

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD****WRIT PETITION NO.10129 OF 2012**

Bharat Cargo Movers,
A Registered Partnership Firm,
having its Registered Office
at C/o-N.A. Khan Transport Contractors,
Gut No.37, Beed bye-pass Road,
Satara Parisar, Aurangabad,
(Through its Partner Nisar Ahmed Khan
s/o Haji Abdul Gaffar Khan,
Age-50 years, Occu:Business,
R/o-House No.5-9-108,
Behind Holiday Camp,
Railway Station Road, Aurangabad

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through its Secretary,
Food, Civil Supplies and
Consumer Protection Department,
Mantralaya, Mumbai-400 032,
- 2) The Deputy Commissioner (Supply),
Aurangabad,
- 3) The District Supply Officer,
Aurangabad,
- 4) The Collector,
Aurangabad,

- 5) Shri R.M. Wani,
Member of Legislative Assembly,
Vaijapur, Tq-Vaijapur,
Dist-Aurangabad,
- 6) Shri Anil Deshmukh,
The Hon'ble Minister for
Food, Civil Supplies and
Consumer Protection Department,
Mantralaya, Mumbai 400 032.

...RESPONDENTS

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Mr.A.S. Kale Advocate h/f. Mr. S.B. Talekar
Advocate for Petitioner.
Mrs.V.S. Choudhari, A.G.P. for Respondent
Nos. 1 to 4.

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**CORAM: S.S. SHINDE AND
S.M. GAVHANE, JJ.**

DATE OF RESERVING ORDER : 21ST FEBRUARY, 2018

DATE OF PRONOUNCING ORDER: 9TH MARCH, 2018

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

1. This Petition under Article 226 of the Constitution of India, has been filed with following substantive prayers:

"A. To quash the proposal dated 17.07.2010 submitted by the Additional Collector, Aurangabad for black listing the petitioner

firm to the Government, pursuant to assurance given by the Hon'ble Minister to the State Legislative Assembly and the direction issued by the Government in that behalf (EXHIBIT-R) by issuing writ of certiorari or any other appropriate writ, order or direction, as the case may be,

B) To quash the direction to black list the petitioner pursuant to the assurance given by the Hon'ble Minister to the Stage Legislative Assembly on 21.04.2010 issued by the Under Secretary to Government vide communication dated 27.06.2012 (EXHIBIT-A-2) by issuing writ of certiorari or any other appropriate writ, order or direction, as the case may be,

H) To quash the communication dated 07.01.2013 according an approval to the proposal blacklisting the petitioner submitted by the Collector, Aurangabad, forwarded by the Deputy Commissioner (Supply), Aurangabad (EXHIBIT-"A-9") by issuing writ of certiorari or any other appropriate writ, order or direction as the case may be."

2. The brief facts giving rise to this

Petition can be stated as under:

A) It is the case of the Petitioner that it is a partnership firm duly registered under the Indian Partnership Act. The Petitioner firm is carrying on business of transport of goods including transport of sugar levy from godowns of the sugar factories to the godowns of sugar nominees appointed by the District Supply Officer. On 9th May, 2007 the Government of Maharashtra issued a resolution laying of policy regarding transport of levy sugar. There are 18 nominees either at Aurangabad or at various places in Aurangabad District. The rates offered by the Petitioner for transport of levy sugar being lowest, the tender submitted by the Petitioner came to be accepted for a period of three years commencing from July, 2007. On 24th June, 2007 the agreement incorporating the terms and conditions in the Government Resolution came to be executed between the partners of the petitioner firm, sugar

nominees, which was also signed by the Assistant Accountant, District Supply Officer and Additional Collector, Aurangabad.

B) The Petitioner contended that from July, 2007, he started transporting levy sugar and supplying to the nominees at their godowns. Every month, the Petitioner firm used to submit the monthly bills, however neither the nominees nor the District Supply Officer, Aurangabad nor Additional Collector, Aurangabad were releasing the payment of transport charges. The Petitioner therefore preferred several representations to the Additional Collector, Aurangabad.

C) It is the case of the Petitioner that on 3rd November, 2009 13 sugar nominees submitted an application to the Additional Collector, Aurangabad falsely stating that the Petitioner was claiming bill of both the sides i.e. to and fro, for transportation of levy sugar and was causing

delay of 8 to 10 days for supply of sugar. Vide letter dated 7th November, 2009, te Additional Collector, Aurangabad directed the Petitioner to supply sugar to the sugar nominees in time and submit its explanation within 24 hours, failing which, sugar nominees will be permitted to transport the levy sugar to their godown. Vide letter dated 13th November, 2009 the Petitioner submitted his explanation.

D) It is the further case of the Petitioner that since the Petitioner was not receiving the payment/ transport charges for quite sometime, it informed the District Supply Officer and Additional Collector, Aurangabad that it would not be able to transport levy sugar and accordingly the Petitioner stopped transporting levy sugar since October, 2009, with prior information that the Petitioner firm would not be liable for any loss caused either to the Government or to the sugar nominees. The Additional Collector vide

letter dated 16th November, 2009, informed the nominees that outstanding transport charges be paid to the Petitioner, and in case the quota of levy sugar allotted to them had lapsed due to non payment of transport charges, the nominees would be responsible for the same.

E) The Additional Collector, Aurangabad issued an order that he has received a complaint in respect of non co-operation by the transporter and therefore a warning was given to the Petitioner firm that levy sugar will be transported by the nominees on its failure to lift the sugar and supply to the nominees and the nominees were permitted to transport the sugar. It is further submitted that the Additional Collector issued an order forfeiting an amount of Rs.50,000/- out of Rs.1,00,000/- of the security deposit vide order dated 10th April, 2010.

F) It is submitted that some of the nominees who

had committed defaults in payment of transport charges, approached Respondent No.5 - M.L.A. from Vaijapur, Dist-Aurangabad and Respondent No.5 raised a Stared question No.6742 during budget session on 3rd April, 2010 on the floor of the State Legislative Assembly. Respondent No.6 gave an assurance to the State Legislative Assembly that necessary action including black listing of the petitioner firm would be taken against the Petitioner firm.

G) It is submitted by the Petitioner that the Additional Collector, Aurangabad passed an order seizing the bank guarantee of Rs.7,00,000/- again without issuing show cause notice or giving an opportunity of hearing. It is further submitted that the Additional Collector had forwarded the proposal to include the name of the petitioner in the black list, vide letter dated 6th April, 2012. Vide letter dated 27th June, 2012 the Under Secretary to Government informed the Deputy

Commissioner (supply), Aurangabad that the Minister had directed to black list the Petitioner pursuant to assurance given to the State Legislative Assembly.

H) By way of amendment, it is submitted by the Petitioner that vide communication dated 7th January, 2013 approval was accorded to the proposal for blacklisting the Petitioner firm. It is further submitted that the appeal preferred by the Petitioner against the order dated 10th April, 2010 in forfeiting security deposit is pending before the Deputy Commissioner (supply), Aurangabad. It is submitted that the Petitioner did not violate condition Nos.25 and 39 of the agreement.

3. Learned counsel appearing for the Petitioner, referring to the grounds taken in the Petition, submits that the Petitioner firm did not violate any of the terms or conditions of the

agreement dated 24th June, 2007. The sugar nominees were not paying transportation charges and octroi paid by the Petitioner and therefore the question of forfeiting security amount or bank guarantee and to black list the petitioner firm did not arise. Learned counsel further submits that the action taken by the Respondent authorities of blacklisting the Petitioner firm is not proper. No opportunity of hearing was given to the Petitioner before taking such serious action. Hence learned counsel submits that the Writ Petition deserves to be allowed. In support of his submissions, learned counsel appearing for the Petitioner has placed reliance upon the exposition of law in various reported Judgments, copies of which are placed on record.

4. On the other hand, learned A.G.P. invites our attentions to the affidavit in reply filed on behalf of Respondent Nos.2 to 4, and submits that as per the terms and conditions of the agreement

dated 21st June, 2007 the Petitioner was put under the obligation to transport and deliver the levy sugar to the concerned sugar nominees within the prescribed time period so that the distribution of the sugar under the Public Distribution System is done within time. It is submitted that on 3rd April, 2010, the Members of the State Legislative Council raised a starred question in the Assembly, thereby questioning the State Government as to what action has been taken against the Petitioner in respect of lapses committed on the part of the Petitioner in transporting and delivering the levy sugar to the sugar nominees at Vaijapur, Gangapur, Kannad, Sillod, Paithan, Soygaon and Khultabad. Respondent No.6 has assured that after the completion of the due inquiry, the process of black listing the Petitioner would be initiated as per law. It is submitted that the Petitioner has not transported and delivered the levy sugar to the concerned sugar nominees within the prescribed time period and had committed default in complying

the terms of the agreement and so initially by notice dated 7th November, 2009 a warning was given to the Petitioner to perform its part in accordance with the terms and conditions of the agreement. Despite the service of order dated 16th November, 2009 the Petitioner did not transport the levy sugar and deliver to the concerned sugar nominees, consequently, the Additional Collector Aurangabad, has passed the order dated 10th April, 2010 thereby terminating the agreement dated 21st June, 2007. So also in order to prevent the delay caused in the distribution of the sugar under the Public Distribution System, the Additional Collector, Aurangabad had permitted the sugar nominees to transport the levy sugar in accordance with the terms and conditions of the agreement.

5. Learned A.G.P. further submitted that as per clause 31 of the agreement dated 21st June, 2007 the Petitioner was under obligation to submit the transport bills to the concerned sugar

nominees for its payment in accordance with the agreed rates, and as per clause 33 of the agreement the sugar nominees were put under the obligation to make the payment of the transportation charges to the Petitioner in accordance with the agreed rates. Sugar nominees had submitted a representation dated 3rd November, 2009 thereby complaining that the Petitioner had committed irregularities and default in transporting the levy sugar to the sugar nominees. In accordance with statement made by Respondent No.6 before the House, the State Government has appointed the Deputy Commissioner (supply), Aurangabad as the competent officer to decide the proposal for black listing the petitioner. Respondent No.4 had submitted a detail report in respect of lapses committed by the Petitioner in transporting the levy sugar from the godowns of concerned sugar factory to the godowns of the sugar nominees. The Deputy Commissioner (supply) after hearing the Petitioner and the District

Supply Officer, and after considering the reply filed by the Petitioner, had submitted a report dated 7th January, 2013 to the Additional Secretary, Food and Civil Supply Department, Government of Maharashtra, thereby stating that the Petitioner has committed the breach of the terms and conditions of the agreement and accordingly the Deputy Commissioner, Aurangabad had submitted the recommendation to black list the Petitioner. It is further submitted that after consider the entire facts of the case, the proposal to black list the Petitioner has been approved. Therefore, learned A.G.P. submits that the Writ Petition be rejected.

6. It appears that the Division Bench of this Court (CORAM: RAVINDRA V. GHUGE AND SUNIL K. KOTWAL, JJ.), on 17th November, 2017 directed Respondent No.2 - the Deputy Commissioner (supply), Aurangabad to decide the pending appeal of the Petitioner within a period of eight weeks.

Accordingly, during the pendency of this Petition, the Appeal has been decided by Respondent No.2, on 10th January, 2018.

7. Learned counsel appearing for the Petitioner submits that though there is a remedy available to challenge the order passed by Respondent No.2, in fact Respondent No.2 has been authorized by Respondent No.1 i.e. State Government and therefore once order is passed by Respondent No.2, no fruitful purpose would be served by taking exception to the order passed by Respondent No.2 by way of filing appropriate proceedings before the State Government.

8. We have considered the submissions of the learned counsel appearing for the Petitioner and also learned A.G.P. appearing for the State. With their able assistance, we have carefully perused the pleadings, grounds taken in the Petition, annexures thereto, amended pleadings and prayers,

the exposition of law laid down in the reported Judgments, the reply filed on behalf of Respondent Nos.2 to 4, annexures thereto and earlier orders passed by this Court.

9. We are of the opinion that instead of entering into the contentions raised on merits by the Petitioner or Respondents by way of filing reply, it would be appropriate for the Petitioner to challenge the order passed by Respondent No.2 on 10th January, 2018 in the appeal preferred by the Petitioner.

10. In that view of the matter, we dispose of this Petition by granting liberty to the Petitioner to avail of an appropriate remedy as available in law so as to take exception to the order passed by Respondent No.2.

11. Ad-interim order which is in force during the pendency of this Petition shall continue for

another four weeks from today. It is made clear that no prayer for further extension of said interim order would be entertained and it would be open for the Petitioner to apply for ad-interim relief/ interim relief in fresh proceedings to be initiated by the Petitioner.

12. With the above observations and directions, the Writ Petitions stands disposed of.

[S.M. GAVHANE, J.]

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[S.S. SHINDE, J.]