the questions involved, we deem it appropriate to reproduce the relevant passages of such written submissions as follows:-

"4. That a submission on behalf of petitioner has been made before this Hon'ble Court that vide letter dated 18.09.2019 (**Page 148 Of SLP**), the respondent/Electricity Company himself has deferred the supply of 593 transformers of Level-II and as such, there is no fault on the part of the petitioner-firm in supplying 593 transformers. In this respect, it is most humbly submitted that the said submission on behalf of Petitioner is only to cover-up its defaults in not supplying the 593 transformers as per time schedule prescribed. The petitioner herein has not produced any document which can be treated as against the answering respondents and as such, an adverse inference cannot be drawn against the answering respondents. The submissions made by the petitioner are contrary to the material evidence available on records, thus, same are liable to be rejected. The petitioner herein was awarded the contract on 22.02.2018 for supply of 593 transformers of level-II and in that regard a purchase order was issued along with terms and conditions of said Contract to the petitioner. It is submitted that as per terms and conditions and also admitted position is that the said supply of 593 transformers had to be made within 6 months from the date of award of said Contract/Purchase order. The Petitioner herein has not produced a single document before the forums below nor before this Hon'ble Court that he was always ready to supply the 593 transformers but the respondents refused to either accept or defer the said supply. Even after 18.09.2019, the petitioner has not produced a single evidence on record to show that he was ready to supply the said transformer which had to be supplied within 6 months from the date of purchase order i.e. on or before 22 August, 2019. After considering the gross violations of terms and conditions of supply of said transformers, virtually after an expiry of more than one year, when it was found that petitioner is not at all interested in supply the said 593 transformers, the answering respondent had no option but to terminate the said purchase order vide order dated 21.11.2019 which has never been challenged before any competent forum.

5. That it is further most respectfully submitted that even if it assumed for the sake of argument, though it is not admitted, that the answering respondents himself have deferred the supply of said 593 transformers, still the adverse inference cannot be drawn against the

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answering respondents on the ground that it is for the petitioner-firm who has to prove on record that the 593 transformers have always been ready for supply to the answering respondents. It is further most respectfully submitted that onus is upon the petitioner to prove that petitioner was always ready to supply the said 593 transformers but the answering respondents have refused the same or deferred the same.

6. It is further most respectfully submitted that the letter dated 18.09.2019 of answering respondents cannot be taken into consideration against the answering respondents in view of the fact that despite various opportunities and communications made to the petitioner by the answering respondents for supply of said 593 Transformers, the petitioner has not even pay any heed on that and finally has chosen not to supply the said transformers on one pretext or other. The answering respondents most humbly submit that this Hon'ble Court may kindly see the reasons given in detail while cancelling the said Purchase order vide order dated 21.11.2019 and also while declaring the petitioner blacklisted vide order dated 30.07.2020."

19.1. The learned counsel has submitted that keeping in view the past conduct of the appellant and violation of the terms and conditions of contract and purchase order, they had rightly cancelled the same and imposed penalty on unsupplied quantity by another detailed order dated 21.11.2019. It is submitted that even the said order dated 21.11.2019 has never been challenged in any forum and has attained finality. According to the learned counsel, imposition of penalty has been consequential to the aforesaid order dated 21.11.2019 and the same had been as per the terms and conditions of the rate/contract/purchase order.

19.2. With reference to the show-cause notice dated 26.11.2019 and the reply dated 30.11.2019, it has been argued that the order dated 13.02.2020 was passed after extending full opportunity of hearing to the appellant and when the said order was challenged in the High Court in Writ Petition No. 7579 of 2020 and the High Court directed the respondents to pass a fresh order after affording opportunity of hearing to the appellant, the authority concerned passed detailed speaking order dated 30.07.2020 after giving full opportunity of hearing to the appellant and after duly considering the financial loss suffered by the respondents due to non-supply of transformers.

19.3. It has been argued that the writ petition was duly defended with reference to Clause 14 of purchase order and the High Court has rightly rejected the principal contention of the appellant even while giving a partial relief of making the order of debarment effective from 13.02.2020. Thus, according to the learned counsel, no case for interference is made out. The decisions of this Court in the case of **Raghunath Thakur v. State of Bihar and Ors.: (1989) 1 SCC 229**; **M/s Erusian Equipment and Chemicals Ltd. v. State of West Bengal and Anr.: (1975) 1 SCC 70**; and an order dated 13.12.2019 passed in **Civil Appeal No. 9417 of 2019- M/s Daffodills Pharmaceuticals Ltd. and Anr. v. State of U.P. and Anr.** have been relied upon.

20. Having given thoughtful consideration to the rival submissions and having examined the record, we are clearly of the view that the impugned order as passed by the High Court in practically denying the principal relief claimed by the appellant cannot be approved and the writ petition filed by the appellant deserves to be allowed to the extent of annulling the effect of debarment and quashing the imposition of penalty.

21. As regards the principles of law applicable to the case, we need not elaborate on various decisions cited at the Bar. Suffice it would be to take note of the decision in **UMC Technologies Private Limited** (supra) wherein, the substance of the other relevant decisions has also been duly noticed by this Court while explaining the principles governing such actions of debarment/blacklisting. Therein, this Court, *inter alia*,

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underscored the requirement of specific show-cause notice and referred to the settled principles in the following terms: -

"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*, (1980) 3 SCC 1 has held that it is essential for the notice to 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.

*** **

16. The severity of the effects of blacklisting and the resultant need for strict observance of the principles of natural justice before passing an order of blacklisting were highlighted by this Court in *Erusian Equipment & Chemicals Ltd. v. State of W.B.*, (1975) 1 SCC 70 in the following terms: (SCC pp. 74-75, paras 12, 15 & 20)

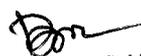
"12. ... The order of blacklisting has the effect of depriving a person of equality of opportunity in the matter of public contract. A person who is on the approved list is unable to enter into advantageous relations with the Government because of the order of blacklisting. A person who has been dealing 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. ***

15. ... The blacklisting order involves civil consequences. It casts a slur. It creates a barrier between the persons blacklisted and the Government in the matter of transactions. The blacklists are "instruments of coercion". ***

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."

17. Similarly, this Court in *Raghunath Thakur v. State of Bihar*, (1989) 1 SCC 229 struck down an order of blacklisting for future contracts on the ground of non-observance of the principles of natural justice. The relevant extract of the judgment in that case is as follows: (SCC p. 230, para 4)

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"4. ... [I]t is an implied principle of the rule of law that any order having civil consequences 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."

18. This Court in *Gorkha Security Services v. State (NCT of Delhi)*, (2014) 9 SCC 105 has described blacklisting as being equivalent to the civil death of a person because blacklisting is stigmatic in nature and debars a person from participating in government tenders thereby precluding him from the award of government contracts. It has been held thus: (SCC p. 115, para 16) "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."

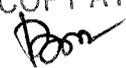
19. In light of the above decisions, it is clear that a prior show-cause notice granting a reasonable opportunity of being heard is an essential element of all administrative decision-making and particularly so in decisions pertaining to blacklisting which entail grave consequences for the entity being 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."

22. As regards maintainability of these appeals, learned counsel for the appellant has rightly referred to the decision in *A.P. State Financial Corporation* (supra) wherein, while dealing with an akin question about maintainability of fresh appeal, after withdrawal of the earlier one and after another round of approach to the High Court, this Court, *inter alia*, observed as under: -

"6. Learned counsel for the contesting respondents have strenuously contended that the special leave petitions against the judgment of the Division Bench of the High Court in writ appeals, having been rejected by this Court, the High Court judgment has achieved finality and, as such, these appeals are liable to be dismissed on that short ground. We do not agree with the learned counsel. This Court while rejecting the petitions as withdrawn, granted liberty to the petitioner to approach the High Court and point out the case which was sought to be pleaded before this Court. In other words, this Court prima facie found the contentions of the petitioner to be plausible and, as such, granted liberty to raise the same before the High Court. The High Court heard the parties at length and passed a reasoned order running into 16 pages. In the facts and circumstances of this case, we are not inclined to agree with the learned counsel that the judgment of the High Court in writ appeals has achieved finality."

22.1. Having regard to the above, and overall circumstances of the case we find no reason to treat the impugned order dated 23.04.2021 as final and deem it appropriate to examine the challenge on merits.

23. As regards the question of penalty, we find force and substance in the contentions urged on behalf of the appellant that such an imposition cannot be approved for two major factors: The first and foremost being that in the show-cause notice dated 26.11.2019, the appellant was put to notice only as regards the proposition of debarment and in the said notice, nothing was indicated about the proposed imposition of penalty. Though in the cancellation orders dated 19.11.2019 and 21.11.2019, the respondents purportedly reserved their right to take appropriate steps, those orders cannot be read as show-cause notice specifically for the purpose of imposition of penalty. The submissions on behalf of

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the respondents in this regard that the said orders dated 19.11.2019 and 21.11.2019 have attained finality do not take their case any further. Finality attaching to the action of cancellation cannot be read as a due notice for imposition of penalty even if the respondents chose to employ the expression '*cancelled with imposition of penalty*' in those orders. Looking to the terms of contract, quantification of the amount of penalty (if at all the penalty is considered leviable) could not have been carried out without affording adequate opportunity of response to the appellant. That being the position, the action of the respondents in imposing the penalty without even putting the appellant to notice as regards this proposed action cannot be approved.

23.1. Secondly, the authority concerned has proceeded to impose the maximum of penalty to the tune of 10% of the deficit supply without specifying as to why the maximum of penalty was sought to be imposed. In this regard, the relevant factors as indicated by the appellant could not have been ignored altogether. Unfortunately, the High Court has totally omitted to consider this aspect of the grievance of the appellant.

23.2. Though, ordinarily, for such an omission of the High Court, the course would have been to remit the issue for consideration but, we are of the view that no useful purpose would be served by remitting such an issue in this matter. This is for the simple reason that imposition of penalty against the appellant cannot be approved because of the want of specific show-cause notice. Moreover, no specific quantum of loss has been specified by the respondents so as to justify the imposition of maximum of penalty. Viewed from any angle, the impugned order dated 17.08.2020 is required to be set aside.

24. Even the order debaring the appellant for a period of 3 years for default in making the requisite supplies carries its own shortcomings. As noticed, the appellant had indeed made substantial supplies against the purchase orders in question. Fact of the matter further remains that on 18.09.2019, the respondent No. 2 dealing with the procurement specifically informed the appellant that the supply under the purchase order in question is to be deferred. It has rightly been argued on behalf of the appellant that after such an order of deferment, there had not been any other communication or even indication from the respondents which would have informed the appellant to resume supplies. We have reproduced hereinabove all the relevant passages in the additional written submissions on behalf of the respondents, made in an effort to meet with the arguments concerning the effect and impact of the said communication dated 18.09.2019. It is at once apparent that the respondents have not been able to rebut the contention urged in this regard on behalf of the appellant. The written submissions on behalf of the respondents do not answer the root question in the matter as to how the appellant could have been made solely responsible for delay or default in supply after the communication dated 18.09.2019 when the respondents themselves informed the appellant that taking of balance delivery was being deferred (until further instructions). In the length and breadth of the arguments on behalf of the respondents, it has nowhere been pointed out if such "further instructions" were ever issued to the appellant before issuance of the cancellation orders dated 19.11.2019 and 21.11.2019 as also before issuance of show-cause notice dated 26.11.2019. That being the position, we are clearly of the view that the debarment order had been issued against the appellant without due regard to the undeniable factual situation where the entire blame could not have been foisted upon or shifted towards the appellant. Hence, the impugned order dated 30.07.2020 debaring the appellant is also required to be set aside.

25. Before concluding, we are impelled to observe that, in fact, the High Court had had the opportunity to correct the obvious errors in its order dated 23.04.2021, particularly

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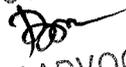
when the review petition was placed before it for consideration because one part of the matter (concerning penalty) was not even considered and as regards other part too, the pertinent contentions of the appellant did not acquire the requisite attention of the High Court. Unfortunately, the High Court chose to dismiss the review petition without even looking into the relevant factors, including the one concerning the impact of the communication dated 18.09.2019. The High Court having not dealt with the matter in the correct perspective whether in disposal of the writ petition or in disposal of the review petition, both the impugned orders could only be disapproved.

26. Accordingly, and in view of the above, these appeals succeed and are allowed. The impugned orders dated 23.04.2021 in W.P. No. 12075 of 2020 and dated 13.12.2021 in Review Petition No. 894 of 2021 are set aside; and the writ petition filed by the appellant is allowed. The impugned orders dated 30.07.2020 in debarment of the appellant and dated 17.08.2020 in imposition of penalty are quashed and set aside.

26.1. Having regard to the period of debarment in terms of the impugned order dated 30.07.2020, we deem it appropriate to provide that such debarment is annulled for all practical purposes and the said order dated 30.07.2020 shall not operate against the rights and interests of the appellant in any future tender process. The order dated 17.08.2020 imposing penalty having also been set aside, no recovery shall be made from the appellant thereunder and if any amount has been recovered, the same shall be refunded to the appellant within a month from today or else, it shall carry simple interest at the rate of 9% per annum from the date of recovery and until the date of repayment. The parties shall bear their own costs.

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No 1046 of 2019

Kantha Vibhag Yuva Koli Samaj Parivartan
Trust and Others

Appellants

Versus

State of Gujarat and Others

Respondents

J U D G M E N T

Dr Justice Dhananjaya Y Chandrachud, J

1 Admit.

2 This appeal under Section 22 of the National Green Tribunal Act 2010¹ arises from a judgment and order of the Principal Bench of the National Green Tribunal² dated 28 September 2018, by which it dismissed OA No 81 of 2014 (WZ).

3 OA No 81 of 2014 (WZ), instituted under Sections 14 and 15 of the NGT Act, was

1 "NGT Act"

2 "NGT"

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pending before the NGT for nearly four years since July 2014. It had been filed by the appellants, who are environmental organisations and individuals directly affected by the degradation of the environment in the area in question. The OA pertained to the issue of the dumping of unsegregated and untreated Municipal Solid Waste³ at an open landfill site admeasuring 188 hectares at Survey No 111 /A, Block No 177, Khajod Village, Taluka Choryasi in the district of Surat, which is surrounded by thirty-five villages. The landfill site had been set up by the fourth respondent, Surat Municipal Corporation⁴, which had started dumping 850 Metric Tonnes of waste per day on 24 January 2003. The extent of dumping increased to 1600 Metric Tonnes of waste per day by 16 January 2014. It was alleged, *inter alia*, that the dumping of waste in the open area without prior treatment was in violation of the Municipal Solid Waste (Handling and Management) Rules 2000 and Bio Medical Waste (Management and Handling) Rules 1998. Further, while SMC had been issued multiple warnings during site visits and inspections, the situation did not improve. It was alleged that the waste disposal led to an irreversible contamination of local water bodies and ground water, caused severe air pollution due to the burning of waste, damaged the ecology of the nearby villages and was affecting the health of the citizens and livestock in the vicinity. The appellants sought directions, *inter alia*, for: (i) restraining the dumping of MSW at the landfill site; (ii) restoration of the environment in the surrounding areas; (iii) restitution of the landfill site to its original condition; (iv) compensation to all those affected in the nearby villages upon

3 "MSW"

4 "SMC"

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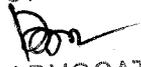

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determination of damages by a committee set up to assess the landfill site; and (v) implementation of the Solid Waste Management Rules 2016⁵.

4 The Western Zone Bench of the NGT issued notice on 8 August 2014. A series of orders emanated from the Western Zone Bench of the NGT in connection with the issues raised. It would suffice to note a few of those orders:

- (i) On 20 March 2015, the NGT noted that "*prima facie* there is ring of truth in the averments made by the Applicants, to indicate that MSW plant, is being mismanaged" and that the burning of the untreated MSW was causing severe air pollution affecting the health of the residents of the nearby villages. Interim directions were issued to prevent this from taking place during the pendency of the OA;
- (ii) On 22 December 2015, the NGT again reproached SMC for not preparing a proper action plan and audit for the management of MSW in the district of Surat. However, on the appellant's issue of their participation in the management of the landfill site, the NGT noted that it would be decided during the final hearing;
- (iii) On 7 March 2016, the NGT directed the Commissioner of SMC to be present and to provide a statement on the following issues: (a) extent of waste collected, treated and disposed of in accordance with the mandate of the Municipal Solid Waste (Handling and Management) Rules 2000; (b) the officers who have failed

⁵ "SWM Rules"

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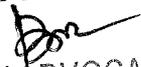
- to enforce the Rules and have failed to comply with the directions of the NGT; (c) the time schedule within which proper waste management will be done in the area in terms of the Rules; and (d) filing an undertaking that waste management shall be done in letter and spirit;
- (iv) On 16 May 2017, the NGT noted that in pursuance of its previous directions, SMC had filed an affidavit indicating, *inter alia*, the action plan which it proposed to execute for handling the problem of MSW within its jurisdiction. The NGT was informed that the issue pertaining to the closure of the Khajod dumping site was pending before the Standing Committee of SMC. Hence, the NGT directed the Standing Committee to take a decision and issue a work order for commencing the work of the closure of the open dumping site within a month. Moreover, SMC was directed to place on the record the details of the lands where the projects are to be commissioned;
- (v) On 19 September 2017, a statement was made on behalf of SMC that it is under an obligation to comply with the SWM Rules and that the site at Khajod is designated for a landfill, an MSW processing plant and a waste-to-energy plant of 100 TPD on a public-private partnership basis;
- (vi) Pursuant to the order of the NGT dated 19 September 2017, the appellants formulated certain action points for implementation of the SWM Rules. On 26 September 2017, an undertaking was filed on behalf of SMC by the Municipal

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Commissioner setting out the steps which would be taken for dealing with MSW, transportation, storage, and processing as well as on other related matters. The undertaking stipulated that there shall be no landfilling or dumping of unprocessed and unsegregated MSW after two years subject to "100% working of the Solid Waste Processing Plant" and certain other conditions;

- (vii) On 6 November 2017, an order was passed by the NGT setting out that it would be hearing SMC, *inter alia*, on the qualified nature of the undertaking which was furnished by it, having regard to the SWM Rules and on the proposed use of the Khajod landfill site despite its potential as a landfill site being concluded. The NGT also indicated that it would be hearing submissions on the commissioning of the waste-to-energy plant and the waste-to-compost plant within a given time frame;
- (viii) An order was passed by the NGT on 5 December 2017, dealing particularly with the issue of quantification of compensation to the farmers due to the damage caused by the burning of solid waste and ground water pollution;
- (ix) On 2 July 2018, the NGT issued directions stating that the submissions which were urged before it by SMC were unacceptable. The NGT declined to accept the contention that the waste-to-energy plant could only be completed by December 2019, and directed that it ought to be completed by March 2018; and

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(x) On 17 July 2018, the NGT noted that SMC's current action plan *prima facie* did not fulfill the requirements of Clause J of Schedule-I of the SWM Rules in relation to closure and rehabilitation of old dumping sites and legacy waste. Hence, it directed SMC to file an affidavit recording its compliance.

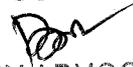
5 A considerable amount of judicial time and attention was entailed during the course of the hearings associated with the above orders. Earlier Benches of the NGT at the Western Zone Bench had been monitoring the status of compliance with the SWM Rules. The NGT was seized with diverse aspects pertaining to the disposal of MSW by SMC, including the modalities which have to be followed while commissioning projects in the future for the conversion of waste to energy.

6 Rather surprisingly, when the proceedings came up on 28 September 2018 before the Principal Bench of the NGT, the OA was disposed of on the ground that in another OA – OA No 606 of 2018 – the NGT had constituted Apex, Regional and State Level Committees to monitor the implementation of the SWM Rules. The OA filed by the appellants was thus closed with liberty to represent the case and ventilate all grievances before the appropriate committee. For convenience of reference, the order passed by the NGT is extracted below:

"As this OA relates to implementation of Solid Waste Management Rules, 2016, we are of the considered opinion that it is covered by the order passed by the larger Bench of the Tribunal dated 20th August, 2018 in OA No 606 of 2018.

The Applicant would be at liberty to represent its case and ventilate

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all grievance before the Committee which shall look into it and finally decide the same.

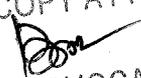
Consequently, OA No 81 of 2014 stands disposed of. There shall be no order as to cost.

M.A. No. 1392 of 2018 and 1393 of 2018

These Applications do not survive for consideration as the main Application has been decided and are accordingly dismissed."

7 At this juncture, it is also important to elaborate on NGT's judgment and order dated 31 August 2018 in OA No 606 of 2018. Those proceedings arose from writ petitions filed before this Court in relation to the proper implementation of SWM Rules across the country, which were later transferred to the NGT. The NGT noted in its decision that though it had earlier issued directions for the implementation of the SWM Rules, they had not been complied with. Later, in a meeting organised by the Central Pollution Control Board with all the States and Union Territories, it was recommended that the NGT should form Apex, Regional and State Level Committees for the implementation of the SWM Rules and the directions issued by the NGT, and that these Committees should submit quarterly reports to the NGT. Thus, the NGT directed the following:

- (i) The Apex Monitoring Committee was set up for one year, till further orders. Its role was to interact with the relevant Ministries and the Regional Monitoring Committees, and it could formulate guidelines/directions which may be useful to the Regional Monitoring Committees and the States/Union Territories. It

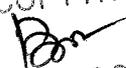
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was to meet preferably every month, and also preferably meet the Regional Monitoring Committees once a month. It shall then submit its report to the NGT every quarter. Further, it was also directed that the Committee set up a website for dissemination of information, so as to enable public participation;

- (ii) The Regional Monitoring Committees were set up for one year, till further orders, for each zone – North, East, West, South and Central. They were to ensure effective implementation of the SWM Rules, and that mixing of bio-medical waste with MSW does not take place and bio-medical waste is processed in accordance with the Bio-Medical Waste Management Rules 2016. The Committees were to preferably meet every week, and meet the Apex Monitoring Committee, have *inter se* interactions and meet the States when necessary. They were to submit their reports to the Apex Monitoring Committee twice a quarter, and also submit a report to the NGT after the first quarter. Much like the Apex Monitoring Committee, the Regional Monitoring Committees were also directed to set up websites; and
- (iii) The State Level Committees were set up for one year, till further orders, for each State and Union Territory. They were to preferably meet with local bodies once every two weeks, and the local bodies were to furnish them reports twice a month. They were to decide on technical and policy issues in accordance with the SWM Rules and consistent with the directions of Apex and Regional

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Monitoring Committees. Further, they were to send their reports to the Regional Monitoring Committee on a monthly basis. It was also directed that public involvement may be encouraged and status of MSW be placed in the public domain.

The NGT directed that the Committees would be at liberty to issue directions for execution of the orders of the NGT to any authority.

8 Ms Shilpa Chohan, learned Counsel appearing on behalf of the appellants, has submitted that relegating the appellants to a committee was wholly inappropriate having regard to the progress which had been achieved by the Western Zone Bench of the NGT in unravelling various aspects of the case. Moreover, it is urged that the jurisdiction to provide restitution and award compensation is entrusted to the NGT and hence, it was not appropriate or proper to dispose of the OA by relegating the decision to a committee.

9 On the other hand, Mr Tejas Patel, learned Counsel appearing on behalf of SMC, submits that the appellants have produced absolutely no material on the basis of which a claim for compensation can be made. Moreover, it was urged that they have a remedy of ventilating their grievances before the appropriate committee.

10 The OA was filed by the appellants under Sections 14 and 15 of the NGT Act.

Section 14⁶ of the NGT Act vests the NGT with jurisdiction over all civil cases where a

⁶ **14. Tribunal to settle disputes.**—(1) The Tribunal shall have the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved and such

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substantial question relating to the environment is involved, and such question arises out of the implementation of the enactments specified in Schedule I to the statute. Sub-Section (1) of Section 15 is in the following terms:

“15. Relief, compensation and restitution.—(1) The Tribunal may, by an order, provide,—

(a) relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in the Schedule I (including accident occurring while handling any hazardous substance);

(b) for restitution of property damaged;

(c) for restitution of the environment for such area or areas,

as the Tribunal may think fit.”

11 In Mantri Techzone (P) Ltd. v. Forward Foundation⁷, a three-Judge Bench of this Court outlined that Section 15(1)(c) of the NGT Act entrusts broad powers to the NGT. Speaking for the Court, Justice S Abdul Nazeer held:

“43. Section 15(1)(c) of the Act is an entire island of power and jurisdiction read with Section 20 of the Act. The principles of sustainable development, precautionary principle and polluter pays, propounded by this Court by way of multiple judicial pronouncements, have now been embedded as a bedrock of environmental jurisprudence under the NGT Act. Therefore, wherever

question arises out of the implementation of the enactments specified in Schedule I.

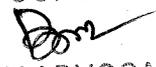
(2) The Tribunal shall hear the disputes arising from the questions referred to in sub-section (1) and settle such disputes and pass order thereon.

(3) No application for adjudication of dispute under this section shall be entertained by the Tribunal unless it is made within a period of six months from the date on which the cause of action for such dispute first arose:

Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days.”

⁷ (2019) 18 SCC 494

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the environment and ecology are being compromised and jeopardized, the Tribunal can apply Section 20 for taking restorative measures in the interest of the environment.”

12 The OA filed by the appellants raised issues falling within the jurisdiction of the NGT under Section 14, since it relates to the implementation of the SWM Rules. The SWM Rules have been notified pursuant to the powers conferred by Sections 3, 6 and 25 of the Environment (Protection) Act 1986, which is Entry 5 in Schedule I of the NGT Act. None of the prayers sought by the appellants are of a nature that cannot be granted by the NGT in accordance with its powers under Section 15(1) of the NGT Act. The OA was being continuously heard by the Western Zone Bench of the NGT since August 2014, and it had already issued significant interim directions.

13 Hence, the issue before us is only whether the Principal Bench of the NGT correctly directed the appellants to now approach one of the Committees set up by it, rather than continue with the proceedings in the OA. To understand this, we must first consider the role of such committees which are set up by courts and tribunals alike.

14 It is first important to differentiate expert committees which are set by the courts/tribunals from those set up by the Government in exercise of executive powers or under a particular statute. The latter are set up due to their technical expertise in a given area, and their reports are, subject to judicially observed restraints, open to judicial review before courts when decisions are taken solely based upon them. The precedents of this court unanimously note that courts should be circumspect in rejecting

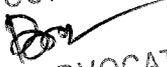
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the opinion of these committees, unless they find their decision to be manifestly arbitrary or *mala fide*⁸. On the other hand, courts/tribunals themselves set up expert committees on occasion. These committees are set up because the fact-finding exercise in many matters can be complex, technical and time-consuming, and may often require the committees to conduct field visits. These committees are set up with specific terms of reference outlining their mandate, and their reports have to conform to the mandate. Once these committees submit their final reports to the court/tribunal, it is open to the parties to object to them, which is then adjudicated upon. The role of these expert committees does not substitute the adjudicatory role of the court or tribunal. The role of an expert committee appointed by an adjudicatory forum is only to assist it in the exercise of adjudicatory functions by providing them better data and factual clarity, which is also open to challenge by all concerned parties. Allowing for objections to be raised and considered makes the process fair and participatory for all stakeholders.

15 Sections 14 and Section 15 entrust adjudicatory functions to the NGT. The NGT is a specialized body comprising of judicial and expert members. Judicial members bring to bear their experience in adjudicating cases. On the other hand, expert members bring into the decision-making process scientific knowledge on issues concerning the environment. In **Hanuman Laxman Aroskar v. Union of India**⁹, a two-Judge Bench of this Court noted that the NGT is an expert adjudicatory body on the

⁸ **Basavaiah (Dr.) v. Dr. H.L. Ramesh**, (2010) 8 SCC 372 (in relation to appointment in an academic institution); **State of Kerala v. RDS Project Ltd.**, (2020) 9 SCC 108 (in relation to safety of a flyover project)
⁹ (2019) 15 SCC 401

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environment. The Court held:

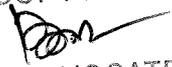
“133. The NGT Act provides for the constitution of a tribunal consisting both of judicial and expert members. The mix of judicial and technical members envisaged by the statute is for the reason that the Tribunal is called upon to consider questions which involve the application and assessment of science and its interface with the environment...”

134. NGT is an expert adjudicatory body on the environment.”

The NGT does not have a dearth of 'expertise' when it comes to the issues of environment.

16 Section 15 empowers the NGT to award compensation to the victims of pollution and for environmental damage, to provide for restitution of property which has been damaged and for the restitution of the environment. The NGT cannot abdicate its jurisdiction by entrusting these core adjudicatory functions to administrative expert committees. Expert committees may be appointed to assist the NGT in the performance of its task and as an adjunct to its fact-finding role. But adjudication under the statute is entrusted to the NGT and cannot be delegated to administrative authorities. Adjudicatory functions assigned to courts and tribunals cannot be hived off to administrative committees. In **Sanghar Zuber Ismail v. Ministry of Environment, Forests and Climate Change and Another**¹⁰, a three-Judge Bench of this Court noted that the NGT cannot refuse to hear a challenge to an Environmental Clearance under Section 16(h) of the NGT Act and delegate the process of adjudicating on compliance to

¹⁰ 2021 SCC OnLine SC 669

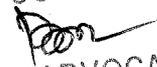
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an expert committee. The Court held:

"8...the NGT has not dealt with the substantive grounds of challenge in the exercise of its appellate jurisdiction. Constitution of an expert committee does not absolve the NGT of its duty to adjudicate. The adjudicatory function of the NGT cannot be assigned to committees, even expert committees. The decision has to be that of the NGT. The NGT has been constituted as an expert adjudicatory authority under an Act of Parliament. The discharge of its functions cannot be obviated by tasking committees to carry out a function which vests in the tribunal."

17 The NGT has in the present case abdicated its jurisdiction and entrusted judicial functions to an administrative expert committee. An expert committee may be able to assist the NGT, for instance, by carrying out a fact-finding exercise, but the adjudication has to be by the NGT. This is not a delegable function. Thus, the order impugned in the appeal cannot be sustained. The consequence of the impugned order is to efface the meticulous exercise which was carried out by the earlier Benches. Valuable time has been lost in the meantime and crucial issues pertaining to the environment in the present case have been placed on the back-burner.

18 Hence, we are of the view that it would be appropriate to set aside the impugned order and to restore OA No 81 of 2014 (WZ) to the file of the NGT. We accordingly allow the appeal and set aside the impugned order dated 28 September 2018. OA No 81 of 2014 (WZ) is restored to the file of the NGT. The NGT shall commence with the hearing of the proceedings from the stage which was arrived at before the impugned order dated 28 September 2018 was passed. Unfortunately, more than three years have

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passed in the meantime, a delay which could have been avoided had the NGT proceeded to adjudicate upon the issues which were raised before it.

19 This Court has not expressed any opinion on the merits of the issues which are raised before the NGT. The NGT will take an appropriate view and issue appropriate directions in continuation of the directions which hold the field, after hearing the parties.

20 The Court was apprised that the impugned order was passed by the Principal Bench since the Western Zone Bench of the NGT was not functioning at the relevant time. Hence, OA No 81 of 2014 (WZ) may now be heard by the Bench which is assigned with the requisite jurisdiction to hear the subject matter of the OA.

21 The appeal is accordingly allowed in the above terms.

22 Pending applications, if any, stand disposed of.

.....J.
[Dr Dhananjaya Y Chandrachud]

.....J.
[Bela M Trivedi]

New Delhi;
January 21, 2022
CKB

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ITEM NO.18

Court 4 (Video Conferencing)
S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

SECTION XVII

Civil Appeal No.1046/2019

KANTHA VIBHAG YUVA KOLI SAMAJ PARIVARTAN
TRUST & ORS.

Appellant(s)

VERSUS

THE STATE OF GUJARAT & ORS.

Respondent(s)

Date : 21-01-2022 This appeal was called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MS. JUSTICE BELA M. TRIVEDI

For Appellant(s) Ms. Shilpa Chohan, Adv.
Mr. Ssawahiq Siddique, Adv.
Dr. Pratyush Nandan, Adv.
Mr. Rajesh Singh, AOR

For Respondent(s) Ms. Aastha Mehta, Adv.
Ms. Deepanwita Priyanka, Adv.

Ms. Ruchi Kohli, AOR

Mr. Avijit Roy, AOR

Mr. Tejas Patel, AOR
Mr. Kaushal Pandya, Adv.

UPON hearing the counsel the Court made the following
O R D E R

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- 1 Admit.
- 2 The appeal is allowed in terms of the signed order.
- 3 Pending applications, if any, stand disposed of.

(CHETAN KUMAR)

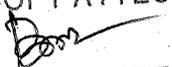
A.R. -cum-P.S.

(Signed Reportable Judgment is placed on the file)

(SAROJ KUMARI GAUR)

COURT MASTER

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