

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9121 of 2012

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A.R. Software, Saketpurti near Bazar Samiti through its Proprietor Ashok Kumar Yadav @ Ashok Kumar, son of Sri Ambika Yadav, resident of Magistrate Colony, Patna, having office at Saketpuri near Bazar Samiti, Patna

.... Petitioner

Versus

1. The State of Bihar through Department of Land Reforms, Government of Bihar, Patna
2. The District Magistrate, Shekhpura
3. Additional Collector, Shekhpura
4. The District Magistrate, Purnea

.... Respondents

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Appearance :

For the Petitioner : Mr. Anand Kumar Ojha, Advocate

For the Respondents : Mr. Ravindra Kr Choubey, S.C.8

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 27-06-2016

The present writ petition has been filed for quashing the letter contained in Memo No.794 dated 02.12.2010 by which the District Magistrate, Sekhpura has cancelled the agreement dated 17.11.2006, confiscated the security deposit, as well as blacklisted the petitioner firm; and for connected reliefs.

2. Learned counsel for the petitioner, Mr. Anand Kumar Ojha, makes a short submission to the effect that prior to the impugned order of blacklisting dated 02.12.2010, no notice in that regard was ever served on the Petitioner Firm and a specific statement to this effect has been made in paragraph-3 of the writ petition. Significantly, the impugned order itself does not also make any averment with regard to service of any show cause notice prior to

blacklisting. As regards the cancellation of agreement and forfeiture of security deposit, the same are not pressed by learned counsel for the Petitioner and hence need not be adjudicated.

3. Learned counsel for the respondents, on the other hand, submits on the basis of paragraph 7 of the counter affidavit filed on behalf of respondent nos. 2 and 3 that numerous notices were issued to the Petitioner. He invites attention to the notice dated 09.08.2007 (Annexure-I) whereby a specific show cause notice against blacklisting was duly issued to the Petitioner.

4. Having heard the parties and on consideration of the materials on record, this Court finds merit in the submission of the learned counsel for the Petitioner. Even though the numerous letters have been relied upon by the respondents as stated above, none of these contain a show cause notice against blacklisting the Petitioner, save and except the letter dated 09.08.2007 (Annexure-I) which was however issued as far back as the year 2007 and receipt of which is denied by the petitioner. The respondents are unable to bring any material on record to show that such letter had in fact been served on the petitioner. Be that as it may, the same does not appear to have been acted upon by the respondents as the impugned order of blacklisting dated 02.12.2010 was passed after a considerable lapse of time of more than three years.

5. This Court is, therefore, of the opinion that the respondents have failed to establish that the Petitioner Firm was appropriately served with a show cause notice for taking action by way of blacklisting of the Petitioner Firm within a reasonable time thereof, and the order of blacklisting cannot therefore be sustained. Moreover, the impugned order suffers from the vice of blacklisting the petitioner in perpetuity which is contrary to the observations of the Supreme Court in ***Kulja Industries Limited Vrs. Chief General Manager, Western Telecom Project Bharat Sanchar Nigam Limited and others [2014(14) SCC 731]***.

6. The impugned order dated 02.12.2010 (Annexure-1) in so far as blacklisting the petitioner is concerned is, accordingly, set aside. It is made clear that in case the respondents propose to take such action against the petitioner, they shall be at liberty to proceed in the matter after serving a fresh show cause notice for such purpose and thereafter proceed in accordance with law.

7. The writ petition stands allowed as above.

(Vikash Jain, J)

N.H./-

AFR/NAFR	
CAV DATE	N/A
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