

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

976 WRIT PETITION NO.64 OF 2023

M/S VATAN TRANSPORT THROUGH ITS PROPRIETOR
MOHD SAJID MOHD ISAK PATEL

VERSUS

THE STATE OF MAHARASHTRA
THROUGH ITS SECRETARY AND OTHERS

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Advocate for Petitioner : Mr. P.R. Katneshwarkar h/f.
Mr. Ganesh A. Gadhe

Government Pleader for Respondent – State : Mr. D.R. Kale

Advocate for Respondent Nos.4 & 5 : Mr. A.R. Tapse h/f.

Mr. P.D. Suryawanshi

Advocate for Respondent No.6 : Mr. S.T. Yaseen

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**CORAM : NITIN W. SAMBRE AND
S.G. CHAPALGAONKAR, JJ.**

DATE : 21-03-2023

PER COURT:

1. The petitioner was awarded contract for supply of water by tankers in the Beed District for the year 2019-2020.

2. As the authorities received complaints against the petitioner in the implementation of the aforesaid work, Enquiry Committee was constituted. The Divisional Commissioner conducted the enquiry and noticed serious shortfalls / mismanagement in the matter of implementation of the work of water supply through tankers. As a sequel of above, vide the impugned order dated January 2, 2023 the respondent - Chief Executive Officer has ordered

black listing of petitioner thereby restraining him from participating in any other tender process in addition to State or its entities.

3. Mr. Katneshwarkar, learned counsel appearing for petitioner would urge that on earlier occasion the authorities of the Zilla Parishad had conducted enquiry against petitioner on the same set of points, wherein clean chit was given to him. He would further submit that the communication dated December 12, 2022 issued by the State Government, communication dated December 19, 2022 issued by the Dy. Commissioner Revenue and the report of the Divisional Commissioner were never made available to petitioner before the impugned order was passed. He would urge that the order impugned is non-speaking order. Based on the enquiry report black listing of petitioner is ordered which in any case is not permissible in law. He would further submit that as a consequences of the order impugned, petitioner is not in a position to participate in any other tender process of the State or its entities.

4. The learned counsel for the respondents would support the order impugned as according to him the inquiry report in categorical terms implicates petitioner in the implementation of the subject contract in regards to the water supply. According to

respondents, the order is already given effect and that being so, this Court should be sloth in causing interference.

5. We have appreciated the aforesaid submissions.

6. The order impugned is passed by the respondent - Chief Executive Officer, Zilla Parishad, Beed. The said order *sans* any reasons much less the application of mind by the respondent authority. Impugned order is based on the mandate in the communication dated December 12, 2022 issued by the State Government and the communication dated October 11, 2022 issued by the Water Supply and Sanitation Department.

7. Apart from above, the impugned order of blacklisting is based on the aforesaid two communications which are admittedly not provided to petitioner. As such, petitioner was not in a position to canvass his defence before the said authority before the order of blacklisting was passed. The fact remains that neither the minutes of such meeting wherein a decision was taken to blacklist petitioner nor reasons if any thereof are referred to in the order impugned. The fundamentals of the fair-play requires that a person concerned against whom an action or order is to be passed having adverse civil

consequences, must be put to notice and should be heard after he is supplied with the adverse material.

8. In the case in hand, the fact remains that petitioner was neither served with the show cause notice nor was given hearing by supplying the documents which are considered adverse to his interest.

9. In the aforesaid background, it can be said that the order impugned is not only contrary to the principles of natural justice, but also *sans* the reasoning much less the application of mind by the respondent authority.

10. The issue is squarely covered by the Supreme Court judgment in the matter of **Erusian Equipment & Chemicals Ltd. vs. State of West Bengal & Anr.**, MANU/SC/0061/1974, para nos.19, 20 & 21 of which read thus:

“19. Where the State is dealing with individuals in transactions of sales and purchase of goods, the two important factors are that an individual is entitled to trade with the Government and an individual is entitled to a fair and equal treatment with others. A duty to act fairly can be

interpreted as meaning a duty to observe certain aspects of rules of natural justice. A body may be under a duty to give fair consideration to the facts and to consider the representations but not to disclose to those persons details of information in its possession. Sometimes duty to act fairly can also be sustained without providing opportunity for an oral hearing. It will depend upon the nature of the interest to be affected, the circumstances in which a power is exercised and the nature of sanctions involved therein.

20. Blacklisting has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for purposes of gains. The fact that a disability is created by the order of blacklisting indicates that the relevant authority is to have an objective satisfaction. Fundamentals of fair play require that the person concerned should be given an opportunity to represent his case before he is put on the blacklist.

21. With regard to the case of the petitioners, it is made clear that the authorities will give an opportunity to the petitioners to represent their case and the authorities will hear the petitioners as to whether their name should be put on the blacklist or not. This is made clear that the

decision on this question will not have any effect on the proceedings pending in Calcutta High Court where the petitioner has challenged the adjudication proceedings under the Foreign Exchange Regulations Act. Any decision of the authorities on the blacklisting will have no effect on the correctness of any of the facts involved in those proceedings.”

11. In view of the above, the petition stands allowed. The order impugned is hereby quashed and set aside.

12. However, quashing of the impugned order is not come in the way of the respondents in causing fresh show cause notice to petitioner and it should be accompanied with the relevant material to be considered against petitioner for proceedings against him for black listing.

13. The respondent - authority in such an eventuality must offer personal opportunity of hearing to petitioner.

(S.G. CHAPALGAONKAR, J.)

(NITIN W. SAMBRE , J.)

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