

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9740 of 2014

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Jitendra Kumar Pathak, son of Late Kameshwar Pathak, resident of Mohalla Saguna, Gandhi Murti, Danapur Cantt, P.S- Danapur, District- Patna, Proprietor M/s Jitendra Kumar Pathak, Danapur Cantt, Patna.

.... Petitioner

Versus

1. The State of Bihar through the Secretary, Building Construction Department, Government of Bihar, Patna.
2. The Engineer-in-Chief-cum-Additional Commissioner-cum-Special Secretary, Building Construction Department, Government of Bihar, Patna.
3. The Bihar State Building Construction Corporation Ltd., Hospital Road, Shastrinagar, Patna 800023, through its Managing Director.
4. The Managing Director, Bihar State Building Construction Corporation Ltd., Hospital Road, Shastrinagar, Patna 800023.
5. The Chief General Manager (North), Bihar State Building Construction Corporation Ltd., Hospital Road, Shastrinagar, Patna 800023
6. The General Manager (North) Bihar State Building Construction Corporation Ltd., Hospital Road, Shastrinagar, Patna- 800023
7. The Dy. General Manager, (Saharsa), Bihar State Building Construction Corporation Ltd., Bihar, Patna

.... Respondents

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Appearance :

For the Petitioner : Mr. Rajendra Narain, Sr. Advocate
Mrs. Anju Narain,
Mr. Umesh Kumar Roy, Advocates
For the Respondents: Ms. Jahan Ara, AC to AAG 5

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 11-02-2016

The present writ petition has been filed for quashing Memo No. 617 dated 28.02.2014 (as contained in Annexure-11) issued under the authority of General Manager (North) of the respondent Corporation, the respondent No. 6 hereof, by which the respondent has recommended to blacklist the Registration No. 36 (Bh.)/11 of the petitioner (Annexure-11); the communication contained in letter No. 848 dated 05.08.2013 issued by the respondent

Chief General Manager of the respondent Corporation, respondent No. 5, (as contained in Annexure-7) whereby and whereunder the petitioner has been debarred from participation in future tenders/contracts; and for connected reliefs.

2. Learned counsel for the petitioner submits that the approval for the petitioner's blacklisting as well as his debarment from participation in future contracts until completion of the work in question, are illegal and unsustainable in law. Apart from the fact that no proper opportunity of hearing was granted prior to approval for petitioner's blacklisting, the impugned actions have been taken by the respondents-authorities unilaterally, which are contrary to the settled principles laid down by this Court in M/s. NCC Ltd. v. The State of Bihar & Ors. [2013 (1) PLJR 952] to the effect that the finding regarding default by the petitioner cannot be made by the State authorities being a party to the contract and the same must come from a proper adjudicatory forum, whether a Court or Arbitral Tribunal. The principle has been reiterated in several subsequent orders such as in C.W.J.C. No. 1146 of 2014, C.W.J.C. No. 9917 of 2014 and C.W.J.C. No. 9009 of 2014.

3. Learned counsel for the respondents, on the other hand, submits that despite several reminders, the petitioner had never shown proper progress of the work thereby compelling the authorities

to take impugned actions.

4. Having heard the parties and on consideration of the materials on record, this Court finds considerable merit in the writ petition. The case of the petitioner is squarely covered by the decision rendered in NCC's case (supra) and learned counsel for the State has also not been able to make submissions to the contrary.

5. The writ petition accordingly stands allowed and the impugned letter no. 848 dated 05.08.2019 and the letter contained in Memo No. 617 dated 28.02.2014 insofar as concerns the petitioner stand quashed.

(Vikash Jain, J)

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