

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.68 of 2016

IN

Civil Writ Jurisdiction Case No. 13511 of 2015

- =====
1. M/s Shakti Construction, a partnership firm having its registered office at New Area, Aurangabad through one of its partner namely Sri Rajkumar Singh son of Sri Sheo Bachan Singh, resident of behind Bal Bihar School, New Area, Aurangabad, Bihar

.... Appellant

Versus

1. The State of Bihar through the Principal Secretary, Water Resource Department, Government of Bihar, Patna
2. The Principal Secretary, Water Resource Department, Government of Bihar, Patna
3. The Principal Secretary, Road Construction Department, Government of Bihar, Patna
4. Executive Engineer, Road Construction Department, Road Division No. 1, Aurangabad
5. The Engineer-in-Chief (Central), Water Resources Department, Patna
6. M/s. Birendra Prasad Singh, through its Partner Birendra Prasad Singh, son of Late Subedar Singh, resident of village Barki Mahuli, Via Takia Bazar, P.S. Karahgar, District- Rohtas (Bihar)
7. M/s Sharda Construction, a partnership firm having its office at New Area, Maharajganj Road, Aurangabad, Bihar through it's Partner Smt. Geeta Singh wife of Sri Kaushal Kumar Singh, resident of New Area, Aurangabad, P.S. & District- Aurangabad (Bihar)

.... Respondents

WITH

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Letters Patent Appeal No. 5 of 2016

IN

Civil Writ Jurisdiction Case No. 13511 of 2015

- =====
1. M/s Sharda Construction, a partnership firm having its registered office at New Area, Maharajganj Road, Aurangabad (Bihar) through it's Partner Smt. Geeta Singh S/o Sri Kaushal Kumar Singh, resident of New Area, Aurangabad, P.S. & District- Aurangabad (Bihar)

.... Appellant

Versus

1. The State of Bihar through the Principal Secretary, Water Resource Department, Government of Bihar, Patna
2. The Principal Secretary, Water Resource Department, Government of Bihar, Patna
3. The Principal Secretary, Road Construction Department, Government of Bihar, Patna
4. The Executive Engineer, Road Construction Department, Road Division No. 1, Aurangabad
5. The Engineer-in-Chief(Central), Water Resources Department, Patna
6. M/s. Birendra Prasad Singh, through its Partner Birendra Prasad Singh, S/o Late Subedar Singh, resident of village Barki Mahuli, Via Takia Bazar, P.S. Karahgar, District- Rohtas (Bihar)
7. M/s Shakti Construction, a partnership firm having its registered office at New

Area, Aurangabad through one of its partner namely Sri Rajkumar Singh S/O Sri Sheo Bachan Singh, resident of behind Bal Bihar School, New Area, Aurangabad, Bihar

.... Respondents

WITH

Letters Patent Appeal No. 145 of 2016
IN
Civil Writ Jurisdiction Case No. 13511 of 2015

1. M/s Birendra Prasad Singh Throughn its Partner Birendra Prasad Singh Son of late Subedar Singh resident of village Barki Mahuli, Via Takia Bazar, P.S. Karahgar, District- Rohtas (Bihar)

.... Appellant

Versus

1. The State of Bihar through the Principal Secretary, Water Resource Department, Government of Bihar, Patna
2. The Principal Secretary, Water Resource Department, Government of Bihar, Patna
3. The Principal Secretary, Road Construction Department, Government of Bihar, Patna
4. The Executive Engineer, Road Construction Department, Road Division No. 1, Aurangabad
5. The Engineer-in-Chief(Central), Water Resources Department, Patna
6. M/s Sharda Construction, a partnership firm having its registered office at New Area, Maharajganj Road, Aurangabad (Bihar) through it's Partner Smt. Geeta Singh Wife of Kaushal Kumar Singh Resident of New Area, Aurangabad, P.s and District Aurangabad (Bihar)
7. M/s Shakti Construction, a partnership firm having its registered office at New Area, Aurangabad through one of its partner namely Sri Rajkumar Singh Son of Sri Sheo Bachan Singh resident of behind Bal Bihar School, New Area, Aurangabad, Bihar

.... Respondents

Appearance :

(In LPA No.68 of 2016)

For the Appellant : Mr. Ashish Giri, Advocate

For the Respondents : Mr. Roy Shivajee Nath, AAG-3

(In LPA No.5 of 2016)

For the Appellant : Mr. Raj Kishore Prasad, Advocate

For the Respondents : Mr. Roy Shivaji Nath, AAG-3

(In LPA No.145 of 2016)

For the Appellant : Mr. Prabhat Ranjan

For the Respondents : Mr. Roy Shivajee Nath, AAG-3

CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and

HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH
(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

JUDGMENT AND ORDER
(CAV)

Date: 17-05-2016



All these three appeals have arisen out of the order, dated 8.12.2015, passed in C.W.J.C. No. 13511 of 2015, whereby a learned single Judge, while quashing the order, dated 30.07.2015, passed by respondent No. 5, Engineer-in-Chief (Central), Water Resources Department, Government of Bihar, Patna, *blacklisting* the unit of petitioner as well as the decision of the Technical Evaluation Committee rejecting the *technical bid* of the petitioner, remanded the matter to the Engineer-in-Chief (Centre), Water Resource Department, Patna, respondent No.5, for passing the order afresh in the matter.

2. The writ petitioner, who is appellant in L.P.A. No. 68 of 2016, is aggrieved only by that part of the order passed by the learned single Judge, whereby the learned single Judge has remitted the matter to respondent No. 5 for an order to be passed afresh on the order of *blacklisting* as well as the decision of the Technical Evaluation Committee rejecting the *technical bid* of the petitioner.

3. Respondent Nos. 6 and 7 of the writ petition are appellants in L.P.A. No. 145 of 2016 and L.P.A. No. 5 of 2016 respectively. These appellants have challenged the order passed by the learned single Judge quashing

the order of *blacklisting* passed on 30.07.2015 and affirmed, in administrative appeal on 04.09.2015.

4. Shorn of unnecessary details, the factual matrix of the issue, which arise for determination in this appeal, may, in brief, be set out as under:

(i) M/s Shakti Constructions was a contractor registered under the Bihar Contractor Registration Rules, 1996 (hereinafter referred to as the '1996 Rules') bearing registration No. IB-0571/1997 of the Water Resources Department.

(ii) Two First Information Reports, giving rise to Akhodhi Gola Police Station Case No. 29 of 2003 and Sasaram Muffasil Police Station Case No. 235 of 2003, were registered against the writ petitioner for having allegedly received, fraudulently, money in excess of the work done in the Irrigation Department.

(iii) While the two criminal cases aforementioned were pending against the writ petitioner, Bihar Contractor Registration Rules, 2007 (hereinafter referred to as the '2007 Rules') came into force, which repealed the 1996 Rules. This apart, 2007 Rules did not save any action taken under the erstwhile 1996 Rules.

(iv) On coming into force of 2007 Rules, the writ petitioner got himself registered afresh under 2007 Rules bearing registration No. 29/2011(First Class) of the



Water Resources Department.

(v) On 06.04.2015, notice inviting tender (in short, NIT) was published by the Road Construction Department inviting tender for *construction and improvement of road asset maintenance work for Amba-Nabinagar Road*, the date of opening of the *technical bid* being 01.05.2015 and the date of opening of the *financial bid* being 10.05.2015.

(vi) Another NIT was also published by the said Department inviting tender for *improvement-cum-output and performance based road asset maintenance work*, the date of opening of the *technical bid* being 08.05.2015 and the date of opening of the *financial bid* being 17.05.2015.

(vii) The *technical bids* of the petitioner, submitted with respect to both the NITs, were found to be responsive.

(viii) Though 10.05.2015 and 17.05.2015 were prescribed as dates for opening of the *financial bids*, as indicated above, the same was not opened for reasons not disclosed. In the meanwhile, however, on 19.05.2015, one Dr. Pramod Kumar Singh, a Member of the Legislative Council, filed a complaint alleging that two criminal cases were pending against the writ petitioner.

(ix) By a notice, dated 02.07.2015, issued by





respondent No.5, namely, Engineer-in-Chief (Centre), Water Resource Department, Patna, the writ petitioner was called upon to show cause as to why it should not be *blacklisted*, in terms of Rule 11 (ka)(ii) of the Rules, for having fraudulently received payments in connection with the work of Tube well Division, tendered by the Minor Irrigation Department, and in respect whereof, Akhodhi Gola Police Station Case No. 29 of 2003 and Sasaram Muffasil Police Station Case No. 235 of 2003 had been registered. The writ petitioner, in response to the notice aforementioned, filed his show cause reply, dated 17.07.2015, claiming, *inter alia*, that the construction work had been duly completed by the petitioner in the year 2002 itself. As regards the criminal cases, it was clarified that the Superintendent of Police, Rohtas, had exonerated the petitioner from involvement in both the cases.

(x) However, the impugned order, dated 30.07.2015, *blacklisting* the petitioner's registration, bearing registration No. 29/2011, came to be passed on the basis of recommendation, made by the Minor Irrigation Department, by letter No. 1260, dated 27.07.2015, having reference of Departmental letter No. 1961, dated 12.04.2003, whereby the Minor Irrigation Department had recommended to the Executive

Engineer, Tube-well Division, Sasaram Camp, Dehri, for institution of First Information Report and for *blacklisting* the petitioner in terms of Government decision taken in this regard.

(xi) The Technical Evaluation Committee reconsidered the *technical bid* of the petitioner and, in the light of subsequent order of *blacklisting*, rejected it vide Memo, dated 22.08.2015 (Annexure 7).

(xii) The writ petitioner challenged the order of *blacklisting* in appeal before the Secretary, Water Resource Department, under Clause 11(Gha) of 2007 Rules; but the appeal was dismissed. The appellate authority, while dismissing the appeal, also took into consideration recommendation of the Irrigation Department, dated 01.09.2015, to *blacklist* the writ petitioner.

5. Being aggrieved, Shakti Constructions filed a writ petition, which gave rise to C.W.J.C. No. 13511 of 2015, with the following prayers :-

"1. for issuance of direction for quashing order dated 30.7.2015, issued by the Engineer-in-Chief (Central), Water Resource Department, Government of Bihar (respondent No.5) by which the registration of the petitioner bearing No. 29 of 2011 was black listed in exercise of power under

Clause 11 (Ga) of the Bihar Contractor Registration Rule, 2007.

2. for setting aside the appellate order dated 4.9.2014, passed by the Principal Secretary, Water Resources Department, Government of Bihar, Patna (respondent No.2), in LPA No. 68 of 2016 affirming the order of *blacklisting* dated 30.07.2015.

3. for quashing order dated 27.8.2015 declaring the *technical bid* of the petitioner to be responsible in passing *blacklisting* order dated 30.07.2015.

4. for quashing decision of the Departmental Tender Committee dated 4.9.2015 allotting the work to respondent No.7."

6. The appellant/writ petitioner, before this Court, has reiterated the submissions made before the learned single Judge. The writ petitioner submits that mere involvement in a criminal case cannot be a basis for making an order of *blacklisting* under 2007 Rules. Hence, the order of *blacklisting* was wholly without jurisdiction and no useful purpose would be served by remitting the matter to respondent No.5, namely, Engineer-in-Chief (Centre), Water Resource Department, Patna, for a fresh

consideration as has been done by the learned single Judge.

7. The writ petitioner also submits that earlier, writ petitioner's unit was registered in the year 1997 under 1996 Rules, which, on expiry, was, again, registered under the new rules, namely, 2007 Rules, bearing Registration No. 29 of 2011. The 2007 Rules did not, however, save any action taken under the erstwhile 1996 Rules. Furthermore, the order of *blacklisting* was passed at the instance of a political person, though, upon opening of the *technical bid*, the petitioner's bids were held responsive in respect of both the tenders. The cancellation of the *technical bids* of the petitioner resulted in awarding of tender in favour of respondent No.7, the latter being the only other qualified tenderer left in the competition.

8. Learned counsel for the State and respondent Nos. 6 and 7 have assailed the order of the learned single Judge, whereby the order of *blacklisting* of the registration of the writ petitioner/appellant's unit has been quashed. It is the submission of the learned Counsel for the State and respondent Nos.6 and 7 that the learned single Judge fell in error in failing to notice that no order of *blacklisting* can be made, under 2007 Rules, unless the person concerned stands convicted and not merely on the basis of registration of criminal cases against him.

9. We have heard learned counsel for the parties and perused the materials on record as noticed in the earlier paragraphs.

10. While considering the present appeal, what needs to be borne in mind, as already pointed out above, is that the writ petitioner was a contractor registered under 1996 Rules of the Water Resource Department, bearing Registration No. 29 of 2011. It is relevant to state that Rules 2007 did not save any action taken under the erstwhile 1996 Rules. The grounds on which registration of a unit can be *blacklisted* and suspended are elaborately mentioned in Clause 11 of the 2007 Rules. As per Clause 11(a)(ii), a contractor can be *blacklisted* for non-execution of work as per terms of contract and directions issued in this regard. Clause (a)(ix) states that a registered contractor can be *blacklisted* for conviction in any criminal activity. The Rules do not visualise *blacklisting* of a registered contractor on the ground of being involved in a criminal case unless the contractor stands convicted.

11. It would appear from the show cause notice, dated 2.7.2015, of respondent No.5 that the action was being contemplated for *blacklisting* the petitioner's unit on the ground that the writ petitioner was involved in two criminal cases for receiving payment by fraud for the work awarded in the year 2002.

12. We have gone through the show cause notice.

The notice, in no manner, indicates that the petitioner was *blacklisted* for not having completed the work awarded in the year 2002 as claimed by the respondents. The ground, mentioned in the show cause notice, is not referable to Clause 11(a)(ii) of the 2007 Rules and, as such, the contention of the respondents that the impugned order of *blacklisting* had been passed against the petitioner's unit for non-execution of the work in the year 2002-2003 is not sustainable in fact and law.

13. Though the above order of *blacklisting* was sustained in the administrative appeal preferred by the writ petitioner against the said order of *blacklisting*, it becomes abundantly clear that the order of *blacklisting*, *having* been passed on the ground of the petitioner's involvement in the criminal cases, was not sustainable under 2007 Rules, when the petitioner did not stand convicted.

14. The impugned order of *blacklisting* was, therefore, rightly quashed by the learned single Judge.

15. However, the learned single Judge, while quashing the order of *blacklisting*, fell in error in remitting the matter to the respondent No.5 for a fresh consideration inasmuch as it would have served no useful purpose, when the writ petitioner's registration was

cancelled on the ground, which was not amenable to any of the clauses of 2007 Rules.

16. We may point out and reiterate that a registered contractor, in the light of 2007 Rules, cannot be *blacklisted* merely on the ground of his being involved in a criminal case unless he stands convicted. In other words, *blacklisting* of a contractor is, under 2007 Rules, permissible only when he is convicted in a criminal case.

17. As per respondents, the writ petitioner has been sought to be *blacklisted* for having fraudulently received excess money without completing the work. It is relevant to state here that the 2007 Rules, repealing 1996 Rules, is not retrospective in nature nor does it save any action taken under 1996 Rules.

18. Situated thus, and for reasons discussed above, we are clearly of the view the order of the learned single Judge, remitting the matter back for fresh consideration, would be an exercise in futility.

19. In the result, the order, under appeal, dated 08.12.2015, passed by learned single Judge is hereby set aside, to the extent whereby the issue of *blacklisting* has been, by the order, under appeal, remitted to respondent No.5, namely, Engineer-in-Chief (Centre), Water Resource Department, Patna, for fresh consideration.

20. LPA No. 68 of 2016 is accordingly allowed. LPA



Nos.5 of 2016 and 145 of 2016, filed by respondent Nos. 6 and 7 in the writ petition, are, consequently, dismissed as being devoid of merit.

21. We would have considered directing opening of the *financial bid* of the writ petitioner, but for the fact that the work has already been awarded to respondent No.7 and is almost complete. As such, no useful purpose would be served by directing opening of the *financial bid*. Nonetheless, as the writ petitioner was ousted from consideration for no fault of his own, he would be entitled to compensation from respondent Nos. 6 and 7. We, therefore, direct respondent Nos.6 and 7 to pay to the writ petitioner a sum of Rs. 50,000/- each as compensation.

(I.A. Ansari, ACJ)

Samarendra Pratap Singh, J : I agree.

(Samarendra Pratap Singh, J)

Pawan/-

AFR/NAFR	AFR
CAV DATE	18.04.2016
Uploading Date	17.05.2016
Transmission Date	N.A.