

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3473 of 2016

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Satyendra Kumar Construction Pvt. Ltd. through its Director Satyendra Kumar, Son of Sri Bhagwan Das, resident of 202, Hira Enclave, New Dak Bunglow Road, P.S. Kotwali, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary, Water Resources, Department, Government of Bihar, Patna.
2. The Engineer in Chief (Madhya) cum Registering Authority, Water Resources Department, Government of Bihar, Patna.
3. Sri Ram Pukar Ranjan, son of Late Laxmi Baitha, at presently posted as Engineer in Chief (Madhya) cum Registering Authority cum Adjudicating Authority, Water Resources Department, Government of Bihar, Patna and residing at 4B, Khushi Villa, P.S. Budha Colony, District Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Prabhat Ranjan

For the Respondent/s : Mr. K.K. Singh, AC to GP-17

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 13-07-2016

Heard Mr. Prabhat Ranjan, learned counsel appearing for the petitioner and Mr. K.K. Singh, learned Assisting Counsel to Government Pleader No.17 for the State.

With the consent of the parties, this matter has been taken up for final disposal at the stage of admission itself.

The petitioner has prayed for quashing of the order bearing Memo No.568 dated 28.1.2016 passed by the Engineer in Chief (South), Water Resources Department, Government of Bihar, Patna, whereby the petitioner has been blacklisted for 10 years in exercise of powers vested in the Engineer in Chief under rule 11(a) (vii) of the Bihar Contractors Registration Rules, 2007, inter alia,

on allegation that the petitioner had submitted forged document for obtaining a tender.

A counter affidavit has been filed in defence supporting the impugned action which is followed by filing of a supplementary affidavit by the petitioner enclosing a copy of the judgment and order passed by the trial court in criminal case bearing Trial No.181 of 2016/G.R. No.381 of 2007 arising from Bounsi (Banka) P.S. Case No.28 of 2007 and in reference thereto it was submitted by Mr. Prabhat Ranjan, learned counsel appearing for the petitioner that since the impugned order of blacklisting rests on the outcome of the criminal case and on no other count, the acquittal of the petitioner in the said criminal case itself invalidate the impugned order.

It is in view of the development that took place during the pendency of the writ petition that the matter was adjourned awaiting a response from the department on the acquittal and a supplementary counter affidavit has since been filed duly sworn by the Under Secretary of the Water Resources Department who yet defends the impugned order, inter alia, on ground that the scope of a criminal proceeding and a disciplinary proceeding are different and even if the petitioner has been acquitted in the criminal case, it would not ipso facto discharge him from the allegations which form the basis of the disciplinary proceeding initiated under the Bihar

Contractors Registration Rules, 2007.

To conclude on the absurdity of the opinion expressed by the Under Secretary I deem it necessary to enumerate the brief facts of the case.

The petitioner is an old registered contractor and possessed a Registration No.11/97. On nearing expiry of the validity of the licence in December, 2006 and in absence of steps being taken for its renewal that the petitioner came before this Court in CWJC No.1678 of 2009 and it is in view of the police case referred to above, that a stand was taken by the department for non-renewal of his licence. The writ petition was dismissed vide Annexure-1. The petitioner being aggrieved moved in appeal giving rise to LPA No.256 of 2009 and the Division Bench without expressing any opinion on the merits of the claim directed the respondents to consider the application of the petitioner for renewal and pass a reasoned order. A copy of the order passed by the Division Bench is present at Annexure-2.

The Joint Secretary, Water Resources Department, Government of Bihar,, Patna in compliance of the orders of the Division Bench proceeded to consider the application of the petitioner for renewal of Licence No.11/97 issued under the Bihar Enlistment of Contractors Rules, 1992 and since in the meanwhile the said Rules had been replaced by the Bihar Contractors



Registration Rules, 2007 that the petitioner was granted fresh Registration under the Bihar Contractors Registration Rules, 2007 bearing No.34/09 and which was made subject to the proceedings initiated against him which was the subject matter of the police case in Bounsi (Banka) P.S. Case No.28 of 2007. The grant of fresh registration by order dated 28.8.2009 was valid for a period of five years as manifest from Annexure-3 and upon expiry of the period that a renewal was granted on 18.9.2014 for a further period of five years which is valid up to 4.8.2019 as manifest from Annexure-4. There was no change in the circumstances in between nor any separate disciplinary proceeding was initiated against the petitioner and even the criminal case was awaiting final disposal before the criminal court, yet for no sound reason and after more than six years of the grant of fresh registration on 28.8.2009 that the Engineer in Chief decided to issue show cause notice to the petitioner on 17.8.2015 vide Annexure-5.

Surprisingly even when the Engineer in Chief takes notice of the fact that the proceeding initiated against the petitioner is in relation to submission of alleged forged sales-tax certificate dated 20.5.2006 in relation to a tender, which fact was disowned by the petitioner in his reply earlier filed and which stand of the petitioner has not been found untrue nor has been rejected by a reasoned order and even when the criminal case remained pending

that the Engineer in Chief proceeded for cancellation of the registration.

Although the reasons assigned by Mr. Prabhat Ranjan, learned counsel appearing for the petitioner for the cancellation exercise, is different but in my opinion even otherwise, there was no occasion for the Engineer in Chief to initiate any action for there was no change in circumstances in between the grant of registration to the petitioner on 28.8.2009 vide Annexure-4 until 17.8.2015 when the show cause notice was issued for the only allegation against the petitioner, was a subject matter of a criminal case.

Mr. Prabhat Ranjan has invited the attention of this Court to a show cause filed by the Engineer in Chief in a contempt application filed by the petitioner, a copy of which is present at Annexure-9 to the writ petition and which has been sworn on 17.8.2015 which is the date of the impugned show cause notice. It is the submission of Mr. Ranjan and which appears convincing that the Engineer in Chief while defending his action in the contempt proceeding arising from MJC No.87 of 2015 by filing a show cause on 17.8.2015, decided to return the petitioner with a show cause on the same date without any delay and which is impugned at Annexure-5. Prima-facie the bias of the Engineer in Chief as alleged by Mr. Prabhat Ranjan stands confirmed and the reasons are not to be searched.



Reverting to the issue at hand it is noted that the petitioner on his part responded to the show cause by filing his reply on 11.9.2015 vide Annexure-6 and in which he has reiterated his earlier stand that the tender papers which were the foundation for the charge set up against the petitioner, had not been submitted by him. A prayer was thus made to await the final judgment in the criminal case. The Engineer in Chief however was in too much of a hurry and by the impugned order passed on 28.1.2016, he has proceeded to blacklist the petitioner for 10 years.

The Engineer in Chief has taken note of the stand of the petitioner that the tender which is the subject matter of charge was never submitted by him and he had also denied the signature thereon, yet the Engineer in Chief even in absence of any material evidence to controvert the stand taken by the petitioner, upholds his signature. The penultimate paragraph of the impugned order reflects that primarily the conclusion of the Engineer in Chief rested on the pendency of a criminal case and in absence of any interim order protecting the petitioner. Meaning thereby the blacklisting rested entirely on the charge pending in the criminal case which has ended in acquittal.

Since the foundation of the impugned order rested on the criminal case which ultimately resulted in acquittal of the petitioner vide Annexure-10 to the supplementary affidavit that this Court had



desired a response from the respondents who though have filed a supplementary counter affidavit but the stand taken therein is, only taken to be rejected for while it is stated in paragraphs 7 and 8 of the supplementary counter affidavit that an acquittal would not absolve the petitioner from the charge of the disciplinary proceedings but the documents on record confirms that save and except for the material which is the basis for criminal case, there is nothing on record for continuation of the disciplinary case, if any drawn or to reject the denial of the petitioner of his involvement in the submission of the tender which was allegedly accompanied with forged document.

Annexure-3 is the order granting licence dated 28.8.2009 which was made conditional upon the outcome of the criminal case and was renewed vide Annexure-4. The show cause notice dated 17.8.2015 impugned at Annexure-5 completely rests on the criminal case and even the opinion of the Engineer in Chief in the impugned order is founded on the grounds that criminal case is pending and there is no interim order either by the trial court or the High Court protecting the petitioner. The premise drawn by the Engineer in Chief suffers no infirmity rather it is the conclusion drawn that is perverse because there is nothing on record which confirms that there is any material in possession of the department to connect the petitioner with the submission of forged papers in the

tender which is the subject matter of the criminal case. The stand taken by the department at paragraph 7 and 8 of the supplementary counter affidavit merely speaks about the well settled principles but discusses no evidence to hold the petitioner guilty nor does it match with the reasons present in the order of blacklisting. It is for this reason that this Court had held the explanation given by the respondents, to defend the impugned order, as an absurdity. Mr. Ranjan has appropriately referred to a judgment of the Supreme Court reported in **(2011)5 SCC 142 (Coal India Ltd. vs. Ananta Saha) paragraph 33**, to canvass that where the foundation itself stands removed, the structure built thereon itself falls.

For the reasons discussed above the order bearing Memo No.568 dated 28.1.2016 passed by the Engineer in Chief, Water Resources Department, Government of Bihar, Patna impugned at Annexure-7 cannot be upheld and is accordingly set aside.

The writ petition is allowed.

(Jyoti Saran, J)

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AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	25.07.2016
Transmission Date	NA