

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9844 of 2015

PG Enterprises, Flat No. 101, Banshi Apartment, R.K. Bhattacharya Road, P.S. Gandhi Maidan, District Patna, through its proprietor Smt. Pratibha Gupta wife of Sri Shankar Kumar,

.... Petitioner

Versus

1. The Central Board of Secondary Education, having its office at Shiksha Kendra, 2, Community Centre, Preet Vihar, Delhi-110092 through its Chairman,
2. The Central Board of Secondary Education, Ambika Complex, behind State Bank Colony, near Brahm Asthan, Sheikhpura, Bailey Road, Patna 800014, through the Regional Officer.
3. The Regional Officer, The Central Board of Secondary Education, behind State Bank Colony, near Brahm Asthan, Sheikhpura, Bailey Road, Patna 800014,

.... Respondents

Appearance :

For the Petitioner : Mr. Sandeep Kumar, Advocate

For the CBSE : Mr. Vinay Krishna Tripathy, Advocate

CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 08-07-2015

I have heard learned counsel for the petitioner and the respondents.

Through this application, the petitioner seeks the following reliefs:-

“(I) For issuance of writ in the nature of certiorari for quashing the office order dated 16.06.2015 (Annexure 5) issued by the respondent no. 3 by which the work awarded to the petitioner has been cancelled, the earnest money and security deposit forfeited and the petitioner firm has been

black-listed.

(II) For any other consequential relief/reliefs for which the petitioner is entitled to in the facts and circumstances of the present case.”

It appears that, vide impugned Annexure 5 dated 16.06.2015, it has been intimated to the petitioner by the Regional Officer of the Central Board of Secondary Education (hereinafter to be referred to as CBSE), Regional Office, Patna, that the work order awarded to the petitioner's firm has been cancelled by the competent authority for the reason that it has failed to execute the work as per the terms and conditions laid down in the Tender Form. It has also been stated that the earnest money and the security deposit stood forfeited as per Clause 11 of the terms and conditions of the tender.

However, at the time of hearing, the petitioner confines this writ application only for the purpose of setting aside part of the impugned order on the ground that its firm has been black-listed without issuing any notice and granting any opportunity of hearing.

So far the order of cancellation of contract and refund of earnest money are concerned, the petitioner seeks liberty to approach the competent forum/arbitration which would be available to him under law.

Accordingly, the aforesaid liberty is granted to the

petitioner.

So far the order of black-listing of the firm of the petitioner is concerned, it does not appear from the impugned order that any show-cause notice was given for such action. It is well settled that if an order is to be passed by the authority concerned visiting civil consequence upon a person or party then it must issue show-cause notice and must also discuss the grounds taken in the reply to show-cause notice. Failure to do so would amount to a serious lacuna as such action would have serious consequence. In the present case, the petitioner, as consequence thereof, would be debarred from taking part in any tender process in future. It is also well settled that the order of black-listing of the firm cannot be passed for all times to come. That means, it cannot be of permanent nature. A reference in this regard has been made to the case of **Kulja Industries Ltd. v. Chief General Manager, Western Telecom Project, Bharat Sanchar Nigam Ltd. and ors. [(2014) 14 Supreme Court Cases 731]**.

The concerned part of order suffers from both vices.

Accordingly, this writ application stands allowed in part and the impugned decision referred in Annexure 5 dated 16.06.2015 is quashed and set aside so far it concerns the black-listing of the firm of the petitioner.

However, it is made clear that the respondents, if they so

desire, would be at liberty to re-initiate such a proceeding but strictly in accordance with law.

(Dr. Ravi Ranjan, J)

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