



HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5650 OF 2025

Prakash Laxmanrao Adke

A sole proprietor of M/s. P. L. Adke having
his address at 02-AB, Adgaonkar Plaza,
near ABB Circle, Trimbak Road,
Mahatma Nagar, Nashik-07

.....Petitioner

Vs.

1. The Maharashtra Jeevan Pradhikaran,
Division Yavatmal
A statutory authority established
under the Maharashtra Water Supply
and Sewerage Board Act, 1976
having its address at 4th Floor,
Express Towers, Nariman Point,
Mumbai-400 021
2. Member Secretary
Member Secretary of the Maharashtra
Jeevan Pradhikaran, Division Yavatmal
having address at 4th Floor,
Express Towers, Nariman Point,
Mumbai-400 021
3. Superintendent Engineer
of the Head Quarter, Maharashtra
Jeevan Pradhikaran,
having address at 4th Floor, Express Towers,
Nariman Point, Mumbai-400 021
4. Chief Engineer
of the Maharashtra Jeevan Pradhikaran,
having address Tapovan Region Amravati

.....Respondents

Mr. Virag Tulzapurkar, Senior Advocate with Mr. Ashish Kamat, Senior Advocate, Mr. Prathamesh Kamat (through V/C), Ms. Ankita Sen and Ms. Arpeeta Panvelkar, i/b Renata Partners, for the Petitioner. Mr. Ajit Ram Pitale, with Mr. Siddharth Pitale, for Respondent Nos.1 to 4.

**CORAM : REVATI MOHITE DERE &
DR. NEELA GOKHALE, JJ.**

DATE : 13th JUNE 2025.

JUDGMENT :- (Per Dr. Neela Gokhale, J.)

1. **Rule.** Rule made returnable forthwith. With consent of parties, the Petition is taken up for final hearing.
2. By this Petition, the Petitioner seeks to quash and set aside order dated 5th March 2025 issued by the Respondent No.2 and restrain the Respondents through their agents, servants or assigns, etc. from taking any action or acting in furtherance of the impugned order. Interim relief is also sought in terms of the aforesaid prayer.
3. The Petitioner is a sole proprietary concern and is a Government recognized Class-1 contractor. The Respondent No.1 is a statutory body established under the Maharashtra Water Supply and Sewerage Board Act, 1976. The Respondent No.2 is its Member

Secretary and the Respondents No.3 and 4 are its Superintendent Engineer and Chief Engineer, respectively.

4. The brief facts of the Petition are as under:

4.1 Pursuant to the Petitioner's bid, being accepted, by the Respondents, a formal contract was executed by and between them on 12th April 2017. The contract involved carrying out various works related to the Yavatmal Water Supply Scheme of the Government of Maharashtra under Amrit Phase-I and II. Amongst other things, the scope of the work included construction of pump house, repairs to the existing water supply pipes, laying new pipes, construction of RCC platforms for substations, etc. The work was to be completed by the Petitioner within thirty months from the date of issuance of work order which was 29th April 2017.

4.2 A tripartite agreement dated 2nd February 2018 was executed by and between the Petitioner, the Respondent No.1 and one Jai Balaji Industries Private Limited ('JBIL') whereby it was agreed that in order to expedite the work of laying of pipes, the Petitioner shall procure the pipes from JBIL and the Respondent No.1 shall pay the consideration of the pipes to JBIL directly. JBIL was one of the companies appearing in its list of approved manufacturers and the tripartite agreement involving JBIL was done at the instance of the Respondents themselves.

- 4.3 During the testing of the pipes supplied by JBIL, the said pipes were found to be defective and damaged. JBIL replaced the same and the work continued but in the process there was delay in execution of original contract.
- 4.4 On 11th January 2022, the Petitioner was issued a show-cause notice by the Respondent No.2 calling upon the Petitioner to show cause as to why his proprietary concern should not be recommended for black-listing. The reasons in the show-cause notice related to delay of the Petitioner in completing the work assigned to his concern in terms of the work order.
- 4.5 The Petitioner sent a reply dated 24th May 2022 to the show-cause notice and gave a detailed point-wise explanation to the allegations of the Respondent in the said show-cause notice. There was no action on the basis of this show-cause notice taken by the Respondents for a period of two years. In the meantime, the contract stood executed as the Petitioner completed the work on 11th July 2022. A certificate certifying that the work was commissioned and completed by the Petitioner on 11th July 2022 was issued by the Executive Engineer of the Respondent No.1 on 29th December 2023.
- 4.6 On 6th August 2024, another show-cause notice was issued to the Petitioner, once again calling upon the Petitioner to explain the delay caused in performance of the contract. He was also called to attend a meeting with the Respondent No.2 to be convened on 20th August 2024.

4.7 The Petitioner attended the said meeting and gave his written explanation. There were other meetings held as well where the matter was discussed among the parties. Even earlier to these meetings, the Respondents held meetings with JBIL regarding the issue, even without the presence of the Petitioner. There are minutes of one of such meeting held on 31st May 2019 where the issue of defective pipes supplied by the JBIL was discussed and certain directions were given to JBIL. There were also communications exchanged by and between the parties relating to the allegations of delay and the Petitioner's explanation to the same.

4.8 Finally, the Respondent No.2, after a period of another 7 months, passed an order dated 5th March 2025 directing that the Petitioner's registration with the Respondent No.1 shall not be renewed for a period of one year from the date of the order and the Petitioner will not be allowed to participate in any tendering process of the Respondent No.1 for a period of one year from the date of the order. Penalty and compensation was also imposed against the Petitioner, subject to the final decision of an Arbitration Appeal pending before this Court. It is this order, assailed before us in the present Petition.

5. Mr. Virag Tulzapurkar, learned Senior Counsel appeared for the Petitioner and Mr. Ajit Pitale, learned counsel represented the Respondent Nos.1 to 4.

6. Mr. Tulzapurkar raised the following objections:
- (a) The impugned order refers to an opinion of the technical officers of the Respondent No.1 as well as an advocate establishing delay on the part of the Petitioner in completion of work. The said opinion was never part of the show-cause notice nor was any such allegation even mentioned in the show-cause notice dated 6th August 2024. It is thus, submitted that since the reasons forming the basis of the impugned order were not put to the Petitioner in the show-cause notice, the Petitioner was deprived of replying adequately to the same.
 - (b) Principles of natural justice require fairness to furnish all material to the Petitioner and afford an opportunity to him to offer his explanation.
 - (c) The Petitioner has been wrongly blamed for supply of substandard pipes by JBIL especially when in the Minutes of the Meeting dated 6th August 2018, the responsibility of JBIL is specifically recorded.
 - (d) The first show-cause notice dated 11th January 2022 was replied

by the Petitioner on 24th May 2022 and the said show-cause notice was not acted upon for a period of more than two years. Suddenly, a second show-cause notice dated 6th August 2024 was issued, bereft of any specific allegation against the Petitioner. The impugned order lists various reasons against the Petitioner, which were never part of the show-cause notice dated 6th August 2024. Thus, the principles of natural justice are totally ignored by the Respondents.

- (e) The conduct of the Respondent No.2 indicates that it was pre-determined to pass the impugned order against the Petitioner.
- (f) The Respondent No.2 failed to appreciate that administrative proceedings entailing significant civil consequences must be consistent with the principles of natural justice.
- (g) The Respondent has acted in exercise of arbitrary authority against the Petitioner.

7. Mr. Tulzapurkar placed reliance on the following decisions of the Supreme Court:

(1) *Gorkha Security Services v. Government (NCT of Delhi) and Others*¹

¹ (2014) 9 SCC 105

(2) UMC Technologies Private Limited v. Food Corporation of India And Another²

8. Mr. Pitale, learned counsel appearing for the Respondents brought to our attention nine grounds finding place in the impugned order forming the basis of the said order. He defended the said order by saying that continuous water supply to the residents of Yavatmal was largely dependent on the expeditious execution of the work assigned to the Petitioner and delay caused in completing the work directly caused hardship to the residents of Yavatmal. The prestige and integrity of the Respondent No.1 came under a cloud. He states that there was delay on the part of the Petitioner right from the start of the contract. The Petitioner was not able to procure the required pipes, raise necessary funds to execute the work and that the progress of the work was extremely slow. There were many communications exchanged between the parties and the Respondents had brought the slow progress of the work to the notice of the Petitioner from time to time. There were various meetings held in which the Petitioner was directed to complete the work expeditiously and within the period as agreed.

² (2021) 2 SCC 551

9. The Petitioner was also found to be negligent in commissioning the work inasmuch as there was a fatal accident on site leading to the death of a laborer. Over and above the delay on the part of JBIL, for which the Respondent did not hold this Petitioner responsible, there were delays in completing the other work apart from that related to JBIL. The work ultimately was completed by 11th July 2022 and the Respondents suffered great financial loss as well as loss of goodwill and reputation in the eyes of the residents of Yavatmal.

10. Mr. Pitale also brought to our notice that penalty was imposed on the Petitioner's concern for delay in completion of the work however, by order dated 19th December 2019 passed by the Single Judge of this Court in an Interim Application No.1 of 2019 in Arbitration Appeal (St) No.30511 of 2019, the Respondents were restrained from deducting any amounts from the RA Bills raised by the Petitioner towards penalty levied on him, during the pendency of the Appeal. The said Arbitration Appeal is pending before this Court. For all the above reasons, Mr. Pitale submitted, that the impugned order is well-reasoned and requires no interference. He thus, urged us to dismiss the Petition.

11. We have heard the parties and perused the record with their assistance.

12. The short point that arises for our consideration today is whether the impugned order can be sustained when passed pursuant to a show-cause notice, bereft of any allegations against the Petitioner, forming the basis of the said order, thereby violating the principles of natural justice.

13. The course of the actions taken by the Respondents commence with the show-cause notice dated 11th January 2022 calling upon the Petitioner to show-cause as to why recommendation of black-listing the Petitioner's firm should not be forwarded to the higher authorities of the Respondents on the ground that there was much delay in discharge of the contract and work order. The Petitioner replied to this notice in detail, giving a point-wise clarification to each allegation raised by the Respondents. There was no action taken in pursuance of the said show-cause notice for a period of more than two years. Admittedly, in the meantime, the Petitioner was permitted to continue with the work and the contract was commissioned and completed by the Petitioner on 11th July 2022.

Accordingly, a completion certificate was also issued by the Executive Engineer of the Respondent.

14. For various counter monetary claims, the Petitioner filed an application under Section 9 of the Arbitration & Conciliation Act, 1996 seeking interim order against penalties levied against him. This Court in an Arbitration Appeal preferred by the Petitioner against rejection of his Section 9 Application by the District Court, stayed the deduction of penalties from RA Bills due to the Petitioner. The order is in effect till date. Surprisingly, the Respondent No.1, a statutory authority established under Maharashtra Water Supply and Sewerage Board Act, 1976 has till date neither initiated any claim against the Petitioner before an arbitrator or any Court of competent jurisdiction nor has appealed against the said Order passed in the Arbitration Appeal.

15. It is only after two years that the Respondents have woken up from their slumber and issued another show-cause notice dated 6th August 2024 calling upon the Petitioner to show-cause as to why action should not be taken against him for delaying the Yavatmal Water Supply Scheme of the Respondent by refusing to adhere to agreed timelines. We have gone through the show-cause notice dated

6th August 2024. There is not a whisper of any specific allegation in the said show-cause notice. There is no mention of the fact that the work has already been completed by the Petitioner in July 2022 itself. There is nothing in this notice to indicate that this notice is a continuation of the earlier show-cause notice dated 11th January 2022. Considering the admitted fact that the work was completed in July 2022 and a certificate of completion duly issued by the Respondent and no action was initiated against the Petitioner pursuant to the first notice dated 11th January 2022, it can be presumed that the Respondents were satisfied with the explanation given by the Petitioner in his reply to the same.

16. The law is settled in respect of circumstances in which black-listing as a penalty can be imposed. The Supreme Court in its decision in the *Blue Dreamz Advertising Pvt. Ltd. v. Kolkata Municipal Corporation*³ while quashing and set aside the blacklisting order, in almost identical facts, referring to its earlier decision in *Kulja Industries Ltd vs Chief General Manager Western Telecom Project BSNL & Ors*⁴, in which it has set out the legal position governing black listing/debarment in USA and UK, observed as under:

³ 2024 INSC 589

⁴ (2014) 14 SCC 731

“25. What is significant is that while setting out the guidelines prescribed in USA, the Court noticed that comprehensive guidelines for debarment were issued there for protecting public interest from those contractors and recipients who are non-responsible, lack business integrity or engage in dishonest or illegal conduct or are otherwise unable to perform satisfactorily. The illustrative cases set out also demonstrate that debarment as a remedy is to be invoked in cases where there is harm or potential harm for public interest particularly in cases where the person’s conduct has demonstrated that debarment as a penalty alone will protect public interest and deter the person from repeating his actions which have a tendency to put public interest in jeopardy. In fact, it is common knowledge that in notice inviting tenders, any person blacklisted is rendered ineligible. Hence, blacklisting will not only debar the person concerned from dealing with the concerned employer, but because of the disqualification, their dealings with other entities also is proscribed. Even in the terms and conditions of tender in the present case, one of the conditions of eligibility is that the agency should not be blacklisted from anywhere.

26. In other words, where the case is of an ordinary breach of contract and the explanation offered by the

person concerned raises a bona fide dispute, blacklisting/debarment as a penalty ought not to be resorted to. Debarring a person albeit for a certain number of years tantamounts to civil death inasmuch as the said person is commercially ostracized resulting in serious consequences for the person and those who are employed by him.

27. Too readily invoking the debarment for ordinary cases of breach of contract where there is a bona fide dispute, is not permissible. Each case, no doubt, would turn on the facts and circumstances thereto.”

17. The Apex Court in its decision in ***Techno Prints v. Chhattisgarh Textbook Corporation and Another***⁴, in paragraph 30 held as under:

“30. Therefore, the Authority is expected to be very careful before issuing a show cause notice. It is expected to understand the facts well and try to ascertain what sort of violation is said to have been committed by the contractor. As noted above, there is always an inherent power in the Authority to blacklist a contractor. But possessing such inherent power and exercising such power are two different situations and connotations. There may be a power but there should be reasonable ground to exercise such power.”

⁴ 2025 SCC OnLine SC 343

18. It is thus, well settled that if a contractor is to be visited with punitive measures of black-listing on account of any breach of contract, the nature of his conduct must be so deviant or aberrant which requires imposing the said punishment. A mere breach of contract without anything more cannot be used to black-list a contractor. The Apex Court while dealing with such matters has observed that the negative effects of black-listing plague the business of the de-barred entity for a very long time and is viewed as a punishment so grave which results in sounding a civil death for the said business.

19. In the case at hand, there are no reasons mentioned in the show cause notice dated 6th August 2024, which are so grave as to justify blacklisting the Petitioner for a period of one year from the date of the order and from participating in any tendering process held by the Respondents. We say this also because the contract has already been discharged by execution by the Petitioner in the year 2022 itself. Moreover, the said show-cause notice does not contain any allegation on the basis of which the impugned order is passed and hence, the Petitioner was never afforded an opportunity to meet the said

allegation. The principles of natural justice were therefore, totally ignored.

20. Considering the aforesaid discussion, we have no hesitation in setting aside the impugned order. Mr. Tulzapurkar informs us that the registration of the Petitioner's concern with the Respondent No.1 stands suspended till date and an application seeking its renewal has been made to the Respondent No.1. However, since the Petitioner has a valid registration in other State Government's organizations, the Respondent No.1 itself had assigned other contracts to the Petitioner's concern, which contracts have also been completed satisfactorily.

21. Accordingly, we pass the following order:

ORDER

- (i) The impugned order dated 5th March, 2025, passed by the Member Secretary, Maharashtra Jeevan Pradhikaran, Mumbai, i.e. the Respondent No.2 is quashed and set aside.
- (ii) This order shall not be construed to mean that the registration of the Petitioner's registration with the

Respondent No.1-Pradhikaran is renewed. The Respondent No.1 shall be at liberty to decide the Petitioner's Application for renewal of his registration on its own merits.

(iii) Needless to state, that all contentions of all parties are kept open.

22. We also make it clear that we have not dealt with the penal action imposed against the Petitioner relating to the levy of penalty and compensation in paragraph 1 of the operative part of the impugned order since the same is a subject matter of the Arbitration Appeal (St) No.30511 of 2019 pending before this Court.

23. We also grant liberty to the Respondent No.1 to issue a fresh show cause notice to the Petitioner, if found necessary and if they so desire, strictly in accordance with law.

24. The Petition is thus, allowed. Rule is accordingly made absolute.

25. There will be no order as to costs.

26. All parties to act on an authenticated copy of this judgment.

(DR. NEELA GOKHALE, J.)

(REVATI MOHITE DERE, J.)