

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

81 WRIT PETITION NO.1043 OF 2019

SHIVAJI PANDURANG CHAVAN
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Mr. R.R. Tandale, Advocate holding for
Mr. S.S. Thombare, Advocate for petitioner.
Mr. S.B. Pulkundwar, A.G.P. for respondent No.1.
Mr. S.B. Solunke, Advocate holding for
Mr. B.T. Bodkhe, Advocate for respondent No.2.

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CORAM : S.V. GANGAPURWALA &
AVINASH G. GHAROTE, JJ.

DATE : 3 December 2019.

ORDER :-

. The petitioner is challenging the action of the respondents thereby blacklisting the petitioner.

2. We have heard learned Counsel for the petitioner and the respondents. According to the petitioner, the impugned order passed is based on erroneous facts. The petitioner was never heard nor any notice was given to the petitioner before blacklisting the petitioner. The order even does not state the period for which the petitioner is to be blacklisted.

3. According to the respondents, criminal case is filed against the petitioner. Inspection report is also received and on the basis of criminal case and inspection report, the petitioner is blacklisted.

4. Learned Counsel for the petitioner, to substantiate that before passing any order blacklisting the petitioner, the petitioner should have been issued notice and explanation should have been called, relied on the judgment of the Apex Court in the case of **Kulja Industries Limited Vs. Western Telecom Project BSNL**, reported in **(2014) 14 SCC 731**.

5. We have considered the submissions. We are not entering into the other merits of the contentions.

6. Admittedly the impugned order is passed without notice to the petitioner and without seeking explanation from the petitioner. The blacklisting of party is a penal action. When an action adverse to the interest of the party is resorted to, the principles of natural justice are to be adhered. The explanation ought to have been called from the petitioner as to why the petitioner should not have been blacklisted.

7. The Apex Court, in the case of **Kulja Industries (supra)** has observed as under :

“The freedom to contract or not to contract is unqualified in the case of private parties. But any such decision is subject to judicial review when the same is taken by the State or any of its instrumentalities. This implies that any such decision will be open to scrutiny not only on the touchstone of the principles of natural justice but also on the doctrine of proportionality. A fair hearing to the party being blacklisted thus becomes an essential pre-condition for a proper exercise of the power and a valid order of blacklisting made pursuant thereto. The order itself being reasonable, fair and proportionate to the gravity of the offence is similarly examinable by a writ Court”.

8. As the petitioner was not given any notice, the impugned order is quashed on the ground that notice was never issued to the petitioner and explanation was not called from the petitioner.

9. If the respondents want to blacklist the petitioner, they shall issue show-cause notice to the petitioner, call for explanation and then may take further action.

10. Writ Petition is accordingly partly allowed. No costs.

(AVINASH G. GHAROTE, J.)

(S.V. GANGAPURWALA, J.)