

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5778 of 2014

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KEMS Services Private Limited, through its Managing Director, Mr. Mohan Kumar Khandelwal, Son of Sri Durga Prasad Khandelwal, 76, B1/B Maurya Lok Complex, Dak Bunglow Road, P.S.- Kotwali, Patna - 800001 (Bihar).

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Water Resources Department, Bihar, Patna.
2. The Engineer -in- Chief (Central/Middle), Water Resources Department, Bihar, Patna.
3. The Chief Engineer, Water Resources Department, Samastipur.
4. The Executive Engineer, Flood Control Division-1, Jhanjarpur, District – Madhubani.
5. Mr. Dharendra Kumar, Former Engineer -in- Chief (Central/Middle), Water Resources Department, Bihar, Patna – 15.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajendra Narain, Sr. Advocate with
Mr. Manish Sahay, Advocate

For the Respondent/s : Mr. K.P. Gupta, GP-10

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 31-08-2016

Heard Mr. Rajendra Narain, learned senior counsel appearing for the petitioner and Mr. K.P. Gupta, learned Government Pleader No.10 for the State.

The petitioner is aggrieved by the order dated 31.1.2014 of the Engineer-in-Chief (Central), whereby he has been blacklisted, inter alia, on grounds of having submitted a forged certificate while filing his tender in respect of a work advertised in the year 2009. A copy of the charge memo is present at Annexure-3 and it charges the petitioner of participating in a tender advertised



in the year 2009 on forged document. Even though the work ultimately went in favour of some other tenderer but the department proceeded against the petitioner for submitting a forged work experience certificate, a copy of which is present at Annexure-5 series at page 39.

Pleadings on record would reflect that the Chief Engineer, Water Resources Department vide his letter dated 11.11.2009 annexed at Annexure-6 directed the Executive Engineer, Irrigation Division, Nawanagar to enquire into the veracity of the experience certificate allegedly submitted by the petitioner. The report of the Executive Engineer as contained in his letter dated 11.11.2009 addressed to the Chief Engineer is present at Annexure-7 and he has confirmed the issuance of the experience certificate bearing No.644 dated 13.9.2006 which certifies a payment in favour of the petitioner for valued work of Rs.2,01,74,419/-. A copy of certificate under reference is also present at Annexure-5 series at page 39. This enquiry, however, did not satisfy the Engineer -in- Chief and who got an enquiry done by the Flying Squad and whose report is present at Annexure-8. The Engineer -in- Chief vide his letter dated 8.5.2013 issued a show cause to the petitioner charging him with submitting forged experience certificate and requiring an explanation against



blacklisting under the provisions of the Bihar Contractors Registration Rules, 2007 (hereinafter referred to as 'the Rules') within 15 days. The petitioner immediately responded to the show cause vide his answer present at Annexure-4. The petitioner explained that although it had participated in the tender floated for raising the height and strengthening of the Bhutahi Balan embankment but he did not file any forged experience certificate. It is further mentioned that it has no knowledge about any enquiry by the Flying Squad nor any explanation had been asked by the Chief Engineer. The Managing Director of the petitioner-Company informed the Engineer -in- Chief that the allegations are baseless and that he is ready to cooperate in any kind of enquiry. The report of the Flying Squad is present at Annexure-8 series and which upholds the charge. The Engineer –in- Chief vide his order bearing Memo No.557 dated 31.1.2014 impugned at Annexure-10 has while placing reliance to the report of the Flying Squad ordered for the blacklisting of the petitioner under the provisions of rule 11(c) of 'the Rules'. The petitioner feeling aggrieved is before this Court.

I have heard Mr. Rajendra Narain, learned senior counsel appearing for the petitioner along with Mr. Manish Sahay, the advocate on record and Mr. K.P. Gupta, learned Government Pleader No.10 for the State.



The only material against the petitioner is the certificate bearing Memo No.644 dated 13.9.2006, a copy of which is placed at Annexure-5 series at page 39 and which according to the Engineer –in- Chief is a forged document. It is rather surprising that even when the author of the said certificate i.e. the Executive Engineer, Irrigation Division, Nawangar, Buxar has clarified the position vide his letter dated 11.11.2009 present at Annexure-7 to the effect that the letter bearing Memo No.644 dated 13.9.2006 was issued under his signature yet it is the certification thereof which is put to doubt not the contents. Mr. Narain, learned senior counsel during the course of his argument has tried to explain the reasons behind the order of blacklisting and for which he has referred to the order passed by the Division Bench in LPA No.1008 of 2013 which is the exercise undertaken by this petitioner to question a previous order of blacklisting. According to Mr. Narain, it had become a regular feature in between the petitioner and the then Engineer –in- Chief and since the earlier order of blacklisting was quashed by the Division Bench vide order present at Annexure-12 dated 22.10.2013 that it prompted the Engineer-in-Chief to open new avenues for blacklisting. It is argued by Mr. Narain that the tender in question was floated in the year 2009 and which went in favour of some other contractor, yet it gave a reason for the Engineer –in-

Chief to chase the petitioner. He submits that such is the bias of the then Engineer-in-Chief that he ensured the passing of the impugned order of blacklisting on the date of his superannuation on 31.1.2014.

I have heard learned counsel for the parties and perused the records.

In my opinion there has been a concerted effort by the then Engineer-in-Chief to ensure that the petitioner remained blacklisted otherwise there was no occasion for him to investigate into the certificate issued in the year 2006 which is allegedly stated to have been submitted in response to the tender floated in the year 2009 which went in favour of some other contractor. Though an enquiry was made into the same but was put at rest on receiving response from the author of the certificate on 11.11.2009 itself. A period of four years having lapsed and there being no change in the circumstances, the Engineer -in- Chief reopened the issue and the sole basis for the opinion of the Engineer –in- Chief is the report of the Flying Squad. There is no explanation as to why an enquiry of the Flying Squad was put to service even when the Executive Engineer had clarified the position on 11.11.2009. The bias of the Engineer-in- Chief is writ large which has culminated in the order impugned and which rests on no evidence. The order is also bad for

it does not prescribe any period for blacklisting. Reference in this regard is made to the judgment of the Supreme Court since reported in **2013(4) PLJR (SC) 447 (M/s Kulja Industries Ltd. vs. Chief Gen. Manager, W.T. Proj. BSNL).**

For the discussions aforementioned the order of blacklisting dated 31.1.2014 passed by the Engineer –in- Chief (Central), Water Resources Department, Bihar, Patna impugned at Annexure-10 cannot be upheld and is accordingly quashed and set aside.

The writ petition is allowed.

(Jyoti Saran, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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