

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (C) No.619 of 2017

(Order dated 17-2-2017 passed by the Municipal Corporation, Raipur)

Suresh Kumar Agrawal, S/o Late Shri B.L. Agrawal, aged about 46 years,
Civil Engineer, Planner, Estimator, Surveyor, R/o J-538, Gudhiyari, Raipur
(C.G.)

Mpl. Corpn. No.267/96-97, Mb. No.73891-42608

---- Petitioner

Versus

1. State of Chhattisgarh, Through Collector, (The Chairman of the District Regularization authority.) District Raipur (C.G.)
2. Municipal Corporation, Raipur, Through the Commissioner, Municipal Corporation, Raipur (C.G.)
3. Town Investor, Municipal Corporation, Raipur (C.G.)

---- Respondents

For Petitioner: Mr. Neeraj Choubey, Advocate.

For State/Respondent No.1: -

Mr. Avinash Singh, Panel Lawyer.

For Respondents No.2 and 3: -

Mr. H.B. Agrawal, Senior Advocate with Mrs. Prabha Sharma,
Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

16/03/2018

1. The petitioner, who is a Surveyor / Civil Engineer and who has been authorised to work as a licensed Supervisor under Rule 26(9)(D) of the Chhattisgarh Bhumi Vikas Rules, 1984 (for short, 'the Rules of 1984'), has been blacklisted by the impugned order by the Municipal Corporation, Raipur on the ground that he has submitted the plans and related information for regularisation of two buildings in accordance with the Chhattisgarh Anadhikrit Vikas Ka Niyamitikaran Adhiniyam, 2002 (for short, 'the Act of 2002') as amended in the year 2016.

2. Mr. Neeraj Choubey, learned counsel appearing for the petitioner, would submit that the impugned order of blacklisting is arbitrary and contrary to law. He would further submit that it is not a new application for permission for residential building, but it is an application for regularisation under the Act of 2002. He would also submit that the order of blacklisting has been passed pursuant to the direction given by the District Regularization Committee on 17-1-2017 which is totally illegal and bad in law.
3. Mr. H.B. Agrawal, learned Senior Counsel appearing for the Municipal Corporation/respondents No.2 and 3, would support the impugned order and submit that the petitioner has acted beyond his authority granted under Rule 26(9)(D) of the Rules of 1984, therefore, he has rightly been directed to be blacklisted.
4. I have heard learned counsel for the parties and considered their rival submissions and also went through the record with utmost circumspection.
5. It is not in dispute that the petitioner has been licensed to act as a licensed Supervisor under the Rules of 1984 of which Rule 26(9)(D) provides as under: -

“26. Licensing of Architect/Engineer etc.—(1) to (8) xxx xxx
xxx

(9) A licensed Architect/Structural Engineer/Engineer/Supervisor/Town Planner shall be competent to perform the duties indicated under each:—

(A) to (C) xxx xxx xxx

(D) Supervisor-Competence.—The licensed Supervisor shall be entitled to submit :

(a) all plans and related information connected with the permission for residential buildings up to 200 square metres and up to two storeys or 7.5 metres height;

(b) certificate of supervision for buildings in (a).

(E) and (F) xxx xxx xxx”

6. Undisputedly, the petitioner is entitled to submit permission for residential building up to 200 sq.mtrs. and up to two storeys or 7.5 metres height. But, in the present case, he moved two applications for regularisation of two buildings under the Rules of 2002 which exceeds 200 sq.mtrs. and that has been taken cognizance of by the District Regularisation Committee on 17-1-2017 and that Committee has directed for blacklisting of the petitioner and accordingly, it has been directed.
7. It is well settled that blacklisting is a serious act and it should not be arbitrary, it should be reasonable, fair and in proportion to the gravity of charges. Legal position on the subject is well settled by a long line of decisions rendered by the Supreme Court starting with **Erusian Equipment & Chemicals Ltd. v. State of West Bengal and another**¹ in which Their Lordships held as under: -

“20. Blacklisting has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for purposes of gains. The fact that a disability is created by the order of blacklisting 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 blacklist.”

8. This has been followed by the Supreme Court in the matters of **M/s Southern Painters v. Fertilizers & Chemicals Travancore Ltd. and another**², **Patel Engineering Ltd. v. Union of India**³, **B.S.N. Joshi & Sons Ltd. v. Nair Coal Services Ltd. and others**⁴ and **Joseph Vilangandan v. The Executive Engineer, (PWD) Ernakulam and others**⁵.

1 (1975) 1 SCC 70

2 AIR 1994 SC 1277

3 (2012) 11 SCC 257

4 (2006) 11 SCC 548

5 (1978) 3 SCC 36

9. In the matter of **Kulja Industries Limited v. Chief General Manager, WT Proj BSNL and others**⁶, the Supreme Court has held that the order of blacklisting should not be arbitrary and it must be fair and reasonable.
10. Reverting to the facts of the present case, it would be quite vivid that merely because the District Regularization Committee has directed the petitioner to be blacklisted on submitting the application for regularization beyond the limit of 200 sq.mtrs., as prescribed in Rule 26(9)(D)(a) of the Rules of 1984, the petitioner has been blacklisted. The Municipal Corporation has not applied its independent mind to come to a conclusion that the gravity of the facts of the case and material available on record, require blacklisting of the petitioner. If the petitioner has filed application which is not in accordance with Rule 26(9)(D) of the Rules of 1984, his application was liable to be rejected, but this cannot be made a ground to blacklist the petitioner, as this is an extreme step of taking away the professional right of the petitioner and that too on the direction of the District Regularisation Committee as such the order of blacklisting the petitioner is arbitrary.
11. As a fallout and consequence of the aforesaid discussion, the writ petition is allowed and the order of blacklisting the petitioner for one year is hereby quashed leaving the parties to bear their own cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Soma

6 (2014) 14 SCC 731 : 2013 AIR SCW 5637