

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4098 of 2018

=====

Amarpur Construction Co. Pvt. Ltd., a registered company having its place of business at Amarpur, P.S. Amarpur, district- Banka through one of its Director namely Santosh Kumar Kanodia, son of Sri Sahdeo Kanodia, resident of Village- Amarpur, P.S. Amarpur, District- Banka

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Department of rural Works, Govt. of Bihar, Patna.
2. The Principal Secretary, Department of Rural Works, Govt. of Bihar, Patna.
3. The Engineer in Chief, Department of Rural Works, Govt. of Bihar, Patna.
4. The Chief Engineer-2, Department of Rural Works, Govt. of Bihar, Patna.
5. The Superintendent Engineer, Department of Rural Works, Bhagalpur Circle, Bhagalpur.
6. The Executive Engineer, Rural Works Division, Bhagalpur.
7. The Assistant Engineer, Rural Works Department, Sahkund, Bhagalpur.
8. The Junior Engineer, Rural Works Department, Sahkund, Bhagalpur.

.... Respondents

=====

Appearance :

For the Petitioner : Mr. Gautam Kumar Kejriwal, Advocate.
Mr. Mohit Agrawal, Advocate.

For the Respondents : Mrs. A. Meenakshee, GP-6

=====

CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 23-03-2018

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

“(a) For issuance of a writ in the nature of certiorari for quashing of part of the memo no. 7725 dated 29.06.2017 issued by the respondent no. 3 in so far as it relates to the petitioner been debarred from participation in future tenders being in teeth of the principles of natural justice;

(b) For issuance of a writ or order or direction upon the respondents to allow the petitioner to participate in the bidding process of all the tenders submitted by the petitioner as the petitioner was never ever communicated the impugned decision of debarment much less any prior show cause notice



was issued in connection thereto;

(c) For holding and a declaration that the petitioner could not have been debarred from participation in future tenders without any notice with regard to specific instance of default on part of petitioner or without serving upon the petitioner a copy of any enquiry report if conducted or without any such enquiry made into the alleged complaint etc. as the same would amount to a unilateral action without any basis and material directly affecting the fundamental rights of the petitioner and it's shareholders;

(d) For grant of any other relief or reliefs to which the petitioner is found entitled in the facts and circumstances of this case".

2. Learned counsel for the petitioner submits that the impugned order of debarment 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.

3. Learned counsel for the respondents appears and has been heard.

4. 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.”

5. 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.”

6. In the above view of the matter and without entering into the merits of the case, the impugned order as contained in letter No. 7725 dated 29.06.2017 issued by the Engineer-in-Chief, Rural Works Department, Bihar, Patna (respondent no. 3) as contained in Annexure-7 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.

7. It is made clear that if the petitioner participates in any tender in the meantime, the same shall be subject to any fresh order of



blacklisting as may be passed against the petitioner pursuant to the liberty as aforesaid.

8. It is further 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)

Md. Ibrarul/Chandran

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	26.03.2018
Transmission Date	N.A.

