

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 15022 of 2015

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Parvez Ahmad Khan @ Parvez Khan, Son of Haseen Ahmad Khan, Resident of
Mohalla- Balua- Tal, P.S. Motihari, District- Motihari.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Government of Bihar Water Resources Department, Patna.
2. The Secretary, Water Resources Department, Government of Bihar, Patna.
3. The Engineer-in-Chief (Madhya) Water Resources Department, Government of Bihar, Patna.
4. The Engineer-in-Chief (North) Water Resources Department, Government of Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ranjeet Kumar, Mr. Yogesh Kumar & Mr. Ranjeeta Singh, Advocates.
For the Respondent/s	:	Mr.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 11-01-2016

Heard learned counsel for the parties.

The challenge in the present writ application is to the order 26.08.2011 passed by respondent no. 3 by which the petitioner both in his individual capacity as well as the firm which he represented along with all other partners in their individual capacity have been blacklisted for an indefinite period and further from any future registration in the Water Resources Department. Subsequently, it appears that the said order was also challenged before the Appellate Authority i.e., the Principal Secretary of the Department which was also disposed off without any interference by order dated 05.05.2014.

Learned counsel for the petitioner submits that



first and foremost the show cause issued to him was without giving any details of the charges and only a vague and cryptic allegation was made and moreover under Clause 18(ii) of the Revised Bihar Enlistment of Contractors Rules, 1992, the punishment which has been ultimately meted out to him of blacklisting of the partners even in the individual capacity is not available. Learned counsel submits that the same is impermissible as has also been held by the Hon'ble Supreme Court in the case of **Gorkha Security Services v. Govt. (NCT of Delhi)** reported in **(2014) 9 SCC 105**, the relevant being at paragraphs 21, 22, 23, 29 and 34. Learned counsel further submits that the order of permanent blacklisting though may have been available in the original 1992 Rules, but not being there in the subsequent Bihar Contractors Registration Regulation, 2007 under which also the punishment order has been passed and also in view of the law settled by the Hon'ble Supreme Court in the case of **Kulja Industries Ltd. v. Western Telecom Project BSNL** reported in **(2014) 14 SCC 731**, the relevant being at paragraph-25, is no longer permissible. Learned counsel submits that without going into the merits of the matter, since by efflux of time almost 15 years from the date of the alleged irregularity committed by the petitioner which relates to work done in the year 2000-2001 and also almost 10 years from the date his registration expired which was in the year 2006, which was declined, the said order needs to be set aside.



Learned counsel for the State submits that the conduct of the petitioner is not fair as he has not performed the job in accordance with the requirements and satisfaction of the Department which has come in the enquiry report leading to the order of punishment. Moreover, it is submitted that the petitioner has also suppressed this fact and also managed to continue with the work in another Department. However, learned counsel has neither brought such facts on record nor is in a position to controvert the law that the reasons for taking action or the order passed by an authority cannot be supplemented by facts brought during any proceeding by way of an affidavit which has not been mentioned in the main order itself. Learned counsel is also not in a position to controvert the fact that the Water Resources Department by order contained in Memo No. 909 dated 17.12.2015 has framed certain guidelines with regard to the period of blacklisting of contractors for irregularity committed by them, copy of which has been produced before the Court by learned State counsel, according to which also for the alleged irregularity committed by the petitioner's firm, the maximum period of blacklisting could have been only 10 years.

Having considered the rival contentions, without going into the merits of the matter, since on the basis of admitted facts and the settled law, the blacklisting having been only for alleged shortcoming in the work executed by the petitioner in the year 2000-2001 and further the renewal of his registration in the

year 2006 having been declined, the period of almost 15 years having passed from the alleged shortcoming in the work performance and 10 years having passed from non renewal of his registration, the impugned order on the short point of it prescribing permanent stoppage of registration in future against the petitioner and all members of the firm Star Construction in the individual capacity cannot be sustained and according is set aside.

The petitioner, his original construction company i.e. M/s Star Construction as well as the partners of the said erstwhile firm shall be free from any adverse consequences pursuant to the order impugned as contained in Memo No. 5373 dated 26.08.2011 as well as the subsequent appellate order contained in Memo No. 1874 dated 06.05.2014.

The writ petition stands disposed off in the aforementioned terms.

(Ahsanuddin Amanullah, J.)

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