



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

**918 WRIT PETITION NO. 2432 OF 2024
WITH
CIVIL APPLICATION NO. 6756 OF 2024
IN WP/2432/2024**

**MS OMKAR CONSTRUCTION A PROPRIETARY FIRM,
THROUGH ITS PROPRIETOR**

VERSUS

**THE STATE OF MAHARASHTRA, THROUGH ITS
PRINCIPAL SECRETARY AND OTHERS**

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Mr R. N. Dhorde, Senior Advocate a/w Mr P. S. Dighe, Advocate
i/b Mr S. S. Dudhane, Advocate for Petitioner/Applicant;
Mr S. J. Salgare, A.G.P. for Respondent Nos.1 to 4

**CORAM : RAVINDRA V. GHUGE
AND
Y. G. KHOBRAGADE, JJ.**

DATE : 10th July, 2024

PER COURT:

ORDER ON CIVIL APPLICATION

1. We have heard the learned Advocates for the respective sides on the Civil Application and the proposed prayers. The pleadings are yet to be completed.

2. The Additional Chief Secretary, Public Works Department, Mumbai, namely, Mrs Manisha Patankar-Mhaiskar

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has filed an affidavit on 27/03/2024. A copy of the said reply is served on the learned Advocate for the Petitioner, on 01/07/2024. In the interregnum, after filing the affidavit-in-reply, the State issued the order dated 21/06/2024, blacklisting the Petitioner.

3. In view of the above, **this Civil Application is allowed.** The proposed amendment shall be carried out within seven days from today.

ORDER BELOW WRIT PETITION

4. The learned Senior Advocate Shri. Dhorde appearing along with Shri. Dighe and Shri. Dudhane, the learned Advocates for the Petitioner, points out that the impugned order dated 21/06/2024, by which, the Petitioner was blacklisted for a period of three years, is passed without granting an opportunity of hearing to the Petitioner.

5. The learned A.G.P. submits on instructions that, one notice was served on the Petitioner on 29/12/2023 and the Petitioner had replied to the said notice vide reply dated 02/01/2024. The learned Senior Advocate fairly points out that

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the said notice was with reference to an allegation that the Petitioner has prepared a concocted record and which made the proprietor liable for registration of a cognizable offence. Hence, a show cause notice was given to the Petitioner with regard to the registration of a cognizable offence.

6. As such, the issue rests at the fact that the State did not issue any show cause notice to the Petitioner, calling upon him as to why he should not be blacklisted and what should be the duration of the blacklisting. It is a different issue, in which we do not wish to go into at this stage, (since the pleadings on this aspect will have to be completed), that whether the State can blacklist an entity only by issuing a show cause notice, or whether such cause for blacklisting the Petitioner, has to be a reasoned order. In paragraph No.7 of the affidavit-in-reply filed by the Additional Chief Secretary, dated 27/03/2024, it is mentioned that the proposal for blacklisting the Petitioner would be examined in the light of prevailing provisions of applicable Government Resolutions.

7. In **M/s Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and another**, reported in **AIR 1975 SC 266**, it was concluded that, it is an implied principle of the rule of law that, any order having civil consequences should be passed only after following the principles of natural justice. It also has to be realized that the blacklisting of any person in respect of business ventures, has civil consequences on the future business of the person. Even if the rules do not expressed so, it is an elementary provision of principle of natural justice that, parties affected by any order should have a right of being heard. Blacklisting has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for the 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 be represented before he is put in the blacklist.

8. Recently, the Hon'ble Supreme Court has delivered a judgment in **State Bank of India and others Vs. Rajesh Agarwal and others, (2023) 6 SCC 1**. The latin phrase '*audi alteram partem*', was considered by the Court and it was concluded that, blacklisting of a person or an entity cannot be without an appropriate opportunity of hearing and without a reasoned order.

9. In view of the above, by way of an ad interim relief, we are staying the operation of the impugned order, dated 21/06/2024. The Respondents are at liberty to file an additional affidavit-in-reply in the light of the amendment allowed by this Court. So also, if the concerned Respondents desire to withdraw the impugned order and follow the law laid down in **M/s Erusian Equipment and Chemicals Ltd. (supra)** and **State Bank of India and others Vs. Rajesh Agarwal and others, (supra)**, they are at liberty.

10. At the request of the learned A.G.P. for listing this matter after four weeks, list this Writ Petition on 07/08/2024 in the 'urgent admissions' category.

11. All office objections shall be removed, on or before 30/07/2024, failing which, this Petition shall stand dismissed without further reference to the Court, on 31/07/2024.

(Y. G. KHOBRADE, J.)

(RAVINDRA V. GHUGE, J.)

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