

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO.7936 OF 2018**

VUB Engineering Pvt.Ltd.

...Petitioner.

Versus

1.Kohapur Municipal Corporation & Anr.

...Respondents

Mr.Y.P.Narvankar, for the Petitioner.

Mr.A.M.Adgule, for Respondent no.1.

Ms.Nisha Mehra, AGP for the State-Respondent No.2.

**CORAM : NARESH H. PATIL, ACTING C.J.
& G.S. KULKARNI, J.****DATE: 12^h OCTOBER, 2018.****P.C.**

1. Rule returnable forthwith. Respondents waive service. By consent of the parties and at their request heard finally.

2. The limited issue which falls for consideration of the Court in this petition is as to whether the order dated 16 April 2018 passed by respondent no.1-Kolhapur Municipal Corporation (for short 'the Municipal Corporation') blacklisting the petitioner as its contractor, can be said to be legal and valid in the absence of appropriate show cause notice being

issued in that regard and no personal hearing being granted before taking a decision.

3. In 2011, the petitioner was awarded a contract for construction of specified roads in package no.3 namely Road Nos.14, 17, 18, 20, 23, 25 and I. The case of the petitioner is that there are several issues like delay in payment of RA bills, non removal of encroachment, non cognizance of the issues pertaining to the water leakage, non supply of design, which delayed the work under the said contract. It is the case of the petitioner that from time to time correspondence in that regard was made with the Corporation.

4. The case of the Municipal Corporation is that the petitioner did not perform the contractual work as per the terms and conditions of the contract. There was undue delay which was affecting the public works. The Municipal Corporation therefore had issued notices dated 15 July 2017 and 23 January 2018 to the petitioner calling upon the petitioner to show cause as to why the contract should not be terminated and the petitioner be blacklisted. The petitioner replied to the said notices justifying that the delay could not be attributed to the petitioner. The

petitioner also sought constitution of a Dispute Redressal Committee by its communication dated 12 April 2018 as contemplated by the tender document, however, no action was taken.

5. On examining the notices issued by the Corporation, as placed on record, we find that the notices which were issued by the Municipal Corporation to the petitioner were composite notices issued for threefold purposes, firstly calling upon the petitioner to show cause as to why the contract should not be terminated, secondly as to why the petitioner should not be blacklisted and thirdly as to why the contract be not awarded to another contractor. This can be clearly seen from the notice dated 15 July 2017-Exhibit 'E' to the affidavit in reply of respondent no.1 (page 158 of the paperbook) and the subsequent notice dated 23 January 2018 (page 150 of the paperbook). We thus find that there is no specific notice issued to the petitioner setting out the reasons as to why the petitioner should not be blacklisted. As also no personal hearing was accorded to the petitioner before blacklisting the petitioner.

6. The law in regard to blacklisting of a contractor is well settled. Any order to blacklist a contractor entails civil consequences,

requiring the authority to follow principles of natural justice. An opportunity of a personal hearing thus necessarily is required to be granted, by the authority, before taking a decision to blacklist its contractor. In this context we may usefully refer to the decision of the Supreme Court in **M/s.Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal**¹ and in **Southern Painters Vs. Fertilizers & Chemicals Travancore Ltd.**². The Supreme Court has held that for a public authority to pass an order of blacklisting the contractor, it is mandatory to adhere to the principles of natural justice. Any order passed without granting a personal hearing in this regard, would be illegal and *void ab initio*.

7. Having heard the learned Counsel for the parties and having perused the record, we are of the opinion that the impugned communication dated 16 April 2018 to the extent it blacklists the petitioner, is set aside. This primarily for the reason that indisputedly an appropriate show cause notice on the issue of blacklisting the petitioner was not issued, as also no opportunity of a personal hearing was granted to the petitioners by the Corporation.

1 AIR 1975 SC 266

2 AIR 1994 SC 1277

8. Accordingly the impugned order dated 16 April 2018 to the extent it blacklists the petitioner, is set aside. We direct the respondent-Corporation to issue a fresh show cause notice specific to the issue of blacklisting. Such a notice be issued within a period of two weeks from today. The petitioner shall respond to the said notice within a period of two weeks after its receipt.

9. The Municipal Corporation after receipt of the reply may inform the petitioner of an appropriate date on which personal hearing would be accorded to the petitioner, and after hearing the petitioner, pass appropriate order on such show cause notice, in accordance with law.

10. The petition is accordingly allowed in the aforesaid terms. No costs.

11. We clarify that we have not gone into, any issues on the contractual relations between the parties. All contentions of the parties in that regard are expressly kept open.

(G.S. KULKARNI,J.)

(ACTING CHIEF JUSTICE)