

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

WRIT PETITION (L) NO. 19466 OF 2019

Devmamledar Svaya Rojgar Seva
Sahkari Sanstha Ltd.

... Petitioner

Vs

1 The Collector, Nashik & Anr.

... Respondents

Mr. A.Y. Sakhare, senior counsel, with Mr. M.N. Sandhyanshiv for
the Petitioner.

Mr. B.V. Samant, AGP, for the Respondent Nos.1 and 2.

**CORAM : S.C. DHARMADHIKARI &
G.S. PATEL, JJ.**

THURSDAY, 26TH SEPTEMBER, 2019

P.C. :

1 Heard both sides.

2 The order passed on 15th April, 2019, is under
challenge in this writ petition. That is styled as impugned order
because by that order, the petitioner has been informed about
acts of omission and commission during the execution of a
contract and at the same time, the impugned order says that in
addition to the contractual rights and powers, the Collector and

District Electoral Officer, Nashik District, Nashik has blacklisted the petitioner for a period of five years from the date of issuance of the impugned order dated 15th April, 2019.

3 Mr. Sakhare, learned senior counsel appearing on behalf of the petitioner raised several contentions. However, he would submit that the writ petition is not filed in an attempt to seek resolution of the contractual disputes, but to question this ultimate direction of blacklisting for a period of five years. That is issued without adequate notice, consideration of the case of the petitioner and thereafter applying the settled parameters in reaching this drastic conclusion. This is an economic death penalty pronounced on the petitioner and the petitioner, therefore, will not be able to compete for any work or contract awarded by the State. Now, this order with this endorsement and remark so also direction would be cited everywhere to dislodge the petitioner.

4 On such a complaint being made and our attention being invited by Mr. Sakhare to an affidavit-in-reply which is filed, we had inquired whether the notice had been issued before

passing the impugned order granting sufficient time to the petitioner to show cause and reply. Mr. Samant, learned AGP stated that despite a positive statement made in this affidavit-in-reply, he would obtain instructions on this issue.

5 We placed this matter under the caption “For Passing Orders” at the request of Mr. Sakhare and Mr. Samant and in order to enable them to take complete instructions.

6 While we find that the show cause notices were issued on 15th September, 2018, 17th September, 2018 and 27th December, 2018, being the reminders inviting the petitioner to attend a personal hearing, we find that the impugned order omits from its consideration and completely the very vital and crucial point as to whether this drastic power should be exercised to bypass contractual remedies or to settle contractual disputes purely. Whether the parameters laid down in the judgment of the Hon’ble Supreme Court about exercise of such drastic power have indeed been taken into consideration at all.

7 On such a query being raised by us today, Mr. Samant, on instructions, says that the Collector is not averse to give a fresh hearing on this point to the petitioner and pass a reasoned order. He will carry out the fresh exercise, uninfluenced by the earlier order. Mr. Samant says that this course being adopted now would adequately redress the grievance of the petitioner. We should not, therefore, express any opinion on the rival contentions. We should keep the issue open.

8 After having given due consideration to the above request, we find that once the impugned order no longer survives on account of the notices received by the petitioner, then, we need not enter into a larger issue or controversy, much less decide it. We proceed to quash and set aside the impugned order. We grant liberty to the respondents to pass such orders as are permissible in law, but before they pass the same and assign proper reasons, they must hear the petitioner and allow the petitioner to place its version fully supported by relevant and germane documents. The petitioners will be notified in advance, the date and time of hearing. Should the petitioner not attend the same, it is open to the Collector to proceed *ex-parte*. Needless to clarify that once

the impugned order does not survive on account of the statements made by Mr. Samant, while passing the fresh order, nothing mentioned, observed and held in the impugned order should influence the Collector.

9 The Writ Petition is disposed of in these terms by clarifying that we have expressed no opinion on the rival contentions.

G.S. PATEL, J.

S.C. DHARMADHIKARI, J.