



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

WRIT PETITION NO.525 OF 2024

M/s Sunshri Enterprises

... PETITIONER

VERSUS

The Union of India & ors.

... RESPONDENTS

.....
Mr. A.D. Sonkawade, Advocate for petitioner
Mr. A.A.A. Khan, A.G.P. for State
Mr. A.P. Bhandari, Advocate for R.No.2 to 7
.....

**CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ.**

DATE : 5th AUGUST, 2025

ORDER :

Heard. The challenge in this Writ Petition is to the order of holiday listing for 15 years, passed by the Territory Manager, and affirmed by the appellate authority. The petitioner is in the business of erecting hoardings. The respondents had given the petitioner a contract to erect certain hoardings. One of the hoardings was to be erected at Brahmangaon Orchard. The contract/ work order was issued

in favour of the petitioner on 1/3/2015. Without erecting the hoarding at the given site, the petitioner, by joining hands with one of the officials of BPCL, submitted a bill amounting to Rs.2,90,032=76 ps. The said bill was cleared on 13/8/2015. After having realised the misappropriation, the BPCL initiated action against the petitioner for its holiday listing. A show-cause-notice was issued to the petitioner. The petitioner appeared in response to the show-cause-notice. It put forth its side. After giving the petitioner opportunity of hearing, the order impugned herein was passed. The petitioner approached the appellate authority unsuccessfully. It is, therefore, before us in this Writ Petition.

2. The learned Advocate for the petitioner would submit that, before the alleged misdeed took place, there was a policy in existence regarding black-listing. The new policy came into being in July 2015. By virtue of clause 2.4 of the new policy, the same would be applicable for the future dealings. In short, the learned Advocate meant to say that, the penalty not prescribed when the alleged misconduct took place, has been imposed relying on the provisions in the new

policy. He even tried to argue on the factual matrix to submit that, the hoarding was in fact erected at some other place only on the directions of the officials of the BPCL. He even adverted our attention to a statement of one of the persons in whose favour the BPCL outlet has been issued/ leased. He would then submit that, a show-cause-notice issued to the petitioner was bad in law since it did not contain the quantum of penalty proposed to be imposed against the petitioner. In support of his contentions, the learned Advocate has relied on the following two judgments of the Apex Court :

- (1) Caretel Infotech Limited Vs. Hindustan Petroleum Corporation Limited & ors. (2019) 14 SCC 81
- (2) Isolators and Isolators through its proprietor Sandhya Mishra. Vs. Madhya Pradesh Madhya Kshetra Vidyut Vitran Company Limited & anr. (2023) 8 SCC 607

3. Learned Advocate for the respondent BPCL took exception to the Writ Petition on the ground of delay and laches. He would submit that, the petition is silent to offer any reason as to why a period of over five years the petitioner slept over its right. According to him, the explanation in the nature of the petitioner to have preferred representation cannot be

termed to be a reason to come out of the principle of delay and laches in filing the Writ Petition.

4. Turning to the merits of the matter, the learned Advocate would submit that, the policy of 2015 was nothing but enlargement of the existing policy. Adverting to clause 2.4 of the new policy, he would submit that, the black-listing/ holiday listing was prescribed in respect of future dealings. He meant to say that, the dealings the BPCL has with the petitioner before the one in question, have all been saved. According to him, if those contracts entered into with the petitioner are cancelled considering his misdeed, it would be a matter of litigation, the petitioner may make out a case of breach of contract and claim damages/ compensation. According to him, under the old policy, no quantum of penalty was prescribed. According to him, the petitioner tendered a false bill in April 2015. Since the petitioner had joined hands with one of the BPCL official, the bill was cleared in August 2015. The petitioner received the amount for the work not done. The act of the petitioner in refunding the amount speaks in volumes. He would further submit that, under the policy itself, a liberty

has been given to approach the authority concerned for reducing the period of holiday listing and the petitioner may avail the same. In that regard, our attention was drawn to clause 6.1.2 in the policy of 2015. Learned Advocate tried to distinguish the authorities relied on. According to him, in the first authority, the undertaking submitted by the contractor therein was post the policy of 2015 came into being. The petitioner therein had suppressed to have met with a penalty of black-listing. According to him, everything in that matter happened post 2015 policy came into being. The same, therefore, would have no application to the facts of the present case. So far as regards other judgment relied on is concerned, he would submit that, although the show-cause-notice did not contain the quantum of penalty proposed to be imposed, the last para of the show-cause-notice was adverted to indicate the authority concerned was determined to impose exemplary penalty. According to him, on the website of the BPCL, the nature of misdeeds to be met with, the proposed penalty has been given. Attention of the petitioner was adverted thereto. The petitioner, therefore, could not be heard to contend that the show-cause-notice did not contain quantum of penalty.

5. We have considered the submissions advanced. Perused the documents on record.

6. It is true that, the petition has been filed five years after the order impugned herein was passed. Prima facie, it may be a case of delay in preferring the Writ Petition. Moreover, no reason has been offered in the petition itself explaining the delay in preferring the Writ Petition. The fact, however, remains that, on the day the petition was filed, the penalty of eight years black-listing was still outstanding. We have, therefore, to entertain the Writ Petition.

7. The earlier policy that was in force did not prescribe any penalty so far as regards wrong similar to one in question. Admittedly, on 1/3/2015, the petitioner was granted contract to erect hoarding. Since we do not wish to go into the factual matrix, it has to be taken that those have been proved. The petitioner, without erecting the hoarding at a specified site, submitted bills therefor on 6/4/2015. The petitioner tried to contend that, the so called misdeed was complete the moment the petitioner submitted the so called false bill. According to

the petitioner, the policy came into being in July 2015 and would, therefore, have no application. The fact is that, the amount under the fictitious bill submitted by the petitioner was realised in August 2015. The petitioner even received the said amount. As such, submitting a false bill, may be a part of the mischief in the mind of the petitioner and that was complete on receipt of the amount for the work not done. Admittedly, the petitioner returned the amount.

8. The question is, whether the policy of 2015 is applicable to the case of the petitioner. Clause 2.4 of the policy reads thus :

“2.4 The Holiday Listing shall be with prospective effect i.e. for future business dealings.”

9. The interpretation of the said clause is as plain as day-light. It has been specifically stated that the holiday listing would be for the future dealings. The details in the policy would further indicate that the contracts entered into with the delinquent and which were in existence have all been saved. The object behind it was to save money, time and litigation in

performance of contractual obligations. As such, clause 2.4 indicates that the black-listing of the delinquent would be for the transaction that would have been entered into with the delinquent post the misdeed was committed. In our view, clause 2.4 admits of not more than one interpretation as sought to be made by learned Advocate for the petitioner. In this view of the factual matrix, the judgment in case of Caretel Infotech Limited (supra) has no application in the present case.

10. So far as regards the show-cause-notice to have not contained proposed quantum of penalty is concerned, the authority relied on pertains to the policy of some other agency and not either of BPCL or HPCL. True, if the policy is one and the same or even identical, the authority may have application. The show-cause-notice in the case in hand indicates that the authority concerned was determined to impose exemplary penalty. Although in so many words the quantum of proposed penalty was not stated in the show-cause-notice, the attention of the petitioner was adverted to the policy in that regard available on the website of the BPCL. We, therefore, find the show-cause-notice to be not illegal and void. The fact,

however, remains that, for the misdeed committed by the petitioner, a maximum penalty of 15 years provided under the policy has been imposed. It is repeatedly held by the Apex Court that the black-listing has a serious consequence and itself a serious penalty as well. The authority concerned has not given any reason as to why it did not prefer to meet the petitioner with holiday-listing for a period lesser than 15 years. Reliance to clause 6.1.2 may be available to the petitioner. The fact, however, remains that, post passing of the impugned order, seven years have passed. It would not, therefore, be in the fitness of things to direct the petitioner to avail the said remedy. Considering the misdeed committed by the petitioner, we find the penalty imposed against the petitioner to be disproportionate. Furthermore, the revised policy of 2025 was brought to our notice by learned Advocate for the petitioner, whereunder black-listing even for similar mischief is to be dealt with, with maximum two years. This favours the case of the petitioner. Relying on the change in the policy as well, according to us, the black-listing so far suffered by the petitioner would meet the ends of justice. With these, the petition deserves to be partly allowed. Hence the order :

ORDER

(i) The Writ Petition is partly allowed.

(ii) The order impugned herein, dated 9/8/2017, passed by the Territory Manager (Retail), Ahmednagar, black-listing the petitioner for 15 years, is modified to the period of black-listing so far suffered.

(NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)

FMPathan/-