

Wadhwa

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 13013 OF 2024**

R A Ghule (of Its Proprietor Mr Rajabhau Ghule) ...Petitioner

Versus

Vasai Virar City Municipal Corporation ...Respondent

Mr Shardul Singh, with Ms Sayali S Sawant, for the Petitioner.

**Mr MP Rao, Senior Advocate, with Vishwanath Patil, Nidhi
Chauhan, i/b Vishwanath Patil, for the Respondent-
Corporation.**

**CORAM. M.S. Sonak &
 Kamal Khata, JJ
DATED: 24th September 2024**

PC:-

1. Heard learned counsel for the parties.
2. The challenge in this Petition is to the communication dated 5 August 2021 made by the Vasai Virar Municipal Corporation (VVMC) purporting to blacklist the Petitioner indefinitely. This Petition was instituted only in September 2024.
3. The only explanation for the delay in instituting this Petition is to be found in paragraph 11, which reads as follows:-

“There is no delay and laches in filing the present petition. The cause of action to file the same arose on 29th August 2024 when the Petitioner learnt that the impugned order was being given effect to in August 2024 by the Respondent despite their actions otherwise since August 2021 to November 2023.”

4. The statement in paragraph 11 is false, particularly considering the communication dated 22 October 2021 issued by the Corporation to the Petitioner. In this communication, notwithstanding the order dated 5 August 2021, the Petitioner was offered an opportunity to complete the incomplete works. This communication states that the Corporation will consider varying the impugned communication dated 5 August 2021 if the incomplete works are completed within a prescribed schedule.

5. The Petitioner, without substantial pleadings, contends that the Petitioner did complete the incomplete works within the prescribed period. However, this is contested and disputed by the Corporation. In this Petition, it is not possible to adjudicate such disputed questions of fact. This is more so because the Petitioner, in paragraph 3(m) of the Petition, has pleaded that the Petitioner has already invoked the Arbitration clause. After all this, it was incorrect for the petitioner to plead that the petitioner was unaware of the communication operating in August 2024. Based upon such false pleadings, laches cannot be sought to be explained.

6. Though the reason for the delay and laches is false, this Petition need not be dismissed on the grounds of delay and laches because there are other grounds for rejecting it. Besides, the Petitioner's complaint is about the continuance of the blacklisting order. This aspect can be examined even at this stage. But the Petitioner could and should have avoided giving a false explanation.

7. The Corporation raises a serious dispute on whether the impugned communication amounts to any indefinite blacklisting of the Petitioner. There are serious disputes about whether the Petitioner completed the contractual works following the contract terms. The contract admittedly contains an Arbitration clause, and the Petitioner claims to have already invoked this Arbitration clause to resolve such disputes. There is no dispute that sufficient opportunity was given to the Petitioner to show cause before the impugned order was made.

8. The Petitioner contends that the impugned blacklisting order was not given effect. For this, he relies upon the work that the Petitioner was permitted to do in pursuance of the communication dated 22 October 2021. No pleading exists about any other work allotted to the Petitioner from October 2021. However, there is a serious dispute about whether the Petitioner completed the works in the time allotted and according to the contractual terms. The question of waiver or acquiescence is also a question of fact. The Petitioner has already invoked the Arbitration clause to adjudicate these questions.

9. In *Kulja Industries Limited vs. Chief General Manager, Western Telecom Project Bharat Sanchar Nigam Limited & Ors*¹, the Hon'ble Supreme Court has held that the duration of blacklisting should not be of unlimited duration. At the same time, the Hon'ble Supreme Court had held that it is not for the Court to normally determine the period for which a Petitioner could remain blacklisted. At least in the first instance, such a matter must be left to the authorities. The extent of the duration cannot be a straitjacket. It depends upon several facts and circumstances. The reasons for adopting such a course of action are set out in paragraphs 28.1 and 28.2.

10. Therefore, in the present case, the Petitioner was given an opportunity to have the effect of the impugned order/communication dated 5 August 2021 diluted. At least prima facie, the Petitioner has failed to complete the works in the extended period or at least there is a serious dispute on this score. This issue of whether the Petitioner completed the incomplete works within the prescribed period and in accordance with the contractual terms is an arbitrable dispute for which the Petitioner has also invoked the Arbitration clause.

11. In the above circumstances, there is no question on this Court entertaining this Petition and deciding the issue of whether this is a case of permanent blacklisting and, if so, the duration for which it ought to continue. Therefore, we had offered the learned Counsel for the Petitioner an opportunity to seek instructions on

¹ (2014) 14 SCC 731

whether the Petitioner was prepared to represent the Corporation to decide, inter alia, on the curtailment of duration. On instructions, Mr Singh submitted that this was unacceptable and that we should decide on the matter. He urged that we immediately stay the impugned communication dated 05.08.2021, though this petition was instituted in September 2024.

12. As noted above, this petition involves seriously disputed facts. The petitioner was given an opportunity by communication dated 22.10.2021. Again, there is controversy about whether the petitioner completed the incomplete works within the prescribed schedule and was consistent with the contractual terms. The petitioner claims to have already invoked the arbitration clause in the contract.

13. There is a dispute on whether the impugned communication constitutes indefinite blacklisting. But even if we were to accept the petitioner's version, still in paragraphs 28.1 and 28.2 of *Kulija Industries (Supra)*, the Hon'ble Supreme Court has indicated the several circumstances that would have to be considered for determining the duration of the blacklisting order.

14. The Hon'ble Supreme Court has also held that ordinarily, it would not be appropriate for the Court itself to determine the period for which the alleged blacklisting should continue, at least in the first instance. Ultimately, this is what the petitioner wants us to do, the disputed facts notwithstanding.

15. Therefore, after considering all the above factors cumulatively and even after excluding the aspect of laches and the false explanation to overcome it, we decline to entertain this Petition for the above reasons. But we clarify that the observations in this order need not influence or prejudice the arbitration claim or other remedies that the petitioner might have under the law. In that sense, all contentions of all the parties are left open for adjudication before the appropriate fora.

16. This Petition is dismissed without any order for costs.

(Kamal Khata, J)

(M.S. Sonak, J)