

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.374 of 2018

In

Civil Writ Jurisdiction Case No.10460 of 2016

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1. The State Of Bihar through its Chief Secretary.
 2. Road Construction Department, Government of Bihar through its Principal Secretary.
 3. Engineer-in-Chief-Cum-Additional Commissioner-Cum-Special Secretary, Road Construction Department, Bihar, Patna.
 4. Secretary to the Engineer-in-Chief, Road Construction Department, Bihar, Patna.

... .. Appellant/s

Versus

1. Brajesh Kumar, son of Sri Ramashrey Prasad, Resident of Village-Chauria Tola, P.O. Dhum Nagar, P.S.- Jagdishpur, District-West Champaran.
2. Rural Works Department, Government of Bihar through its Principal Secretary, Patna.
3. Engineer-in-Chief, Rural Works Department, Government of Bihar, Patna.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. S. Raza Ahmad, AAG-5 Mr. Vishwambhar Prasad & Mr. Alok Ranjan, A.C. to AAG-5
For the Respondent/s	:	None

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 07-01-2019

Re: I.A. No.2126 of 2018

Heard Sri S. Raza Ahmad, learned Additional Advocate

General No.5 for the State of Bihar.



2. This appeal is stated to be beyond time by one year 117 days. We, however, find the cause to be shown as sufficient to condone the delay and treat the appeal to be within time.

Re: L.P.A. No.374 of 2018

The appeal arises out of the proceedings of blacklisting of the respondent-petitioner that ultimately culminated in the order passed by the Secretary, Road Construction Department, Government of Bihar on 12th of April, 2016 affirming the blacklisting order dated 07.08.2015 issued by the Engineer-in-Chief in terms of the Bihar Contractors Registration Rules, 2007.

2. The respondent-petitioner had admittedly been awarded a contract for road widening of State Highway No.72 at a particular place as already described in the impugned judgment on the strength of a certificate of experience which was alleged to be fake. The respondent-petitioner was given a notice on 19th of August, 2013 by the Road Construction Division, followed by a reminder on 27th of September, 2013. The respondent-petitioner tendered a reply on 29th of October, 2013 and in paragraph 3 of the said reply, it was categorically stated by the respondent-petitioner that the said certificate had been erroneously uploaded along with the documents of contract by the Computer Operator by mistake



and, therefore, in effect the uploading of the said document, which is alleged to be fake, was accepted by the respondent-petitioner.

3. After receiving the reply, the Engineer-in-Chief of the Road Construction Department referred the matter to the Rural Works Department through the letter dated 24.02.2014 for taking appropriate action. As a sequence thereto, a notice was issued to the respondent-petitioner on 09th of April, 2014 and after considering the reply of the respondent-petitioner, an order was passed on 2nd of September, 2014 by the Rural Works Department blacklisting the petitioner without defining the period of blacklisting.

4. The respondent-petitioner filed an appeal as per the 2007 Rules before the concerned Secretary, who set aside the said order and remanded the matter for a decision afresh. On such remand, the Engineer-in-Chief of Rural Works Department, vide order dated 25th of June 2015, passed a fresh order blacklisting the respondent-petitioner for one year.

5. It appears that on 18th of June, 2015, an office order was issued by the Road Construction Division of the Government of Bihar prescribing the guidelines and also prescribing the period for which the blacklisting order could survive. This office order was obviously tendered prior to the order passed on 25th of June,



2015, yet he was awarded a punishment of blacklisting for one year only. This order dated 25th of June, 2015 was neither challenged nor set aside and instead, a fresh order was passed by the Road Construction Division on 07th of August, 2015 blacklisting the respondent-petitioner for ten years. As per the guidelines dated 18th of June, 2015, blacklisting will be for ten years in the event any work order of contract has been obtained on the basis of fake documents.

6. The order dated 07th of August, 2015, nowhere takes notice of the earlier order dated 25th of June, 2015, which was passed by the Rural Works Department in respect of the very same allegations for which the respondent-petitioner had been blacklisted for one year.

7. In the above background, the respondent-petitioner filed C.W.J.C. No.15180 of 2015, that was disposed of on 06th of January, 2016 by the following order:

“Heard learned counsel for the parties.

After some argument learned counsel for the petitioner seeks permission to withdraw the application in order to move before the appellate authority under the Bihar Contractors Registration Rules, 2007.

Accordingly, the writ petition stands disposed off as withdrawn with the liberty aforesaid.



The Court would only like to indicate that the appellate authority shall not be guided by the decision contained in Letter No.154 dated 18.06.2015 with regard to the period of blacklisting as the same can only be inflicted for an offence committed prospectively and not for the period the petitioner is said to have committed the misconduct, which is much prior in time. It will be open to the petitioner to advance all his arguments before the appellate authority. If such an appeal is filed within one month from today along with a copy of this order, the same shall be disposed off by the appellate authority within two months thereafter.”

8. A perusal of the said judgment would indicate that the appeal was to be decided without being guided by the office memorandum dated 18th of June, 2015 as the Court was of the opinion that since the allegation was of the year 2013, therefore, the office memorandum dated 18th of June, 2015 would not apply retrospectively.

9. The matter was again taken up in appeal and the appellate authority affirmed the blacklisting order passed by the authority, whereby the respondent-petitioner stood blacklisted for a period of ten years. It is these orders that came to be challenged in the writ petition giving rise to the present appeal and after consideration of entire materials on record, the learned single



Judge came to the conclusion that the action taken for blacklisting the respondent-petitioner once again was arbitrary as he had already been blacklisted for a period of one year on 25th of June, 2015.

10. We have considered the submissions raised by the learned Additional Advocate General and we find that the earlier punishment dated 25th of June, 2015 had been rendered after the matter had been remitted by the Road Construction Department to the Rural Works Department. In such a situation, the Road Construction Department could not have undertaken a fresh exercise as this would amount to a review of the earlier order dated 25th of June, 2015, for which there is no such provision under the 2007 Rules nor is there any such provision even under the guidelines which have been framed on 18th of June, 2015.

11. Accordingly, the appellate authority while proceeding to have considered the claim of either side should also have looked into this aspect as to whether it was permissible for the Road Construction Department to have reviewed the earlier order passed by the Rural Works Department which was at the instance of the Road Construction Department itself in respect of a default of 2013. The appellate authority totally oblivious of this aspect proceeded to affirm the order which otherwise could not



have been passed as a matter of review over and above the earlier order dated 25th of June, 2015 and against the observations made in the judgment dated 06.01.2016.

12. The question of applicability of the office memorandum dated 18th of June, 2015 could have been taken into account had it been a case that there was a deliberate attempt on the part of the authority to avoid considering the same when the order was passed on 25th of June, 2015. No such finding has been recorded by the appellate authority as to why the office memorandum dated 18th of June, 2015 was not considered by the authority when it passed the order on 25th of June, 2015 nor any action appears to have been taken in this regard.

13. Consequently, in the absence of any such material permitting review of the said order dated 25th of June, 2015, we do not find any error in the conclusion drawn by the learned single Judge in allowing the writ petition and quashing the impugned orders.

14. It may, however, be clarified that the instant appeal is being dismissed with the observations keeping in view the peculiar facts of this case and any other matter in relation to blacklisting arising out of the 2007 Rules would be governed by



the said Rules as well as the office memorandum dated 18th of June, 2015.

15. The appeal is consigned to records.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

PNM

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

