

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2498 of 2018

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M/s Saraswati Construction through its Managing Director, Baijnath Prasad,
S/o Late Dahu Yadav, Resident of Mustafabad, M.I.G.-44, P.S.- Rampur, District-
Gaya.

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Government of Bihar,
Rural Works Department, Bisheshwaraiya Bhawan, Bailey Road, Patna.
2. The Engineer in Chief, Rural Works Department, Bisheshwaraiya Bhawan,
Bailey Road, Patna.
3. The Chief Engineer, Rural Works Department, Bisheshwaraiya Bhawan,
Bailey Road, Patna.
4. The Superintending Engineer, Rural Works Department, Works Division,
Gaya, District- Gaya.
5. The Executive Engineer, Rural Works Department, Works Division, Gaya,
District- Gaya.
6. The Executive Engineer, Rural Works Department, Works Division, Tekari,
District- Gaya.
7. The Project Manager, Rural Works Department, Works Division, Gaya,
District- Gaya.

.... Respondents

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Appearance :

For the Petitioner : Mr. Ravindra Kumar Sinha, Advocate

For the Respondents : Mr. Kameshwar Pd. Gupta -GP10

Ms. Deepanjali Gupta, AC to GP 10

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 26-02-2018

As prayed, learned counsel for the petitioner is permitted
to make necessary corrections in paragraph no. 1 and in the prayer
portion of the writ petition in course of the day.

2. Heard learned counsel for the petitioner as well as
learned counsel for the respondents.

3. The present writ petition has been filed for quashing



the order dated 22.06.2016 (so far the petitioner is concerned) issued under the signature of the Engineer-in-Chief, Rural Works Department, Bihar, Patna vide letter no. 7567 whereby and whereunder the petitioner-firm has been debarred from participating in the future tender.

4. Learned counsel for the petitioner-firm assails the impugned order of blacklisting mainly on two grounds, namely, (a) that no show cause notice was served upon the petitioner prior to passing of the impugned order; and (b) that the impugned order has been passed banning all the business activities of the petitioner-firm which amounts to an order of blacklisting for all times to come, which is wholly arbitrary and illegal.

5. Learned counsel for the respondents appears and has been heard but however is unable to controvert the stand of the petitioner.

6. Having heard the parties and on consideration of the materials on record, this Court finds merit in the submissions of the petitioner. In *Kulja Industries Limited vs. Chief General Manager, Western Telecom Project, Bharat Sanchar Nigam Limited and others*, (2014) 14 SCC 731, the Apex Court observed as follows :-

“25. Suffice it to say that "debarment" is recognised and often used as an effective method for disciplining deviant suppliers/contractors who may have committed acts of omission and



commission or frauds including misrepresentations, falsification of records and other breaches of the regulations under which such contracts were allotted. What is notable is that the "debarment" is never permanent and the period of debarment would invariably depend upon the nature of the offence committed by the erring contractor."

7. It would appear that the principles in regard to "debarment" and "blacklisting" would be the same in view of para 21 of the said judgment, wherein it has been observed as follows –

"21. The legal position governing blacklisting of supplies in U.S.A. and U.K. is no different. In U.S.A. instead of using the expression "blacklisting" the term "debarring" is used by the statutes and the Courts."

8. In the above view of the matter, the impugned order of blacklisting dated 22.06.2016 (Annexure-6) is being interfered with only to the extent that the petitioner has been barred from carrying on its business activities for an indefinite period. The matter is remanded to the Engineer-in-Chief, Rural Works Department, Bisheshwaraiya Bhawan, Bailey Road, Patna (Respondent No. 2) for taking a fresh decision with respect to the period of blacklisting to be imposed upon the petitioner after grant of opportunity of hearing to the petitioner in



accordance with law.

9. The writ petition stands allowed as above.

(Vikash Jain, J)

B.T/Chandran

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	27.02.2018
Transmission Date	N.A.

