

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.1665 OF 2015**

Technotrade Impex Pvt. Ltd.

..Petitioner

vs.

Deputy Commissioner (MCGM)

Central Purchase Department and Ors.

...Respondents

Mr. Ajay Basutkar a/w Mr. Aniket Ransubhe and Ms. Ashwini Gadgil for the Petitioner.

Mr. N. V. Walawalkar, senior counsel a/w Ms. Pallavi Thakar for the Respondent Nos.1 to 3.

Mr. Mohit Jadhav, AGP for the Respondent No.4.

CORAM : A.S. OKA & P. N. DESHMUKH, JJ.

DATE : 22nd JANUARY, 2018

P.C.:

. Heard the learned counsel for the Petitioner, the learned Senior counsel for the Respondent Nos.1 to 3 and the learned AGP for the Respondent No.4. On the last date we had invited attention of the learned Senior counsel for the Respondent Nos.1 to 3 (the Mumbai Municipal Corporation and Ors.) to the fact that by the impugned order dated 27th April 2015, the Petitioner has been blacklisted permanently as the said order does not specify that the blacklisting would operate for any specific period.

2. Considering the narrow controversy, the petition is taken up for final disposal. Rule. Advocate on record on behalf of the Respondent Nos.1 to 3 waives service. Learned AGP waives service for the Respondent No.4. The impugned order dated 27th April 2015 has been passed by the Deputy Municipal Commissioner of the Mumbai Municipal Corporation. The order notes that the Petitioner with all its directors, CEO and owners have been permanently blacklisted from participating in any tender process

of the Mumbai Municipal Corporation. Similarly, the security deposit paid under the said contract and remaining amount of the bills i.e. Rs.20,67,60,800/- to be paid to the Petitioner has been seized.

3. Reliance has been placed on the decision of the Apex Court in the case of *Kulja Industries Limited vs. Chief General Manager, Western Telecom Project Bharat Sanchar Nigam limited and Ors.*¹ as well as the decision of a Division Bench of this Court dated 27th October 2016 in Writ Petition No.2752/2014, *M/s. J. K. Surface Coatings Pvt. Ltd. vs. Oil and Natural Gas Corporation*, in support of the contention that the law does not permit permanent blacklisting.

4. The learned senior counsel appearing for the Respondent Nos.1 to 3 supported the impugned order by contending that findings of fact recorded in the impugned order need no interference by this Court. Learned AGP also supported the impugned order.

5. We have carefully considered what is stated in the impugned order. There is a permanent blacklisting made of the Petitioner, its directors and CEO. As far as this aspect is concerned, the law it is well settled in the case of *Kulja Industries Limited (cited supra)*. The paragraph 25 reads thus:

“Suffice it to say that “debarment” is recognised and often used as an effective method for disciplining deviant suppliers/contractors who may have committed acts of omission and commission or frauds including misrepresentations, falsification of records and other breaches of the regulations under which such contracts were allotted. What is notable is that the “debarment” is never permanent and the period of debarment would invariably depend upon the nature of the offence committed by the erring contractor.”

(underline supplied)

¹(2014) 14 Supreme Court Cases 731

6. Moreover from the impugned order we find that the sum of Rs.20,67,60,800/- and the security deposit has been ordered to be seized. It is not in dispute that for recovery of the said amount, the Petitioner has already filed a suit on the original side of this Court. Therefore, whether the said part of the impugned order is legal or not is an issue which will have to be decided in the pending suit. The Court before which the suit is pending will have to decide whether in the facts and circumstances of the case, the Petitioner is entitled for the said amount.

7. The impugned order holds that the case for blacklisting the Petitioner is made out. We find that the entire approach of the concerned officer dealing with the issue of blacklisting is contrary to the law laid down by the Apex Court in the case of *Kulja Industries Limited (supra)*. Hence, we propose to remit the case to the appropriate officer, who will have to decide the entire issue of blacklisting afresh.

8. Accordingly, we pass the following order:-

ORDER

(i) The impugned order dated 27th April 2015 (except the direction regarding the seizure of amounts) is hereby quashed and set aside and the case is remitted to the Deputy Municipal Commissioner (Central Purchase Department of the Mumbai Municipal Corporation);

(ii) We direct the Deputy Municipal Commissioner to pass final order on the show cause notice dated 30th September 2014 after considering the record, submissions/reply of the Petitioner and after giving an opportunity of being heard to the Petitioner. Final order shall be passed as expeditiously as possible and in any event within a period of 6 weeks from the date on which this order is uploaded;

(iii) As a civil suit filed by the Petitioner is pending, the issue whether the Municipal Corporation is entitled to retain amount of Rs.20,67,60,800/- and security deposit or whether the Petitioner is entitled to the said amount and the contentions raised by the Petitioner are expressly kept open to be decided by the concerned Court;

(iv) We have made no adjudication on the allegations made against the Petitioner in show cause notice and the contentions raised by the Petitioner in the written arguments/reply;

(v) Rule is partly made absolute in the above terms;

(vi) We direct the representative of the Petitioner to remain present before the Deputy Commissioner on 16th February 2018 at 11.00 for fixing the schedule of hearing.

(P.N. DESHMUKH, J)

(A.S. OKA, J.)