

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16868 of 2019

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M/s Bimla Enterprises through its Proprietor Shri Bhola Thakur, aged about 71 Years, Gender-Male, Having its Registered Office at C-62,S-No.12, East Sagarpur, New Delhi-110046, Branch Office at Opposite Gee Pee Furniture, Nala Road, P.O.-P.S.-Kadamkuan, Patna.

... .. Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar at Patna.
2. The Principal Secretary, Department of Health, Government of Bihar at Patna.
3. Indira Gandhi Institute of Cardiology, through its Director Having its Office at Patna Medical College Campus, Ashok Rajpath, Patna.
4. The Director, Indira Gandhi Institute of Cardiology at Patna Medical College Campus, Ashok Rajpath, Patna
5. The Joint-Director, Indira Gandhi Institute of Cardiology at Patna Medical College Campus, Ashok Rajpath, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Aditya Shankar, Advocate Mr. Sanchay Srivastava, Advocate Mr. Ravi Prakash, Advocate Mr. Sourav Suman, Advocate
For the Respondent/s	:	Mr. R. B. N. Singh, AC to GA 10

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date : 21-11-2019

The petitioner in the present case is seeking a writ in the nature of writ of Certiorari to quash and cancel the order of cancellation of contract as contained in Annexure 'P/12, the letter dated 23.05.2019 as contained in Annexure 'P/17' issued under the signature of respondent no. '2' by which a direction has been issued to black list the petitioner, to lodge FIR against him and to stop payment for the work done by the petitioner during the period



petitioner has rendered its services pursuant to the award of contract in question. The petitioner has also challenged the order of blacklisting as contained in Annexure 'P/18' issued on 30.05.2019 by which the name of the petitioner firm has been permanently placed in the black list.

The facts as appearing on the records are that this petitioner participated in a tender for providing security services in Indira Gandhi Institute of Cardiology, Patna (in short 'IGIC'). The petitioner claimed that it was an empanelled agency with the Director General Resettlement (in short 'DGR'). The petitioner provided an undertaking dated 13.10.2018 to the respondents in support of the claim of the petitioner that the Agency is empanelled with the 'DGR'. Since the petitioner was declared L1 bidder, the work in question was awarded to the petitioner and an agreement as contained in Annexure 'P/7' got executed between the parties. After the petitioner deployed its personnel and was executing the work, the petitioner was served with a show cause notice dated 16.03.2019 alleging that the letter of empanelment by 'DGR' dated 26th December, 2018 which was produced by the petitioner has been verified and it has confirmed that the said letter has not been issued by the office of DGR, Ministry of Defence, Government of India.



The show cause notice bearing no. 726 dated 16.03.2019 was served upon the petitioner and the petitioner submitted a reply thereto vide Annexure 'D' to the counter affidavit. The respondents have taken a plea that the reply submitted by the petitioner was not found satisfactory by the Purchase Committee, therefore, the said Committee recommended for cancellation of contract in question in the light of Clause '18' of the agreement.

In view of that decision the agreement in question as well as the work order have been cancelled vide letter as contained in Annexure 'F' to the counter affidavit.

It appears that after the cancellation of agreement and work order, the Director, IGIC, Patna wrote a letter contained in Reference No. 984 dated 18.04.2019 to the Principal Secretary, Health Department, Government of Bihar bringing the entire facts and circumstances to his notice and sought a guideline on the question of payment of Bills submitted by the petitioner. In response to the said letter, the Under Secretary, Health Department, Government of Bihar vide letter dated 23.05.2019 directed the Director, IGIC, Patna to put the petitioner agency in the blacklist and also to lodge first information report against the petitioner and further ordered not to make any payment against the work.



Learned counsel for the petitioner submits that it is evident from the record that while issuing a show cause notice on 16.03.2019, the Director, IGIC, Patna had not proposed either blacklisting or stoppage of payments to which the petitioner had already become entitled by virtue of the services rendered to the organization. The show cause notice was only limited to an action towards termination of the agreement but after cancellation of the agreement and work order when the Director, IGIC, Patna sent a communication the Department of Health, Government of Bihar and sought guidelines, the Under Secretary to the Government, under the Department of Health, directed the Director, IGIC, Patna to take further action towards blacklisting, lodgement of FIR and stoppage of payment. In his submission, the subsequent actions taken by the respondent authorities are not by virtue of any independent exercise of mind on their part and the action is totally based on the dictate of the Department of Health, Government of Bihar.

Learned counsel for the State has opposed the writ application and has submitted that the petitioner had participated in the tender and had produced a fake empanelment certificate because of which the impugned action has been taken. Learned counsel for the State, however, admits to this extent that in the



show cause notice dated 16.03.2019, there was no proposal to blacklist the petitioner but it is his submission that the show cause notice was stipulating that further action in accordance with law shall be taken.

Having heard learned counsel for the petitioner as well as learned counsel for the State as also on careful perusal of the records, this Court is of the considered opinion that so far as the order of cancellation of contract is concerned, the same may be challenged by the petitioner before an appropriate court/forum as it would not be just and proper for this Court to delve into the question of facts particularly when the facts are required to be adjudicated after giving the parties an opportunity to adduce their respective evidences.

This Court is, therefore, not entertaining the writ application with regard to the challenge made to the cancellation of contract and leave it open for the petitioner to pursue his remedy before any other court/forum in accordance with law.

This Court is, however, convinced that the subsequent action towards blacklisting of the petitioner, direction for lodgement of the FIR and stoppage of the payments for the work done by the petitioner are result of the directions issued by the Principal Secretary, Department of Health, Government of Bihar.



No show cause notice proposing blacklisting was issued to the petitioner.

It is not in dispute that the petitioner had rendered services pursuant to the agreement and for the period prior to cancellation of agreement, the petitioner would be entitled to get payment but no reason has been shown in the counter affidavit filed on behalf of the respondents as to why such payment would not be made to the petitioner.

To this Court, it appears that the respondent no. '4' has not acted independently in the matter of taking decision with respect to blacklisting, lodgement of FIR and stoppage of payment for the services already done by the petitioner.

This Court has been informed that till date the FIR has not been lodged. The Court finds that the order of blacklisting is not only without giving any opportunity to show cause as also in the nature of a permanent blacklisting, thus, on both counts the order of blacklisting is liable to set-aside. Reference in this regard may be made to the judgment of the Hon'ble Supreme Court in the case of **Gorkha Security Services vs. Govt. of NCT of Delhi & Ors.** reported in **AIR 2014 SC 3371** and the judgment in the case of **Kulja Industries Limited Vs. Chief Gen. Manager W.T. Proj. BSNL & Ors.** reported in **AIR 2014 SC 9**.



This Court, therefore, sets-aside the action of the respondents by which the petitioner has been blacklisted and a direction has been issued to lodge the FIR against the petitioner as also by which the further payment of the petitioner has been withheld. The impugned communication as contained in Annexure- 'P/18' and the subsequent action as contained in Annexure- 'P/19' series are hereby set-aside. The matter is remitted to the respondent no. '4' for a fresh consideration independently and after giving an appropriate opportunity of hearing to the petitioner.

This Court also directs that the admitted dues of the petitioner be paid within a period of 60 days from the date of receipt/production of a copy of this order.

The writ application is allowed to the extent indicated above.

(Rajeev Ranjan Prasad, J)

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CAV DATE	
Uploading Date	22.11.2019
Transmission Date	

