

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 1812 OF 2022

M/s. Sahil Industries, through its Manager,
Having its registered office at Sector 10,
Plot No. 233, P.C.N.T.D.A., Bhosari MIDC,
Pune – 411026.

...PETITIONER

Versus

1. The Commissioner, Akola Municipal Corporation, Akola,
Mahatma Gandhi Road, New Radhakisan Plots,
Akola – 444001.
2. Akola Municipal Corporation, Akola,
through its Administrator,
Mahatma Gandhi Road, New Radhakisan Plots,
Akola – 444001.

...RESPONDENTS

Shri A.A. Naik, Advocate for the petitioner.
Dr. Anjan De, Advocate for the respondents.

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**CORAM : SUNIL B. SHUKRE AND
G.A. SANAP, JJ.**

DATED : 9 JUNE 2022.

ORAL JUDGMENT : (PER : SUNIL B. SHUKRE, J.)

Rule. Rule made returnable forthwith. Heard finally
by consent of learned Counsel for the parties.

2. The subject of blacklisting of the contractors is now well crystallized. Since, blacklisting is considered to be a civil death of a person, the law requires that principles of natural justice are followed. In *Gorkha Security Services Vs. Government (NCT of Delhi) And Others [(2014) 9 SCC 105]*, it has been held by the Hon'ble Supreme Court that a show cause notice giving of the material set-up against the contractor and informing the contractor of the proposed action of blacklisting is necessary. The Hon'ble Apex Court has held that the show cause notice must meet the following two requirements :

- (i) The material/ grounds to be stated which according to the department necessitates an action;
- (ii) Particular penalty/ action which is proposed to be taken. It is this second requirement which the High Court has failed to omit.

The Hon'ble Apex Court has also held that even if the proposed action is not specifically mentioned in the show cause notice, the show cause notice must be of such a nature that it can be clearly and safely discerned from it the action that a contractor has to face in the matter.

3. In the case of *Kulja Industries Limited Vs. Chief General Manager, Western Telecom Project Bharat Sanchar Nigam Limited And Others* [(2014) 14 SCC 731], it has been held by the Hon'ble Supreme Court that the blacklisting order must answer the principle of proportionality in the sense that it must not operate for an indeterminate period.

4. When the above referred principles of law are applied to the present case, we find that the action of blacklisting of the petitioner has been taken without meeting the requirements of the principles of natural justice. There is a show cause notice given to the petitioner on 06/09/2021, reply to which was given by the petitioner on 14/09/2021, and thereafter, another notice was issued to the petitioner on 22/11/2021 informing him of non-compliance with some of the conditions of the contract and also of the proposed action of cancellation of contract. But in none of these notices, the employer has mentioned anything about taking of action of blacklisting of the petitioner. The impugned order has been passed on 22/11/2021, and it came to be passed on the same day on which one notice dated 22/11/2021 complaining that

the petitioner had not paid the amount due on account of the companies liability towards the Employees Provident Fund and Insurance was given. There is nothing on record to show that any due opportunity of hearing was granted to the petitioner. Of course, the learned Counsel for the Corporation has invited our attention to condition No.21 of the agreement, which lays down that in case it is found that the contractor is paying wages to the contractual employees below the prescribed minimum wages, action of cancellation of contract and blacklisting of the contractor would be taken by the Corporation. The learned Counsel for the Corporation has also pointed out to us letters issued to the petitioner informing him of various defaults committed by him including one relating to the alleged non-payment of wages as per the Minimum Wages Act, 1948 and also the replies, which are called by the learned Counsel as evasive and which, according to the learned Counsel for the Corporation, put the petitioner on sufficient notice of the impending action against him.

5. On careful perusal of this exchange of communication between the parties, we find that the petitioner

has been informed of the defaults committed by him earlier, and the petitioner too on his part had given some replies to the Corporation, and it also appears to us that no serious efforts have been made by either of the parties to demonstrate or establish the real facts.

6. In these circumstances, in our view, the requirements of the principles laid down by the Hon'ble Supreme Court in the cases of *Gorkha Security Services (supra)* and *Kulja Industries Limited (supra)* are not fulfilled, and therefore, we are also of the view that this is a fit case for directing a fresh enquiry in the matter.

7. In the result, the petition is allowed. The impugned order is hereby quashed and set-aside. The matter is remanded back to respondent No.2 for fresh enquiry in the matter only on the aspect of blacklisting of the petitioner in accordance with law, keeping in view the principles settled by the Hon'ble Supreme Court in the cases of *Gorkha Security Services (supra)* and *Kulja Industries Limited (supra)*. After giving sufficient opportunity of hearing to the petitioner, respondent No.2 shall pass an appropriate order in the matter as

expeditiously as possible.

8. Rule accordingly. No costs.

JUDGE

JUDGE

Sumit