# IN THE HIGH COURT OF JUDICATURE AT BOMBAY
## CIVIL APPELLATE JURISDICTION
## WRIT PETITION NO.6727 OF 2024

Mr. Sudhir Rajaram Chavan, Proprietor of M/s. Rudra Systems ***...Petitioner***

**V/s.**

1. The State of Maharashtra, through Ministry of Energy, New and Renewable Energy.
2. Maharashtra State Electricity Distribution Company Limited.
3. Maharashtra State Electricity Distribution Company Ltd, Nashik Zone.
4. Executive Engineer, Maharashtra State Electricity Distribution Company Limited, Rural Division, Nashik.
5. M/s. Aryan Services, through its Proprietor.
6. Mr. Rahul Uttamrao Dhikle ***...Respondents***

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**Mr. Shekhar Jagtap** *with Ms. Sairuchita Chowdhary i/b. J. Shekhar Associates, for the Petitioner.*

**Mrs. Neha Bhide,** *Govt. Pleader with Mr. O.A. Chandurkar, Addl. GP & Mrs. G.R. Raghuvanshi, AGP for Respondent No.1-State.*

**Mr. Rahul Sinha** *i/b. M/s. DSK Legal, for Respondent Nos.2 to 4.*

**Mr. Sandeep Waghmare,** *for Respondent No.5.*

**Mr. Rahul Motkari** *i/b. Ms. Manasi Pawar, for Respondent No.6.*

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**CORAM: ALOK ARADHE, CJ. &**
**SANDEEP V. MARNE, J.**
**Dated: 10 JUNE 2025.**

**<u>Oral Order</u> :** *(Per Sandeep V. Marne J.)*

1. By this Petition filed under Article 226 of the Constitution of India, Petitioner challenges order dated 23 March 2023 debarring him from business dealings with Maharashtra State Electricity Distribution Company Limited (**MSEDCL)** including debarment in participation of future tender processes for three years. Petitioner's appeal against debarment order dated 23 March 2023 has been dismissed by the Appellate Authority by order dated 27 March 2024, which is also subject matter of challenge in the present Petition.

2. Petitioner claims to be in the business of meter reading and other data collection services in various areas for several entities including MSEDCL. It claims to have rendered services of meter reading and data collection for MSEDCL for 15 years. On 30 August 2019, MSEDCL published Notice Inviting Tender (**NIT**) for monthly meter reading, monthly bill printing and monthly bill distribution of LT consumers in specified areas of MSEDCL for the years 2019-20 to 2021-22. Petitioner was found to be successful bidder in the tender process and Letter of Award dated 15 January 2020 was issued in his favour allotting him the tendered work for the specified customers. A show cause notice dated 28 September 2021 was issued to the Petitioner alleging non-satisfactory services on his part on account of incorrect meter readings done by him. Petitioner was called upon to submit his explanation,

failing which he was threatened with cancellation of the work and recovery of liquidated damages. Petitioner submitted his reply on 1 October 2021 putting forth the pretexts of heavy rainfall, large number of customers, non-functioning of Mobile APP, etc. By letter dated 16 February 2022, MSEDCL cancelled the work allotted to the Petitioner. Show cause notice dated 28 February 2023 was issued to the Petitioner for proposed blacklisting action. Petitioner replied the show cause notice on 13 March 2023 and sought to accuse Respondent No.6 for termination of his work. Petitioner was called for personal hearing on 17 March 2023. However he failed to appear for personal hearing, which was re-scheduled on 21 March 2023. He filed Writ Petition No.3802 of 2023 challenging the proceedings initiated for his blacklisting. The Committee constituted by MSEDCL considered the reply filed by the Petitioner and passed order dated 23 March 2023 debarring him from participating in MSEDCL tenders for a period of three years. On 7 July 2023, this Court passed order in Writ Petition No.3802 of 2023 granting liberty to the Petitioner to appear before the Committee on 24 July 2023 for personal hearing. The findings recorded in order dated 23 March 2023 were directed to be treated as *prima facie* with the direction to the Committee to pass a fresh order after grant of opportunity of hearing to the Petitioner. Accordingly, personal hearing was conducted on 24 July 2023, on which date representation was filed by the Petitioner. The Committee thereafter proceeded to pass final order dated 22 August 2023 directing debarment of the Petitioner for a period of three years.

3. Petitioner preferred appeal before the Joint Managing Director, MSEDCL on 1 September 2023 and filed Writ Petition No.2119 of 2024 in this Court complaining non-decision of his appeal. The Petition came to be disposed of by order dated 21 February 2024 directing

expeditious hearing of the appeal. The appeal has been rejected by the Appellate Authority by order dated 27 March 2024, which is also subject matter of challenge in the present Petition.

4. Mr. Jagtap, the learned counsel appearing for the Petitioner would submit that impugned order of debarment passed by the MSEDCL is *ex facie* illegal and arbitrary. That the same is passed at the behest of Respondent No.6, who is member of Legislative Assembly and competitor of Petitioner in the business. He would submit that the action of debarment of Petitioner was clearly unwarranted considering the position that the Petitioner had rendered similar services for 15 long years without any blemish. That the impugned decision is taken without conducting any enquiry into the allegations levelled against Petitioner. That the Committee did not have any material before it for the purpose of arriving at a finding that the Petitioner had created fake meter reading IDs or had punched wrong readings, which were not actually taken by him. That the Petitioner had offered valid justification of non-availability of access to all the meters on account of Covid-19 pandemic. That MSEDCL otherwise follows the practice of raising bills of provisional readings and thereafter raising correct bills on the basis of accurate meter readings. That Petitioner has already lost the work and has additionally been imposed penalty. That in such circumstances, further action of blacklisting was clearly uncalled for and would in fact tantamount double jeopardy. He would rely upon judgment of Apex Court in ***M/s. Techno Prints V/s. Chhattisgarh Textbook Corporation and Anr.***[1]

5. Petition is opposed by Mr. Sinha, the learned counsel appearing for Respondent Nos.2 to 4. He would submit that the order of

[1] SLP(C) No.10042/2023, decided on 12 February 2025.

blacklisting has been passed after grant of due opportunity of hearing to the Petitioner. That in absence of element of perversity it would be beyond the scope of judicial review by this Court to interfere in the impugned action of blacklisting. That the case involves loss of faith as the Petitioner has indulged himself in fraudulent activities of recording incorrect meter readings. He would rely upon clause 9.1.2 (f) of debarment and de-registration policy. He would submit that well considered decision taken after grant of due opportunity of hearing does not warrant any interference in exercise of jurisdiction of this Court under Article 226 of the Constitution of India. In support, he would rely upon judgments in ***Afcons Infrastructure Ltd. V/s Nagpur Metro Rail Corporation Ltd. & Anr.***[2] and ***Kulja Industries Ltd. V/s. Chief General Manager, Western Telecom Project BSNL & Ors***.[3] Mr. Sinha would pray for dismissal of the Petition.

6. We have also heard Ms. Bhide, the learned Govt. Pleader appearing for Respondent No.1-State, Mr. Waghmare, the learned counsel appearing for Respondent No.5 and Mr. Motkari, the learned counsel appearing for Respondent No.6.

7. Rival contentions of the parties now fall for our consideration.

8. Petitioner has questioned correctness of decision taken by MSEDCL debarring him to participate in further tender processes for a period of three years. There is no dispute to the position that MSEDCL has followed the principle of *audi alteram partem* by grant of due opportunity of hearing to the Petitioner before making the order of

[2] (2016) 16 SCC 818
[3] (2014) 14 SCC 731

debarment. The Petitioner's work was initially terminated by order dated 16 February 2022. It appears that penalty of Rs.3.22 lakh was also imposed on the Petitioner for rendering unsatisfactory services during the period January 2020 to February-2022. MSEDCL thereafter decided to initiate action for debarment of Petitioner and accordingly served upon him show cause notice dated 28 February 2023. After Petitioner filed his response to the show cause notice on 13 March 2023, MSEDCL did not proceed to take decision merely on the basis of written response by the Petitioner. It decided to grant personal hearing to him and scheduled such hearing on 17 March 2023 by issuing intimation to the Petitioner vide letter dated 16 March 2023. Petitioner however, wrote back to MSEDCL expressing his inability to attend the personal hearing stating that he was unwell. The hearing was therefore re-scheduled to 21 March 2023 for which again Petitioner failed to appear. The Committee therefore proceeded ahead to decide the debarment proceedings and passed an order dated 23 March 2023 debarring the Petitioner to participate in future MSEDCL tenders for a period of three years. In its order dated 23 March 2023 the Committee referred to the findings recorded after conduct of investigations which had reported that Petitioner had created fake meter reading IDs and had punched wrong readings which were actually not taken by him. The Committee referred to imposition of penalty of Rs.3.22 lakhs on the Petitioner for erroneous readings taken by him during January-2020 to February -2022. The Committee found that photos of meter taken by Petitioner were not of good quality giving rise to consumer discontent and increase in consumer grievances. The Committee found that work was required to be assigned to other agency resulting in accumulated readings and blocking of revenue of MSEDCL. The Committee also recorded that action of the Petitioner resulted in bad debts in some of the cases. On above broad reasonings, Competent

Authority debarred the Petitioner from business dealings with MSEDCL including debarment in participation in future tender processes of MSEDCL for three years.

9. As a result of order dated 7 July 2023 passed in Writ Petition No.3802 of 2023, Petitioner was granted fresh opportunity of hearing on 24 July 2023. After considering further response of the Petitioner, the Committee passed order dated 22 August 2023 reiterating the findings recorded in the earlier order dated 23 March 2023 and reaffirming decision of debarment. Petitioner's appeal has also been decided by the Appellate Authority, which again found that the Petitioner had failed to record proper meter readings and had punched erroneous figures towards readings. The Appellate Authority found that accumulated readings on account of actions of the Petitioner resulted in revenue blockage for MSEDCL. The Appellate Authority also upheld the finding of Petitioner not taking good quality pictures of meters thereby resulting in increase in consumer grievances. The Appellate Authority accordingly rejected the appeal by order dated 27 March 2024.

10. It is thus clear that the impugned decision of the debarment has been taken after grant of full opportunity of hearing to the Petitioner. The Competent Authority as well as the Appellate Authority have recorded findings of fact about fraudulent activities of the Petitioner in recording erroneous meter readings. Petitioner has not been able to demonstrate any element of perversity in the said factual findings recorded by the Competent Authority and Appellate Authority. This Court cannot sit in appeal over the findings recorded by the said authorities.

11. After arriving at a conclusion that the Petitioner was recording erroneous meter readings which led to losses for MSEDCL, the Competent Authority has thought it appropriate to debar the Petitioner from participating in tender processes for a period of three years. The subjective satisfaction recorded by the Competent Authority that actions of the Petitioner warrant debarment cannot be questioned in writ jurisdiction before this Court. Whether the action of termination of work and imposition of penalty was sufficient or whether action for debarment was also warranted is something which the Competent Authority can alone decide. It would not be for this Court to step into the shoes of the Competent Authority and hold that action for debarment ought not to have been taken even after Petitioner was found to have indulged in fraudulent activities. It is for the Competent Authority to decide the proportionality of action to be taken against the Petitioner after it is found that he was repeatedly indulging in recording fraudulent meter readings.

12. In ***Afcons Infrastructure Ltd.*** (supra) the Apex Court has held in paragraphs 11 and 13 as under:-

> 11. Recently, in Central Coalfields Ltd. v. SLL-SML (Joint Venture Consortium) it was held by this Court, relying on a host of decisions that the decision-making process of the employer or owner of the project in accepting or rejecting the bid of a tenderer should not be interfered with. Interference is permissible only if the decision-making process is mala fide or is intended to favour someone. Similarly, the decision should not be interfered with unless the decision is so arbitrary or irrational that the Court could say that the decision is one which no responsible authority acting reasonably and in accordance with law could have reached. In other words, the decision-making process or the decision should be perverse and not merely faulty or incorrect or erroneous. No such extreme case was made out by GYT-TPL JV in the High Court or before us.
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> 13. In other words, a mere disagreement with the decision-making process or the decision of the administrative authority is no reason for a constitutional court to interfere. The threshold of mala fides, intention to favour someone or arbitrariness, irrationality or perversity must be met before the constitutional court interferes with the decision-making process or the decision.

13. It is a trite law that right to debar/blacklist a contractor is an inherent right of the Competent Authority. In ***Kulja Industries Ltd.*** (supra) the Apex Court has held in paragraph 17 as under:

> 17. That apart, the power to blacklist a contractor whether the contract he for supply of material or equipment or for the execution of any other work whatsoever is in our opinion inherent in the party allotting the contract. There is no need for any such power being specifically conferred by statute or reserved by contractor. That is because "blacklisting" simply signifies a business decision by which the party affected by the breach decides not to enter into any contractual relationship with the party committing the breach. Between two private parties the right to take any such decision is absolute and untrammelled by any constraints whatsoever. The freedom to contract or not to contract is unqualified in the case of private parties. But any such decision is subject to judicial review when the same is taken by the State or any of its instrumentalities. This implies that any such decision will be open to scrutiny not only on the touchstone of the principles of natural justice but also on the doctrine of proportionality. A fair hearing to the party being blacklisted thus becomes an essential precondition for a proper exercise of the power and a valid order of blacklisting made pursuant thereto. The order itself being reasonable, fair and proportionate to the gravity of the offence is similarly examinable by a writ court.

14. Debarment of the Petitioner is not permanent. Debarment is only for a period of three years. After the end of the debarment period, Petitioner would be free to participate in MSEDCL tender processes.

15. Reliance by Petitioner on judgment of the Apex Court in ***M/s. Techno Prints (***supra) is inapposite. In case before the Apex Court, a show cause notice for blacklisting was issued in addition to forfeiture of earnest money deposit. The blacklisting was proposed on the ground of

violation of certain clauses of the tender agreement. The issue before the Apex Court was whether proposed action of blacklisting was justified considering the nature of violation alleged against the Appellant therein. The Appellant was assigned the contract of printing books by executing a contract in the year 2020, when the entire country was in the grip of Covid-19 pandemic. Contractual obligation could not be fulfilled by the Appellant. The Apex Court found that the Appellant could not discharge the contractual obligation due to circumstances beyond its control. The Apex Court held that such an action was at best the breach of terms and that the same did not warrant blacklisting of the Appellant. In the facts of that case the Apex Court held that there was no good reason for the Authority to issue show cause notice for blacklisting. The Apex Court has specifically clarified in paragraph 29 of its judgment that the findings are recorded keeping in mind peculiar facts of that case. As against mere violation of clauses of agreement by failure to supply books within the stipulated period in the case before the Apex Court, the Petitioner in the present case is found to have indulged in fraudulent activity of creation of fake meter reading IDs and punching erroneous readings without actually taking the correct meter readings. The facts of the present case are thus clearly different than the one involved in ***M/s. Techno Prints.*** Judgment of the Apex Court is thus clearly distinguishable.

16. It must also be borne in mind that Petitioner has invoked extra-ordinary jurisdiction of this Court under Article 226 of the Constitution of India while setting up challenge to the impugned blacklisting action. Having found that the Petitioner has indulged in fraudulent activities of creation of fake meter reading IDs and punching erroneous readings without taking the actual meter readings, this Court

would be loathe to exercise equitable and discretionary jurisdiction in petition filed by the Petitioner.

17. In absence of any material being produced by the Petitioner to demonstrate an element of perversity or arbitrariness or irrationality in the findings recorded by the Committee, challenge to debarment action cannot be sustained. We therefore do not find any valid reason to interfere in the impugned action of debarment. Petition is devoid of merits. It is accordingly **dismissed** without any order as to costs.

**[SANDEEP V. MARNE, J.]** **[CHIEF JUSTICE]**