

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2927 OF 2021

WITH

INTERIM APPLICATION NO. 4266 OF 2022

M/s. Eskag Sanjeevani Pvt.Ltd.. ...Petitioner.
V/s.
The Commissioner of Municipal Corporation
& anr. ...Respondents

Mr. Maruti Parshuram Bhavarkar, for Petitioner.

Mr. Anoop Patil a/w. Ms. Oorja Dhond i/b. Mr. Sunil Sonawane, for
respondent No. 1-MCGM.

Mr. Amit Shastri, AGP for Respondent No. 2 State.

Mr. Kaushik Kishore Ghosh, Law Officer of Petitioner company present.

Dr. Omprakash Vallepawar Assistant Health Officer present in court.

Ms. Prachi B. Shingare, Head Clerk, Public Health Dept. F/S Ward-MCGM present in Court.

CORAM : R.D. DHANUKA &
KAMAL KHATA, JJ.
DATE : 20TH OCTOBER, 2022.

P.C. :-

1. This matter has been adjourned from time to time in view of the pendency of Criminal Writ Petition No. 3298 of 2018 filed by Mr. Ajay Mehta and two others against the State of Maharashtra &

ors. The learned Counsel for the Municipal Corporation has tendered a letter before this Court dated 18th February, 2022 stating that if the Petitioner withdraws the criminal proceedings pending before the learned Chief Metropolitan Magistrate, Calcutta bearing CN/299 of 2018 filed by the Petitioner against the order of blacklisting passed against the Petitioner, which is the subject matter of this Petition.

2. In view of the stand taken by the Municipal Corporation, we direct the Petitioners in Criminal Writ Petition No. 3298 of 2018 who are the then officers of Municipal Corporation to withdraw the said Criminal Writ Petition No. 3298 of 2018 to apply for quashing of the complaint filed by the Petitioner in the Writ Petition No. 3298 of 2018 by consent of the parties. On 19th October, 2022, the Division Bench of this Court passed an order on the said Criminal Writ Petition recording the statement made by the Petitioners herein (Respondent No. 3 in Criminal Writ Petition No. 3298 of 2018) that he intends to withdraw the criminal complaint lodged by them before the Metropolitan Magistrate, 11th Court, Calcutta being CN/299 of 2018 against the Municipal Commissioner, Municipal Corporation of Gr. Mumbai, Mumbai. This Court accordingly vacated the interim stay granted by this Court in the Criminal Writ Petition No. 3298 of 2018 to enable the Petitioner herein to withdraw the criminal complaint filed

by the Petitioner before the Metropolitan Magistrate, 11th Court, Calcutta bearing No. CN/299 of 2018. The said Criminal Writ Petition is adjourned to 10th November, 2022.

3. It is the grievance of the Petitioner that in view of blacklisting order passed by the Municipal Corporation, the Petitioner is deprived of submitting tenders not only floated by the Municipal Corporation but several others.

4. Mr. Patil, learned Counsel for the Municipal Corporation fairly pointed out that in view of the representation made by the Petitioners to withdraw the order of blacklisting, the Municipal Corporation has granted sanction to continue the order of blacklisting only for a period of 4 years from the date of passing of order of such blacklisting provided, criminal complaint filed against the Municipal Corporation by the Petitioner herein is withdrawn. The statement is accepted.

5. Learned Counsel for the Petitioner further undertakes to withdraw the said criminal complaint being CN/299 of 2018 pending before the Metropolitan Magistrate, 11th Court, Calcutta within 4 weeks from today and shall produce certified copy of the order of

withdrawal of the complaint before the Municipal Corporation without fail.

6. Be that as it may, in view of the fact that the Municipal Corporation has already granted sanction for continuation of the order of blacklisting against the Petitioner only for a period of 4 years, which period has already expired as on date, we have recorded the undertaking tendered by the Petitioner to withdraw the said complaint within 4 weeks from today.

7. The order of blacklisting passed by the Municipal Corporation thus does not survive today.

8. Learned Counsel for the Petitioner states that the Petitioners have not filed any other proceedings against the Municipal Corporation other than this Writ Petition and the said Criminal complaint. He further states on instructions that he will not file any further proceedings against the Municipal Corporation for recovery of any claim amount in view of the order passed by the Municipal Corporation. The statement is recorded as and by way of undertaking to this Court.

9. In view of the aforesaid reasons, the Writ Petition is disposed of.

10. If the Petitioners do not produce certified copy of the order that would be passed by the Metropolitan Magistrate, 11th Court, Calcutta in Criminal Case bearing CN/299 of 2018 within four weeks from today, the Municipal Corporation would be at liberty to apply for further directions in this Writ Petition.

11. It is made clear that in view of the blacklisting order passed by the Municipal Corporation does not survive as on date, any letter issued by the Municipal Corporation in furtherance of the said order also does not survive.

12. Mr. Patil, learned Counsel for the Municipal Corporation agrees to instruct the advocate representing the Municipal Corporation to remain present before the Criminal Court at the time of the Petitioner's withdrawing the said complaint without fail. The learned Counsel for the Petitioner has agreed to communicate the date of the said proceedings pending before that criminal court at Calcutta to the Municipal Corporation 7 days in advance, to make the arrangement to remain present through advocate before the

Metropolitan Magistrate, 11th Court, Calcutta on the date of the petitioners seeking withdrawal of the criminal complaint.

13 It is made clear that upon production of certified copy of the order, that would be passed by the Metropolitan Magistrate, 11th Court, Calcutta, the Municipal Corporation shall address a formal letter to the Petitioner seeking withdrawal of order of blacklisting and all other letters within one week from the receipt of the order of withdrawal of criminal complaint.

14. Place this matter on board for “**reporting compliance**” on 28th November, 2022, to be placed under caption “**direction**”.

15. In view of disposal of Writ Petition, pending interim application does not survive. The same is disposed of.

(KAMAL KHATA, J.)

(R.D. DHANUKA, J.)