

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Review No.565 of 2016

IN

LPA 145 of 2016

=====

M/s Birendra Prasad Singh, through its Partner Devesh Kumar, son of Sri Birendra Prasad Singh, resident of Village Barki Mahuli, Via Takia Bazar, P.S. Karahgar, District- Rohtas (Bihar). Petitioner/Appellant.

Versus

1. The State of Bihar through the Principal Secretary, Water Resources Department, Government of Bihar, Patna.
2. The Principal Secretary, Water Resources Department, Government of Bihar, Patna.
3. The Principal Secretary, Road Construction, Government of Bihar, Patna.
4. The Executive Engineer, Road Construction Department, Road Division No. I, Aurangabad.
5. The Engineer in Chief (Central), Water Resources Department, Patna.
6. M/s. Sharda Construction, a partnership firm having its office at New Area, Maharajganj Road, Aurangabad (Bihar), through one of its Partner Smt. Geeta Singh, Wife of Sri Kaushal Kumar Singh, resident of New Area, Aurangabad, P.S. and District- Aurangabad (Bihar).

.... Respondent/Respondent 1st Set.

7. M/s Shakti Construction, a partnership firm, having its registered office at New Area, Aurangabad through one of its partner namely Sri Raj Kumar Singh, Son of Sri Sheo Bachan Singh, resident of Behind Bal Bihar School, New Area, Aurangabad, Bihar. Opposite Parties/Respondents

With

=====

Civil Review No. 1 of 2017

IN

LPA 5 of 2016

=====

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

Versus

1. The State of Bihar through the Principal Secretary, Water Resource Department, Govt. of Bihar, Patna.
2. The Principal Secretary, Water Resource Department, Govt. of Bihar, Patna.
3. The Principal Secretary, Road Construction Department, Govt. 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).

.... Respondents/Opposite Parties.

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). Petitioner/Respondents/Opposite Parties.
- =====



Appearance :

(In C. REV. No.565 of 2016)

For the Petitioner/s : Mr. Prabhat Ranjan, Advocate
Mr. Chandan Kumar, Advocate
For the Respondent/s : M. Raj Kishore Prasad, Advocate
Mr. Ashish Giri, Advocate
For the State : Mr. Anjani Kumar (AAG 4)

(In C. REV. No.1 of 2017)

For the Petitioner/s : Mr. Raj Kishore Prasad, Advocate
For the Respondent/s : Mr. Anjani Kumar (AAG 4)
Mr. Prabhat Ranjan, Advocate
Mr. Chandan Kumar, Advocate
Mr. Ashish Giri, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

And

HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH)

Date: 02-05-2017

Both the Civil Review applications arise out of common order, dated 17.05.2016, passed in L.P.A. No. 68 of 2016 and L.P.A. No. 5 of 2016 and L.P.A. No.145 of 2016, which, in turn, arise out of common order, dated 08.12.2015, passed in C.W.J.C. No. 13511 of 2015.

2. As there has been a prolonged legal battle, it would be necessary to notice the facts of the case in brief and we do no better, but to refer to the facts mentioned in para 4 under review, which is quoted herein below:

“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.”

3. Being aggrieved by the order of blacklisting as well as rejection of the technical bid, which was earlier held responsive, M/s



Shakti Construction filed a writ petition, which gave rise to C.W.J.C.

No. 13511 of 2015 with the following prayers:

“ i) For issuance of a writ/ order/ direction in the nature of certiorari for quashing the order dated 30.07.2015 issued by the respondent Engineer-in-Chief (Central) Water Resource Department, Government of Bihar, Patna by which the registration of the petitioner bearing no.29/2011 (First Class) has been blacklisted in exercise of power under Rule 11 (Ga) of Bihar Contractor Registration Rule, 2007.

ii) For issuance of a writ/ order/ direction that in the facts and circumstances of the case the order of blacklisting dated 30.07.2015 is wholly without jurisdiction and contrary to Rule 11 of Bihar Contractor Registration Rule, 2007 as well as violative of principles of natural justice and hence violative of Article 14 of the Constitution of India.

iii) For issuance of an interim order during the pendency of the present writ application staying the operation of order of blacklisting dated 30.07.2015 and/or directing the respondent Executive Engineer, Road Construction Department, Road Division No.1, Aurangabad to consider the tender of the petitioner submitted pursuant to NIT No.-RCD/Road Division No.1 Aurangabad/02/2015-16 dated 24.04.2015 in relation to the work specified in Column No.3 therein on its own merit without being influenced by the order of blacklisting dated 30.07.2015 and also to consider the tender of the petitioner pursuant to NIT No. RCD/Road Division No.1 Aurangabad/01/2015-



16 dated 06.04.2015 in relation to the work specified in Column No.1 without being influenced by the order of blacklisting dated 30.07.2015.

iv) For issuance of such other writ(s), order(s), direction(s) as your Lordships may deem fit and proper.”

4. The learned single judge quashed the order of blacklisting, but however, remanded the matter to the authorities for fresh consideration of the issue. It appears that the order did not satisfy any of the parties, i.e., the writ petitioner, private respondent nos.6 and 7 of the writ application and all of them preferred appeal. The appeal preferred by the petitioner gave rise to L.P.A. No. 68 of 2016, whereas the appeal filed by respondent no.6, M/s Birendra Prasads Singh, gave rise to L.P.A. No. 145 of 2016 and the appeal filed by respondent no.7, M/s Sharda Construction, gave rise to L.P.A. No. 5 of 2016. All the three appeals came to be heard and disposed of by a common order, dated 17.05.2016. The Division Bench noticed that the main allegation in the show-cause notice was that the writ petitioner received money fraudulently for the work allotted in the year 2002, for which criminal cases were instituted. However, he was blacklisted under Clause 11 (ka)(ii) of the 2007 Rules, which is referable to non-completion of work, whereas it is the assertion of the writ petitioner that in fact he had completed and executed the work awarded in 2002 and 2003, though a bit belatedly. Para 12 of the



judgment under review, which is relevant in this context is quoted herein below:

“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.”

5. Being aggrieved by the order of L.P.A. Bench, respondent nos. 6 and 7 moved the Hon'ble Apex Court being S.L.P. Nos. 15819 - 15820/2016. The S.L.Ps. were disposed of with the following directions, which is quoted herein below:

“The High Court will consider the review petition on merits provided the review petition is filed within a period of two weeks from today.

The costs imposed by the High Court will be considered in the review petition.

We have been informed that the special leave petition against the same order filed by the State of Bihar was dismissed on 03.10.2016. We make it clear that the dismissal of the special leave petition



will not come in the way of the High Court in deciding the review petition.”

6. Pursuant to the liberty granted by the Hon’ble Apex Court respondent nos. 6 and 7 filed these review petitions for reviewing the order passed in the appeals.

7. Learned counsel submits that factual errors have crept in the order under review. The appellant was not blacklisted for institution of criminal cases, but was blacklisted for having received money fraudulently for not having completed the work awarded in the year 2002 - 2003.

8. Counsel for the writ petitioner submits that the review petitioners are raising stale matters of award of tender in the year 2002-2003. In fact, the writ petitioner was not blacklisted for any act of omission and commission in respect of those tenders. Furthermore, the show-cause notice itself was vague and contrary. He next submits that against quashing of the order of blacklisting, the State filed appeal before the Hon’ble Apex Court, which was dismissed and as such the matter regarding blacklisting, vis-à-vis, the petitioner and State, has been finally settled by the Hon’ble Apex Court.

9. We have heard the learned counsel for the parties. We are in agreement with the submission of learned counsel for the writ petitioner that the show-cause notice dated 22.07.2015 by the Water Resources Department is vague and contradictory. It appears from



mere perusal of the show-cause notice that the allegation was that the petitioner had received money fraudulently in respect of tenders awarded in the year 2002-03. However, he was asked show-cause as to why he will not be blacklisted under Clause 11 (ka)(ii) of the 2007 Rules, which is referable to delayed completion of contract. Furthermore, the petitioner was blacklisted under a different clause, namely, Rule 11(ga) of 2007 Rules. This Court, as such, observed that the ground mentioned in the show-cause notice is not amenable to Clause 11 (ka)(ii) of the 2007 Rules, which is not sustainable in law.

10. Furthermore, the State appeal against quashing of the order of blacklisting by this Court too has been dismissed by the Hon'ble Apex Court and as such the matter has attained finality. Counsels for the review petitioners, who were respondent nos. 6 and 7 in the writ petition, submit that in any view of the matter, the order of blacklisting was passed by the State and even if it was found faulty by the Court, the compensation ought not to have been awarded against them, merely because the contract was subsequently awarded to M/s Sharda Construction, one of the review petitioners, for which they cannot be blamed. Even assuming that they had filed a complaint against the writ petitioner in the department or before the local MLA, the show-cause notice or order of blacklisting was ultimately passed by the Government in exercise of its statutory power.

11. We are in agreement with the submission of the



learned counsel for respondent nos. 6 and 7 that even if the process of blacklisting started on the complaint of one of the review petitioner, they ought not to have saddled with the cost, as ultimately the decision of blacklisting was of the Government. As such we review and recall the earlier order of awarding cost against respondent nos. 6 and 7. Nonetheless, it would be open for the M/s Shakti Construction (Opposite Party No.7) to stake their claim for compensation against Government for cancelling his technical bid on the ground, which were not amenable to 2007 Rules, which resulted in losing the contract.

12. Both the review applications are, accordingly, disposed of.

(Samarendra Pratap Singh, J.)

(Arun Kumar, J.)

Uday/

AFR/NAFR	
CAV DATE	NA
Uploading Date	27.05.2017
Transmission Date	NA

