

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 134 OF 2016

Vachanram Purohit .. Petitioner
Vs.
Municipal Corporation of Greater Mumbai .. Respondent

WITH

WRIT PETITION NO. 135 OF 2016

Bhupendra Rajpurohit .. Petitioner
Vs.
Municipal Corporation of Greater Mumbai .. Respondent

WITH

WRIT PETITION NO. 136 OF 2016

Chetan Trivedi .. Petitioner
Vs.
Municipal Corporation of Greater Mumbai .. Respondent

WITH

WRIT PETITION NO. 138 OF 2016

Tusshar Munoat .. Petitioner
Vs.
Municipal Corporation of Greater Mumbai .. Respondent

WITH

WRIT PETITION NO. 140 OF 2016

M/s.Munech Infraprojects .. Petitioner
Vs.
Municipal Corporation of Greater Mumbai .. Respondent

WITH

WRIT PETITION NO. 143 OF 2016

Ishwarsingh C.Rathod .. Petitioner
Vs.
Municipal Corporation of Greater Mumbai .. Respondent

WITH

WRIT PETITION NO. 144 OF 2016

Sujit Shah, Sole proprietor of M/s.Yashi
Constructions .. Petitioner
Vs.
Municipal Corporation of Greater Mumbai .. Respondent

WITH

WRIT PETITION NO.151 OF 2016

Sundeeep Vatnani .. Petitioner
Vs.
Municipal Corporation of Greater Mumbai .. Respondent

WITH

WRIT PETITION NO.158 OF 2016

Jethmal M.Mistry .. Petitioner
Vs.
Municipal Corporation of Greater Mumbai .. Respondent

WITH

WRIT PETITION NO.164 OF 2016

Vachanram Sutar .. Petitioner
Vs.
Municipal Corporation of Greater Mumbai .. Respondent

WITH

WRIT PETITION NO.250 OF 2016

Rajaram Parmar .. Petitioner
Vs.
Municipal Corporation of Greater Mumbai .. Respondent

WITH

WRIT PETITION NO.252 OF 2016

Rakesh Shah .. Petitioner
Vs.
Municipal Corporation of Greater Mumbai .. Respondent

WITH

WRIT PETITION NO.274 OF 2016

Hitesh Nethilal Chaudhary and ors. .. Petitioners
Vs.
Municipal Corporation of Greater Mumbai .. Respondent

WITH

WRIT PETITION NO.306 OF 2016

Vagatsingh Kabawat .. Petitioner
Vs.
Municipal Corporation of Greater Mumbai .. Respondent

WITH

WRIT PETITION NO.307 OF 2016

Natwar Mehta .. Petitioner
Vs.
Municipal Corporation of Greater Mumbai .. Respondent

WITH

WRIT PETITION NO.308 OF 2016

Mangal K.Purohit .. Petitioner
Vs.
Municipal Corporation of Greater Mumbai .. Respondent

WITH

WRIT PETITION NO.310 OF 2016

Pravin Sonaji Rajgor .. Petitioner
Vs.
Municipal Corporation of Greater Mumbai .. Respondent

WITH

WRIT PETITION NO.315 OF 2016

Bhagwanram Choudhary .. Petitioner
Vs.
Municipal Corporation of Greater Mumbai .. Respondent

WITH

WRIT PETITION NO.316 OF 2016

Kaluram Purohit .. Petitioner
Vs.
Municipal Corporation of Greater Mumbai .. Respondent

Mr.Abhijeet Marathe, for the Petitioners.
Mr.A.Y.Sakhare, Senior Counsel a/w Mr.Joel Carlos and
Ms.Geeta Joglekar, for B.M.C.

**CORAM : V. M. KANADE &
M.S.KARNIK, JJ.
DATE : 22nd APRIL, 2016**

P.C. :

1. Heard.

2. The petitioners are the civil works contractors and have completed several contracts entrusted to them by the Mumbai Municipal Corporation. According to the petitioners, they have submitted their bids for tenders in 'K'/East ward. However, they were informed that the Corporation has given a direction to lock the user ids of number of contractors. It is the case of the petitioners that when they made an enquiry with the concerned ward office of the Corporation, they were informed that user ids were blocked in view of the directions given by the Deputy Municipal Commissioner (Z-1). They were also informed that petitioners were black listed by the Corporation. Aggrieved by the said action, the petitioners have filed these Petitions. The petitioners are seeking an appropriate writ, order and direction for setting aside black listing of the petitioners under the circulars dated 08/10/2014, 20/11/2014 and 09/12/2014.

3. The learned Counsel appearing on behalf of the petitioners submitted that the said order is expressly bad and illegal since neither show cause notice was given or enquiry was made nor they were given a personal hearing by the Corporation. He submitted that the order of black listing is violative of principles of natural justice and therefore, the same is liable to be quashed and set aside. He submitted that 3 Petitions were filed by 3 contractors who were black listed and their Writ Petitions were allowed by the Division Bench of this Court by order dated 04/03/2015. He invited our attention to the order passed by the Division Bench of this Court dated 04/03/2015 in Writ Petition (L) No.465 of 2015. He submitted that, in fact, these circulars were withdrawn by the Corporation by issuing a fresh circular dated 27/03/2015. He submitted that in spite of withdrawal of the said circulars, the Corporation was still blocking their user ids. He submitted that the Corporation may be given a direction not to block

their user ids and permit them to offer their bids. In support of his submissions, he placed reliance on the following decisions of the Apex Court.

- i) M/s.Erusian Equipment & Chemicals Ltd. Vs. State of West Bengal and another, (1975) 1 Supreme Court Cases 70.
- ii) Gorkha Security Services Vs. Government (NCT of Delhi) and others, (2014) 9 Supreme Court Cases, 105.

4. Mr.Sakhare, learned Senior Counsel appearing on behalf of the respondent submitted that the order dated 04/03/2015 was passed only qua petitioner in the said Petitions. He invited our attention to the order dated 27/10/2015 passed by the Division Bench of this Court in Writ Petition (L) No. 2882 of 2015 in which in paragraph 2 of the order, the Division Bench of this Court has observed that order of setting aside the black listing was passed qua petitioner in the Writ Petition.

5. He submitted that the Corporation was ready to give hearing to the petitioners and the process of giving hearing would be completed within a period of 8 weeks.

6. He submitted that post decisional hearing can be given in certain cases. He submitted that the Division Bench of this Court in **Writ Petition No. 569 of 2013 in case of Paras V. Mehta Vs. Mumbai Municipal Corporation and others decided on 23/08/2013** had, almost in similar circumstances, permitted post decisional hearing to be given to the petitioner in the said case. He submitted that in the said case also, by way of interim measure, certain contractors were black listed and show cause notice was issued to the petitioner in the said case and enquiry was held thereafter. He submitted that the Division Bench of this Court had observed that it was open for the Corporation by way of interim measure to suspend the registration of a contractor in public interest and

thereafter, hold an enquiry.

7. He invited our attention to the affidavit-in-reply filed by the respondent. He submitted that so far as circular dated 27/03/2015 is concerned, the said circular was issued by the City Engineer, Secretary, Registration Committee and the Director, ES & P, Chairman Registration Committee and not by the Municipal Commissioner and an enquiry therefore, was being held against those officials who were responsible for issuing the said circular of withdrawing the black listing of contractors.

8. He submitted that it was noticed by the Municipal Commissioner that number of contractors were, without completing any work, receiving money which they were not entitled to and there was a large scale fraud committed by these contractors in connivance with municipal employees. He submitted that in these

circumstances, the Municipal Commissioner was constrained to issue these circulars of black listing. He submitted that the petitioners had approached this Court almost after 10 months. He submitted that the Petitions were filed on 19/10/2015 and the last circular of black listing of contractors was issued on 09/12/2014. He submitted that almost after 10 months these Petitions were filed and no explanation was given in the Petitions for the delay caused in filing the Petitions. He submitted that therefore, no prejudice would be caused if the petitioners are given hearing now. He, therefore, submitted that in view of the gross delay caused in filing these Petitions and on account of the fraudulent activities of the petitioners, interim relief may not be granted in favour of the petitioners.

9. On the other hand, Mr.Marathe, the learned Counsel appearing on behalf of the petitioners submitted

that judgment in the case of **Paras V. Mehta** (*supra*) can be distinguished on facts. He submitted that in the said case, show cause notice was issued and thereafter, the circular was issued, whereas in the present case, admittedly, show cause notice was not issued before the impugned circulars were issued by the Corporation. He submitted that there was no delay in filing these Petitions because the petitioners came to know about their black listing only after Writ Petitions which were filed by 3 contractors was allowed and thereafter they came to know that user ids were blocked by the Corporation. He submitted that it is a settled position in law that order of black listing cannot be passed without giving a hearing and without issuing a show cause notice.

10. After having heard both the Counsels at length, we are of the view that the submission made by the learned Counsel appearing on behalf of the petitioners cannot be accepted. Though it is well settled that, normally, whenever

an order of black listing is passed, such an order can only be passed after following the principles of natural justice.

11. In the present case, however, the impugned circulars were issued on 08/10/2014, 20/11/2014, 09/12/2014 and the present Petitions have been filed on 19/10/2015, i.e almost one year after the first circular dated 08/10/2014 was issued. In the Petitions, no explanation has been given for the delay and latches caused in filing the Petitions or for claiming interim relief. The explanation which is given that the petitioners came to know in the last week of December 2014 cannot be accepted. It is submitted by the petitioners that when the petitioners enquired with the concerned ward officer of the Corporation, they came to know that few of the black listed contractors received E-mail from the Corporation and this was the communication by which the petitioners came to know about the impugned circulars. It

is not possible to accept the said submission made by the petitioners. In paragraph 9 of the Petitions, petitioners stated that they came to know for the first time in the last week of December 2014 about the impugned circulars. In subsequent paragraph, the petitioners have stated that thereafter they were informed about the impugned circulars passed by the Corporation. The fact remains that initial knowledge about the impugned circulars became available to the petitioners in the last week of December 2014. Therefore, there is delay of 10 months in approaching this Court.

12. From the affidavit-in-reply filed by the Corporation, it is evident that number of contractors are involved in fraudulent practices to cause monetary loss to the Corporation and as a result, the Municipal Commissioner has no other option but to issue the impugned circulars. It is true that normally, before issuing

an order of black listing, show cause notice is given to the petitioner and after giving him a hearing, the impugned circular is issued. In the present case, however, since the petitioners have themselves approached this Court almost after one year, this grievance cannot be available to the petitioners.

13. The Division Bench of this Court in the case of **Paras V. Mehta** (*supra*) has observed that by way of interim measure, order of suspension can be passed. We are of the view that the impugned circulars, therefore, will have to be treated as an interim measure for suspending the registration. The Division Bench of this Court in **Paras V. Mehta** (*supra*) has observed in paragraphs 15 & 16 as under:

“15] There is a well settled distinction between interim measures, which are made as a holding operation pending full fledged enquiry and final action either by way of

inflicting penalty or orders of blacklisting and deregistration. The impugned letter dated 14.2.2013 and circular dated 16.3.2013 indicate that the respondents, pending final decision on the aspect of blacklisting or deregistration, felt it appropriate that no work orders be issued to the petitioner or that any further tender bids that may be submitted by the petitioner be not considered in the interregnum. At this stage, there can be no insistence upon rigid compliance with principles of natural justice. If serious irregularities are suspected, then pending appropriate enquiry, it may not be unreasonable to take interim measures by way of holding operation.

In the case of *Lewis v. Heffer*, 1978 (3) ALL E.R.354, Lord Denning drew out the distinction between suspensions which are inflicted by way of punishment and suspensions, which are made as holding operation pending enquiry in the following words:

“ But they do not apply to suspensions which are made, as a holding operation, pending enquiries. Very often irregularities are disclosed in a Government department or in a business house; and a man may be suspended on full pay pending enquiries. Suspicion may rest on him; and so he is suspended until he is cleared of it. No one, so far as I know, has ever questioned such a suspension on the ground that it could not be done unless he is giving notice of the charge and an opportunity of defending

himself and so forth. The suspension in such a case is merely done by way of good administration. A situation has arisen in which something must be done at once. The work of the department or the office is being affected by rumours and suspicions. The others will not trust the man. In order to get back to proper work, the man is suspended. At that stage the rules of natural justice do not apply, see *Furnell v. Whangarei High Schools Board*".

16] The aforesaid observations were cited with approval by the Supreme Court in the case of *Liberty Oil Mills V/s. Union of India*, 1984(3) SCC 465, by observing that predecisional natural justice is not usually contemplated when the decision taken are of an interim nature pending investigation or inquiry.

14. In the present case, show cause notice was not issued by the Corporation before issuing the impugned circulars and since the petitioners have themselves approached this Court after one year, no prejudice will be caused to them, if the Corporation gives them hearing within 12 weeks from today.

15. So far as the order of this Court in Writ Petition (L) No. 465 of 2015 is concerned, the Division Bench of this Court by order dated 27/10/2015 passed in Writ Petition (L) No. 2882 of 2015 has observed that the said order of setting aside black listing would be applicable only qua petitioner in the said Petition. In paragraph 2 of the said order, the Division Bench has observed as under :

“The submission of the learned counsel for the petitioners is that the orders of black listing as against the petitioners have been set aside by the order dated 4th March 2015 in the Writ Petition (L) No. 465 of 2015. We disagree with the said submission. We find that the order of black listing only in so far as the writ petitioner in the said writ petition has been set aside.”

16. We, therefore, keeping larger public interest in mind, do not propose to interfere with the impugned circulars which have been issued by the Corporation from October 2014 to December 2014. We, however, direct the Corporation to issue show cause notices to the petitioners

and to give personal hearing to the petitioners. We direct the Corporation to issue show cause notices within 4 weeks from today. The petitioners may give replies to the said show cause notices within 4 weeks thereafter and the Corporation after hearing the petitioners shall decide the said show cause notices within 4 weeks thereafter. The entire process, therefore, to be completed within 12 weeks from today. It is clarified that if the Corporation accepts the explanation given by any of the petitioners, it may revoke the black list and if the order of black listing is confirmed, the petitioners are at liberty to challenge the said order. With the aforesaid directions, these Petitions are disposed of.

(M.S.KARNIK, J.)

(V. M. KANADE, J.)