

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13601 of 2017

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Anand Consultants, a Proprietary Firm through Rupesh Kumar Srivastava son of Late Anand Bihari Srivastava resident of 157-C, Patliputra Colony, Near Tennis Court, Patna - 800013.

.... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Dept. of Industries, Govt. of Bihar, Patna.
2. Infrastructure Development Authority (A Government of Bihar Undertaking) 1st Floor, Udyog Bhawan, East of Gandhi Maidan, Patna - 800004.
3. The Managing Director, Infrastructure Development Authority, 1st Floor, Udyog Bhawan, East of Gandhi Maidan, Patna - 800004.
4. Director (Project & Implementation), Infrastructure Development Authority, 1st Floor, Udyog Bhawan, East of Gandhi Maidan, Patna - 800004.
5. Executive Engineer, Infrastructure Development Authority, 1st Floor, Udyog Bhawan, East of Gandhi Maidan, Patna - 800004.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. P.K.Shahi, Sr. Adv
Mrs. Poonam Singh, Adv
Mr. Abhimanyu Vatsa, Adv
Mr. Rajni Kant Singh, Adv

For the Respondent/s : Mr. Abbas Haider-SC6

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 14-03-2018

The present writ petition has been filed for the following reliefs:-

- (i) *To quash and cancel the show cause notice as contained in letter no. 1391 dated 26.07.2017 as also to quash and cancel the decision/order of the Director (Project and Implementation)/Director (P&I) (Respondent No. 4) as contained in office order no. 1608/Tech dated 04.09.2017 by which the*



agreement no. 103/SBD/2015-16 executed in favour of the petitioner has been terminated and in accordance with the Bihar Contractors Registration Rules, 2007, Clause 11(ka)(ii) the petitioner firm has been blacklisted for all time to come and the Earnest Money Deposit has also been forfeited.

(ii) To issue a writ of mandamus restraining the respondents from giving effect to the order/direction as contained in office order no. 20 dated 04.09.2017.

(iii) To issue any other appropriate writ/writs, direction/directions as the Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

2. Mr.P.K. Shahi, learned senior counsel appearing on behalf of the petitioner submits that the impugned order dated 04.09.2017 (Annexure-12) is wholly arbitrary and illegal. Pursuant to show cause notice dated 26.07.2017 (Annexure-11), the petitioner submitted its detailed reply dated 04.08.2017 and 30.08.2017 against the proposed action of cancellation of the agreement, blacklisting, institution of the FIR etc. The impugned order, however, has been passed without due application of mind and without assigning any reason for not accepting the show cause reply of the petitioner. However, the petitioner has been blacklisted for indefinite period, contrary to the settled principles of law. He relies on the decision of the Apex Court in Kulja Industries Limited vs. Chief



General Manager, Western Telecom Project, Bharat Sanchar Nigam Limited and others, (2014) 14 SCC 731.

3. 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 (supra) it was 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."

4. 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."

5. In the above view of the matter, the impugned order dated 04.09.2017 (Annexure-12) is hereby quashed and the matter remanded to the Director (Project & Implementation), Infrastructure Development Authority, 1st Floor, Udyog Bhawan, East of Gandhi



Maidan, Patna – 800 004 (Respondent No. 4) to pass orders afresh after considering the aforesaid replies of the petitioner, pursuant to the show cause notice, before passing fresh orders in accordance with law.

6. The writ petition stands disposed of.

(Vikash Jain, J)

Chandran/BT

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	20.03.2018
Transmission Date	NA

