

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

927 WRIT PETITION NO.10751 OF 2022

M/S SAI ENTERPRISES BHAIYYA
SAHAB NARAYAN MUNE

... Petitioner

VERSUS

THE SECRETARY MINISTRY OF PETROLEUM
AND NATURAL GAS AND OTHERS

... Respondents

...

928 WRIT PETITION NO.11090 OF 2022

RAJENDRA ASHOK AKOLKAR

... Petitioner

VERSUS

THE SECRETARY MINISTRY OF PETROLEUM
AND NATURAL GAS AND OTHERS

... Respondents

...

Mr. V. D. Sapkal (Senior Counsel) i/b Mr. P. R. Nangare, Advocate for the
Petitioners in both petitions

Mr. A. P Bhandari, Advocate for Respondent Nos.4 to 6 in both petitions

Mr. D. B. Gaikwad, Advocate for Respondent No.1 in both petitions

...

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

DATE : 14.03.2023

FINAL ORDER :

1. After recording findings of the petitioners indulging in malpractice resulting into financial loss to the Corporation, the petitioners were posted in the holiday list for a period of 15 years as a punishment.

2. After the petitioners suffered such orders, an appeal was carried which was also rejected.

3. In view of the policy for holiday listing of the vendors in BPCL i.e. respondents/company, the petitioners preferred an application styling to be one under the provisions of Clause-6 of the said policy seeking revocation of holiday listing keeping in mind that the petitioners have already suffered holiday listing i.e. ban in any of the business activity of the respondents - Corporation for a period of 15 years. Such request is rejected vide impugned orders dated 19th September, 2022 and 13th September, 2022.

4. The petitioners have specifically come out with the case in the prayer clause that the orders, whereby punishment of posting the petitioners on holiday list dated 10th August, 2017, 29th January 2019, whereby appeal was dismissed be quashed and set aside and the order passed on the review application under Clause-6 be also set aside.

5. A specific ground is raised that the application of the petitioners is under Item-6 of the policy. The Item-6 of the policy reads thus :

“Revocation of Holiday Listing:

6.1. An order for Holiday Listing once passed for a certain specified period shall be revoked as under:

6.1.1. An order for Holiday Listing passed for a certain specified period shall be revoked on the expiry of that specified period, subject to the Agency giving a request in writing clearly mentioning the corrective action which has already been taken/proposed to be taken, to avoid recurrence Specific order of revocation shall be issued by the concerned Procurement Department Vendor Enlistment Committee, which had recommended the Holiday Listing, after considering the Vendor’s request, with copy to the Nodal Department.

6.1.2. A Holiday Listing order may, on a review during its currency of operation, be revoked by the competent authority if it is of the opinion that the disability already suffered is adequate in the circumstances of the case, and the Agency has taken appropriate action to avoid recurrence.”

6. In the aforesaid background, learned Senior counsel Mr. Sapkal would urge that the petitioners having suffered the holiday listing for a period of more than five years, considering the nature of default alleged against the

petitioners, the petitioners should be ordered to be removed from the holiday listing on the basis of penalty/punishment which they have already suffered. An additional submission is that the orders impugned passed in exercise of Clause No.6.1.2 referred above are without any reasons particularly, having regard to the defaults as referred to in Item-4.2.12 which are defined under Clause-3 of the policy.

7. While countering the aforesaid submissions, Mr. Bhandari, learned counsel for the respondents–Corporation would urge that once the petitioners accepted their defaults, the respondents - Corporation was well within its power to pass the impugned order, thereby refusing to grant the relief as has been claimed under Item-6.1.2 of the aforesaid policy. So as to substantiate the aforesaid claim, Mr. Bhandari has invited our attention to mode and manner, in which, the petitioners have conducted themselves which has led to the passing of the impugned orders whereby the petitioners were ordered to be holiday listed.

8. We have appreciated the aforesaid submissions.

9. Having regard to the policy as referred to above, the fact remains that the petitioners were punished for a period of 15 years, thereby ordering their holiday listing, they having indulged into an act of malpractice as referred to under Clause-3(x) of the aforesaid policy.

10. The petitioners in view of invoking provisions of Clause-6.1.2 have rather accepted their defaults and had suffered the punishment imposed for more than five years.

11. In this background, the petitioners appears to have taken recourse to Clause-6 so as to unless them from holiday listing which prayer is rejected vide the impugned orders.

12. The fact remains that the orders impugned are non speaking orders as the orders do not contain any reason. Since the orders impugned are in exercise of clause which deal with the holiday listing a remedy is provided to the petitioners of seeking review of the order of punishment, it was expected of the respondents to pass a reasoned order.

13. Though Mr. Bhandari has tried to make an endeavour to justify the impugned orders so as to draw reasons from the record, it is difficult for us to get convince that such reasons which are absent in the impugned orders can be borne out of record to infer the justification of the passing of the orders impugned.

14. In the aforesaid background, it has to be observed that the impugned orders dated 19th September, 2022 and 13th September, 2022 which lack the reasoning in support of the conclusion drawn is not sustainable in law and are accordingly quashed and set aside.

15. We direct all the petitioners to appear before the Competent Authority with the written notes of argument on or before 27th March, 2023. We expect the Competent Authority to pass an order in exercise of Clause-6 particularly, Clause-6.1.2, keeping in mind the Clause-3, the charge levelled against the petitioners and they having already undergone the punishment of five years, as expeditiously as possible and in any case within a period of ten weeks from the appearance of the petitioners.

16. The writ petitions shall stand partly allowed in the above terms.

(S. G. CHAPALGAONKAR, J.)

(NITIN W. SAMBRE, J.)