

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.22060 of 2014

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M/s. Mother India Construction Pvt. Ltd., a Company registered under the Companies Act, 1956, and having its registered office at Aspura House, Road No. 3, Sanjay Gandhi Nagar, Kankarbagh, Patna - 800020 through its Manager Raj Kishor S/o Sri Rama Shankar Singh R/o Pesu Staff Quarter No. 4 Mangals Road, Patna - 800015.

.... Petitioner

Versus

1. The State of Bihar through its Principal Secretary, Water Resources Department, Government of Bihar, Sinchai Bhawan, Patna.
2. Engineer-in-Chief (Central), Water Resources Department, Government of Bihar, Sinchai Bhawan, Patna.
3. Chief Engineer, Water Resources Department, Gaya.
4. The Bihar State Hydroelectric Power Corporation Limited through its Managing Director, Bihar State Hydroelectric Power Corporation Limited, Sone Bhawan, 2nd Floor, Virchand Patel Marg, Patna.
5. The Project Manager, Sone Canal Hydroelectric Project, Dehri-on-Sone, Rohtas.
6. The Assistant Manager (Accounts), Bihar State Hydroelectric Power Corporation Limited, Sone Bhawan, 2nd Floor, Virchand Patel Marg, Patna.

.... Respondents

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Appearance :

For the Petitioner : Mr. Jitendra Singh, Sr. Advocate,
Mr. Mrigank Mauli, Advocate
For the State : Mr. Ajay Bihari Sinha, S.C. 19,
Mr. Suryakant Kumar, A.C. to S.C. 19

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN
ORAL JUDGMENT
Date: 13-03-2015

I have heard Mr. Jitendra Singh, learned Sr. counsel
along with Mr. Mriyank Mauli, learned counsel for the petitioner and
Mr. Ajay Behari Sinha, S.C. 19 along with Mr. Suryakant Kumar,
A.C. to S.C. 19, learned counsel for the State.

Petitioner is aggrieved by the order dated 22.01.2013
passed by the Engineer-in-Chief (Central), as contained in Annexure



17, by which he has blacklisted the petitioner as well as the appellate order dated 11.12.2014, as contained in Annexure 22, by which the order in original has been affirmed after holding that the signatures upon the concerned certificates granted by the officers concerned are fake and forged but, at the same time, also admitting the fact that entry has been made in the dispatch register showing its dispatch to the petitioner from the department.

Learned counsel appearing for the petitioner has contended on the basis of certain documents which have been appended in the writ petition that the aforesaid certificates were required as experience certificate for grant of work order in a subsequent notice inviting tender. Further endeavor has been made to impress upon this Court that there was no occasion for the petitioner to forge the letter and, thereafter, submit it for the said purpose in view of the fact that it is admitted position that such works orders were given to the petitioner company and they were executed and completed and, thereafter, the entire payments in that regard were also made to the petitioner. Thus, there was no occasion for the petitioner to forge the letter because it was entitled to get a genuine letter from the department for the said purpose. It has been further submitted that even the executants of those letters have not denied their signatures upon the documents rather they have merely stated



that they were never issued. Thus, it is pointed out that there is a contradiction in the stand as they are admitting the signature but, at the same time, denying the issuance of such letters and in such case, it cannot be held that letters were forged and fabricated one. He has further relied upon the document which is again a certificate granted by the Executive Engineer certifying that the agency had executed the concerned work but on the query made to the concerned as to whether he has issued that certificate or not, the concerned Executive Engineer, BHPC, Arwal had verified it being the author of the certificates.

Such being the situation, it is contended that even if the genuineness of the certificates was not appealing to the concerned original authority and the appellate authority then they ought to have got it verified and examined by an expert by sending it to the Forensic Science Laboratory but that was never done and order of permanent blacklisting to the petitioner has been passed. It is next contended that the aforesaid action of permanently blacklisting the petitioner is in teeth of the law laid down by the Apex Court in **M/s. Kulja Industries Limited v. Chief Gen. Manager, W.T. Proj., BSNL and others [AIR 2014 Supreme Court 9]**.

Learned counsel appearing for the State, on the other hand, has taken me through the counter affidavit filed on behalf of the



respondent nos.1 to 3 to impress upon this Court that the petitioner itself is at fault for getting the adverse orders against it as it never filed any show cause before the original authority and, on the basis of the materials available on the record, order has been passed. However, he could not deny the fact that the works, for which the concerned certificates were allegedly issued, were actually given to the petitioner, the petitioner had executed the work and payment of bills have been made. It is accepted that the petitioner was having such experience which entitled it to be called in the concerned notice inviting tender. In fact, the petitioner claims that it has executed one of the orders given to the satisfaction of the authority concerned. On the point of permanent blacklisting also, learned counsel for the State is unable to support it by any judicial pronouncement or the provisions including the statutory one.

In such a situation, in my considered opinion, this case at least is required to be remitted back on one of the grounds that permanent blacklisting was not permissible in view of the decision of the Hon'ble Supreme Court rendered in **M/s. Kulja Industries Limited (Supra)** relevant passages from which stand extracted as under:-

“24. Suffice it to say that ‘debarment’ is recognised and often used as an effective method for disciplining deviant suppliers/contractors who may have committed acts of omission and commission or frauds including misrepresentations, falsification of records and other breaches of

the regulations under which such contracts were allotted. What is notable is that the 'debarment' is never permanent and the period of debarment would invariably depend upon the nature of the offence committed by the erring contractor.

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26. The next question then is whether this Court ought to itself determine the time period for which the appellant should be blacklisted or remit the matter back to the authority to do so having regard to the attendant facts and circumstances. A remand back to the competent authority has appealed to us to be a more appropriate option than an order by which we may ourselves determine the period for which the appellant would remain blacklisted. X X X X X X X X

Thus, on the aforesaid issue, this writ application has to be allowed and the order dated 22.01.2013, as contained in Annexure 17, as well as the appellate order dated 11.12.2014, as contained in Annexure 22, are required to be quashed and the matter is to be remitted back to the competent original authority for fresh determination in accordance with law. Ordered accordingly.

Since the matter is being remitted back and since the petitioner has also raised an issue that there could not have any reason for it to forge a certificate when, admittedly, it was having such experience coupled with the fact that even the authorities have not denied that dispatch register shows issuance of such certificate in favour of the petitioner and, though there is denial of the concerned executants officers but again there is acceptance of issuance of such certificate by verifying it vide Annexure 7 dated 23.09.2011, this Court is of the opinion that the final decision should be taken by the

authority after making proper enquiry with respect to alleged forgery of the certificates by sending the concerned certificates with sample signatures of the concerned officers extracted from the existing documents to the Central Forensic Science Laboratory for its verification by handwriting experts. The authority concerned is expected to proceed in the matter in the manner as stated above within a period of four weeks from the date of receipt/production of a copy of this order.

(Dr. Ravi Ranjan, J)

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