

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11497 OF 2019

M/S OMKAR CONSTRUCTION
THROUGH ITS PROPRIETOR
DADARAO SHIVAJI DHAGE

...PETITIONER

VERSUS

THE STATE OF MAHRASHTRA
AND OTHERS

...RESPONDENTS

Mr. R.N. Dhorde, Senior Counsel with
Mr. P.S. Dighe, Advocate with
Mr. V.R. Dhorde, Advocate for Petitioner
Mr. S.B. Pulkundwar, AGP for Respondents -State

**CORAM : S. V. GANGAPURWALA AND
ANIL S. KILOR, JJ.**

DATE : 26th SEPTEMBER, 2019

ORAL ORDER:

1. Mr. Dhorde, the learned Senior Counsel for the petitioner submits that the petitioner would restrict this writ petition only to the extent of prayer clause (E). The prayer clause (E) reads thus -

(E) Hold and declare that, the impugned order dated 11.09.2019 passed by the Respondent No.7 – Collector, Nanded thereby blacklisting the petitioner is illegal, arbitrary and violative of Article 14, 19(1)(g) of the Constitution of India and therefore, the same is liable to be quashed and set aside and for that purpose issue necessary orders;

2. Shorn of the facts necessary to decide the present petition - it appears that the petitioner is blacklisted under order dated 11.09.2019 passed by the Collector, Nanded. The genesis for the said order appears to be FIR filed against the petitioner under the provisions of the environment regulations and the Indian Penal Code purportedly on the ground of theft of minor mineral.

3. Mr. Dhorde, the learned Senior Counsel for the petitioner submits that the order blacklisting the petitioner is without notice to the petitioner and without hearing the petitioner. The principles of natural justice are violated. Before blacklisting the petitioner, the petitioner was not even issued notice. The order has a civil consequences. In view of that, adherence to the principles of natural justice was mandatory. The learned Senior Counsel to substantiate his contention relied on the judgment of the Apex Court in case of ***Gorkha Security Services Vs. Government (NCT of Delhi) and others reported in (2014) 9 SCC 105*** and another judgment of the Apex Court in case of ***Raghunath Thakur and others Vs. State of Bihar and others reported in (1989) 1 SCC 229***.

4. Mr. Pulkundwar, the learned Assistant Government Pleader submits that the petitioner is guilty of the theft of minor mineral worth Rs. 24 crores. According to the learned Assistant Government Pleader, there is no provision of giving notice before

blacklisting the petitioner under clause 13(A) of the Government Resolution dated 03.01.2018 (Page 124). No fault can be found in the order of the Collector.

5. We have considered the submissions. The petitioner is blacklisted under the impugned order. Clause 13(A) gives power to authority to blacklist the contractor throughout the State.

6. Blacklisting the contractor has civil consequences.

7. It is trite that whenever an action is taken giving rise to the civil consequences with further ramifications, the principles of natural justice are required to be followed. The opportunity of giving an explanation has to be given to the contractor. The order blacklisting the contractor has prejudicial effect, the adherence to the principles of natural justice in such cases would be inherent concomitant. The Apex Court in case of *Raghunath Thakur Vs. State of Bihar (supra)* has observed that blacklisting any person in respect of business adventure has civil consequences for future business of the person concerned in any event. Even if the rules do not express so, it is elementary principle of natural justice that parties affected by an order should have right of being heard and making representation.

8. In the present case, the principles of natural justice are infringed. The petitioner has not been given any opportunity before the end action of blacklisting the petitioner has been resorted to by

the respondents. Such an order cannot be sustained.

9. In light of the above, we quash and set aside the impugned order. The respondent, if it so desires to take action against the petitioner, the authorities shall issue show cause notice to the petitioner enumerating the grounds upon which the action is sought to be taken inviting reply from the petitioner and then only may proceed to take further action.

10. The writ petition is accordingly disposed of. No costs.

[ANIL S.KILOR]
JUDGE

[S.V.GANGAPURWALA]
JUDGE

mta