

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2516 OF 2022**

Winner Software Pvt Ltd ...Petitioner
Versus
Maharashtra State Council of Examination, Pune ...Respondents
& Anr

Mr SR Nargolkar, with Arjun Kadam, for the Petitioner.
Mr AI Patel, Addl GP, for the Respondents-State.

**CORAM G.S. Patel &
 Vinay Joshi, JJ.
DATED: 11th March 2022**

PC:-

1. Rule.

2. Respondents are represented. We make rule returnable forthwith and take up the matter for final disposal.

3. Since the issue is involved in this Petition is exceedingly narrow, we have not thought it is necessary to allow time for an Affidavit in Reply although Mr Patel has instructions to seek time, simply because we see no answer at all to the impugned communication at page 63.

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4. The Petitioner had an Agreement dated 5th February 2021 with the 1st Respondent for providing services regarding the conducting of Optical Mark reading (“OMR”) based examinations for the State-based scholarship examination for students of Class V & Class VIII in the National Talent Examination and National Means-cum-Merit scholarship as also other examinations.

5. With no forewarning, let alone a show cause notice or a hearing, the Petitioner received a communication dated 14th February 2022 from the 1st Respondent, the Maharashtra State Council of Examination, Pune unilaterally and forthwith terminating the contract with the Petitioner. This was done ostensibly invoking the “for convenience” clause of the contract. The only basis was that one of the Petitioner company’s directors was named as an accused in a criminal complaint registered by the cyber police, Pune city while he was a director of some other company and in respect of that other company. That allegation related to certain alleged malpractices and fraud in the TET examination. The company in question was one GA Software company limited of which Saurabh Tripathi, presently a director of the Petitioner, happened then to be a director. That was also historical at a remote point in time, 2017-2018.

6. We do not see how it is possible for either of the Respondents to dredge up some historical thing that may have happened against one particular director on account of his association with some other entity. The contract in question is between an artificial entity namely the Petitioner, a juristic entity of perpetual succession, and the Respondents. There is no contract with any individual director

that could permit the Respondents to take recourse to any such cause of action.

7. In any case, given the consequences of such an action, namely an immediate termination, the very least that was required was some sort of notice followed by an opportunity to the company i.e. the Petitioner and also to the person named to show cause why a proposed action should not be taken. The termination of a contract like this is not inconsequential. It certainly results in severe financial consequences. It has other consequences as well namely that the fact of the termination is likely to be held against the Petitioner company (and all its directors) in any future Government contract. All Government contracts require disclosures of such cancellations.

8. We, therefore, are compelled to see this as a straightforward violation of Article 14 on the ground of irrationality, unreasonableness and arbitrariness in addition to a violation of the principles underlying Article 19(1)(g) as applicable to the 2nd Petitioner, an individual and a citizen of India, one Abhijeet Vilas Lohare.

9. If it comes to a question of mandamus, and the prerequisite of demanding justice, that might have been a factor had the Respondents cared to give a notice to the Petitioner. Here the result has been reached directly without giving the Petitioner any opportunity to demand justice.

10. Mr Nargolkar submits that there is another aspect to this as well. The Respondents have, by their impugned notice, effectively adjudged — or even adjudicated — the Petitioner and, more particularly, its director as guilty, even though there is no such adjudication by the court in question. A mere accusation has been seen by the Respondents as the commission of a criminal offence, and they have leapfrogged the entire criminal justice system to consider the Petitioner's director guilty. "What happened to the principle of innocent until proven guilty?", Mr Nargolkar asks, and, in our view, with considerable justification. Although this is not a criminal matter that comes before us today, the salutary underlying principle is one we must bear in mind. For the Respondents' impugned action raises one vital issue. If, on a mere accusation, yet unproved, yet to be adjudicated, the Petitioner and its director are to be found 'guilty as charged' of the offence in question, what is to happen if the final verdict is in favour of the Petitioner's director? If he is acquitted or the complaint against him otherwise fails? There is no possibility of the Respondents restoring this contract or making restitution.

11. There is no point in asking the Petitioner to make a representation to some higher authority. That would be appropriate where the impugned communication was at least minimally defensible. If it is not so defensible, there is no question of allowing it to remain a minute longer than absolutely necessary.

12. Rule is accordingly made absolute in terms of prayer clause (a), (b) and (c) which read thus:

“(a) Issue Rule. Call for records and proceedings.

(b) That a writ of Certiorari or any other suitable writ, order or direction, in the nature of writ of Certiorari be issued thereby quashing and setting aside Notice/Communication bearing No.Ja.Kra.Marapap/Bhandar/2022/373, dt. 14-02-2022 issued by the Respondent No.02, and all consequent actions taken thereafter, also be quashed and set aside, and thereby declare that the Agreement dt.05-02-2021 executed between the Respondent No.01 and the Petitioner shall subsist until its scheduled termination.

(c) That a writ of mandamus or any other suitable writ, order or direction, in the nature of a writ of mandamus be issued thereby directing the Respondent No 01 to forthwith withdraw Notice Communication bearing No. Ja.Kra.Marapap/Bhandar/2022/373/ dt.14-02-2022, including all consequent actions, if any, arising therefrom and implemented so far.”

13. We permit an amendment forthwith without leave to amend to correct prayer (b) to be worded as a prayer for a Certiorari and not for Mandamus.

14. We clarify that this order is not to be construed to mean that no action of any kind for any cause can ever be taken against the Petitioner. We also do not intend this order to be read as a direction to the Respondents to take any particular action. We have addressed ourselves only to the present impugned action and nothing else.

15. In the facts and circumstances of the case there will be no order as to costs.

(Vinay Joshi, J)

(G. S. Patel, J)