

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7658 of 2014

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M/S Kumar Construction through its Managing Partner Jai Kumar Sharma, son of Jagdish Singh, Resident of Village - Rajpur, P.S. Bihta, District - Patna

.... Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Old Secretariat, Patna
2. The Secretary, Rural Works Department, Vishweshwariya Bhawan, Bailey Road, Patna
3. The Joint Secretary, Rural Works Department, Government of Bihar
4. The Engineer-in-Chief, Rural Works Department, Vishweshwariya Bhawan, Bailey Road, Patna
5. The Chief Engineer (I), Rural Works Department, Patna
6. The Superintending Engineer, Rural Works Department, Work Circle, Patna
7. The Executive Engineer, Rural Works Department, Works Division, Patna

.... Respondents

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Appearance :

For the Petitioner : Mr. Lal Babu Singh, Advocate

For the Respondents: Mr. Arvind Ujjwal, SC 25

Mr. Upendra Pratap Singh, AC to SC 25

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 02-02-2016

The present writ petition has been filed for quashing the order contained in Memo No. 18853 dated 03.12.2012 (Annexure-7) whereby the respondent Engineer-in-Chief has blacklisted the petitioner, and for connected reliefs.

2. Learned counsel for the petitioner submits that the impugned order of blacklisting dated 03.12.2012 is wholly arbitrary and illegal and cannot be sustained. He invites attention to the show cause notice dated 26.09.2012 which indicates that the reasons sought to be given for blacklisting the petitioner related to non-completion of



work within time, without even giving specific details of such allegation. The detailed show cause filed by the petitioner appears to have not found favour with the respondents and accordingly, the order of blacklisting was passed with reference to the default allegedly committed by the petitioner in terms of Rule 11(Ka)(vi) of the Bihar Contractors Registration Rules, 2007 (for short, “the Rules”). It is submitted that the said provisions are in terms wholly inapplicable to the present case. Even if the order of blacklisting be considered with reference to Rule 11(Ka)(ii) of the Rules in view of the allegation of non-completion of work within time, the same is manifestly erroneous. It is a matter of record that the concerned Executive Engineer by his letter no. 3977 (*Annu*) dated 21.12.2009 had clearly stated on the basis of an inspection report dated 30.10.2007, that the petitioner could not be faulted for the delay in completion of the work which was on account of obstruction caused by the local people. The Chief Engineer in his letter contained in Memo No. 1178 dated 06.04.2010 had also recommended for closing the agreement, requiring the Superintending Engineer to send the details of the work done by the petitioner to avoid double payment.

3. Learned counsel for the respondents submits that the show cause filed by the petitioner was duly examined but was not found satisfactory and the petitioner was found guilty under Rule

11(Ka)(vii) of the aforesaid Rules as the petitioner was found guilty of non-completion of work in time. The action of the respondents in blacklisting the petitioner cannot be faulted as due opportunity was granted to the petitioner in observance of the principles of natural justice.

4. Having heard the parties and on careful consideration of the materials available on record, this Court finds merit in the submissions of the petitioner. It is a matter of record that the petitioner was not found to be responsible for delay in execution of the work which was attributed to obstruction caused by the villagers. The Chief Engineer had also recommended for closing the agreement which is not disputed. In this view of the matter, therefore, the show cause notice issued to the petitioner for his blacklisting on the sole ground of delay in execution of work, does not appear to have any basis whatsoever. The stand of the respondents in their counter affidavit to the effect that the show cause filed by the petitioner was not found satisfactory, is completely cryptic and vague as it does not indicate how and why, the same was not found satisfactory. The impugned order of blacklisting, suffers from the same vice of being a completely a non-speaking order, apart from the fact that the blacklisting of the petitioner has been made for an indefinite period, which is also not sustainable in law.

5. In the above circumstances, the impugned order contained in Memo No. 18853 dated 03.12.2012 (Annexure-7) is hereby quashed. The writ petition stands allowed.

(Vikash Jain, J)

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