

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12755 of 2015

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Rajesh Kumar Singh (Contractor) son of Umesh Prasad Singh, Resident of
village- Bahramba, P.S. & District- Jamui

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Rural Work Department, Govt. of Bihar, Patna
3. The Engineer in Chief cum Additional Commissioner cum Special Secretary,
Rural Work Department, Govt. of Bihar, Patna
4. The Chief Engineer Rural Work Department, Patna
5. The Superintending Engineer Rural Work Department, Munger
6. The Executive Engineer Rural Work Department, Sheikhpura

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Vinod Gautam
For the Respondent/s : Mr. Prasoon Sinha

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN
ORAL JUDGMENT

Date : 22-11-2018

I.A. No. 7784 of 2015

This interlocutory application has been filed impugning the order contained in Memo No. 10945 dated 08.09.2015 passed by the Engineer-in-Chief, Rural Works Department (respondent no. 3) by which the petitioner has been placed under the category of blacklist.

2. Having regard to the nature of the prayer made, the interlocutory application is allowed and the same is treated as forming part of the writ petition.

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3. The main writ petition has been filed for the following reliefs –

“(i) A writ in the nature of Certiorari setting aside the office order bearing Memo no. 523 dated 5.5.2014



(Annexure-4) issued under the signature of Executive Engineer (R-6) Rural Work Division Sheikhpura whereby and where under the agreement of contract with regard to package no. BR-19R-51 of the petitioner has unilaterally been terminated without considering the objections raised by the petitioner in complete violation of Principle of natural Justice (vide Annexure-4) Page-

(ii) For setting side the letter no. 1357 dated 11.10.2014 issued from the level of office of Executive Engineer (R-6) whereby and where under in pursuant to termination of the contract petitioner's security deposits and earnest money has been forfeited and amount of Rs. 13,15,939/- as liability in terms of debt payable to employer is directed to deposit, failing which the same will be recovered by way of filing certificate case (Vide Annx-5) Page-

(iii) For setting aside the Memo No. 11369 dated 4.10.2013 issued under the signature of Engineer in Chief Respondent no.3) whereby and where under petitioner has been declared defaulter and has been debarred from participating in future tender process (Vide Ann-9) page-

Any other order/orders for granting other relief/reliefs for which the petitioner is found entitled to in the facts and circumstances of the case."

4. Learned counsel for the petitioner raises a short contention to the effect that the impugned orders have been passed in utter violation of natural justice as no notice whatsoever has been served granting any opportunity of hearing before termination of the contract (Annexure-4) nor forfeiture of the security deposits and the earnest money (Annexure-5), treating the petitioner as defaulter. It is further



submitted that the impugned order of blacklisting dated 08.09.2015 (Annexure-10) has also been passed mechanically without considering the show cause of the petitioner and without assigning any reason and is thus in violation of natural justice.

5. Learned counsel for the respondents opposes the writ petition and relies on the counter affidavit in this regard. However, specific stand of the petitioner with regard to non-service of notice before passing of the impugned orders has not been controverted.

6. Having heard learned counsel for the parties and on consideration of the materials available on record, this Court is of the view that the impugned orders passed against the petitioner are not sustainable in law. The respondents have not been able to demonstrate that any notice was served on the petitioner prior to passing of the impugned orders of termination, forfeiture of security deposits and earnest money nor the order of debarment was served upon him and as such, the relevant orders have clearly been passed in violation of natural justice which cannot be sustained. Similarly, the order of blacklisting has been passed without discussion of the reasons cited in the show cause of the petitioner (Annexure-8) as evident from bare perusal of the impugned order dated 08.09.2010 (Annexure-10). The said order of blacklisting is unsustainable for having been passed for an indefinite period, in view of the observations of the Hon'ble Supreme Court in *Kulja Industries Limited Vs. Chief General Manager, Western Telecom Project, Bharat Sanchar Nigam Limited & Others* (2014) 14 SCC 731.



7. The impugned order of termination (Annexure-4), the order of forfeiture of security deposits and earnest money (Annexure-5), the order of debarment dated 04.10.2013 (Annexure-9) and the order of blacklisting dated 08.09.2010 (Annexure-10) are accordingly quashed with observation that the respondents shall be at liberty to issue show cause notice to the petitioner, if so advised, before proceeding further in the matter.

8. The writ petition accordingly stands allowed.

B.T/Chandran

(Vikash Jain, J)

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	24.11.2018
Transmission Date	N.A.

