

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

WRIT PETITION NO.2429 of 2022

Priyadarshani Bahuuddeshiya Seva Sahakari Sanstha,
a registered co-operative society, through its
President- Mr. Ramesh Vithobaji Bandhekar,
aged about 38 years,
R/o. 1083/A/34, Pachpaoli Road,
Nagpur-440 017

..... **PETITIONER**

...V E R S U S...

1. State of Maharashtra
Through its Secretary,
Department of Education and Sports,
Mantralaya, Madam Cama Road,
Mumbai-400 032.
2. Nagpur Municipal Corporation,
through its Municipal Commissioner,
Near Vidhan Bhavan, Civil Lines,
Nagpur-440 001.
3. Nagpur Municipal Corporation
through its Education Officer,
Near Vidhan Bhavan, Civil Lines,
Nagpur-440 001.
4. Directorate of Primary Education, Pune.
Through its Director, Central Building,
1st Floor, at Pune- 411 002.

..... **RESPONDENTS**

Shri Akshay A. Naik, Advocate for petitioner.
Ms K. R. Deshpande, Assistant Government Pleader for respondent nos. 1 &
4.
Shri G.A.Kunte, Advocate for respondent nos.2 and 3.

CORAM :- A.S.CHANDURKAR AND URMILA JOSHI-PHALKE, JJ.
DATE :- JULY 28, 2022.

JUDGMENT (Per A.S.CHANDURKAR, J.)

Rule. Rule made returnable forthwith and heard the learned counsel for the parties.

2. The challenge raised in this writ petition is to the order dated 22nd April, 2022 by which the petitioner-Co-operative Society has been prevented from participating in any tender process of Nagpur Municipal Corporation on permanent basis.

3. The facts relevant for adjudicating the writ petition are that on 01st May, 2019 the Nagpur Municipal Corporation(for short, the Corporation) issued a notice inviting tenders for supply of cooked food to local schools within the jurisdiction of the Corporation. Since the Society was interested in participating in the said tender, it submitted its bid. As the same was found to be competitive, a work order was issued to the Society on 26th June, 2019. The Society accordingly supplied food as per this work order. Thereafter on 17th February 2022 another contract was executed between the Society and the Directorate of Primary Education of the State of Maharashtra. By that work order, the Society was to supply food grains to

schools within the jurisdiction of the Corporation under the Mid-Day Meal Scheme. On 20th April, 2022 the Corporation issued a show cause notice to the Society stating therein that on 5th and 6th April, 2022 an inspection was taken to examine the manner in which the work order was being executed by the Society. Various shortcomings were noted and the Society was called upon to give its clarification within a period of 24 hours. It was stated that if the explanation furnished was not found sufficient, action would be taken in accordance with the Rules. The Society on 21st April, 2022 submitted its reply denying the existence of deficiencies as alleged. It demanded various documents on the basis of which the show cause notice was issued. It also requested that the said show cause notice be dropped. On the next day, the Corporation issued an order cancelling the work order and blacklisting the Society from participating in any future contracts with the Corporation on permanent basis. Being aggrieved, the Society has challenged the aforesaid order.

4. Shri Akshay Naik, learned counsel for the petitioner-Society submitted that the order of blacklisting was bad in law for various reasons. Inter alia, it was submitted that a short period of 24 hours was given to the Society to submit its explanation. It was not possible for the Society to gather all relevant documents and submit a satisfactory reply. Absence of

adequate opportunity therefore vitiated the impugned action. Further in the show cause notice the deficiencies pointed out had no relation with the ground on which the action was taken against the Society. In the show cause notice deficiencies in the supply of food grains and its quality had been referred to. The order of blacklisting indicated that since the Society relied upon forged documents to indicate its experience for the supply of food grains, the work order was being cancelled. Thus, the action was taken on the basis of a ground which was not mentioned in the show cause notice. Similarly, in the show cause notice the proposed penalty to be imposed was also not indicated. It was merely stated that action would be taken in accordance with law. If the Society was to be blacklisted that ought to have been mentioned in the show cause notice. The same was however not done. It was also submitted that the impugned order was unreasoned and liable to be set aside even on that count. To substantiate his contentions, the learned counsel placed reliance on the decisions in *Gorkha Security Services vs. Government (NCT of Delhi) and others [(2014) 9 SCC 105]*, *Kulja Industries Limited vs. Chief General Manager, Western Telecom Project Bharat Sanchar Nigam Limited and others [(2014) 14 SCC 731]* and *Kranti Associates Private Limited and another vs. Masood Ahmed Khan and others [(2010) 9 SCC 496]*. It was thus submitted that the impugned order of blacklisting ought to be set aside.

5. Shri G.A.Kunte, learned counsel for the respondent nos.2 and 3-Corporation supported the impugned order. According to him, since the Corporation noticed various deficiencies in the execution of the work order, an inspection was carried out after which the show cause notice was issued to the Society. The reply submitted by the Society was not found satisfactory and hence the impugned action came to be taken. It was submitted that the petitioner relied upon forged documents to indicate that it possessed requisite experience for carrying out similar work. Since it was found that the Society had relied upon such documents, the action of blacklisting was taken. Considering the nature of the work order, strict action was taken against the Society and it was debarred from further participation in the future tender process. Since the impugned action was taken after grant of due opportunity to the Society, there was no reason to interfere with the impugned order. The writ petition was liable to be dismissed.

5. Having heard the learned counsel for the parties and having perused the relevant documents placed on record, we find that the impugned order of blacklisting is liable to be set aside for the following reasons:

(a) In the show cause notice dated 20th April, 2022, the Corporation

has indicated the grounds on which it proposed to take action against the Society. These grounds relate to the manner in which the work order was being executed contrary to its terms. It was stated that after carrying out inspection on 5th and 6th April, 2022 these deficiencies were noted. Perusal of the order of blacklisting indicates that the Commissioner has found that the Society relied upon a bogus experience certificate for obtaining the work order. Another ground mentioned was the irregularity in the distribution of food grains for 189 days. It thus becomes evident that while the order of blacklisting is based on submission of a forged experience certificate by the Society that aspect has not been mentioned in the show cause notice. In other words, the impugned action has been taken without putting the Society to notice that it was proposed to be blacklisted for submission of a forged experience certificate. The impugned action thus having been taken without seeking the explanation of the Society on the submission of a forged experience certificate, the same becomes unsustainable.

(b) Another aspect to be noted is that in the show cause notice the proposed action of blacklisting has not been referred to. It has merely been stated that appropriate action would be taken in accordance with the Rules. While passing the impugned order, the Society has been blacklisted on a permanent basis. This aspect of mentioning the proposed action in the show cause notice has been considered by the Hon'ble Supreme Court in *Gorkha*

Security Services (supra) and it has been held therein that merely making a mention in the show cause notice that action would be taken in accordance with law is not sufficient and when a harsh action of permanent blacklisting is proposed, the same ought to have been mentioned in the show cause notice.

(c) While replying to the show cause notice, the Society on 21st April, 2022 demanded the documents on the basis of which the show cause notice was issued. These documents were not supplied to the Society. On the contrary, the impugned order came to be passed on the next day. Since it was the case of the Society that the work order was being satisfactorily carried out, it was incumbent upon the Corporation to have supplied the documentary material on which it sought to rely for taking the action of blacklisting. This material not having been supplied to the Society, it becomes obvious that it was not aware of the basis on which the impugned action was taken.

6. In our view, the aforesaid grounds are sufficient to set aside the order of blacklisting. Since the order of permanent blacklisting is a harsh order, it ought to have been passed after complying with the principles of natural justice and giving appropriate notice to the Society of the action proposed. Hence for aforesaid reasons, the impugned order dated 22nd April,

2022 insofar as it permanently blacklists the Society is concerned, the same is set aside. It is open for the Corporation to take appropriate action against the Society in accordance with law after complying with the principles of natural justice.

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

(URMILA JOSHI-PHALKE, J.)

(A.S.CHANDURKAR, J.)

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