

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18530 of 2015

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M/s Chaturvedi Industries, A Sole Proprietorship Firm having its office at Narayanpur, Anant Road, MIC Muzaffarpur, P.S. Sadar, District Muzaffarpur through its Proprietor Shri Ram Ekabal Chaturvedi son of Late Surendradeo Chaturvedi, resident of Chakia, P.S.-Bhagwanpur Hatt, District Siwan, presently residing at Flat No.201, Sri Shyam Enclave, Road No.3, New Patliputra Colony, P.S. Patliputra, District- Patna.

.... Petitioner

Versus

1. The South Bihar Power Distribution Company Ltd. Patna, Bihar, a Government of Bihar undertaking, having its registered office Vidyut Bhawan, Bailey Road, Patna through its Chairman.
2. The Director (Finance), South Bihar Power Distribution Company Ltd. Patna, Bihar, having its registered office Vidyut Bhawan, Bailey Road, Patna.
3. The Director (Operation), South Bihar Power Distribution Company Ltd. Patna, Bihar, having its registered office Vidyut Bhawan, Bailey Road, Patna.
4. The Chief Engineer, Department of Store and Purchase, South Bihar Power Distribution Company Ltd. Patna, Bihar, having its registered office Vidyut Bhawan, Bailey Road, Patna.
5. The Electrical Superintending Engineer, Department of Store and Purchase, South Bihar Power Distribution Company Ltd. Patna, Bihar, having its registered office Vidyut Bhawan, Bailey Road, Patna

.... Respondents

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Appearance:

For the Petitioner/s : Mr. Arjun Kumar, Adv.

For the Respondent/s : Mr. Prakash Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 25-04-2017

Heard learned counsel for the parties.

2. The present case is being disposed of only on the point that without giving any show-cause notice the petitioner-company



has been blacklisted.

3. The South Bihar Power Distribution Company Limited has floated a tender vide NIT No.59/PR/SBPDCL/2014 for supply of G.I. earthing pipes, the specification thereof was duly provided in the said tender notice. The petitioner-company and others have applied for supply of the same. Finally, the petitioner-company and one Gautam Electric Works were selected and accordingly, the work order was issued in their favour. Both the companies have supplied the pipes, but later on, it was found that the materials are below the specification, led to lodging of criminal case and the respondent-authority vide office order No.1285 dated 20.08.2015 blacklisted the petitioner-company.

4. The short question which has been raised by the petitioner-company that before passing the order of blacklisting neither any show-cause notice was given to the petitioner-company nor any opportunity of hearing was provided to the petitioner-company.

5. Learned counsel for the petitioner-company submits that a team constituted by the respondent-company has made an inspection of the materials supplied by the petitioner-company and it was found that the materials are in terms of the specifications and



allowed to be supplied. Even after supply of the materials further inspection was made and it was found that the supply was in terms of the specifications.

6. Whereas, learned counsel for the respondent-company has taken a stand that the materials supplied by the petitioner-company is 'below standard' and on that account that a criminal case has also been lodged against the petitioner-company, which is still pending, but the learned counsel for the respondent-company has not disputed the fact that before issuance of blacklisting order no any show cause was given to the petitioner-company.

7. Learned counsel for the petitioner-company further submits that neither in the agreement nor any provision has been made for blacklisting the organization in case of supply sub-standard material or in case of transgression to work order.

8. This argument is not acceptable to this Court in view of the fact that the Management has inherent power to blacklist or debar any organization in case of violation of supply of materials *de hors* to the terms of agreement or work order or commitments, misconduct or illegality in the matter of supply of materials, but subject to the condition that it must give notice before passing such order.



9. Learned counsel for the petitioner has placed reliance on the judgment of this Court with respect to Gautam Electric Works passed in C.W.J.C. No.14512 of 2015, where the Court has held that blacklisting cannot be done without giving notice. He has also placed reliance on the decisions of the Hon’ble Supreme Court in the case of *Erusian Equipment & Chemicals Ltd., v. State of West Bengal* reported in *1975 (1) SCC 70* and *Gorkha Security Services v. Govt. (NCT of Delhi)*, reported in *(2014) 9 SCC 105*.

10. In such view of the matter, the impugned order as contained in Office Order No. 1285 dated 20.08.2015 issued by the Chief Engineer (S & P), South Bihar Power Distribution Company Limited, Patna is hereby quashed. The matter is remanded back to the respondent authorities, if they so desire, may take action against the petitioner-company in accordance with law.

11. With the aforesaid observations and directions, this writ application is allowed.

(Shivaji Pandey, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	27.04.2017
Transmission Date	N/A.

