

Ashwini

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 12473 OF 2024

M/s Ideal Chemicals (India) Pvt Ltd.,
Through its Director
Mr Vipul Maheshwari
Having Office at Ghanshyam Niwas,
1st Floor, Furniture Market, Near UBI,
Ulhasnagar- 421 003, Maharashtra.

...Petitioner

~ versus ~

1. Pimpri Chinchwad Municipal Corporation,
Through its Commissioner, Office at-
Mumbai- Pune Highway, Kharalwadi,
Pune – 411 018.
2. State of Maharashtra,
Copy served to Govt. Pleader,
High Court, Mumbai.

...Respondents

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APPEARANCES

For the Petitioner

Mr Surel S Shah, Senior Advocate,
with Sumedh S Modak.

For Respondent No. 1-
PCMC

Mr Kedar B Dighe.

For Respondent–State

Mr SS Bhende, AGP.

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

DATED : 2nd September 2024

ORAL JUDGMENT (Per MS Sonak J):-

1. Heard Mr Surel Shah, learned Senior Advocate for the Petitioner, Mr Kedar Dighe, for the Pune Municipal Corporation (“PCMC”) and Ms SS Bhende, learned AGP for the Respondent State.

2. Rule. The rule is made returnable immediately at the request and with the consent of learned counsel for the parties.

3. The Petitioner challenges the PCMC’s order dated 30th July 2024 blacklisting the Petitioner for a period of three years in the context of a contract for the supply of Poly–Aluminium Chloride liquid and Poly–Aluminium Chloride powder to the PCMC. Admittedly, neither was any show–cause notice issued nor was any hearing afforded to the Petitioner before the impugned order dated 30th July 2024 was made.

4. The law regarding blacklisting of contractors is quite clear. Such an order visits the contractor with serious civil consequences. Therefore, there has to be compliance with the

principles of natural justice and fair play before such an order is made.

5. In the case of *M/s Guruji Infrastructure Pvt Ltd vs The Pimpri Chinchwad Municipal Corporation, Pune*¹, Writ Petition No. 7432 of 2024 decided on 10th July 2024, we had to set aside a similar blacklisting order made by PCMC. In the said decision, we relied upon the decision of the Hon'ble Supreme Court in the case of *UMC Technologies Pvt Ltd v Food Corporation of India & Anr.*² Since this was a decision concerning the order of the PCMC blacklisting the Petitioner without compliance with principles of natural justice, it was expected by the PCMC to follow the law in *M/s Guruji Infrastructure Pvt Ltd (supra)*.

6. 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 notify the affected party 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 explicitly mentioned and unambiguously. An order travelling beyond the bounds of notice is impermissible and without jurisdiction to that extent.

1 2024:BHC-AS:27374-DB.

2 (2021) 2 SC 551.

7. 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 based on which an action was proposed to be taken 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.

8. Applying the ratio of the above decisions to the facts of the present case, the impugned order dated 30th July 2024 is liable to be set aside and is hereby set aside. However, the quashing of this impugned order dated 30th July 2024 will not preclude the PCMC from issuing a 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 PCMC is free to decide the issue of blacklisting following the law.

9. The PCMC shall pay the Kirtikar Law Library Rs. 5,000/- in costs. This is mainly because, hardly ten days before the impugned order was made, we had quashed a similar order of blacklisting without complying with the principles of natural justice. Still, the impugned order was made without complying with the principles of natural justice. Admittedly, there was no show-cause notice for blacklisting in this matter.

10. The rule is accordingly made absolute to the above extent. All concerned to act on an authenticated copy of this order.

(Kamal Khata, J)

(M.S. Sonak, J)