

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9862 of 2018

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M/s S. S. S. Construction, Sitakund (Pipra), East Champaran through Mr. Abhay Gupta, Son of Late Kailash Sah, resident of Village and Post- Damodarpur, Police Station- Pipra, Block- Chakiya, District- East Champaran, Motihari.

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Rural Work Department, Govt. of Bihar, Patna.
2. The Chief Engineer, Rural Work Department, Govt. of Bihar, Patna.
3. The Superintending Engineer, Rural Work Department, Govt. of Bihar, Patna.
4. The Executive Engineer, Rural Work Department, Work Division, Belsand, District- Sitamarhi.

.... Respondents

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Appearance :

For the Petitioner : Mr. Manoj Kumar Singh, Advocate.

For the Respondents : Mr. Kumar Alok, SC-7

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 12-07-2018

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) A writ in the nature of certiorari or any other appropriate writ, order or direction for quashing the letter no. 7829 dated 03.07.2017, which was issued under the signature of Respondent No. 1, by which the respondent no. 1 has proclaimed the suspension of contractor-ships of the petitioner and debar the petitioner from participation in next coming tender.

(II) For a direction to the respondents to examine the actual position of work performance of the petitioner in the light of



letter no. 98 dated 15.02.2016 send by the respondent no. 4 to respondent no. 1.;

(III) For a direction to the respondents to release the due amount in favour of the petitioner as much as possible earlier.

(IV) For a direction to the respondents to issue a letter with regard to satisfactory work performance of the petitioner.

(IV) For any other relief or reliefs for which the petitioner is found entitled to, in the light of facts and circumstances of the case”.

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, Govt. of Bihar, Patna for removing the name of the petitioner from the list of the debarment.

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 submission 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 03.07.2017 (Annexure-11) is set aside as it concerns the petitioner only and the matter is remanded to the Chief Engineer, Rural Works Department, Govt. 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 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.

10. The writ petition accordingly stands allowed.

(Vikash Jain, J)

Md. Ibrarul/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	17.07.2018
Transmission Date	N.A.

