

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14155 of 2015

Om Prakash Bhardwaj, son of Sri Jawahar Lal Bhardwaj, Resident of Mohalla-Ashok Nagar, Ward No.36, P.O. and P.S. Begusarai, District- Begusarai, the proprietor of M/s Jawahar Lal Bhardwaj Akshya Urja Shop, Sona Jageshwar Complex, N.H.31, Begusarai, P.O. and P.S. Begusarai, District- Begusarai.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Planning and Development Department, Government of Bihar, Patna.
3. The District Magistrate, Begusarai, District- Begusarai.
4. The District Planning Officer, Begusarai, District- Begusarai.

.... Respondent/s

Appearance:

For the Petitioner/s : Mr. Shashi Bhushan Kumar Manglam, Advocate

For the Respondent/s : Mr. Purnendu Singh, GP-27

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 20-05-2016

Heard Mr. S.B.K. Manglam for the petitioner and Ms.

Sunita Kumari, Assisting Counsel to GP-27 for the State.

The petitioner is aggrieved by the order bearing No. 1034 dated 21.8.2015 of the District Planning Officer, Begusarai whereby he has been blacklisted *inter alia* on grounds of delayed execution of work. The order has been questioned on grounds that it has been passed without notice and without opportunity of hearing to the petitioner and that the blacklisting is for an indefinite period.

Learned counsel for the petitioner while relying upon a judgment of the Supreme Court reported in **(2014) 9 SCC 105**

(Gorkha Security Services vs. Government (NCT of Delhi) & Ors)

submits that an order of blacklisting has to precede show cause notice and opportunity of hearing.

Mr. Manglam further in support of his submission submits that a blacklisting cannot be for an indefinite period relies on the following judgments:

- (i) 2014(2) PLJR 375 (Bholey Shankar Construction Pvt. Ltd. Vs. State of Bihar);
- (ii) 2013(4) PLJR SC 447 (M/s Kulja Industries Ltd. Vs. Chief Gen. Manager, W.T. Project B.S.N.L. & Ors);
- (iii) 2013(2) PLJR 753 (HCL Infosystem Ltd. Vs. Bihar State Electricity Board).

Although learned counsel for the State has relied upon the statement made in paragraph-26 and 27 of the counter affidavit to defend the impugned order and to submit that a show cause notice indeed was issued to the petitioner but the only document on record at Annexure-B which is dated 18.5.2015 requires the petitioner merely to complete the work and is not a show cause against a proposed blacklisting. Law is well settled and any order adversely and prejudicially affecting a noticee has to be preceded with a show cause against the proposed penalty. Although a stand is taken that such notice was indeed issued but neither the said show cause against the

proposed penalty of blacklisting is on record nor the impugned order passed on 21.8.2015 makes any such reference. That the order was passed on 21.8.2015 and the petitioner has suffered thereunder for almost 10 months now, the object of the order stand served. However, not being satisfied by the procedure adopted by the respondent District Planning Officer, respondent no. 4 for blacklisting the petitioner and in view of the law settled in the judgment(s) relied upon by Mr. Manglam, the order of blacklisting cannot be upheld and is accordingly set aside.

The writ petition is allowed.

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(Jyoti Saran, J)

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CAV DATE	
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