

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 2123 of 2018**

- Aka Consultants (India) Private Limited Through Mr. Sudhir Karde Senior Manager, (Business Development) Rgd Off 8, SBI Officers Colony, Opp. Anand Bazar, Indore (Madhya Pradesh)

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Principle Secretary, Department Of Housing And Environment, Govt. Of Chhattisgarh, New Raipur, Chhattisgarh
2. Chhattisgarh Housing Board Head Office Paryavas Bhawan, North Block, Sector 19, New Raipur, Chhattisgarh. - 492002
3. Architect (Chhattisgarh Housing Board) Head Office, Paryavas Bhawan, North Block, Sector 19, New Raipur, Chhattisgarh

---- Respondent

For Petitioner	Shri Vijayesh Atre and Shri Vedant Bhelonde, Advocates
For Respondent No.1	Shri Shashank Thakur, GA
For Respondent Nos.2 & 3	Shri Sanjay Patel, Advocate

Hon'ble Justice Mr. Prashant Kumar Mishra**Order On Board****25/09/2018**

1. Petitioner was executing a consultancy contract for providing Architectural and Engineering Services for NMDC Township, Nagarnar at Jagdalpur on behalf of the Chhattisgarh Housing Board (henceforth 'the Board'). On the petitioner being allegedly found involved in submitting some fake or forged documents, a

show cause notice was served on it on 05.04.2018 requiring the petitioner to show cause against forfeiture of EMD of Rs.24.00 Lakhs while exercising the power under Clause 2.15.5 of RFP and restrain it from further participation of RFP revised bid. Thereafter order (Annexure-P-8) was passed against the petitioner on 19.04.2018 debarring him from participating in future recall of RFP for **this project** by the Board from the date of issuance of the order, however, this order is not the subject matter of challenge in this writ petition.

2. For the present, the petitioner is aggrieved by the order (Annexure-P-1), whereby while refusing to renew its registration with the Board, it has been directed by the Architecture of the Board that the petitioner shall not be allowed to participate in any of the project of the Board for a period of 5 years and its registration shall not be renewed for next 5 years.
3. Shri Atre, learned counsel with Shri Bhelonde, would submit that the Board has never issued any show cause notice against the petitioner for debarring it for a period of 5 years, therefore, the impugned order suffers from violation of principle of natural justice. He would refer to the law laid down by the Supreme Court in the matter of **Joseph Vilangandan vs Executive Engineer¹** and **Gorkha Security Services vs Government (NCT of Delhi) and others²**.
4. Shri Patel, learned counsel for the respondent Nos.2 & 3, would submit that the impugned order is infact an order refusing

¹ (1978) 3 SCC 36

² (2014) 9 SCC 105

registration for 5 years, therefore, as a necessary fallout, the petitioner will not be able to participate in any of the project of the Board for a period of 5 years. Thus, the order (Annexure-P-1) is not an order of blacklisting but is an order refusing registration with the Board for a period of 5 years.

5. It is settled law that an order of blacklisting cannot be passed unless a show cause notice is issued clearly mentioning the intended action against the person against whom the adverse order is to be passed. There is no mention in the order (Annexure-P-8) dated 19.04.2018 that the petitioner shall not be allowed to participate in any of the project of the Board for a period of 5 years. If the petitioner's non participation in any of the project was a necessary fallout of the order of refusal to register, there was no need for the respondents to mention in the impugned order that it will not be allowed to participate in any of the project of the Board for 5 years. The impugned order is a veiled attempt to blacklist the petitioner for a period of 5 years in the garb of refusing to register it. In the area of petitioner's vocation, an order of this nature would definitely taint its credibility elsewhere in the country when it participates in architectural competition. Mere refusal to register may be on various grounds but when refusal to register and debarment for 5 years is backed with some allegations, the same would amount to blacklisting. The impugned order by itself is an innocuous order of refusal to register but it carries with it an element of blacklisting, which could not have been passed without providing opportunity of hearing clearly informing the petitioner as to the

intended action against it.

6. Consequently, the impugned order deserves to be and is hereby quashed with liberty to the respondents to issue a clear show cause notice against the petitioner about the intended action and thereafter the Board may pass necessary order in accordance with law and in terms of the contract.
7. The writ petition stands allowed to the extent indicated above. There shall be no order as to cost.

Sd/-

Prashant Kumar Mishra
Judge

Nirala