

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5553 of 2016

=====

Sadhu Sharan Singh, son of Late Adya Prasad Singh, Resident of Village and P.O. Ramgarh, P.S. Chowk Ramgarh, District- Lakhisarai.

.... Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Rural Works Department, Government of Bihar, Patna.
3. The Engineer-in-Chief-cum-Additional-Commissioner-cum-Special Secretary, Rural Works Department, Government of Bihar, Patna.
4. The Chief Engineer, Rural Works Department, Bhagalpur.
5. The Superintending Engineer, Rural Works Department, Works Circle, Munger.
6. The Executive Engineer, Rural Works Department, Work Division, Sheikhpura.

.... Respondents

=====

Appearance :

For the Petitioner/s : Mr. Ajit Kumar Singh, Adv.

For the Respondent/s : Mr. Kameshwar Prasad Gupta, G.P.-10

=====

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 01-05-2017

Heard learned counsel for the petitioner and learned counsel for the State.

2. In this case, limited grievance has been raised about the blacklisting of the petitioner vide order dated 08.09.2015 passed by the Engineer-in-Chief, Rural Works Department, Government of Bihar, Patna.

3. The Government has issued a notice, inviting tender



under P.M.G.S.Y. scheme for the purposes of construction and maintenance of road for package No.BR-19R-026 for construction and maintenance of road from Panghara to Kharagwara, total value of work was Rs.47,69,940/- and maintenance cost was Rs.2,33,467/- and from Belauri to Pathala, work package was BR-19R-32 and total value of work was Rs.24,28,838/- and its maintenance cost was Rs.1,40,074/-. The petitioner has not completed the work within the time prescribed, that led to rescinding of the agreement as well as order of blacklisting has been passed by the Engineer-in-Chief, where it has been mentioned in exercising the power under Clause-11(vi) of the Bihar Contractor Registration Rules, 2007.

4. Learned counsel for the petitioner submits that no such event has been mentioned in Clause-11(vi) of the Bihar Contractor Registration Rules, 2007 and as such, the Engineer-in-Chief has wrongly passed the order inasmuch as he has not issued any specific notice with respect to putting the petitioner under blacklisting category. It has further been stated that the Engineer-in-Chief has no authority to blacklist the petitioner even when the petitioner has not completed the work within the prescribed time.

5. Even though, the Rules are not there or Rule does not



cover the area, but it is the inherent power of the management to blacklist any organization if the organization does not perform its job within the prescribed time. The management cannot be said to be denuded with the power to blacklist a wrong doer, but subject to the condition that the authority must give prior notice showing intention of proposed punishment.

6. In this regard, reliance can be placed on the decision of the Hon'ble Supreme Court in the case of ***Gorkha Security Services v. Govt. (NCT of Delhi), (2014) 9 SCC 105.***

7. Learned counsel for the State submits that as the petitioner has not completed the work within the prescribed time he was given the notice for completion of work, even then, he has not completed the work. It has further been stated that if the petitioner has not completed the work within prescribed time, it cannot be said that wrong action has been taken of blacklisting inasmuch as the petitioner has been paid more than Rs.25 lakhs for the work performed by him. But, nowhere any statement has been made that any specific notice has been given to the petitioner before passing the order of blacklisting.

8. In such view of the matter, the impugned order dated



08.09.2015 is set aside. The matter is remanded back to the authority concerned with a liberty that, if they so desire, they may give proper notice to the petitioner and give proper time to file explanation and after considering the same, pass reasoned order in accordance with law. The entire exercise should be completed by the respondent authorities within a period of three months from the date of receipt/ production of a copy of this order.

9. With the aforesaid observations and directions, this writ application is disposed of.

(Shivaji Pandey, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	11.05.2017
Transmission Date	N/A.

