

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14512 of 2015

=====

M/s Gautam Electric Works, a Proprietorship firm having its registered office at 404, Sheela Residency, East Boring Canal Road, Patna through its Proprietor namely, Smt. Darshana Devi Agrawal, wife of Sri Gobind Lal Agarwal, resident of 404, Sheela Residency, East Boring Canal Road, Patna.

.... Petitioner

Versus

1. South Bihar Power Distribution Company Ltd., a Government of Bihar undertaking through its Managing Director, Vidyut Bhawan, Bailey Road, Patna 800 021
2. The Managing Director, South Bihar Power Distribution Company Ltd., a Government of Bihar undertaking through its Managing Director, Vidyut Bhawan, Bailey Road, Patna 800 021
3. The Chief Engineer (S&P), South Bihar Power Distribution Company Ltd., a Government of Bihar undertaking through its Managing Director, Vidyut Bhawan, Bailey Road, Patna 800 021
4. The Electrical Superintending Engineer (S&P), South Bihar Power Distribution Company Ltd., a Government of Bihar undertaking through its Managing Director, Vidyut Bhawan, Bailey Road, Patna 800 021

.... Respondents

=====

Appearance :

For the Petitioner : Mr. Ashish Giri, Advocate

For the Respondents : Mr. Vinay Kirti Singh, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 15-09-2015

Heard learned counsel for the petitioner and learned counsel for the respondent power company.

2. The present writ petition has been filed for quashing office order No. 1286 dated 20.08.2015 issued by the Chief Engineer (S&P), South Bihar Power Distribution Company Limited, Patna (Respondent no. 3) by which the petitioner company has been blacklisted for a period of three years from the

date of issuance of the order and against the direction that the petitioner forfeit its performance guarantee.

3. Learned counsel for the petitioner submits that the impugned order of blacklisting and the order of forfeiture of its performance guarantee have been passed without issuance of show cause notice and without grant of any opportunity of being heard in the matter. It is, therefore, submitted that such order cannot be sustained in law as it is in violation of fundamental principle of natural justice.

4. Reliance is placed on the decision of the Hon'ble Apex Court rendered in *Erusian Equipment & Chemicals Ltd., vs. State of West Bengal* [(1975) 1 SCC 70], in paragraph 20 whereof it has been observed as follows :-

"Blacklisting has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for purposes of gains. The fact that a disability is created by the order of blacklisting indicates that the relevant authority is to have an objective satisfaction. Fundamentals of fair play require that the person concerned should be given an opportunity to represent his case before he is put on the black list."

5. In a more recent decision rendered in *Gorkha*

Security Services vs. Government (NCT of Delhi) and others [(2014) 9 SCC 105] the Hon'ble Supreme Court while reiterating the principle in Erusian Equipment case (supra) has clarified even the contents required to be incorporated in the show cause notice in the following terms :-

"21. The central issue, however, pertains to the requirement of stating the action which is proposed to be taken. The fundamental purpose behind the serving of show-cause notice is to make the noticee understand the precise case set up against him which he has to meet. This would require the statement of imputations detailing out the alleged breaches and defaults he has committed, so that he gets an opportunity to rebut the same. Another requirement, according to us, is the nature of action which is proposed to be taken for such a breach. That should also be stated so that the noticee is able to point out that proposed action is not warranted in the given case, even if the defaults/breaches complained of are not satisfactorily explained. When it comes to blacklisting, this requirement becomes all the more imperative, having regard to the fact that it is harshest possible action."

6. Learned counsel for the respondent power company appears and has been heard.

7. In that view of the matter and without entering into the merits of the case, the impugned order as contained office

order No. 1286 dated 20.08.2015 issued by the Chief Engineer (S&P), South Bihar Power Distribution Company Limited, Patna (Respondent no. 3) as contained in Annexure-19 of the writ petition is hereby set aside with liberty to the respondent power company to issue show cause to the petitioner, if so advised, before resorting to any adverse action against the petitioner.

8. The writ petition accordingly stands allowed.

(Vikash Jain, J)

Chandran

U			
---	--	--	--