

**BASAVRAJ
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PATIL**

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

**WRIT PETITION NO. 8038 OF 2022
WITH
WRIT PETITION NO. 9650 OF 2022**

M/s. Suvas Electricals

..... Petitioner

Vs.

State of Maharashtra & Ors.

..... Respondents

Mr.Gauraj Shah a/w. Mr. Mangesh Hamane for the Petitioner
Mrs. M. P. Thakur, AGP for the State
Mr. Ashish S. Gaikwad for Respondent Nos.2 and 3

**CORAM: S.V.GANGAPURWALA &
S.G. DIGE, JJ.**

DATED : NOVEMBER 9, 2022

P.C.

1 The Petitioner's contract has been terminated by Respondent No.2, so also the Petitioner, under the impugned communication, is black-listed. In a way, the Petitioner is not permitted to fill-in the tender of Respondent No.2 for a period of three years.

2 On August 30, 2022, we had recorded the statement of the learned Advocate for the Petitioner that the Petitioner is not raising any contractual dispute in the matters. The Petitioner is not challenging the termination of its contract in the present Writ Petitions. The Writ Petitions are restricted only to the extent of

debarring the Petitioner for filling-in the tender with Respondent No.2 for a period of three years.

3 The learned Advocate for the Petitioner submits that the order black-listing the Petitioner and/or not permitting the Petitioner to bid for a period of three years with Respondent No.2, is in flagrant violation of principles of natural justice. No show cause notice was issued to the Petitioner before action of black-listing the Petitioner was undertaken.

4 The learned Counsel for Respondent No.2 submits that the Petitioner is guilty of not completing the work within time. Many notices were issued to the Petitioner to complete the work within time. The Petitioner was also intimated that if the work is not completed within time, then security deposit would be forfeited, the contract would be terminated and the Petitioner would be prohibited from tendering with Respondent No.2 for a period of three years. According to the learned counsel for Respondent No.2, five to six notices were issued to the Petitioner but the Petitioner did not improve its performance. Eventually, Respondent No.2 had to take decision of forfeiting the security deposit and that the remaining work shall be completed at the risk and costs of the Petitioner so also the Petitioner is debarred from tendering with Respondent No.2 for a

period of three years. Same is after issuing many letters to the Petitioner. Principles of natural justice are followed. It is within the right of Respondent No.2 to prohibit the Petitioner from contracting for a period of three years for the negligence on the part of the Petitioner.

5 We have considered the submissions.

6 It appears that the Petitioner was given contract. Extensions were also given to the Petitioner. It is the case of Respondent No.2 that the Petitioner did not complete the work.

7 The letters on record suggest that the Petitioner was intimated that if the work is not completed within time, the penalty clause would be invoked. Notices were issued on 25th May 2021, 16th June 2021 and 28th January 2022 and eventually, on 8th February 2022, the impugned communication was issued to the Petitioner.

8 As in the present matter, the Petitioner is not challenging the termination of contract, as such, we are not dilating on the said aspect.

9 The Petitioner, under the impugned communication, is also debarred from participating in the tender process of Respondent No.2 for a period of three years. The same would mean black-listing

the Petitioner from tendering with Respondent No.2. The black-listing has civil consequences. When such a drastic action is undertaken, the principles of natural justice are to be followed and explanation is required to be called from the Petitioner. Show cause notice, in such cases, normally is to be given unless clauses in the agreement between the parties or facts on record suggest otherwise.

10 In the present case, except intimating the Petitioner that the Petitioner would be debarred from participating in the tender process with Respondent No.2 for a period of three years, no show cause notice was issued to the Petitioner calling explanation from the Petitioner, as to why the Petitioner should not be debarred from participating with the tender process of Respondent No.2 for a period of three years. The impugned order is passed without show cause notice to the Petitioner.

11 In light of that, we pass the following order:

- a. The impugned order, to the extent of debarring the Petitioner from participating in the tender process for a period of three years, is set aside.
- b. It is made clear that Respondent No.2, may after issuing show cause notice to the Petitioner, take fresh action with regard to debarring the Petitioner from participating in the tender process with Respondent No.2 for a period of three

years or otherwise. In that event all contentions of the respective parties are kept open.

c. The Writ Petitions, as such, are disposed of.

(S.G. DIGE, J.)

(S.V. GANGAPURWALA, J.)