

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

WRIT PETITION NO. 2667 OF 2017

Suresh Sinha and 6 others Petitioners

Vs.

Municipal Corporation of Greater Mumbai Respondents
and others

Mr. Gaurav Joshi, senior counsel a/w Mr. Kazan Shroff, Mr. Abhay Jadeja, Mr. Jay Z. i/b Crawford Bayley and Co. for the petitioners
Mr. A. Y. Sakhare, senior advocate a/w Ms. Pallavi Thakar, Ms. Sheetal Mane for Municipal Corporation of Greater Mumbai.

**CORAM : SMT. VASANTI A. NAIK,
RIYAZ I. CHAGLA, JJ.**

DATE : NOVEMBER 28, 2017.

P.C.

By this writ petition, the petitioners-directors of M/s. Indian Register of Shipping have challenged the order of the Deputy Municipal Commissioner (Environment) dated 26/07/2017, blacklisting the petitioners for the period of 7 years from the date of service of the order on them. By the impugned order, the company as well as the directors are prohibited from competing, entering into any contract with and for carrying out any work of the Municipal Corporation of Greater Mumbai.

On receipt of some complaints, the Corporation had appointed a committee to enquire into the irregularities in the execution of the road works. Some of the roads in work code W-266, C-248 & AE-5 were investigated by the

enquiry committee and during investigation, the enquiry committee had found that though the third party quality auditors had knowledge that the work was not carried out as per the design and B.O.Q. they had falsely certified the works that were not actually carried out, thereby enabling the contractors to claim the amount for the same. The action of blacklisting was therefore initiated against some companies including M/s. Indian Register of Shipping Company, of which the petitioners are the directors. The Corporation served a notice on the company asking it to show cause as to why it should not be black listed in view of the illegalities committed by it. No show cause notice was however served on the then directors or the petitioners-directors, most of whom had joined the office only after the show cause notice was served on the company. Without serving a show cause notice on the directors, the Deputy Municipal Commissioner (Environment) by the impugned order dated 26/07/2017 not only black listed the company but also black listed the petitioners-directors and the power of attorney holders in the contract after recording a finding that due to the illegality on the part of M/s. Indian Register of Shipping, the contractors had made false claims of huge amounts. The order of the Deputy Commissioner (Environment) is impugned by the petitioners, in so far as it black lists the petitioners.

Mr. Joshi, the learned senior counsel appearing for the petitioners inter-alia submitted that the impugned order is liable to be set aside as far as the petitioners are concerned as the petitioners were not served with a show cause notice and no opportunity whatsoever was granted to the petitioners before the penal action of blacklisting the petitioners for a period of 7 years was passed. It is submitted that the Corporation ought to have at least served the show cause notice on the petitioners before blacklisting them. It is submitted that the petitioners were entitled to personal hearing in the matter of blacklisting but at least the Corporation should have served a show cause notice on the petitioners

before taking the drastic action. It is submitted that in the show cause notice served on M/s. Indian Register of Shipping no allegations whatsoever are made personally against the directors of the company. It is submitted that some of the petitioners-directors were not the directors of the company at the relevant time when the illegalities were allegedly committed or even when the show caue notice was served on the company. It is submitted that in the absence of an opportunity the impugned order is liable to be set aside.

Mr. Sakhare, the learned senior counsel appearing for the Corporation supported the impugned order. It is submitted that after the complaint in respect of irregularities in the execution of road works was investigated, certain illegalities were detected and hence, the Corporation had served a notice on M/s. Indian Register of Shipping of which the petitioners are the directors. It is stated that since the show cause notice was served on the company and the liability of the company in the case of its directors is vicarious, the absence of service of notice on the petitioners-directors would not vitiate the impugned order. Reliance is placed on the judgment reported in **[(2004) 11 Supreme Court Cases 213]** to canvas that it would not be necessary to serve a notice on the directors before taking penal action of blacklisting against them. It is stated that some opportunity may be granted to the Corporation to file a detailed affidavit-in-reply to point out the illegalities committed by the petitioners-directors.

Since admittedly the petitioners-directors of M/s. Indian Register of Shipping were not granted any opportunity, whatsoever to show cause against the proposed blacklisting, much less for a period of 7 years, the impugned order as far as it relates to the blacklisting of the petitioners cannot be sustained. It is well settled that before blacklisting either the company or its directors and before prohibiting them from participating in the contract with the State Government or the other local bodies and authorities, it would be necessary for

the authorities to grant some opportunity to the entities that are proposed to be blacklisted. In the instant case, though a notice was served on M/s. Indian Register of Shipping asking it to show cause against the proposed blacklisting, no notice whatsoever was served on the directors. Some of the petitioners were not the directors of the company when the alleged illegalities were committed. It is stated that all the directors are reputed and highly placed, one of the directors of the company being the chairman of the shipping Corporation of India and another director is the chairman of the Goa Ship yard. Without serving a show cause notice on the petitioners and without granting them an opportunity of hearing, the Corporation could not have passed an order of blacklisting the petitioners. Since the order is clearly violative of the principles of natural justice, in so far as the directors are concerned, the same is liable to be set aside in respect of the directors. The Corporation cannot support its order by relying on the judgment reported in **[(2004) 11 Supreme Court Cases 213]**. The facts involved in the said case are clearly distinguishable. In the said case, the company and its directors were debarred from filing a tender as the director of the said company had assaulted the officer of the authority in relation to the award of contract. In the aforesaid set of facts, the Hon'ble Supreme Court held that for the act of the director, the concept of vicarious and constructive liability operates so far as the company is concerned. In effect, the Hon'ble Supreme Court held that by the act of the director of assaulting the authority in relation to the award of contract, the company would also be liable. The facts in the instant case are clearly distinguishable. Here, the Corporation had served a notice on the company asking it to show cause as to why it should not be blacklisted and without granting any opportunity, whatsoever to the directors of the company, the order of blacklisting the petitioners-directors was passed, though there were no allegations in the show cause notice in regard to the personal involvement of the directors.

Hence, for the reasons aforesaid, the writ petition is partly allowed. The impugned order dated 26/07/2017, so far as it blacklists the petitioners for a period of 7 years is hereby quashed and set aside. It is needless to mention that the Corporation could take appropriate steps against the persons concerned in accordance with law. Order accordingly. No costs.

At this stage, the learned senior counsel appearing for the Corporation seeks the stay of this order for a period of 4 weeks.

In the circumstances of the case, when the directors of the company are very highly placed officers and most of them had joined the company after the show cause notice was served on the company, we reject the prayer made by the Corporation for staying this order.

[RIYAZ I. CHAGLA J.]

[SMT. VASANTI A. NAIK, J.]