

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12493 of 2016

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S A J Infracon Project India Ltd. having its Registered Office at S-401, Uday Giri Apartment ,Near Kotwali Thana, P.S. Kotwali, Patna 800001 through its Managing Director Akhilesh Kumar Jaiwal son of Late Ram Narayan Lal resident of S-401. Uday giri Apartment, Near Kotwali Thana, P.S. Kotwali, District Patna

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Road Construction Department, Government of Bihar, patna.
2. The Engineer-in-Chief, Road Construction Department, Government of Bihar, Patna
3. The Chief Engineer, Road Construction Department, North Camp Darbhanga, Government of Bihar, Patna
4. The Superintending Engineer, Road Construction Department. Road Circle, Saharsa
5. The Executive Engineer, Road Division, RCD, Khagaria

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Prabhat Ranjan

For the Respondent/s : Mr. Ashok Kumar Dubey, A.C. to AAG-11

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA
ORAL ORDER

3 25-10-2016 Heard learned counsel for the petitioner and learned counsel for the State.

The petitioner seeks quashing of the office order dated 14.10.2015 issued by the Engineer-in-Chief, Road Construction Department, Government of Bihar, by which the petitioner has been blacklisted for a period of ten years under clause 11 (ka) (ii) of the Bihar Contractors Registration Rules, 2007 read with Departmental Memo dated 18.06.2015 as also for quashing the appellate order dated 11.05.2016 of the Secretary, Road



Construction Department, Bihar by which the appeal of the petitioner has been dismissed and the blacklisting for a period of ten years has been confirmed.

The petitioner was awarded a contract for construction of RCC Drain and PCC Road in Mahesh Khunt-Gogri-Parbatta-Sultanganj Ghat Road in KM 8th (P) and 9th (P) for the year 2013-14.

The agreement was executed on 06.01.2014 and the date for completion of the work was 05.07.2014. Apart from the other issues raised by the petitioner from the very beginning after the allotment of work, on finding encroachment over the land in question the petitioner wrote letters to the respondents for handing over encroachment free site. Despite series of letters in that regard neither the defects as pointed out by the petitioner were rectified nor the encroachments could be removed by the respondents; instead a show cause notice dated 07.07.2014 was issued by the respondent No.4 as to why the petitioner should not be debarred and the agreement be not rescinded apart from forfeiting the earnest money. The petitioner by his letter dated 23.08.2014 replied to the Executive Engineer as also to the Chief Engineer raising all the pleas and making alternative proposal.

The Executive Engineer by his order dated 05.11.2014



rescinded the agreement, forfeited the earnest money and performance guarantee and recommended for blacklisting of the registration of the firm.

While the aforesaid action of the respondents was challenged before this Court by the petitioner in C.W.J.C. No.20772 of 2014 filed on 14.11.2014, the Executive Engineer by show cause notice dated 21.05.2015 directed the petitioner to furnish his reply as to why action of blacklisting be not taken against him under the provisions of the Bihar Contractors Registration Rules, 2007 (in short '2007 Rules'). By another letter dated 09.07.2015, the petitioner was again asked to submit his reply failing which ex parte action would be taken. However, on account of the show cause notice challenged before this Court in the writ petition, the petitioner did not file reply to the said show cause notice.

Thereafter, the Engineer-in-Chief by the impugned office order dated 14.10.2015 blacklisted the petitioner for a period of ten years under clause 11 (ka) (ii) of the 2007 Rules read with office order dated 18.06.2015 of the Road Construction Department. An appeal filed by the petitioner against the said order was also rejected by the impugned order dated 11.05.2016 of the Secretary, Road Construction Department.



The interlocutory application filed by the petitioner in the pending writ application was disposed of with liberty to the petitioner to file a separate writ petition so far as the order of blacklisting is concerned. Hence, the present writ petition.

Learned counsel for the petitioner submits that the action of the respondents is unfair and unjust as also illegal as they are themselves responsible for the situation that the work could not be completed since encroachment free site was not made available to the petitioner.

It is further submitted by learned counsel that in the entire counter affidavit filed on behalf of the State not even a single word has been mentioned with regard to the encroachment. In the said circumstances, the respondents could not have acted in the grossly illegal manner as they have done in the present matter.

It is also submitted by learned counsel that the only stand of the authority is that repeated instructions were given to the petitioner to start and complete the work and a novel reason for blacklisting the petitioner is found in the blacklisting order that the petitioner could have started the work on the existing width of the road. However, it is submitted by learned counsel for the petitioner that the respondents are unable to show a single direction issued by them at any stage, despite repeated letters of



the petitioner, to complete the work on the existing width.

It is further submitted that the petitioner was obliged to carry out the work as per the agreement but no encroachment free land was handed over to the petitioner at any time and there was no question of holding the petitioner liable for not starting the work on the existing width of the road without any direction in writing in that regard.

Lastly, it is submitted by learned counsel for the petitioner that the agreement itself is of the year 2014, whereas the punishment of ten years has been awarded relying upon the office order dated 18.06.2015 issued by the Road Construction Department which is much after the issuance of the show cause notice and is otherwise also contrary to law providing for such large period of blacklisting without any exercise of mind to the facts and circumstances involved for passing the order of blacklisting.

Learned counsel for the State, on the other hand, seeks to rely upon repeated letters issued by the Executive Engineer to the petitioner to start the work and submits that the petitioner, despite several letters issued to him, had not even started the work and thus he has rightly been blacklisted.

Learned counsel also seeks to support the stand taken in the



impugned order that the petitioner could have at least started the work on the existing width of the road pending the removal of encroachment.

On a consideration of the facts and circumstances of the case, this Court finds force in the submissions of learned counsel for the petitioner that if a contract is allotted by the respondents then pursuant to the same, the work has to be done in accordance with the terms and conditions of the contract and the same cannot be done if there is encroachment on the land. Evidently the respondents have failed to remove the encroachment and are totally silent in their counter affidavit with regard to the issue of encroachment. As a matter of fact, the ground taken in the appellate order that the petitioner could have started the work on the existing width amounts to an admission of the respondents that there was an encroachment over the land and they have failed to remove the same, as was their responsibility in the matter.

So far as the question of doing the work on the existing width is concerned, it was not contemplated in the terms and conditions of the agreement and the only way, in which the petitioner could be compelled to start the work on the existing width of the road was to issue specific direction by the competent authority in that regard. Nothing is to be found nor at any stage



such a direction has been issued to the petitioner. Reasons for blacklisting the petitioner thus appear to be wholly non est.

This Court is also in agreement with the submissions of learned counsel for the petitioner that the office order dated 18.06.2015 being much after the date of agreement in the year 2014 does not apply to the case of the petitioner.

So far as the legality of the office order dated 18.06.2015 is concerned, since this Court has already held that the same cannot be applied to the case of the petitioner for deciding on the period of blacklisting, therefore this Court does not express any view on the legality of the said order, which shall be considered in an appropriate case.

Thus, for all the aforesaid reasons, the writ application is allowed and the impugned orders dated 11.05. 2016 and 14.10. 2015 are both quashed.

(Ramesh Kumar Datta, J)

V.P.Sinha/-

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