

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 15492 of 2013

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M/s Arvind Kumar Singh (Contractor), Head Office At and Post- Gangjala, Saharsa through Arvind Kumar Singh, son of Sri Jitendra Narayan Singh Resident of Village & Post Gangjala, District- Saharsa

..... Petitioner

Versus

1. The State of Bihar, through Principal Secretary, Road Construction Department, Bihar, Patna
2. The Principal Secretary, Road Construction Department, Bihar, Patna
3. The Engineer in Chief-cum-Additional Commissioner cum Special Secretary, Road Construction Department, Bihar, Patna
4. The Chief Engineer-II, Road Construction Department, Bihar, Patna
5. The Superintending Engineer, Head Office, Road Construction Department, Bihar, Patna
6. The Superintending Engineer-cum-Project Manager, Pradhan Mantri Gram Sadak Yojana, Bihar Rural Road Development Agency, Government of Bihar, Patna
7. The Superintending Engineer, Rural Works Department, Work Circle, Kishanganj
8. The Executive Engineer, Rural Works Department, Works Division, Forbesganj, District- Araria

..... Respondents

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Appearance:

For the Petitioner	: Mr. Shravan Kumar, Sr. Advocate Mr. Satish Kumar Singh Mr. Dinesh Maharaj, Advocates
For the Respondents	: Mr. Rajesh Kumar, AC to GP 3

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 07-09-2016

Heard learned senior counsel for the petitioner and learned counsel for the respondents.

2. The present writ petition has been filed for following reliefs –

“(i) The order as contained in Memo No. 2036(E) dated 25.03.2013 as contained in Annexure-8 issued under the signature of Respondent No. 3 be quashed.

(ii) The order of Appellate Authority as contained in Memo No. 3866(E), Patna dated 19.06.2013 as contained in Annexure-9 be quashed.

(iii) During pendency of the application the order as contained in Memo No. 2036(E) dated 25.03.2013 and Memo No. 3866(E), Patna dated 19.06.2013 (Annexures 8 & 9) be stayed.

(iv) Any other relief/reliefs as Your Lordships may deem fit and proper in the facts and circumstances of the case."

3. According to the petitioner, a registered class-I contractor, the short facts of the case are that pursuant to an e-tender issued on 25.07.2012 for eight works, the petitioner participated for the works at serial no. 2, 5 and 7, for which the estimated cost was Rs. 527.44 lacs, Rs. 427.93 lacs and Rs. 510.31 lacs respectively as shown in the tender notice. One of the conditions for eligibility was the submission of an experience certificate of the satisfactory completion of at least one work of the value of not less than 10% of the estimated value of the contract. The petitioner, inter alia, uploaded the experience certificate issued by the National Buildings Construction Corporation Limited (for short "the NBCC") relating to an agreement amount of 4.35 lacs for the year 2008-09.

4. Mr. Shravan Kumar, learned senior counsel appearing for the petitioner, submits that the show cause notice dated 06.12.2012 is vague and did not state the precise nature of error in the experience certificate owing to which the order of blacklisting has been passed. It is further submitted that the complaint by M/s Topline Infra Projects Private Ltd. (Annexure-5) alleging that in the petitioner's experience certificate, the quantity of Bituminous Macadam shown at 4612.22 MQ said to have been used by the petitioner was incorrect, is false as that



was the result of a mere typographical error in place of the correct figure of 2612.22 MQ. The petitioner has, in fact, completed the work for a value of Rs. 4,37,30,173/- vide Road Package No. BR27/99 Road from Dhamdaha to Barharakothi under '*Pradhan Mantri Gram Sadak Yojana*' under the National Buildings Construction Corporation Ltd., Delhi vide agreement dated 01.09.2008 and hence he has fulfilled the criteria of having completed a work of at least 10% of the estimated value of the contract.

5. Learned counsel for the respondents, on the other hand, submits that the petitioner has rightly been blacklisted as has been confirmed in appeal. The experience certificate relied upon by the petitioner was found, on verification, not to have been issued by the National Buildings Construction Corporation Ltd., Delhi at all, and hence the certificate is forged. Moreover, the petitioner did not raise objection at any point with regard to the validity of the show cause notice, but duly submitted to the jurisdiction of the authorities by filing a show cause reply dated 21.12.2012 (Annexure-7), and this fact clearly shows that the petitioner had duly understood the nature of the allegation for which blacklisting was proposed and no prejudice has been caused to the petitioner.

6. Having heard the parties and on a careful consideration of the materials available on record, this Court is of the view that the impugned order of blacklisting dated 25.03.2013 (Annexure-8) as well as the appellate order upholding the same (Annexure-9) cannot, in principle, be faulted. It has not been denied by the petitioner that the

experience certificate was found not to have been issued by the NBCC, Delhi. The claim of the petitioner of having completed the work of value of Rs. 4,37,30,173/- is not substantiated even from the certificate which discloses a figure of only Rs. 4.35 lacs for the year 2008-09. This Court is also of the view that the petitioner clearly understood the nature of the show cause and duly submitted its reply with regard to a typographical error relating to quantity of Bituminous Macadam used.

7. This Court, however, takes note that the impugned order of blacklisting (Annexure-8) has been passed against the petitioner for an indefinite period which is clearly unacceptable in view of the observations of the Hon'ble Supreme Court in *Kulja Industries Ltd. v. Chief General Manager BSNL & Others*, (2014) 14 SCC 731. In that view of the matter and in line with the view expressed in para 26 of the said decision, the matter is remitted back to the Engineer in Chief-cum-Additional Commissioner-cum-Special Secretary, Road Construction Department, Bihar, Patna (respondent no. 3) for the limited purpose of determining the specific period for which the order of blacklisting shall operate and remain effective.

8. The writ petition stands disposed of with the aforesaid observations and directions.

(Vikash Jain, J)

B.T/Chandran

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	14.09.2016
Transmission Date	N.A.