

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5022 of 2010

=====

Sanjay Printing Works, a Partnership Firm, Rai Jai Krishna Road, Gurhatta,
Patna-800008, through its Partner Sri Nawin Chandra Jaiswal , S/O Late Dr.
Mathura Prasad Jaiswal

.... Petitioner/s

Versus

1. The State of Bihar through Department of Information & Public Relation
2. The Secretary, Information & Public Relation Department , Govt. of Bihar.
3. The Director, Information & Public Relation Department , Govt. of Bihar.
4. The Assistant Director (Publication), Department of Information & Public Relation , Govt. of Bihar.

.... Respondent/s

=====

Appearance:

For the Petitioner/s :	Mr. AJAY KUMAR SINHA Mr. Ajit Kumar Sinha Mr. Suman Kumar Jha, Advocates
For the Respondent/s:	GP14

=====

CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 05-07-2018

I.A. No. 5857 of 2010

This Interlocutory Application has been filed for amendment in
the prayer portion of the main writ petition by adding the following
prayers—

- (i) *To quash the order contained in Annexure-11 the same being bad in law as also on fact.*
- (ii) *To allow the petitioner to supply all the balance number of diaries.*
- (iii) *To grant such other relief that your Lordship may deem fit and proper in the facts and circumstances of the case.*



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

CWJC No. 5022 of 2010

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

- (i) *For issuance of appropriate writ/direction restraining the respondents not to black list the petitioner by accepting the show cause filed by the petitioner in response to the show cause notice dated 09.02.2010.*
- (ii) *For issuance of appropriate writ/direction to allow reasonable time to supply the balance number of diary 2010 i.e. 24806 out of which 3500 are readily available.*
- (iii) *For issuance of appropriate writ/direction which the petitioner in the facts and circumstances of the case be found entitled.*
- (iv) *To quash the order contained in Annexure-11 the same being bad in law as also on fact.*
- (v) *To allow the petitioner to supply all the balance number of diaries.*
- (vi) *To grant such other relief that your Lordship may deem fit and proper in the facts and circumstances of the case.*

4. Mr. Ajay Kumar Sinha, learned counsel for the petitioner, questions the validity of the impugned blacklisting order dated



19.03.2010 primarily on the ground that no such right enured nor was reserved with the respondents for punishing the petitioner in the manner done. The delay in completing the work of publishing the diaries in question was attributable to the respondents as the requisite materials were not made available to the petitioner within time. It is further submitted that the order of blacklisting has been passed for an indefinite period and for all times to come, which cannot be sustained in law.

5. Learned counsel for the respondents appears and resists the writ petition submitting that the petitioner failed to comply with the terms of the agreement and did not supply the diaries within time and hence the blacklisting order was passed.

6. Having heard learned counsel for the parties and on consideration of the materials on record, this Court finds that the petitioner does not appear to have escalated the dispute with regard to the alleged non-supply of the diaries and did not take any steps for resolving the dispute before any forum at the relevant time. It may be noted that the work order was given to the petitioner by memo no. 2385 dated 12.11.2009 and even in absence of any agreement, the petitioner was entitled to raise the dispute before the Bihar Public Works Contracts Disputes Arbitration Tribunal which had already been constituted under the relevant Act of 2008. The



petitioner however chose not to do so. There is inordinate delay on the part of the petitioner who has not acted with due diligence in approaching this Court.

7. The contention of the petitioner that the respondents were not empowered to pass any order of punishment against the petitioner is devoid of any merit, in view of the observations 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 wherein it has been stated that —

“17. ... the power to blacklist a contractor whether the contract be for supply of material or equipment or for the execution of any other work whatsoever is in our opinion inherent in the party allotting the contract. There is no need for any such power being specifically conferred by statute or reserved by contractor. That is because “blacklisting” simply signifies a business decision by which the party affected by the breach decides not to enter into any contractual relationship with the party committing the breach.”

8. There is however, merit in the submission of the petitioner that the order of blacklisting could not have been passed for an indefinite period and in perpetuity. This aspect of the matter has also been dealt with in the *Kulja Industries* case (supra) in the following terms —

“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."

9. It would further appear that the principles in regard to "debarment" and "blacklisting" are the same in view of para 21 of the said judgment 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."

10. In the above view of the matter, the impugned order dated 19.03.2010 (Annexure-11) is hereby quashed and the matter remanded to the Secretary, Information and Public Relations, Government of Bihar, Patna (Respondent No. 2) only for the purpose of taking a fresh decision with respect to the period of blacklisting to be imposed upon the petitioner, after grant of an opportunity of hearing to the petitioner in accordance with law.

11. It is directed that while deciding the period for which blacklisting is required to be imposed, regard shall be had for the period already suffered by the petitioner between 19.03.2010 when the order of blacklisting was passed and 25.08.2011 when the said order was directed by this Court to remain stayed. Considering that the



issue of blacklisting has lingered for a long time, it is expected that the entire process shall be concluded within a reasonable time frame and in any event, not exceeding three months hereof. Needless to say, the petitioner shall co-operate in early disposal of the matter.

12. The writ petition stands disposed of as above.

13. I.A. No. 5391 of 2011 filed for interim orders against the order of blacklisting dated 19.03.2010 stands already disposed of.

14. I.A. No. 7036 of 2011 filed on behalf of the respondent-State for vacating the stay order dated 25.08.2011, stands dismissed.

15. I.A. No. 5857 of 2011 filed by respondent no. 4, which is in the nature of a counter affidavit as no prayer has been made therein, requires no separate order.

(Vikash Jain, J)

Chandran/BT

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	10.07.2018
Transmission Date	NA

