

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 5153 OF 2014
WITH
CIVIL APPLICATION NO.2313 OF 2014
AND
CIVIL APPLICATION NO.364 OF 2016**

M/s. Pace Systems, Beed .. Petitioner

V/s.

The State of Maharashtra & Ors. .. Respondent

.....
Mr. Jagdish G. Reddy (Aradwad), Advocate for the Petitioner in
W.p.5153 of 2014 and for the applicant in CA 364 of 2016.
Mrs. M. P. Thakur, AGP for Respondent Nos.1 to 4.

.....

**CORAM : A.S. OKA AND
C.V. BHADANG, JJ.**

DATED : FEBRUARY 10, 2016.

P.C.

Heard the learned counsel appearing for the petitioner and the learned AGP for the first to fourth respondents. The substantive challenge in this petition is to the order dated 24th September, 2013 passed by the District Collector of Solapur. By the said order the contract granted to the petitioner on 10th December, 2010 was terminated. A direction was issued to black list the petitioner.

2 As far as the challenge to the order of termination of the contract is concerned, the period of contract is already over. Therefore, in this writ petition under Article 226 of the Constitution of India, the said issue need not be gone into. If the petitioner has any claim for compensation/damages, it is for him to adopt appropriate remedy in that behalf.

3 As far as the order of black listing is concerned, the petitioner has specifically contended in the petition and in particular ground (iii) in paragraph 82 that the petitioner was never given any show cause notice calling upon him to show cause as to why action of blacklisting should not be taken against him. In the reply filed by Vijaysingh Shankarrao Deshmukh, the Residential Deputy Collector, Solapur which is dated 11th June, 2014, no case is made out that any specific show cause notice was served to the petitioner calling upon him to show cause as to why he should not be blacklisted.

4 As far as the law on the aspect of action of black listing is concerned, is well settled. There are several decisions of the Apex Court dealing with the said aspect. The last of such

decision is in the case of ***Gorkha Security Services V/s. Government (NCT of Delhi) & Ors***¹. It will be necessary to make a reference to paragraphs 16 and 17 of the said decision. Paragraph 16 reads thus:

“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.”

(Underline supplied)

In paragraph 17, the Apex Court relied upon its earlier decisions and held that drastic action of blacklisting against a contractor cannot be taken without giving an opportunity of being heard after service of show notice.

¹ (2014) 9 SCC 105

5 We have perused the impugned order. Even in the impugned order, the Collector has not stated that any such show-cause notice was issued to the petitioner. No such show-cause notice has been produced by the first to third respondents. Therefore, the action of blacklisting is completely illegal being in breach of the principles of natural justice. To that extent, the petition must succeed and we pass the following order:

:: ORDER ::

(i) The challenge to the impugned order dated 24th September, 2013 as far as termination of contract is concerned, is not entertained as the period of the contract is already over. However, it will be open for the petitioner to adopt appropriate remedy in accordance with the law, as far as monetary claim, if any, is concerned. All contentions of the parties in that behalf are kept open;

(ii) Clause (c) of the operative part of the impugned order dated 24th September, 2013 in relation to blacklisting of the petitioner is hereby quashed and set aside;

(iii) this order will not preclude the first to third respondents from initiating an action against the petitioner for blacklisting. However, before taking any action, the said respondents will have to follow the principle of natural justice. After issuing show-cause notice, an opportunity of being heard will have to be granted to the petitioner;

(iv) we make it clear that we have not considered the merits of the allegations of breaches committed by the petitioner. All the contentions of the parties in that behalf are kept open;

(v) Rule is made partly absolute on the above terms;

(vi) Civil Application Nos. 2313 of 2014 and 364 of 2016 do not survive and the same are disposed of accordingly.

(C. V. BHADANG, J.)

(A.S. OKA, J.)