

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.**

WRIT PETITION NO.4621 OF 2022

M/s. Vinay Sonu Badhe and Company,
through its General Power of Attorney
Rajat Sanjay Badhe
Age : 30 years, Occu : Contractor,
R/o. "Sonai" Shanti Nagar,
Sopan Colony, Bhusawal, Dist. Jalgaon

.. Petitioner

Versus

1. The State of Maharashtra
through the Secretary,
Urban Development Department,
Mantralaya, Mumbai
2. Directorate of Municipal Council
Administration, Through its Director,
Government Transport Service
Building, 3rd Floor, Sir Pochkhanwala
Road, Worli, Mumbai
3. The Collector,
Jalgaon, Dist. Jalgaon
4. The Chief Officer,
Bhusawal Municipal Council,
Tal. Bhusawal, Dist. Jalgaon

.. Respondents

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Mr. Rajendra Deshmukh, Senior Advocate i/by. Mr. Govind A.
Kulkarni, Advocate for the Petitioner

Mr. S.G. Karlekar, AGP for the Respondent – State

Mr. B.S. Deshmukh, Advocate for Respondent No.4

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**CORAM : R.D. DHANUKA &
S. G. MEHARE, JJ.**

Dated : May 02, 2022

ORAL JUDGMENT (PER R.D. DHANUKA, J.) :-

1. Rule. Learned AGP waives notice on behalf of respondent nos. 1, 2 and 3. Mr. B. S. Deshmukh, learned Counsel waives notice on behalf of respondent no. 4.

2. Rule made returnable forthwith. Heard finally by the consent of the parties.

3. By this petition filed under Article 226 of the Constitution of India, the petitioner challenges the order dated 21-03-2022 passed by the respondent no. 4 thereby blacklisting the petitioner-firm for two years and forfeited an amount of Rs.92,42,310/-.

4. Mr. Rajendra Deshmukh, learned Senior Counsel for the petitioner invited our attention to the impugned order passed by respondent no.4 and also to show cause notice dated 09-03-2022. He would submit that show cause notice was received on email by the petitioner on 15-03-2022 and it was replied through mail on 21.03.2022 at 03.30 p.m. He would further submit that one of the

MLA from Bhusawal had raised a star question about condition of roads of Bhusawal city. In view of the question asked relating to the work allotted to the petitioner, respondent no.4 passed the impugned order dated 21.03.2022 without considering the reply filed by the petitioner.

5. Mr. B. S. Deshmukh, learned Counsel for respondent no.4 - Chief Officer, on the other hand, would submit that the petitioner was afforded sufficient opportunities pointing out the delay on the part of the petitioner in carrying out the work and, thus, the impugned order was rightly passed by respondent no.4.

6. Mr. Rajendra Deshmukh, learned Senior Counsel for the petitioner would submit that even if the respondent no. 4 was not satisfied with the explanation of the petitioner regarding delay on the part of the petitioner, if any, in completing the work, he could not have blacklisted the petitioner and forfeited the security deposit. Respondent no.4 could have awarded lesser punishment to the petitioner as provided in the Government Resolution dated 28-09-2006. He would further submit that the State Government has already granted extension of time till 21.03.2023 to complete the works allotted for the year 2018-19 and 2019-2020. He would

submit that the petitioner had already made a representation and had expressed his readiness and willingness to complete the work in time. The said representation, however, is pending before respondent no. 4.

7. Insofar as the impugned order in respect of forfeiting the security deposit and blacklisting of the petitioner is concerned, perusal of the record clearly indicates that the show cause notice was issued by respondent no.4 on 09.03.2022 and the said notice was received by the petitioner on 15.03.2022. On 21.03.2022 the petitioner had responded to the said show cause notice and had called upon the respondent no.4 to withdraw the said show cause notice. The said reply was received by respondent no. 4 at 03.31 p.m. on 21.03.2022. Perusal of the record further indicates that only on account of the star question raised by the Member of Legislative Assembly relating to the work allotted to the petitioner, respondent no. 4 appears to have hurriedly passed the impugned order dated 21.03.2022 that too without considering the reply filed by the petitioner on 21.03.2022.

8. In our view, the impugned order passed by respondent no. 4 blacklisting the petitioner-firm for two years and forfeiting security deposit Rs.92,42,310/- is in violation of the principles of the

natural justice. The issue of jurisdiction raised by the petitioner before respondent no. 4 has also not been considered. Hence, the impugned order dated 21.03.2022 passed by respondent no. 4 is quashed and set aside.

9. Show cause notice is restored to file. After affording sufficient opportunity to the petitioner of being heard and complying with the principles of natural justice, respondent no.4 shall pass a fresh order in accordance with law, without being influenced by the observations made and the conclusions drawn in this order, within a period of four weeks from the date of appearance of the petitioner before respondent no. 4.

10. The petitioner is directed to remain present before respondent no.4 on 10.05.2022.

11. It is made clear that so far as the issue of jurisdiction of the Chief Officer in respect of issuance of Show-cause notice is concerned, in view of the clause no. 4 of the Government Resolution dated 20.09.2006, the Chief Officer shall decide the said issue after considering the provision under clause no. 4 of the said Govt. Resolution dated 20.09.2006. If the Chief Officer finds that he has no

jurisdiction to issue such Show-cause Notice for initiating any action against the petitioner, respondent no. 4 shall refer the said issue to the authority, which according to the petitioner, is Chief Engineer, Divisional Level Nashik, PWD, for appropriate decision.

12. It is also made clear that the Officer, who is authorized to take decision in accordance with law, shall pass an appropriate order. Such an Officer, who is authorized to take decision in that event, shall pass an order within four weeks from the date of the issue being referred to such an Officer after complying the principles of natural justice.

13. Insofar as the issue of representation made by the petitioner is concerned, the learned Counsel for respondent no. 4 does not dispute that the State Government by its Government Resolution dated 28.03.2022, has already granted extension of time till 31.03.2023 for carrying out the allotted works. It is made clear that the petitioner would be at liberty to file additional representation within one week from today. In that event, the respondent no.4 shall consider the representation already made along with additional representation that would be made within four weeks from today after giving personal hearing to the petitioner. If the representations

of the petitioner are accepted, the appropriate order may be passed by respondent no.4 for withdrawing the preventive action already taken against the petitioner. Both the parties are at liberty to negotiate the terms and conditions for the balance work.

14. After considering the representations of the petitioner, respondent no. 4 shall submit the report to the respondent no. 3 - Collector for consideration and compliance.

15. Rule is made absolute in the aforesaid terms with no order as to costs.

16. Parties to act upon the authenticated copy of this order.

(S. G. MEHARE, J.)

(R.D. DHANUKA, J.)

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