

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1864 of 2018

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L. R. Sharma & Company, having its Office at V-17, Green Park Extension, New Delhi- 110016 through its Power of Attorney Holder namely Shri L.R. Sharma.

.... Petitioner/s

Versus

1. The State of Bihar through Urban Development & Town Planning Department, Govt. of Bihar, Vikas Bhawan, New Secretariat, Patna.
2. The Principal Secretary, Urban Development & Town Planning Department, Govt. of Bihar, Vikas Bhawan, New Secretariat, Patna.
3. Bihar Urban Infrastructure Development Corporation Limited, (A Government of Bihar Undertaking) through its Managing Director having its office at 2nd floor, Khadya Bhavan Road No. 2, Daroga Prasad Rai Path, R-Block, Patna- 800001.
4. The Chief General Manager, Bihar Urban Infrastructure Development Corporation Limited, (A Government of Bihar Undertaking) having its office at 2nd floor, Khadya Bhavan Road No. 2, Daroga Prasad Rai Path, R- Block, Patna- 800001.
5. The Project Director SI-4, Bihar Urban Infrastructure Development Corporation Limited, (A Government of Bihar Undertaking) having its office at 2nd floor, Khadya Bhavan Road No. 2, Daroga Prasad Rai Path, R- Block, Patna- 800001.
6. M/S Jyoti Buildtech Pvt. Ltd. (A Company Incorporated under the Laws of Company Act 1956) having its registered office at 68/5339, Raigarpura, Karol Bagh, New Delhi & Corporate office at 19-B, Lajpat Nagar Chowk, Lucknow U.P.
7. M/s Abhyudaya Housing and Construction Pvt. Ltd. (A Company Incorporated under the Laws of Company Act 1956) having its Registered office at 2nd floor, Abhydyaya Tower, 2-Meerabai Marg, Hajrat Ganj, Lucknow, U.P.

.... Respondents

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Appearance :

For the Petitioner	:	Dr. Anshuman, Mr. K.K. Jha, Mr. Prashant Prakash, Advocates
For the State	:	Mr. Abbas Haider -SC6
For the BUIDCO	:	Mr. Rabindra Kr. Priyadarshi, Advocate

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 04-05-2018

Heard learned counsel for the petitioner and learned counsel
for the respondent-State as well as learned counsel for the respondent-
BUIDCO.



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

“(i) For issuance of a writ/order/direction in the nature of a writ of certiorari to quash/set aside the letter dated 18.08.2017 issued by Respondent No. 5 whereby and whereunder the petitioner was debarred for 5 years from participating in the tenders for the projects of respondent no. 3, without any show cause notice and without providing an opportunity of hearing and in complete violation of principles of Natural Justice.

(ii) For issuance of a writ/order/direction in the nature of a writ of certiorari to quash/set aside the letter dated 11.10.2017 sent by the respondents no. 5 to the Delhi Jal Board, Bangalore Water Supply and Sewerage Board and Nagar Vikas Nyas Alwar at Alwar mentioning therein as to the alleged recommendation for blacklisting the petitioner for 5 years, declaring the same as illegal, unreasonable and against the well settled principles of law i.e. principles of natural justice so far as the petitioner is concerned.

(iii) For issuance of a writ order or direction in the nature of a writ of mandamus directing the respondent nos. 3, 4 & 5 not to take any action for the alleged lapses on the part of petitioner in execution of the documents and submission of the performance security or not to debar/blacklist them without giving an opportunity of being heard and without issuing show cause notice in writing and hence in complete violation of principles of Natural Justice.

(iv) For that the action of debarring the petitioner for 5



years from participating in the tenders of the projects of the respondents No. 3 and any proposed action or recommendation of the respondents Nos. 3, 4 & 5 for blacklisting the petitioner for 5 years as mentioned in letter dated 18.08.2017/11.10.2017 may kindly be stayed during pendency of this writ petition.

(v) For any relief/reliefs as your Lordships may deem fit and proper in the fact and circumstances of this case.”

3. Learned counsel for the petitioner submits that the impugned order of debarment for five years from participating in the tenders has been passed without issuance of show cause notice and without grant of any opportunity of being heard in the matter. It is, therefore, submitted that such order cannot be sustained in law as it is in violation of the fundamental principles of natural justice.

4. Learned counsel for the respondent-State as well as respondent-BUIDCO appear and have been heard but no counter affidavit has been filed on their behalf.

5. 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.”

6. 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.”

7. In the above view of the matter and without entering into the merits of the case, the impugned order as contained in letter dated 18.08.2017 issued by Managing Director, Bihar Urban Infrastructure Development Corporation Limited, Khadya Bhavan Road No. 2, Daroga Prasad Rai Path, Patna (respondent no. 3) as contained in Annexure-P/11, in so far as it concerns the petitioner, is hereby set aside granting liberty to the respondents to issue an appropriate show cause notice and grant reasonable opportunity of hearing before resorting to any adverse action against the petitioner.



8. It is made clear that in case the stand of the petitioner denying non-service of show cause notice prior to the 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.

9. The writ petition accordingly stands allowed.

(Vikash Jain, J)

B.T/Chandran

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	07.05.2018
Transmission Date	N.A.

