

Ashwini

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7432 OF 2024

M/S GURUJI INFRASTRUCTURE PVT LTD,
Through its Director,
Mr Ashish Hrushikesh Guru,
Having Office at- 33, Surat Plaza,
Chandulalwadi, Opp- Bank of Baroda,
Station Road, Bhayandar West,
Dist-Thane 401 101.

... PETITIONER

~ VERSUS ~

- 1. THE PIMPRI CHINCHWAD MUNICIPAL CORPORATION, PUNE**
through it's Commissioner,
Office-Mumbai-Pune Highway
Kharalwadi, Pune-411 018.
- 2. THE STATE OF MAHARASHTRA,**
Through Addl. Government Pleader
High Court, Bombay.

... RESPONDENTS

APPEARANCES

FOR THE PETITIONER

Mr Shriram Kulkarni, i/b Nitesh J Mohite.

FOR RESPONDENT NO. 1- (PCMC)

Mr Kedar Dighe.

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FOR RESPONDENT NO. Mr SL Babar, AGP.
2- STATE

**CORAM : M.S. Sonak &
Kamal Khata, JJ.**

DATED : 10th July 2024

ORAL JUDGMENT (Per MS Sonak J):-

1. Heard Mr Kulkarni, learned Counsel for the Petitioner, Mr Dighe, learned Counsel for Respondent No. 1-Pimpri-Chinchwad Municipal Corporation (“Corporation”) and Mr Babar, AGP for the Respondent-State.
2. Leave to amend the prayer clause and correct the date of the impugned order. Amendment to be carried out forthwith. Reverification is dispensed with.
3. Rule. Rule made returnable immediately.
4. The challenge in this Petition is to the order dated 20th May 2022 (Exhibit “F”), by which the Petitioner’s contract for labour supply was terminated, and the Petitioner was blacklisted for a period of three years.
5. Mr Kulkarni, learned Counsel for the Petitioner, fairly submits that the impugned orders, to the extent they terminate the

Petitioner's contract, have not been challenged. The challenge, he submits, was to the blacklisting of the Petitioner for three years because the show cause notice dated 6th September 2021, which was issued to the Petitioner, did not even whisper about any intention to blacklist the Petitioner.

6. Mr Kulkarni submits that blacklisting a contractor for three years visits such a contractor with serious civil consequences. He relies upon **UMC Technologies Pvt Ltd v Food Corporation of India & Anr**¹ to submit that no blacklisting could have been ordered without a show-cause notice clearly spelling out the intention on the part of the issuer of the notice to blacklisting the noticee.

7. Mr Kulkarni submits that for the above reasons, amongst others, the impugned order dated 20th May 2022 to the extent blacklist the Petitioner deserves to be set aside.

8. Mr Dighe learned Counsel for the Corporation submits that a show-cause notice was issued to the Petitioner, and the fact that such notice did not refer to any intention of blacklisting makes no difference. He submits that the grounds for termination of the contract were virtually admitted by the Petitioner. He submits that the alleged circumstance that the workers were subsequently paid their full wages cannot be regarded as a mitigating factor. He referred to reply on behalf of the Corporation and submitted that for the reason set out therein, no relief should be granted to the present Petitioner.

1 (2021) 2 SCC 551.

9. The rival contentions now fall for our determination.

10. The show-cause notice dated 6th September 2021 indeed alleges breaches of the contract on the part of the Petitioner. The show-cause notice required the Petitioner to show cause as to why no action should be taken to terminate the contract due to the apparent breaches. However, there is nothing in the show-cause notice dated 6th September 2021 to suggest any intention of blacklisting the Petitioner.

11. In **UMC Technologies Pvt Ltd (supra)**, the Hon'ble Supreme Court has held that the first principle of civilised jurisprudence is 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 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.

12. The Hon'ble Supreme Court, in the specific context of blacklisting a contractor, held that it was essential for the notice to specify the particular grounds on the basis of which an action was proposed to be taken so as to enable the noticee to answer the case against him. A Court held that this requirement should be

particularly observed where severe consequences of blacklisting and stigmatisation accrue to the person/entity being blacklisted. The Court held that for a show-cause notice to constitute the valid basis of a blacklisting order, such notice must spell out clearly, or its contents be such that it can be clearly inferred therefrom, that there was an intention on the part of the issuer of the notice to blacklisting the noticee. Such a clear notice is essential for ensuring that the person against whom the penalty of blacklisting is intended to be imposed has an adequate, informed and meaningful opportunity to show-cause against his possible blacklisting. In the case before the Hon'ble Supreme Court, it was observed that the plain reading of the notice makes it clear that the action of blacklisting was neither expressly proposed nor could it have been inferred from the language employed in the show-cause notice.

13. The mere existence of a clause in the bid document, which mentions blacklisting as a bar against eligibility, cannot satisfy the mandatory requirement of a clear mention of the proposed action in the show-cause notice. Since the Corporation's notice in the case before the Hon'ble Supreme Court was completely silent about blacklisting, it could not have led the noticee to infer that such an action could be taken by the Corporation in pursuance of the notice. The Court held that had the Corporation expressed its mind in the show-cause notice to the blacklist, the noticee could have filed a suitable reply for the same. The order of blacklisting was accordingly set aside on the ground that it traversed beyond the bounds of the show-cause notice, which was impermissible in law.

14. Applying the ratio of the above decision to the facts of the present case, we quash the impugned order dated 20th May 2022 only to the extent it blacklists the Petitioner for three years. Even in this case, the show-cause notice issued to the Petitioner had not spelt out any intention to blacklist the Petitioner. On the perusal of the show-cause notice, such intention could not be inferred. Thus, the impugned notice, to the extent it blacklists the Petitioner, is required to be quashed for failure of natural justice. We do so accordingly.

15. The quashing of the impugned order dated 20th May 2022 to the extent it blacklists the Petitioner will not preclude the Corporation from issuing a fresh show-cause notice to the Petitioner containing the proposal to blacklist the petitioner. After hearing the Petitioner and considering the cause shown by him, the Corporation is free to decide on the issue of blacklisting in accordance with the law.

16. The rule is accordingly made absolute to the above extent. There should be no order for costs. All concerned to act on an authenticated copy of this order.

(Kamal Khata, J)

(M. S. Sonak, J)