

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

WRIT PETITION NO.5175 OF 2008

Petitioner : Yashwant s/o Ramraoji Kalbande,
Aged about 42 years, Occupation : Contractor,
R/o Main Road, Dodakipura, Katol, Dist. Nagpur.
– Versus –

Respondents : 1. Zilla Parishad, Nagpur,
through its Chief Executive Officer,
Civil Lines, Nagpur – 440 001.

2. The Executive Engineer,
Minor Irrigation Department, Zilla Parishad,
Nagpur.

Mr. S.V. Bhutada, Advocate for the Petitioner.
Mr. M.M. Sudame, Advocate for the Respondents.

CORAM: **AVINASH G. GHAROTE AND M.W. CHANDWANI, JJ.**
DATE : **7th AUGUST, 2023.**

J U D G M E N T : (Per M.W. Chandwani, J.)

The petition challenges the order dated 08/10/2008 issued by respondent No.1, whereby the petitioner was blacklisted permanently.

02] The petitioner is a contractor and is registered with the Public Works Department (PWD). The petitioner claims that he has been regularly awarded different tenders for civil works by the Zilla Parishad as well as the

PWD, which have been completed by the petitioner, promptly. From 2008, the Zilla Parishad insisted the petitioner for direct registration with it. Therefore, the petitioner had submitted an application to the Zilla Parishad for his registration. But, he came to know that he has been blacklisted permanently by respondent No.1.

03] It is contended in the writ petition that some unknown person took contract from the Minor Irrigation Department in the name of the petitioner from Zilla Parishad as well as from MHADA and did not complete the work to the satisfaction of the Zilla Parishad. When, the petitioner came to know that his signatures were forged and even bogus account was opened in the name of the petitioner, and instead of account payee cheques, bearer cheques were issued against the said work, which were taken by somebody in the name of the petitioner, accordingly, the petitioner reported the matter to the Police Station also. It is also contended that the impugned order of blacklisting has been issued by respondent No.1 without following the due process of law and even no 'show cause notice' was issued to the petitioner. Hence, the petitioner approached to this Court by way of the present writ petition.

04] Having heard the learned Counsel for the petitioner as well as the respondents and having gone through the record, it appears to us that no

‘show cause notice’ was issued to the petitioner before passing of the impugned order blacklisting the petitioner that too, permanently. It is trite position of law that blacklisting has the effect of denying a person an opportunity to participate in the tender process. Not only this, it is also a dent on the reputation of the person. It is relevant to refer the decision of the Supreme Court in the case of UMC Technologies Private Limited vs. Food Corporation of India and another (2021) 2 SCC 551, wherein in paragraphs 13 and 14, the Supreme Court has held as under :-

“13. At the outset, it must be noted that it is the first principle of civilised jurisprudence that a person against whom any action is sought to be taken or whose right or interests are being affected should be given a reasonable opportunity to defend himself. The basic principle of natural justice is that before adjudication starts, the authority concerned should give to the affected party a notice of the case against him so that he can defend himself. Such notice should be adequate and the grounds necessitating action and the penalty/action proposed should be mentioned specifically and unambiguously. An order travelling beyond the bounds of notice is impermissible and without jurisdiction to that extent. This Court in Nasir Ahmad v. Custodian General, Evacuee Property has held that it is essential for the notice to specify the particular grounds on the basis of which an action is proposed to be taken so as to enable the noticee to answer the case against him. If these conditions are not satisfied, the person cannot be said to have been granted any reasonable opportunity of being heard.

14. Specifically, in the context of blacklisting of a person or an entity by the State or a State Corporation, the requirement of a valid, particularised and unambiguous show-cause notice is particularly crucial due to the severe consequences of blacklisting and the stigmatisation that accrues to the person/entity being blacklisted. Here, it may be gainful to describe the concept of blacklisting and the graveness of the consequences occasioned by it. Blacklisting has the effect of denying a person or an entity the privileged opportunity of entering into government contracts. This privilege arises because it is the State who is the counterparty in government contracts and as such, every eligible person is to be afforded an equal opportunity to participate in such contracts, without arbitrariness and discrimination. Not only does blacklisting take away this privilege, it also tarnishes the blacklisted person's reputation and brings the person's character into question. Blacklisting also has long-lasting civil consequences for the future business prospects of the blacklisted person.”

05] In view of the law, which has been settled in various decisions of the Supreme Court including UMA Technologies (*supra*) and the decision of this Court, the impugned order blacklisting the petitioner permanently without giving him an opportunity of hearing and without complying the principles of natural justice, does not stand in the eyes of law and, therefore, it needs to be set aside.

06] Accordingly, the writ petition is allowed. The impugned order dated 08/10/2008 is hereby set aside. Rule is made absolute with no order as to costs.

**sandesh*

(M.W. Chandwani, J.)

(Avinash G. Gharote, J.)