

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1865 of 2015

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M/s Om Sri Construction through its working partner Pravin Kumar Jha Son of
Bhageran Jha. resident of village Lavapur Narain P.S.Mahnar, District-Vaishali.

.... Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary Department of Water
Resources, Government of Bihar, Patna.

2. Principal Secretary, Department of Water Resources, Government of Bihar,
Patna.

3. Secretary, Department of Minor Water Resources, Vikash Bhawan, Bailey Road,
Government of Bihar, Patna.

4. Chief Engineer, Minor Irrigation, North Muzaffarpur Range, Muzaffarpur.

5. Superintending Engineer, Minor Irrigation Circle, Darbhanga.

6. Executive Engineer, Minor Irrigation Division , Darbhanga.

.... Respondent/s

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Appearance :

For the Petitioner : Mr. Ajay Kumar Thakur, Advocate with
Mr. Md. Imteyaz Ahmad,
Mr. Amit Kumar and
Mr. Eshtiyaque Ahmad, Advocates

For the State : Mr. Ashok Kumar Pathak, AC to GP 11

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 22-02-2016

Heard learned counsel for the parties.

Learned counsel for the petitioner is permitted to make correction in the description of respondent no. 3. Let the same be done during the course of the day.

The petitioner is aggrieved by order dated 24.12.2014 contained in Memo No. 1122 dated 26.12.2014 passed by the respondent no. 3 by which the petitioner's firm has been debarred and blacklisted in terms of Rule 11 (क) (v) of the बिहार ठीकेदारी निबंधन नियमावली, 2007 (hereinafter referred to as the 'Regulations').

Learned counsel for the petitioner submits that for an alleged criminal offence by one of the Directors of the petitioner's firm, Shashtri Nagar P.S. Case No. 622 of 2014 dated 16.10.2014 was registered on the basis of written complaint filed by the Project Co-ordinator-cum-Engineer-in-Chief of the Minor Water Resources Department. It is submitted that making the F.I.R. the base, the impugned order has been passed without affording any opportunity of hearing under Rule 11 (ख) of the said Regulations which makes it mandatory that before taking such action, the concerned contractor has to be issued show cause notice. It is submitted that without going into the merits of the case, the respondents not having issued show cause notice to the petitioner, the order impugned cannot be sustained.

Learned counsel for the State submits that the petitioner

has committed misconduct which is a ground under the Regulations for taking such action of debarment and blacklisting and thus the authorities cannot be said to have acted without jurisdiction. However, he is not in a position to controvert the fact that prior to taking step for passing such order, the petitioner had been noticed and in fact, upon confirmation, it is submitted that no such notice has been issued.

Having considered the aforesaid facts, without going into the merits of the case, on the short point of there being violation of the principles of natural justice as well as the mandatory statutory provision itself of giving notice to the party concerned before it can be debarred or blacklisted, not having been complied with in the present case, the Court has no option but to hold the order to be unsustainable. Accordingly, the impugned order contained in Memo No. 1122 dated 26.12.2014 passed by the respondent no. 3 is set aside. However, the respondents shall not be precluded to take appropriate action against the petitioner in accordance with law.

The writ petition stands disposed off in the aforementioned terms.

(Ahsanuddin Amanullah, J)

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