

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14207 of 2017

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Jai Ghosh Kumar, Son of Late Shiv Narayan Singh, Resident of Village - Aiman Bigha, P.O. - Kanchanpur, P.S. - Sahjahanpur, District - Patna.

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Rural Works Department, 'Vishweshwaraiya Bhawan' Bailey Road, Patna - 15.
2. The Engineer-in-Chief-cum-Additional Commissioner-cum-Special Secretary, Rural Works Department, 'Vishweshwaraiya Bhawan' Bailey Road, Patna - 15.
3. The Chief Engineer-1, Rural Works Department, 'Vishweshwaraiya Bhawan' Bailey Road, Patna - 15.
4. The Superintending Engineer, Rural Works Department, Works Circle, Nalanda at Biharsharif - 803101.
5. The Executive Engineer, Rural Works Department, Works Division, Hilsa (Nalanda).

.... Respondents

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Appearance :

For the Petitioner : Mr. Manish Sahay, Advocate

For the Respondents : Mr. P.N. Shahi -AAG6

Mr. Mritunjay Kumar, AC to AAG 6

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 03-04-2018

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) For quashing of debarment order so far as petitioner is concerned, issued vide letter Nos. 11369 (Anu) dated 04.10.2013 under signature of the Engineer-in-Chief-Cum-Additional Commissioner-Cum-Special Secretary, Rural Works Department, Government of Bihar, Patna, as contained in Annexure - P-2 Series, by which the petitioner and others have been



declared defaulter and debarred from participating their bids in future tender. Name of petitioner figures at Serial No. 47 of said debar list dated 04.10.2013 as enclosed along with said debar letter.

(ii) For declaring that the actions of the respondents are arbitrariness, malafide, malicious, colourable exercise of power as well as contrary to provision of agreement.

(iii) For further passing such an Order or Orders for which the petitioner is entitled under the law in the facts and circumstances of this case.”

3. 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. It is further stated that in any event the petitioner has completed all the six works in view of which the Executive Engineer, Rural Works Department, Hilsa by letter dated 02.09.2015 (Annexure-P/3) has recommended for removing the petitioner's name from the debar list. The said matter has traveled to the Superintending Engineer where it remains pending.

4. Learned counsel for the respondents appears and has been heard. No counter affidavit has been filed till date.

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 No. 11369 (Anu) dated 04.10.2013 issued by the Engineer-in-Chief, Rural Works Department, Bihar, Patna (respondent no. 2) as contained



in Annexure-P/2 series 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	07.04.2018
Transmission Date	N.A.

