

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4241 of 2013

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Chitragupta Construction Pvt. Ltd. through its Executive Director Mr. Jai Sinha,
Son of Late Umesh Prasad, Mohalla: - Thakurbari Road, At and P.O.:- Jehanabad,
P.S.:- Jehanabad, Pin 804408.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Water Resources Department, Government of Bihar, 'Sinchai Bhawan', Patna- 1.
2. The Engineer-in-Chief (Middle), Water Resources Department, Government of Bihar, 'Sinchai Bhawan', Bihar, Patna- 1.
3. The Chief Engineer, Water Resources Department, Aurangabad (Bihar).
4. The Executive Engineer, Water Resources Department, Sinchai Pramandal, Daudnagar (Aurangabad).

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rajendra Narain, Sr. Advocate with Mr. Manish Sahay Mr. Anil Kumar Sinha
For the Respondent/s	:	Mr. Siddhartha Prasad, AC to AAG-4

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 21-04-2016

Heard Mr. Rajendra Narain, learned senior counsel appearing for the petitioner and Mr. Siddhartha Prasad, learned Assisting Counsel to Additional Advocate General No.4 for the State.

The writ petition was originally filed questioning the notice bearing No.373 dated 24.1.2013 issued by the Engineer-in-Chief (Central), Water Resources Department, Government of Bihar, Patna, whereby the petitioner was directed to respond as to why he be not blacklisted under the provisions of rule 11 of the Bihar Contractors Registration Rules, 2007 (hereinafter referred to as the '2007 Rules'). While the matter was pending consideration



that the proceedings so initiated against the petitioner has been taken to its conclusion and vide order bearing Memo No.1327 dated 11.3.2013 the Engineer-in-Chief (Central), Water Resources Department, Government of Bihar has proceeded to blacklist the petitioner under rule 11 of the '2007 Rules' inter alia on the allegation so set up against him and upon his failure to file his explanation.

Facts of the case briefly stated is that an agreement was entered in between the petitioner and the authorities of the Water Resources Department for strengthening the service road connecting the Patna Main canal in between 53 to 57 kilometers bearing Agreement No.18 F² of 2003-04. Following the contract the work was discharged by the petitioner and which is manifest from Annexure-4 which is a certification by the Executive Engineer, Irrigation Division, Daudnagar, district- Aurangabad which certificate is dated 5.10.2004. Meaning thereby the contract was concluded at least on 5.10.2004.

An Audit inspection was carried out by the audit team of the Accountant General and who have found certain irregularities in the *challans* so furnished for the stone metals used by the petitioner in the construction of road. The audit was carried out from 17.06.2005 to 30.06.2005 as is manifest from Annexure-A/3 to the counter affidavit which is dated 23.12.2005. The counter affidavit at



paragraph 16 shows that the respondent did act upon the audit objection, issued notice to the petitioner albeit after a delay of about two years on 10.4.2007 but neither the petitioner responded nor the department thought it reasonable enough to pursue the matter. It is further manifest from Annexure-A/1 that whatsoever be the dispute regarding the royalty, was recovered by the department in April 2008. It is almost 8 years since the audit objection was carried out and five years after the recovery of the royalty in question was done that the department woke up from slumber to initiate the proceeding in question and when the impugned notice dated 24.1.2013 was issued to the petitioner to give his response against the blacklisting under the provisions of the '2007 Rules'. The petitioner moved this Court questioning the very initiation of the proceeding after a delay of almost a decade since the completion of work and while the writ petition was pending that final order has been passed which has been questioned through I.A. No.3647 of 2013.

Mr. Narain, learned senior counsel appearing for the petitioner while questioning the initiation of the proceedings on its validity has submitted that the contract having been brought to a close in 2004 itself, any dispute whatsoever could have been resolved as per the law existing on the date but the authorities have committed a gross illegality to invoke the provisions of the '2007 Rules' for initiating the proceedings in question, which does not



have retrospective effect. The initiation of the proceedings have also been questioned on grounds of unexplained delay as well as on fact that the dispute whatsoever stood resolved by the recovery made in April 2008 and whereafter there was no occasion for initiation of the proceeding in question. Learned counsel in support of his submission has relied upon two Bench decisions of this Court arising from CWJC No.18641 of 2009 (M/s Narayani Nirman vs. The State of Bihar) and CWJC No.830 of 2010 ((M/s Rishi Builders Pvt. India Ltd. vs. The State of Bihar) annexed at Annexure-9 series.

The arguments of Mr. Narain has been contested by Mr. Prasad, learned counsel appearing for the State and while admitting that the proceedings have been initiated in the light of the audit objection of the Accountant General he submits that there was no delay on the part of the department to move against the petitioner inasmuch as a notice was issued to him on 10.4.2007 vide letter bearing Memo no.549 enclosed at Annexure-A/3. He further submits that since the allegations against the petitioner are serious hence the initiation of proceeding. To support the initiation under the '2007 Rules' he submits that since the payments of bills were pending hence there is no infirmity therein.

I have heard learned counsel for the parties and I have perused the records. The order is unsustainable on many grounds, namely:

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- (a) The proceedings have been initiated after an unexplained delay of almost a decade;
 - (b) No proceeding for blacklisting can be initiated after lapse of a decade of conclusion of contract for reasons whatsoever unless it accompanies a valid explanation;
 - (c) The proceedings in question also could not have been initiated under the '2007 Rules' which was not in force when the alleged default is said to have been committed by the petitioner in connection with the work which was completed on 5.10.2004 itself;
 - (d) The '2007 Rules' could not have been pressed into service as it has no retrospective effect;
 - (e) The show cause notice dated 10.4.2007 so relied upon by the department placed at Annexure-A/3 simply requires the petitioner to pay the royalty which was deposited in April, 2008 as is manifest from the impugned notice dated 24.1.2013 present at Annexure-8 read along with AnnexureA/1; and
 - (f) Whether or not the challans deposited were of doubtful character, it required an adjudication thereon but I find that despite the recommendation made by the Assistant Director, Mines and Geology, Rohtas at Sasaram vide letter dated 21.7.2008 (Annexure-A/2) to the Executive

Engineer, Irrigation Division, Daudnagar for initiation of appropriate proceedings, the same was not acted upon presumably since the royalty was deposited.

In the eloquent circumstances as discussed above the very initiation of the proceeding for blacklisting the petitioner, was *void ab-initio* and so is the final order passed thereon.

For the reasons discussed above the notice dated 24.1.2013 impugned at Annexure-8 along with the order dated 11.3.2013 impugned at Annexure-10 cannot be upheld and are accordingly set aside.

The writ petition is allowed. The interlocutory application stands disposed of.

(Jyoti Saran, J)

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NAFR	
CAV DATE	
Uploading Date	03-05-2016
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