

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.2377 OF 2017

GNI Infrastructure Pvt. Ltd.,
Having its Registered Office at
Gut No.123, Chitegaon,
Tq-Paithan, Dist-Aurangabad,
Through its Director
Shri Khushbir Singh Basant Singh Bindra

...PETITIONER

VERSUS

- 1) State of Maharashtra,
Through Secretary,
Dept. of Urban Development,
Mantralaya, Mumbai-4000032,
- 2) The Commissioner
of Aurangabad Municipal
Corporation, Aurangabad,
- 3) Project Management Consultant,
Through Engineer In-charge of
Aurangabad Municipal Corporation,
Aurangabad.

...RESPONDENTS

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Mr.R.N. Dhorde, Senior Counsel i/b. Mr. P.R.
Katneshwarkar Advocate for Petitioner.
Mr.V.M. Kagne, A.G.P. for Respondent No.1.
Mr.S.B. Deshpande Advocate for Respondent No.2.

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**CORAM: S.S. SHINDE AND
MANGESH S. PATIL, JJ.**

DATE OF RESERVING ORDER : 15TH NOVEMBER, 2017

DATE OF PRONOUNCING ORDER : 21ST NOVEMBER, 2017

ORDER [PER S.S. SHINDE, J.]:

1. This Writ Petition is filed with the following substantive prayer:

"A. By issuing writ of Certiorari or any other appropriate writ, order of directions under Article 226 of the Constitution of India, this Hon'ble Court may be pleased to quash and set aside order dated 10/02/2017 Outward No.MNP/UP/AB/Differed Payment/2017/125 issued by the Municipal Corporation Commissioner and there by blacklisted the Petitioner and restrained for working to the Municipal Corporation Aurangabad."

2. Heard Mr. Dhorde, learned senior counsel appearing for the Petitioner, learned A.G.P.

appearing for the State and Mr. Deshpande, learned counsel appearing for Respondent Nos.2 and 3.

3. During the course of hearing, learned senior counsel appearing for the Petitioner restricted his arguments about grievance of the Petitioner of not supplying the report prepared by the College of Engineering, Pune in respect of quality of work performed by the Petitioner, before he was blacklisted by the Respondent Corporation. It is submitted that in absence of serving copy of the report prepared by the College of Engineering, Pune, the decision of the Respondent Corporation to blacklist the Petitioner is bad in law and therefore only on this ground alone the Petition deserves to be allowed. In support of aforesaid contentions, learned senior counsel placed reliance upon the exposition of law in the case of M/s. Erusian Equipment & Chemicals Ltd. vs. State of West Bengal and another¹.

¹ (1975)1 S.C.C.70

4. On the other hand, learned counsel appearing for the Respondent Corporation, relying upon the averments in the affidavit in reply, submits that keeping in view the inferior quality of work performed by the Petitioner contrary to the terms of contract, and after receiving the report from the College of Engineering, Pune and also considering the earlier report submitted by the Government College of Engineering, Aurangabad, and also keeping in view the factual position, the Petitioner was blacklisted. Sufficient opportunity was given to the Petitioner to defend him. The report submitted by the College of Engineering, Pune is on record of the Petition and therefore it cannot be said that copy of the report received from the College of Engineering, Pune was not supplied to the Petitioner.

5. Upon hearing learned senior counsel appearing for the Petitioner and learned A.G.P.

appearing for the State and learned counsel appearing for Respondent Municipal Corporation and upon perusal of the pleadings in the Petition, annexures thereto, reply filed by the Respondent Corporation, we are of the opinion that in view of the Judgment of the Supreme Court in the case of M/s. Erusian Equipment & Chemicals Ltd. vs. State of West Bengal and another, supra, before the name of the Petitioner was blacklisted, it was incumbent upon Respondent No.2 Corporation, to supply the copy of the report received from the College of Engineering, Pune, so as to afford an opportunity to the Petitioner to reply to the said report. Therefore, we find considerable force in the argument of learned senior counsel appearing for the Petitioner that the decision taken by the Respondent Corporation to blacklist the Petitioner is bad in law.

6. Be that as it may, we have noticed that the Petitioner has filed the affidavit, and in

Para Nos.2 and 3 of the said affidavit, it is stated that:

"2. That, pending the writ petition, the petitioner also moved Municipal Corporation that, the order of blacklisting be recalled. The request of petitioner was put up before the Standing Committee, Municipal Corporation, Aurangabad who in its meeting dated 11.10.2017 considered the prayer of petitioner and recalled the order of blacklisting. A copy of said order in Subject No.130 i.e. the minutes of meeting of Standing Committee dated 11.10.2017 is produced herewith and marked as Exhibit"A".

3. Earlier on 13.10.2017, the petitioner has moved for withdrawal of writ petition but the prayer to withdraw the writ petition was rejected. However, at present, the challenge in this writ petition does not survive in view of order of Standing Committee."

7. In that view of the matter, in view of the subsequent developments occurred after filing of this Petition, in our opinion, this Writ Petition has become infructuous. Accordingly, the Writ Petition stands disposed of, as infructuous.

8. It appears that the affidavit of the Petitioner was directly filed in the Registry without seeking leave of this Court. In that view of the matter, Registrar(Judicial) to cause the enquiry how the said affidavit of the Petitioner has been accepted by the Registry during the pendency of the Petition without seeking leave of this Court. Such enquiry to be completed within TWO WEEKS from today and the report be submitted before this Court.

[MANGESH S. PATIL, J.]

[S.S. SHINDE, J.]

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