

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11386 of 2018

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M/s R. K. Construction through Its Proprietor Rajesh Kumar Singh, son of Late Sarbjeet Singh, resident of village Topra Tola, P.S. Pirpaninti, District Bhagalpur

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Rural Works Department, Government of Bihar, Patna
2. The Engineer in Chief, Rural Works Department, Government of Bihar, Patna.
3. The Chief Engineer-2, Rural Works Department, Bihar, Patna
4. The Superintending Engineer, Rural Works Department, Works Division, Bhagalpur, Bihar.
5. The Executive Engineer, Rural Works Department, Works Division, Bhagalpur, District Bhagalpur, Bihar.

.... Respondents

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Appearance :

For the Petitioner : Mr. Prabhat Ranjan, Advocate

For the Respondents : Mr. Kumar Alok, SC7

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 26-06-2018

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

2. The present writ petition has been filed for the following reliefs –

“(i) Commanding upon the respondent no. 2 to forthwith delete the name of the petitioner from the list of debarred Contractors as circulated from the list of debarred contractors as circulated vide Departmental Letter No. 7725 dated 29.06.2017 (wherein the name of the firm appears at Sl. No. 902) on the ground that the work, which could not be



completed as per the agreed date of completion has already been completed on 12.11.2014; and/or
(ii) Direction upon the respondent no. 2 to consider and dispose of the representation of the petitioner dated 12.06.2018 whereby a request has been made for revoking the name of the petitioner from Sl. No. 902 of the Departmental letter No. 7725 dated 29.06.2017; and
(iii) Direction upon the respondents to consider the Technical Bid of the petitioner which have been submitted after the competition of the work (which resulted into the debarment) during the pendency of the present writ application."

3. Learned counsel for the petitioner-firm submits that the impugned order of debarment has been passed without issuing any show cause notice and no opportunity of hearing has been granted to the petitioner. It is submitted that in any event, the work in question has since been completed by the petitioner and recommendation made by the Superintending Engineer, Rural Works Department, Bhagalpur for removing the name of the petitioner from the list of the debarment (Annexure-4).

4. Learned counsel for the respondents appears and has been heard but however is unable to controvert the stand of the petitioner in absence of any counter affidavit being filed.

5. Having heard the parties and on careful consideration



of the materials on record, this Court finds merit in the submissions of the petitioner.

6. It is well settled that any action of the State having civil consequences must conform to the principles of natural justice. It is relevant to take note of the decision in *Erusian Equipment & Chemicals Ltd. vs. the State of W.B.*, (1975) 1 SCC 70 wherein the Hon'ble Apex Court observed as follows __

"20. Blacklisting has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for purpose of gains. The fact that a disability is created by the order of blacklisting indicates that the relevant authority is to have an objective satisfaction. Fundamentals of fair play require that the person concerned should be given an opportunity to represent his case before he is put on the blacklist."

7. It would further appear from the decision of the Hon'ble Apex Court in *Kulja Industries Limited vs. Chief General Manager, Western Telecom Project, Bharat Sanchar Nigam Limited and others*, (2014) 14 SCC 731 that the principles in regard to "debarment" and "blacklisting" would be the same –

"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 debarment dated 29.06.2017 (Annexure-2) is set aside insofar as it concerns the petitioner only and the matter is remanded to the Engineer-in-Chief, Rural Works Department, Government of Bihar, Patna (Respondent No. 2) for taking a fresh decision after issuing show cause notice and after granting an opportunity of hearing to the petitioner in accordance with law.

9. It is made clear that in case the stand of the petitioner denying non-service of show cause prior to order of debarment being passed is found to be incorrect, the respondents shall be at liberty to approach this Court for recall of this judgment.

10. The writ petition stands allowed as above.

(Vikash Jain, J)

B.T/Chandran

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	05.07.2018
Transmission Date	N.A.

