

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No.7672 of 2022

In the matter of an application under Articles 226 and 227 of the
Constitution of India.

Centre for Advance Research on *Petitioner*
Alternative Medicine (CARAM)

-versus-

State of Odisha and Ors. *Opposite Parties*

Advocates appeared in the case through Hybrid Mode:

For Petitioner : *Mr. Samvit Mohanty, Adv.*

For Opposite Parties. : *Mr. B.P. Tripathy, Adv.*
Mr. Ch. Satyajit Mishra, AGA

CORAM:

Dr. JUSTICE S.K. PANIGRAHI

DATE OF HEARING:-26.04.2023

DATE OF JUDGMENT: -03.07.2023

Dr. S.K. Panigrahi, J.

1. In this Writ Petition, the Petitioner has challenged the order No.750 dated 11.03.2022 passed by the Opposite Party No.4/Collector and District Magistrate, Nayagarh wherein the order No.218 dated 09.02.2021 passed by the Opposite Party No.3/ Chief District Medical and Public Health Officer, Nayagarh has been upheld disengaging the Petitioner and

blacklisting its engagement in the district of Nayagarh, and forfeiting the security money. The Petitioner/ NGO was also directed to refund the amount given as advance towards operation and management of Maa Gruha Projects at Khandapada and Dasapalla of Nayagarh.

I. FACTS OF THE CASE:

2. Shorn of unnecessary details, the facts of the case in brief, are that the Opposite Party No.2/ Mission Director, National Rural Health Mission (NHM), Odisha, Bhubaneswar with the approval of State NGO committee awarded contract in favour of the Petitioner's NGO CARAM for management of "Maa Gruha Project" in partnership mode at Daspalla and Khandapada in the district of Nayagarh vide letter dated 17.02.2020. An operational guideline was issued for management of "Maa Gruha Project", wherein the objectives, features, activities and reporting was enumerated. Based on the said guideline, the Petitioner was directed to manage the "Maa Gruha Project". Thereafter, one Memorandum of Understanding (MOU) was signed between the Opposite Party No.3 and the Petitioner on 6th March, 2020 and started its operation and management of "Maa Gruha Project" in Public-Private Partnership (PPP) model in Nayagarh District. The Petitioner managed the project by engaging local persons as per the guidelines issued by the Opposite Parties.

3. The job of the Petitioner is to keep pregnant women in “Maa Gruha” before their delivery and provide food, shelter and engage them in recreational activities. The Opposite Party No.2 vide letter dated 18.1.2021 issued show cause notice to the Petitioner for discrepancies/ violation of norms for operation and management of “Maa Gruha Project” in the district of Nayagarh. Based on the same, the Opposite Party No.3 issued letter No.99 dated 20.01.2021 calling upon the Petitioner to submit its reply on the allegation of mismanagement of “Maa Gruha Project”. On random cross verification of the admission discharge register, it was found therein that there are some discrepancies with regards to beneficiaries and the NGO has engaged students to work in the said organization. In response to the said letter, the Petitioner submitted show cause reply on 25.01.2021 which was duly received by Opposite Party No.3 on the same day. Without holding any inquiry far-less examining the Executive Director of the Petitioner's institution vide order No.218 dated 09.02.2018, the Opposite Party No.3 passed order for disengagement of the Petitioner with immediate effect and blacklisted the Petitioner for engagement in the district of Nayagarh, while also forfeiting the security money. In the said order, the Petitioner was also directed to refund the amount given as advance towards operation and management of “Maa Gruha Project” at Khandapada and Dasapalla of Nayagarah

District within one month. Said order was challenged before this Court in W.P.(C) No.8248 2021 which was disposed on 16.11.2021 with a direction to the Petitioner to file fresh representation and the authority to revisit the order. Pursuant to the order of this Court, the Petitioner submitted a representation alongwith the order dated 16.11.2021 passed by this Court passed in W.P.(C) No.8248 of 2021 as well as the copy of the judgment of the Supreme Court of India passed in *UMC Technologies Pvt. Ltd. vrs. Food Corporation of India*¹ before the authority. The Opposite Party No.3 vide letter dated 13.12.2021 requested the Petitioner to appear in person before the Opposite Party No.4 on 24.12.2021 at 11 A.M. at the Mini Conference Hall of Collectorate, Nayagarh. In response to the said letter, the Petitioner appeared before Opposite Party No.4 and explained the circumstances in support of his representation. However, the Opposite Party No.4/Collector and District Magistrate, Nayagarh passed the impugned order No.750 dated 11.03.2022 wherein the order No.218 dated 09.02.2021 passed by the Opposite Party No.3/ Chief District Medical and Public Health Officer, Nayagarh was upheld disengaging the Petitioner and blacklisting for engagement in the district of Nayagarh.

¹ AIR 2021 SC 166

II. SUBMISSIONS ADVANCED ON BEHALF OF THE PETITIONER:

4. Learned counsel for the Petitioner submitted as under:

- a. The Opposite Party No.4/Collector and District Magistrate, Nayagarh, without due application of mind to the representation of the Petitioner and by ignoring the dictum of the Supreme Court in *UMC Technologies Pvt. Ltd.* (supra) mechanically confirmed the order No.218 dated 09.02.2021 passed by the Opposite Party No.3/ Chief District Medical and Public Health Officer, Nayagarh vide order No.750 dated 11.03.2022.
- b. The show cause notice issued to the Petitioner did not spell out clearly in its contents that there is intention on the part of the issuer of the notice to blacklist the Petitioner. Therefore, the order of blacklisting is violative of the principle of natural justice.
- c. The impugned order does not disclose as to how long the Petitioner is blacklisted in the district of Nayagarh. Hence, the same is arbitrary and ambiguous. He further submitted that, the Opposite Party No.4 did not consider the submissions made in page-2 of the representation which is as follows-

“It is relevant to mention here that on getting the phone calls from Government authorities, the beneficiaries, on the fear of forcible isolation,

denied the fact that they were admitted and were taken care of at the appropriate time in the Maa Gruhas mentioned above. But the said aspect was never considered. Moreover, the beneficiaries were never examined in person. So far as employment of the students is concerned, the MoU does not stipulate that the students cannot be engaged in Maa Gruha Projects. Therefore, the order passed on dtd.09.02.21 has seriously prejudiced and defamed the under signed."

- d. Learned counsel for the Petitioner further submitted that the Petitioner was denied access to his records being illegally seized by the Opposite Parties. The said documents of the Petitioner could have proved the innocence of the Petitioner. The impugned order shows a pre-determined attitude of the authorities. A bare perusal of the impugned order would reveal its mechanical nature, as the grounds raised by the Petitioner in the representation were not dealt with while re-visiting the earlier order. In such view of the matter, learned counsel for the Petitioner submitted that the impugned order No.750 dated 11.03.2022 passed by the Opposite Party No.4/Collector and District Magistrate, Nayagarh be quashed.

III. SUBMISSIONS ON BEHALF OF THE OPP. PARTIES:

5. On the other hand, learned counsel for the Opposite Parties/ State submitted as under:

- a. The petitioner's NGO-Centre for Advanced Research on Alternative Medicine' (CARAM), Bhubaneswar was selected for management of Maa Gruha Projects in partnership mode at Dasapalla and Khandapada of Nayagarh District under "Sishu Abond Matru Mrityuhara Purna Nirakaran Abhijan (SAMMPurNA) programme" budget. Memorandum of Understanding (MoU) was signed on 06.03.2020 between the Zilla Swasthya Samiti, Nayagarh represented by the Opposite Party No.3/Chief District Medical and Public Health Officer, Nayagarh and the Executive Director, Centre for Advanced Research on Alternative Medicine (CARAM), Bhubaneswar.
- b. The State Level Official from NHM, Odisha visited the Maternity Waiting Home (MWH) (Maa Gruha) projects on 11.12.2020 operated at Khandapada and Dasapalla of Nayagarh district and the same are managed by the Petitioner NGO "CARAM". The following major discrepancies/violation of MoU were noticed:

"As per the admission register, it was found that at Khandapada MWH, total 167 pregnant women have been admitted since

operation of the project. However, random cross verification of the admission and discharge register shows that Smt. Anita Behera, W/o. Chhabi Behera, Vill- Chaupalli had never been to the Maa Gruha Project and she had directly visited the Hospital for delivery. Similarly, in another case, the husband replied that his wife had directly gone to Hospital for delivery instead of Maa Gruha. When the Maa Gruha staff were asked about the fact in the presence of Medical Officer (V/c), Khandapada, the Maa Gruha staff admitted that since August, 2020 only two pregnant women had been admitted in the Khandapada MWH and the reported figures are not correct.

In both the Maa Gruha projects, the NGO "CARAM" has engaged ongoing College Students as Lady Health Assistants (LHA) who are pursuing regular +2 course/ B.A. In case of Khandapada MWH, the NGO has engaged Laxmipriya Das, regular +2 student of Rani Sukadei Mahila Mahavidyalaya, Banki and Pujarani Rout, regular B.A student of Women's College, Khandapada. Similarly, in Daspalla MWH, one LHA (daughter of one ASHA) was also studying in B.A 1st year.

Such action on the part of the NGO "CARAM" indicates misappropriation of Government fund in the names of false beneficiaries since beginning of the project, fabrication and falsification of reports, violation

of MoU in engagement of manpower under the project and breach of contract which has affected the greater interest of the local community."

- c. The observation of the State team was communicated to the Opposite Party No.3 vide letter No.494 dated 18.01.2021 by the Opposite Party No.2.
- d. Keeping in view the above violation, show cause notice was issued to the Executive Director, M/s Centre for Advanced Research on Alternative Medicine, Bhubaneswar (Petitioner) by the Opposite Party No.3 vide letter No.99 dated 20.01.2021 to submit reply on such negligence within seven days.
- e. The Opposite Party No.3 had constituted an enquiry committee under the Chairmanship of the ADPHO (FW), Nayagarh vide Order No.102 dated 20.1.2021 for detailed enquiry into the matter. The enquiry Committee conducted detailed enquiry with prior intimation to the Petitioner and submitted report regarding irregularities/ discrepancies/ violation of norms for operation and Management of Maa Gruha Projects at Khandapada and Dasapalla of Nayagarh district by the NGO CARAM, Bhubaneswar.

f. From the detailed enquiry of the Committee Members at concerned project office, community level interaction with the recorded 14 beneficiaries (randomly selected from the Maa Gruha admission register), ASHA of concerned village and MPHW(F), it was revealed that:

“The NGO did not engage required staffs in the Maa Gruha with requisite qualification since the beginning of the project which was gross violation of the MoU in engagement of manpower under the project and breach of contract.

Total funds amounting of Rs.10,43,475/- (i.e. Rs.5,89,296/- in 1st installment and Rs.4,54,179/- in 2nd installment) was transferred to the bank account of the NGO CARAM for Maa Gruha Daspalla during 2020-21. Similarly, total funds amounting of Rs.10,43,475/- (i.e. Rs.5,89,296/- in 1st installment and Rs.4,54,179/- in 2nd installment) was transferred to the bank account of the NGO CARAM for Maa Gruha-Khandapada during 2020-21.

As per record, the NGO CARAM has submitted 89% UC of 1st installment released by District for Maa Gruha Daspalla and 100% Utilization Certificate of 1st installment released by the District for Maa Gruha-Khandapada. But from random field verification of the Maa Gruhas, it was observed

that names of the beneficiaries have been tampered. Actual staying period as per statement of the beneficiary, ASHA, MPHW(F) in most of the cases were found to be false which clearly indicates misappropriation of Government fund in the names of false beneficiaries since the beginning of the project, the fabrication and falsification of reports, in violation of MoU and breach of contract has affected the greater interest of the local community."

- g. The Opposite Party No.3 has issued show cause notice vide Letter No.99 dated 20.01.2021 for reply on the misappropriation and negligence within a period of seven days. The Petitioner has submitted reply vide letter No. 30/CARAM/BBSR, Dt.25.01.2021 which was found to be unsatisfactory because the Petitioner had failed to provide proper justification and proof that the Petitioner has not misappropriated Government fund in using the names of false beneficiaries since the beginning of the project, fabrication and falsification of reports, violation of MoU etc.
- h. Keeping in view the observation of the State Team, findings of the District level Enquiry Team and unsatisfactory reply of the Petitioner, the decision of Opposite Party No.4 Collector and DM-cum-Chairperson

of District NGO Committee, Nayagarh was obtained for disengagement of the NGO CARAM, declared the NGO CARAM as blacklisted for engagement in the district of Nayagarh and the security money deposited by the NGO CARAM for the two Maa Gruha Projects were forfeited. The NGO 'Centre for Advanced Research on Alternative Medicine', Bhubaneswar had been asked to refund the amount given as advance towards operation and management of Maa Gruha Projects at Khandapada and Dasapalla of Nayagarh district within one month.

- i. The Petitioner's institution was reminded vide letter No.935 dated 19.05.2021 to refund the advance amount towards operation and management of Maa Gruha Project at Khandapada and Dasapalla of Nayagarh District. But, the Petitioner's institution sent a legal notice on 22.05.2021 to intimating the Opposite Party No.4 that he is not empowered to ask for refund and warn to file contempt.
- j. The Clause No.10 of the MoU signed between the Petitioner and Opposite Party No.3 for operation of the two projects states that, *"xx xx xx Failure to comply with terms and condition, the ZSS may withhold, suspend, reduce or cancel the contribution in the event that NGO/RKS fails to comply with the terms and conditions of the Memorandum of Understanding"*.. Similarly, the District Collectors have

been authorized by NHM, Odisha to withdraw the partnership with the NGOS managing health projects in PPP mode in the event of establishment of financial irregularity and serious dislocation in running the project vide letter No.OSH & FWS/PPP/4156/2016 Dated 02.04.2016 communicated to all the Collector and DMs, Odisha.

- k. This Court vide order dated 16.11.2021 passed in W.P.(C) No 8248 of 2021 has passed the following orders:-

“ xxx xxx xxx xxx. It does appear some reasons have been given in impugned order. Show cause dated 20 January, 2021 contain information obtained regarding staff engaged by petitioner. Some allegations are that information tendered was incorrect and college going students engaged as health assistants. By impugned order more particulars have been given substantiating the allegations made. In addition, details about funds disbursed also have been given. In the circumstances, petitioner will be at liberty to make a representation dealing with the details given in impugned order, to the authority. Such representation is to be made within two weeks from date. In event it is made, the authority will revisit impugned order and either reiterates with reference to the representation or modify it. xxx”

1. Accordingly, the Petitioner NGO was called upon to appear before the Opposite Party No.4 i.e. the Collector

and District Magistrate, Nayagarh for hearing of the representation. He was given a fair chance to participate on the grievances to prove the innocence of the NGO, but the Executive Director, CARAM failed to counter the discrepancies found by the State team and District level inquiry team regarding beneficiaries who had supposedly availed the services at Maa Gruha project. The staff of the respective Maa Gruhas on the date of inspection and during hearing of the Executive Director were not able to counter the discrepancies regarding reporting of the particular expectant mother beneficiaries, concerning their admission, accommodation facilities availed and provision of food for them/escorts and discharge at the respective Maa Gruhas. Accordingly, the Opposite Party No.4/Collector and DM, Naygarh has passed the Order No.750 dated 11.03.2022 disposing of the representation of the Petitioner and complied the order dated 16.11.2021 passed by this Court in W.P.(C) No.8248 of 2021.

m. The act of the Petitioner has resulted in misappropriation of Government fund in the names of false beneficiaries since inception of the project, fabrication and falsification of reports, violation of MoU in engagement of manpower under the projects and breach of contract has affected the

greater interest of the local community which are clearly spelt out in the show cause notice.

- n. The said agency has not been blacklisted for the entire Government programme of the State. Rather, the agency is restricted to Nayagrh District only.
- o. The Executive Director present on the date of hearing was unable to justify with proper proof thereof on the allegations leveled against the NGO. Hence, it is not a fact that the submission has not been considered. Rather, the allegation is proved as found from examination of the beneficiaries and the interaction with the staff of the NGO.
- p. No record was illegally seized. Further, the Petitioner agency has, at no point of time, requested to access the same. Rather, the Petitioner has gone through it during personal appearance before the Opposite Party No.4 and unable to counter the discrepancies pointed out as follows:
As per the Maa Gruha operational guidelines attached to the writ petition, specific qualification has been mentioned for engagement of different category of manpower under the project including Lady Health Assistant (LHA) in the Maa Gruha Projects. In case of both the Maa Gruha Projects at Khandapada and Dasapalla, the NGO CARAM has violated the conditions and engaged ongoing College Students as Lady Health Assistants (LHA) as in case of

Laxmipriya Das, +2 student of Rani Sukadei Mahila Mahavidyalaya, Banki and Pujarani Rout, BA student of women's college, Khandapada for Khandapada Maa Gurha Project. Similarly, in Daspalla MWH, one LHA (daughter of one ASHA) was also regular student of B.A 1st year.

- q. The CDM and PHO, Nayagarh being the Member Secretary of Zilla Swasthya Samiti, Nayagarh reserves the right to issue necessary correspondence with due approval of the Collector and Chairperson of District NGO Committee with regards to the projects managed by any NGO in the District. As the DM and Collector has been authorized by NHM, Odisha to take decision vide letter No.4156 dated 02.04.2016. In this matter, the decision of Collector and Chairperson of District NGO Committee has been communicated to the Petitioner by the Opposite Party No.3.
- r. The Petitioner was given seven days time to submit reply on the show cause notice issued by the Opposite Party No.3 vide Letter No.99 dated 20.01.2021. In reply the Petitioner vide Letter No.30 dated 25.1.2021 has submitted compliance, which was found unsatisfactory. Further inquiry was also conducted by a District Level Committee headed by ADPHO(FW) on 22.01.2021 and 25.01.2021 at

Dasapalla and Khandapada Maa Gruha respectively. The Petitioner was informed regarding the inquiry by the Committee vide memo No.102 dated 20.01.2021.

- s. The Petitioner NGO CARAM has been declared blacklisted for Nayagarh district by the Collector and Chairperson of District NGO Committee, Nayagarh. The District Collectors have been authorized by NHM, Odisha to take decision with regard to withdrawal of partnerships with the NGOs managing health projects in PPP mode in the District vide Letter No.OSH&FWS/PPP/4156/2016, dated 02.04.2016.
- t. With reference to the enquiry report of the District Level Committee and provisions made in Clause Nos.10 and 12 of MoU document, the decision taken by the Collector and Chairperson of District NGO Committee, Nayagarh and subsequent communication of the decision by the Opposite Party No.3 has relevance.
- u. It is further submitted that in the meantime new Agency has been selected through re-advertisement for continuation of service delivery for the expectant pregnant women in both the vacant locations i.e Khandapada and Dasapalla. For rolling out of the above two projects in partnership with the newly selected Agency, MoU has been signed between ZSS, Nayagarh and new Agency on

10.05.2022. In such view of the matter, learned counsel for the State submitted that the Writ Petition is devoid of merit and is liable to be dismissed.

IV. CONCLUSION AND ORDER:

6. Heard the parties. The right to enter into a contract forms an essential part of private laws which enables an individual or partners or company to enter into a contract that governs the business relation. It also allows the parties to fix the terms and conditions of the contract. Similarly, Article 298 of the Constitution of India, empowers the Government to enter into a contract for trade or business and frames laws that give effect to such contracts. It allows the executive to frame laws governing such Government contracts. In the past, the Government has often used its power under Article 298 of the Constitution of India for allocating tenders via public-private partnerships to different companies. No employer would normally sever legal relationship unless so compelled by circumstances as it also involves its reputation. That apart, the power to blacklist a contractor, whether it is a contract for supply of material or equipment or for the execution of any other work whatsoever, is in our opinion inherent to the party allotting the contract. In fact, 'blacklisting' simply signifies a business decision by which the party affected by the breach decides not to enter into any

contractual relationship with the party committing the breach. Between two private parties the right to take any such decision is absolute and untrammelled by any constraints whatsoever. But, in the instant case, the employer is Government and the importance of procedural fairness cannot be undermined. backlisting has been explained in Random House Dictionary, English Language (Unabridged edition), p. 154:

“Blacklist means a list of persons under suspicion, disfavor, censure; a list privately engaged among employers containing the names of persons to be debarred from employment because of untrustworthiness or for holding opinions considered undesirable; a list drawn up by a labour union containing the name of employees to be boycotted for unfair labour practices”

7. It is true that blacklisting affects the reputation of a person put on the blacklist, it is not limited to his dealings with the Government but also in dealings with private firms and amounts to affecting his business prospects. A blacklist order leads to civil consequences. Such an order must not be passed by any authority without affording due opportunity of being heard to the person likely to be affected by such an order.
8. In other jurisdictions like in USA and UK, the legal position governing blacklisting of suppliers is no different. In USA, instead of using the expression 'Blacklisting', the term "debarring" is used by the Statutes and the Courts. The Federal

Government considers 'suspension and debarment' as a powerful tool for protecting taxpayer resources and maintaining integrity of the processes for federal acquisitions. Comprehensive guidelines are, therefore, issued by the Government for protecting public interest from those contractors and recipients who are non-responsible, lack business integrity or engage in dishonest or illegal conduct or are otherwise unable to perform satisfactorily.

9. It is an undenying fact that the authority must act in fairness while putting a person in the blacklist. The principles of natural justice are attracted in case a person is to be deprived of entering into business relationship, particularly so when such a person has reasonable expectation of making a gainful contract with the Government. The Government or instrumentalities of State are under a constitutional obligation not to discriminate. They owe a duty towards citizens to act fairly, without fear or favour. If the State unfairly puts a party on blacklist, it will amount to denial of an equal opportunity of being able to compete with his adversaries. Blacklisting any person would mean deprivation of an equal opportunity of competing with others. Thus, where valuable rights are sought to be taken away by the Government in depriving of a person dealing with it, the writ Courts cannot act as mere spectator and shall intervene to do justice to the aggrieved party. Another aspect of putting a party on blacklist is

the stigma attached with it, besides depriving him of rightful gains which he would have made from the contract had he not been put on blacklist. A situation may arise when the party put on blacklist from executing the contracts in hand. In such a case, it not only puts a stigma on the contractor but also affects his civil rights. Further, plethora of judgments of the apex Court and High Courts have unequivocally resonated and reminded the employers that blacklisting the contractor cannot be for an indefinite period. The order by which a contractor is blacklisted must mention the period for which he is put on the blacklist because blacklisting cannot debar a party forever as a registered contractor.

10. Reliance may be placed on *Ms. Ponniah & Co. vs Superintending Engineer*². The Hon'ble Supreme Court in *VET India Pharamaceuticals Limited Vs. State of Uttar Pradesh & Another*³ has observed that an order of blacklisting operates to the prejudice of a commercial person not only "*in praesenti*", but also puts a taint, which attaches far beyond and may well spell the death knell of the organization/institution for all times to come described as a civil death. Such observations of the apex Court fairly describe the effect of the impugned order on the

² AIR 2006 NOC 1515 (Mad)

³ (2021) 1 SCC 804

petitioner. It has been argued on behalf of the State that the principles of natural justice have been fully complied with, as a show cause notice was issued to the writ petitioner and therefore an opportunity could be said to have been given to the petitioner to put forward its case before the final decision was taken. However, we need to address ourselves on the doctrine of proportionality as also the contents of the show cause notice. It is also well settled that the High Court, while exercising power of judicial review, would be reluctant to substitute its own opinion on the quantum of penalty or punishment imposed. However, if the High Court finds the punishment as imposed shockingly disproportionate the interference with the same would be warranted even if it is a contractual dispute.

11. Although the "Doctrine of Proportionality" has been dealt with as a part of the Wednesbury's principle, the Courts have adopted a different position when it comes to the judicial intervention in terms of judicial review. It has been held that the principle entails the reasonableness test with a heightened scrutiny. In other words, to apply this doctrine, not only the decisions have to be within the limits of reasonableness, but only, there has to be a balance between the advantage and disadvantage in the outcome that has been achieved through the administrative action. Therefore, the extent of judicial review is

more intense and greater on account of "proportionality" test than the 'reasonableness' test. Further, the apex Court, while applying the rule of proportionality, must think about the public and individual interest in the matter which is not done while applying the Wednesbury's principle of unreasonableness. In *Gohil Vishvaraj Hanubhai and Ors. v. State of Gujarat and Ors*⁴ it is held in paragraphs 24 to 27 thus:

"24. The next question is whether the impugned decision could be sustained judged in the light of the principles of 'Wednesbury unreasonableness'. In the language of Lord Diplock, the principle is that "a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it". Having regard to the nature of the allegations and the prima facie proof indicating the possibility of occurrence of large scale tampering with the examination process which led to the impugned action, it cannot be said that the impugned action of the respondent is "so outrageous in its defiance of logic" or "moral standards". Therefore, the 2nd submission of the appellant is also required to be rejected.

25. We are left with the 3rd question – whether the magnitude of the impugned action is so disproportionate to the mischief sought to be addressed by the respondents that the cancellation of the entire examination process affecting lakhs of

⁴(2017)13 SCC 621

candidates cannot be justified on the basis of doctrine of proportionality.

26. The doctrine of proportionality, its origin and its application both in the context of legislative and administrative action was considered in some detail by this Court in Om Kumar & Others v. Union of India, (2001) 2 SCC 386.

This Court drew a distinction between administrative action which affects fundamental freedoms[10] under Articles 19(1) and 21 and administrative action which is violative of Article 14 of the Constitution of India. This Court held that in the context of the violation of fundamental freedoms;

"54. the proportionality of administrative action affecting the freedoms under Article 19(1) or Article 21 has been tested by the courts as a primary reviewing authority and not on the basis of Wednesbury principles. It may be that the courts did not call this proportionality but it really was.

This Court, thereafter took note of the fact that the Supreme Court of Israel recognised proportionality as a separate ground in administrative law to be different from unreasonableness.

27. It is nobody's case before us that the impugned action is violative of any of the fundamental freedoms of the appellants. We are called upon to examine the proportionality of the administrative action only on the ground of violation of Article 14. It is therefore necessary to examine the principles laid down by this Court in this regard.

Xx xx xx xx"

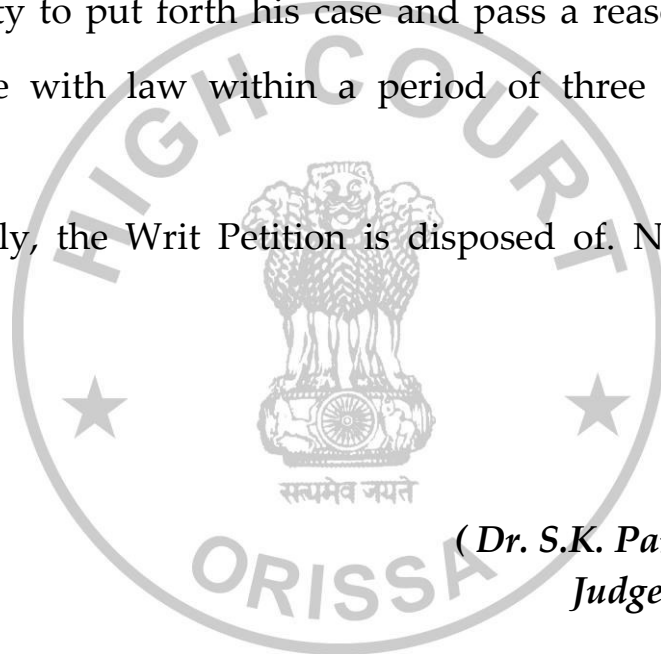
12. It is also well settled that even though the right of the writ petitioner is in the nature of a contractual right, the manner, the method and the motive behind the decision of the authority whether or not to enter into a contract is subject to judicial review on the touchstone of fairness, relevance, natural justice, non-discrimination, equality and proportionality. All these considerations that go to determine whether the action is sustainable in law have been sanctified by judicial pronouncements of the Supreme Court and this Court which are of seminal importance in a system that is committed to the rule of law. A fair hearing to the party being blacklisted thus becomes an essential pre-condition for a proper exercise of the power and a valid order of blacklisting. In addition, the State has to examine the principle of proportionality while examining the instant case since the blacklisting period is not specified.

13. Thus, having regard to the aforesaid discussion, we have reached to the conclusion that the decision of the State to blacklist the petitioner has been done in a hush hush manner without giving a proper hearing. Further, the application of the doctrine of proportionality has not been kept in mind in proper perspective while awarding a punitive measure like blacklisting without a period specified in the impugned order. In addition, there seems to be violation of codal procedures, in so far as

procedural formalities are concerned. In the result, this writ petition succeeds to the extent that the impugned order of blacklisting the Petitioner deserves a revisiting by the State authority.

14. In the light of the above discussion, the impugned order is quashed. The Opposite Party No.4 is directed to re-examine the entire issue in proper perspective by giving the Petitioner an opportunity to put forth his case and pass a reasoned order in accordance with law within a period of three months from today.

15. Accordingly, the Writ Petition is disposed of. No order as to costs.



(Dr. S.K. Panigrahi)
Judge

*Orissa High Court, Cuttack,
Dated the 3rd July, 2023/B. Jhankar*