

Before S. S. Sandhwalia C.J. and S. S. Sodhi, J.  
PUNNU TOURIST SERVICE (P) LTD.,—Petitioner.

versus

THE HOME SECRETARY, CHANDIGARH ADMN.,  
CHANDIGARH,—Respondent.

Civil Writ Petition No. 4101 of 1982.

April 6, 1983.

*Constitution of India 1950—Articles 14 and 226—Transport companies and booking agencies black-listed from entering into any transactions with Chandigarh Administration—No opportunity of hearing afforded before black-listing these parties—Principles of natural justice—Whether violated—Order of black-listing—Whether liable to be quashed.*

*Held, that the black-listing order involves civil consequences. It casts a slur. It creates a barrier between the persons black-listed and the Government in the matter of transactions. The black-lists are instruments of coercion. Black-listing has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for the purposes of gains. The fact that a disability is created by the order of black-listing 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 black-list. Where an order is passed without any such opportunity being afforded, it must be held to be contrary to law and is accordingly liable to be quashed.*

(Paras 9, 10 and 13).

*Petition under Article 226 of the Constitution of India, praying that the Hon'ble Court may be pleased to issue a Writ in the nature of Mandamus, Certiorari, order or direction to the Home Secretary Chandigarh Administration to delete the name of the petitioner contained at No. 9 in the impugned order/Memo 'Annexure 'P-1'.*

*It is further prayed that the Petitioner may kindly be exempted from serving the notice to the respondent and also from filing the certified copy of Annexure P-1.*

*It is further prayed that during the pendency of the Writ Petition the operation of the impugned memo/Order Annexure P-1 may kindly be stayed and the respondent directed not to enforce it.*

*It is yet further prayed that any other relief which this Hon'ble Court thinks fit in the circumstances of the case may also be granted. The costs of the petition may be granted to the petitioner.*

R. C. Dogra, Advocate with S. S. Chopra, Advocate, for the  
Petitioner.

M. R. Agnihotri, Sr. Advocate with Anil Seth and O. P. Goyal,  
Advocates,—for Respondents.

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### JUDGMENT

S. S. SODHI, J.

(1) On August 30, 1982 the Home Secretary of the Union Territory, Chandigarh issued an order (Annexure P/1) to all heads of departments and offices of the Chandigarh Administration, that no receipt issued by any of the transport companies or booking agencies mentioned therein be entertained particularly in the matter of payments to employees in respect of leave travel concession claims, as the Administration had decided to blacklist such transport companies and booking agencies from entering into any transactions with the Chandigarh Administration or any of its subordinate offices for a period of five years. Amongst the transport companies, mentioned in this order, were the petitioner—Punnu Tourist Service (P) Limited and the Sai Yatra (Registered) Chandigarh.

(2) Petitions under Article 226 of the Constitution were filed by both the Punnu Tourist Service (P) Ltd., as also Sai Yatra (Registered) seeking to challenge thereby the order of the Home Secretary (Annexure P/1). The petition filed by the former, being the one referred to above, while that of Sai Yatra (Registered) being Civil Writ No. 4100 of 1982. This order will dispose of both these Writ Petitions as common questions were raised therein and they were consequently heard together.

(3) According to the petitioners their black-listing by the impugned order (Annexure P/1) involved civil consequences, in that they were thereby deprived the advantage and privilege of entering into lawful business transactions with the Chandigarh Administration, its subordinate offices and employees. Besides it also adversely effected their good name creating a slur on their reputation. This order of the Home Secretary, it was pleaded, was violative of the provisions of Article 14 of the Constitution of India as also the Rules of natural justice, in that no opportunity was afforded to them of being heard before the impugned order was passed which was therefore, contrary to law. The relief thus claimed was the quashing of this order of the Home Secretary.

(4) The stand taken by the Home Secretary, of the Union Territory of Chandigarh in the return filed in this case was that

the impugned order was purely an administrative matter to regulate leave travel concession to government servants under a non-statutory scheme. The liberalisation of this concession to cover journeys by chartered buses had brought in its train wide spread misuse. Intelligence collected by the Chandigarh Administration in October, 1980 revealed that bogus and fictitious receipts worth lacs of rupees were issued by the transport booking agencies within and outside the Union Territory of Chandigarh. Without arranging any actual tour by chartered bus, receipts were being issued by such agencies by charging only 20 to 30 per cent of the face value of such receipts. Claims for about Rs. 75,000 per month on account of leave travel concession were put in till August, 1980, but upon the unearthing of the scandal, the claim came down to only Rs. 1500 per month from September 1980. Expediency thus required an immediate halt to the misuse of the concession and the black-listing of the booking agencies concerned was considered the desirable course to adopt. The impugned instructions were accordingly issued for the guidance of the departments and the offices. These instructions were to safe-guard the State exchequer and no legal right of the petitioners had thus been infringed and consequently the petitioners were not entitled to invoke the extra jurisdiction of this Court.

(5) It was also stated in the return that the petitioner-company namely, the Punnu Tourist Service (P) Limited was duly heard before the impugned order was issued by the Home Secretary.

(6) Further again, in the case of Punnu Tourist Service (P) Limited, it was stated that in an enquiry into the leave travel concession claims made by four employees of the government press, some receipts issued by this company were considered by the Home Secretary. In this enquiry, it was shown that no list of passengers had been filed as was required while applying for a special permit for the journey from Chandigarh to Kanya Kumari. In addition, the permits attached with the leave travel concession claims of the employee concerned, bore the rubber stamps of only two check-posts in the State of Haryana namely Kundli and Dhulkot; whereas the photostat copies of the permits produced by this Company also bore endorsements of various check-posts in Madhya Pradesh. There were, however, no endorsements thereon relating to the States of Kerala or Tamil Nadu. The petitioners were duly confronted with this matter, but they did not cooperate in the probe

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into the matter. It was stated that even the names and addresses of the tourist guide, driver and conductor of the bus concerned employed by them were not disclosed.

(7) The return filed in the Writ Petition filed by Sai Yatra (Registered) was also to the same effect except that in this case no plea was raised that any hearing had been granted before the impugned order was passed.

(8) The plea of the respondent Home Secretary of a hearing having been granted to the Punnu Tourist Service (P) Limited was vehemently challenged by Mr. R. C. Dogra counsel for the petitioners. He adverted in this behalf to Annexures R/5 and R/6 to the written statement filed by the Home Secretary and rightly pointed out that a reading of these documents would show that the petitioners had been called only with regard to the enquiry into the claims of the leave travel concession by the four employees of the government press. Mr. M. R. Agnihotri, appearing for the respondents could point to no other material to substantiate the plea raised in the written statement regarding the hearing granted to the petitioners before the passing of the impugned order. It must be taken as established therefore that neither of the petitioners were afforded any opportunity of being heard in the matter prior to the passing of the impugned order.

(9) The matter relating to black-listing came up for consideration before the Supreme Court in *M/S Erusian Equipment and Chemicals Limited v. State of West Bengal and anothers*, (1), where it was observed "The black-listing order involves civil consequences. It casts a slur. It creates a barrier between the persons black-listed and the Government in the matter of transactions. The black-lists are 'Instruments of coercion.'"

(10) It was further observed "black-listing has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for puposes of gains. The fact that a disability is created by the order of black-listing 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 black-list."

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(1) AIR 1975 S.C. 266.

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(11) *The Erusian Equipment's case* (supra) was followed and approved by the Supreme Court in the subsequent case of *Joseph Vilangandan v. The Executive Engineer (P.W.D.) Ernakulam and others*, (2).

(12) Mr. M. R. Agnihotri appearing for the respondent sought to draw a distinction in the present case from the two authorities of the Supreme Court referred to above by adverting to the fact that this was not a case where any tenders had been invited by the Chandigarh Administration or any list of approved transport companies had been prepared from which the petitioners were sought to be excluded. This, it was contended, was merely the case of Chandigarh Administration making a choice, like any other individuals of deciding whom to deal with.

(13) In the face of clear language expressed in the binding precedent of the Supreme Court in the authorities referred to above no such distinction, as was sought to be drawn by the counsel for the respondents in the present case to take it out of the ambit and scope of the principles set out therein can be sustained. The matter must now be taken to be well settled that if the Government decides to black-list any company or firm, the person concerned must be given an opportunity to represent against it before such an order is passed. The impugned order thus having been passed without any such opportunity being afforded to the petitioners cannot, but be held to be contrary to law and is accordingly hereby quashed. Both these Writ Petitions are thus accepted. In the circumstances, however, there will be no order as to costs.

S. S. Sandhawalia, C.J.—I agree.

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N. K. S.