Sumedh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6622 OF 2024

Himalay Manohar Patil,
Age: 30 yrs. Occ.: Business
R/o. Above Post Office, Post Wada,
Taluka Wada, District Palghar ... **Petitioner**

~ versus ~

1. **The State of Maharashtra,**
Through its Govt. Pleader,
High Court Bombay
2. **Zilla Parishad, Palghar.** ... **Respondents**

Appearances

for the petitioner	**Mr RD Suryawanshi**, *with Rohan Hule.*
for respondent no. 2	**Mr Nikhilesh Pote**, *with Manan Talati.*
for the Respondent-State	**Ms Rupali Shinde, AGP.**

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

RESERVED ON : 28th June 2024

PRONOUNCED ON : 3rd July 2024

JUDGMENT (*Per KAMAL KHATA, J*):-

1. Heard learned counsel for the parties. Rule. The Rule is made returnable forthwith with consent.

2. This Petition impugns an order passed by the Zilla Parishad Palghar on 26 February 2024, by which the Zilla Parishad terminated the Petitioner's Contractor license (Class 5A) without granting the Petitioner any hearing.

3. This is an unusual case in which a contractor's (on the panel of the Zilla Parishad) license was terminated not because of shoddy work, breach of terms, misappropriation of funds, or such usual causes but because of his alleged conduct on a solitary occasion of barging into the Parishad hall where a meeting was on.

4. Mr Suryawanshi submits that the Petitioner, a civil engineer, was issued a Contractor's license under the category of Class-5A for five years from 23rd October 2017 up to 22nd October 2022 and was renewed under the same category for a further period of 11th January 2023 to 10th January 2026. He submits that the Petitioner has, since 2017-18 and up to 2022-2023, completed various construction projects granted by the Zilla Parishad in Palghar

district. He submits that there have been no complaints with regard to any of the work that was completed so far.

5. The Petitioner was issued a show cause notice dated 10 January 2024, in which it was alleged that the Petitioner unauthorizedly barged into the general meeting being held by the Zilla Parishad and thereby disrupted the government work that was being carried on. On this basis, the Petitioner was asked to explain why his registration certificate as an independent contractor should not be cancelled.

6. On the very next day, i.e., 11th January 2024, the Petitioner replied to the show cause notice. He narrated that day's incident, pointing out that when he and his elder brother were entering their office at around 4:00 p.m., some persons obstructed his brother and threatened them with dire consequences. Thereafter, some people gathered and started pushing his brother before the employees of the construction department of the Zilla Parishad. At this point in time, a crowd of goons ran towards the Petitioner. With the view to save his life, the Petitioner ran towards the office of the Zilla Parishad and entered the room where a meeting was in progress. At this point, he merely requested all the persons present to save him and his brother from the persons trying to harm them. Since no one helped, he left. He eventually approached the police, who helped. This, according to the Petitioner, was the only incident that had transpired, and within 16 days of this incident, the Zilla Parishad terminated the license of the Petitioner.

7. Mr Suryawanshi submits that when the Petitioner entered the hall, he had no idea that any meeting was in progress. There was no intention to disturb any proceedings. He submitted that the mob from whom the petitioner was running away was upset because the Petitioner, as a registered contractor, had objected to the Parishad awarding contracts to unregistered contractors. He submitted that by virtue of this termination of the license, the Petitioner is practically blacklisted and would be prevented from participating in any tender processes. He, therefore, submits that this decision of termination of the Petitioner's license is extremely drastic and disproportionate, assuming the Petitioner misconducted himself by barging into the meeting hall in self defence. He, therefore, submits that the impugned order of termination of his license be set aside.

8. Mr Pote defended the impugned action by relying on an executive instruction detailing the circumstances in which the contractor's license is liable for termination. He submitted that since the Petitioner's conduct of entering into the meeting hall was bad, the impugned action was correct and validly taken after considering the Petitioner's explanation.

9. We heard Mr Suryawanshi and have perused the paper book. We also heard Mr Pote, who fervently attempted to support Respondent No. 2's decision.

10. Considering the facts and circumstances of the case and the material on record, we find it difficult to sustain the Corporation's impugned action for several reasons. The instructions relied upon

by Mr Pote refer to "unsatisfactory work" as one of the grounds for termination. Here, there is not even any such allegation in the show cause notice. The allegation had no reasonable nexus with the discharge of contractual obligations by the Petitioner. The impugned order was made without hearing the Petitioner. The impugned order is non-speaking in the sense that it does not even briefly indicate why Petitioner's explanation was found unacceptable. In any event, the impugned action defies the doctrine of proportionality. The impugned action of Respondent No. 2 reminds us of the classic idiom "Don't use a hammer to kill an ant".

11. Reference to "Wednesbury principle of reasonableness" is contained in *Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn*[1]. In that case, Lord Greene, M.R. has held that a decision of a public authority will be liable to be quashed or otherwise dealt with by an appropriate order in judicial review proceedings where the court concludes that the decision is such that no authority properly directing itself on the relevant law and acting reasonably could have reached it.

12. This is a case where relevant considerations like the petitioner's consistent satisfactory performance as a licensed contractor for several years are ignored. Instead, irrelevant considerations, having no nexus with the discharge of contractual obligations, are the foundation. Even assuming that the Petitioner, on one solitary occasion, entered the meeting hall, this could hardly be the ground to terminate the Petitioner's license. The Petitioner

1 (1948) 1 KB 223 : (1947) 2 All ER 680

was treated unfairly, and the action is disproportionate. Applying the Wednesbury principles, we think that the impugned action is unsustainable and must be quashed.

13. In *Tata Cellular*[2] this Court has mentioned two other facets of irrationality:

(1) It is open to the court to review the decision-maker's evaluation of the facts. The court will intervene where the facts taken as a whole could not logically warrant the conclusion of the decision-maker. If the weight of facts pointing to one course of action is overwhelming, then a decision the other way, cannot be upheld.

(2) A decision would be regarded as unreasonable if it is partial and unequal in its operation as between different classes.

14. On the other hand, as amply put by Leyland and Anthony in *Textbook on Administrative Law*[3] "Proportionality works on the assumption that administrative action ought not to go beyond what is necessary to achieve its desired results (in everyday terms, that you should not use a sledgehammer to crack a nut) and in contrast to irrationality is often understood to bring the courts much closer to reviewing the merits of a decision.".

15. Considering the above two principles, a bare perusal of the impugned order would show that this is not a case where the

---

2 (1994) 6 SCC 651

3 (5th Edn. OUP, 2005) at p. 331

Petitioner misconducted himself with the Zilla Parishad's office bearers. It is also not a case in which work carried out by the Petitioner had any defect. It is not even a case of misappropriation of funds or any accounting issue or any fraud played with Respondent No. 2. In any event, the meeting was not disrupted by the Petitioner for any malafide intent to disrupt the proceedings but an unexpected incident which had nothing to do with the Petitioner's contractual work.

16. Thus, merely disrupting a meeting and in the circumstances that are not denied or disputed by Respondent No. 2 would not be sufficient grounds to cancel a contractor's license. Therefore, applying the test of Wednesbury's unreasonableness as well as the proportionality test, the action of terminating the license of the Petitioner is clearly disproportionate and warrants interference.

17. For all the above reasons, we pass the following order:

(a) The Rule is made absolute.

(b) The impugned order dated 26th February 2024 terminating the Petitioner's license issued by the Zilla Parishad is quashed and set aside.

18. The Petition is thus disposed of with no orders as to costs.

(Kamal Khata, J) **(M. S. Sonak, J)**