

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 3441 of 2020

Raj Kumar Singh Raja Construction Pvt. Ltd. having its registered office at village- Bali Paker, P.O. and P.S.- Paliganj, District- Patna and Command Office At 2nd Floor, RB Market, Ramnagari More, Ashiyana Digha Road, Patna-25 represented through its Managing Director namely Sri Raj Kumar, aged about 45 years (male), son of Prem Dhari Singh, resident of House No. A/16, Bank of India Colony, Indrapuri, Raja Bazar, Rukunpura, B.V. College, P.s.- Shashtri Nagar, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Road Construction Department, Government of Bihar, Patna
2. The Principal Secretary, Road Construction Department, Government of Bihar, Patna
3. The Engineer in Chief, Road Construction Department, Government of Bihar, Patna
4. The Superintending Engineer, Road Division, Motihari
5. The Executive Engineer, Road Construction Department, Road Division, Motihari.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Y. V. Giri, Sr. Adv.
Mr. Pranav Kumar, Adv.

For the State : Mr. Mahendra Prasad Verma, AC to SC-20

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date : 22-06-2021

The present writ petition has been filed by the petitioner for quashing the order dated 27.01.2020



and memo dated 05.02.2020 issued under the signature of the Engineer-in-Chief, Road Construction Department, Government of Bihar, Patna, whereby and whereunder the registration of the petitioner firm has been blacklisted for ten years.

2. The brief facts of the case are that the petitioner is a company registered under the provisions of the Companies Act and is a registered Class-I contractor in terms of the provisions of the Bihar Contractor Registration Rules, 2007. The Government of Bihar, through the office of the Executive Officer, Road Construction Department, Road Division, Motihari, had issued a tender dated 21.09.2017 for construction of various roads stated therein including construction, up-gradation and maintenance of the Shankar-Saraiya to Chhapwa Road from 0.00 km. to 20.650 km. for the year 2017-18 and the time of completion of the work in question was stipulated as 18 months. The



petitioner along with others had participated in the said tender and eventually, the petitioner was awarded the tender in question, whereafter it had entered into an agreement dated 31.01.2018 with the Respondent No. 5 i.e. the Executive Engineer, Road Construction Department, Road Division, Motihari. The petitioner had then commenced its work in accordance with the agreement and was also made payment after due verification by the authorities, however, suddenly, the petitioner received a show cause notice dated 14.08.2019 wherein it was stated that the Flying Squad has submitted an inquiry report dated 12.06.2019 wherein irregularities have been found (as mentioned in the said notice dated 14.08.2019), hence, the petitioner was directed to explain as to why necessary action under the provisions of the Bihar Contractor Registration Rules, 2007 and under the agreement be not taken. Similar notice was sent to the petitioner by the Engineer-in-Chief, Road Construction Department, Bihar,



Patna, vide letter dated 09.10.2019 wherein certain additional issues had been raised, however, no proposed punishment was mentioned therein. In fact, the Engineer-in-Chief, by issuing the aforesaid additional show cause notice dated 09.10.2019, had also relied on a report of the Flying Squad, Division No. 4, dated 12.06.2019, however, the copy of the same was never supplied to the petitioner. The petitioner had then submitted a common reply dated 05.11.2019 to the aforesaid show cause notices dated 14.08.2019 and 09.10.2019, explaining therein that the entire work has been done in accordance with the agreement and the same can also be verified from the records. The petitioner had also relied upon an inspection report dated 06.09.2019, of the Respondent No. 5, addressed to the Special Secretary, Road Construction Department, Patna in which discussion with regard to the status of Shankar-Saraiya to Chhapwa Road was made and from perusal of the same, it is



apparent that the work had been done by the petitioner as per the specification mentioned in the agreement dated 31.01.2018. The petitioner had also furnished the point-wise reply to the allegations / deficiencies pointed out in the aforesaid show cause notices. Thereafter, the Respondents, without considering the aforesaid show cause reply of the petitioner dated 05.11.2019, had again issued another show cause notice dated 06.01.2020 to the petitioner, under the signature of the Superintending Engineer, Motihari, in which new deficiencies and grounds were raised, to which the petitioner had again submitted a detailed reply dated 15.01.2020 stating therein that no irregularity had been committed on the part of the petitioner.

3. The respondent-Engineer-in-Chief, Road Construction Department, Bihar, Patna, by the impugned order dated 27.01.2020, relying upon an ex-parte report dated 11.04.2019 and an ex-parte report of the Committee constituted under



the Chairmanship of the Chief Engineer, Kendriya Nirupan Sangathan, Road Construction Department, Bihar, Patna, dated 14.11.2019, had found the petitioner guilty and had accordingly blacklisted the petitioner firm for the next ten years.

4. The learned Senior Counsel for the petitioner, Sri Y. V. Giri, assisted by Sri Pranav Kumar, Advocate, has submitted that the impugned order dated 27.01.2020 suffers from three vices. It is submitted that firstly, the inquiry reports dated 11.04.2019, 12.06.2019 and the one dated 14.11.2019, which have formed the basis for passing of the impugned order dated 27.01.2020, have never been supplied to the petitioner, resulting in the petitioner firm being precluded from being afforded an opportunity of rebutting the contents of the same and putting forth its defence, resulting in non-compliance of the principles of natural justice, consequently, resulting in the impugned order dated 27.01.2020



being rendered illegal and void. In this regard, the learned Senior Counsel for the petitioner has relied on a judgment rendered by this Court in the case of ***M/s Cobra Industrial Security forces (India) Ltd. versus The State of Bihar & Ors.***, reported in ***2020 (4) BLJ 487***, paragraphs no. 14 whereof is reproduced herein below:-

"14. Nonetheless, since the respondents have fervidly relied on an inquiry report dated 13.2.2020, to contend that the Bihar Rajya Beej Nigam Ltd. had constituted an internal committee for inquiring into the allegations leveled against the petitioner company and the committee has found that large-scale illegality has been committed by the employees of the writ petitioner by way of demanding money from job aspirants for their placement in the Bihar Rajya Beej Nigam Ltd. and moreover, the petitioner company has also suppressed the factum of it being blacklisted on a previous occasion in the affidavit filed by it while filling up the bid documents, it would suffice to state here that the said inquiry report dated



13.2.2020 has never been supplied to the petitioner firm, thus the petitioner firm has been precluded from being afforded an opportunity of rebutting the same and putting forth its defense, resulting in non-compliance of the principles of natural justice, hence, on this ground as well, the present writ petition is liable to succeed, hence, the order of blacklisting dated 13.4.2020 is quashed, being bad both on facts as also in Law, however, with liberty to the Respondents, Bihar Rajya Beej Nigam Ltd., to issue a fresh show cause notice to the petitioner company, annexing the aforesaid inquiry report dt. 13.2.2020, seeking response of the petitioner company and then taking appropriate decision in accordance with law."

5. The learned Senior Counsel for the petitioner, Sri Y. V. Giri, has further submitted that none of the show cause notices dated 14.08.2019, 09.10.2019 as also the one dated 06.01.2020 contain any particulars about the penalty / action, which is proposed to be taken, hence, the same has also resulted in violation of the principles of



natural justice. In this regard, the learned Senior Counsel for the petitioner has referred to a judgment rendered by the Hon'ble Apex Court in the case of ***Gorkha Security Services vs. Govt. (NCT of Delhi) and Others***, reported in **(2014) 9 SCC 105**, paragraphs no. 22 and 33 whereof are reproduced herein below:-

"22. The High Court has simply stated that the purpose of show-cause notice is primarily to enable the noticee to meet the grounds on which the action is proposed against him. No doubt, the High Court is justified to this extent. However, it is equally important to mention as to what would be the consequence if the noticee does not satisfactorily meet the grounds on which an action is proposed. To put it otherwise, we are of the opinion that in order to fulfil the requirements of principles of natural justice, a show-cause notice should meet the following two requirements viz:

(i) The material/grounds to be stated which according to the department



necessitates an action;

(ii) Particular penalty/action which is proposed to be taken. It is this second requirement which the High Court has failed to omit.

We may hasten to add that even if it is not specifically mentioned in the show-cause notice but it can clearly and safely be discerned from the reading thereof, that would be sufficient to meet this requirement.

33. When we apply the ratio of the aforesaid judgment to the facts of the present case, it becomes difficult to accept the argument of the learned Additional Solicitor General. In the first instance, we may point out that no such case was set up by the respondents that by omitting to state the proposed action of blacklisting the appellant in the show-cause notice, has not caused any prejudice to the appellant. Moreover, had the action of blacklisting being specifically proposed in the show-cause notice, the appellant could have mentioned as to why such extreme penalty is not justified. It could have come out with extenuating circumstances



defending such an action even if the defaults were there and the Department was not satisfied with the explanation qua the defaults. It could have even pleaded with the Department not to blacklist the appellant or do it for a lesser period in case the Department still wanted to blacklist the appellant. Therefore, it is not at all acceptable that non-mentioning of proposed blacklisting in the show-cause notice has not caused any prejudice to the appellant. This apart, the extreme nature of such a harsh penalty like blacklisting with severe consequences, would itself amount to causing prejudice to the appellant."

6. The last issue raised by the learned Senior Counsel for the petitioner is that though the petitioner, while replying to the show cause notices, issued by the respondent authorities had relied upon the report of the Executive Engineer, Road Construction Department, Road Division, Motihari, contained in letter dated 06.09.2019, sent to the Special Secretary, Road Construction



Department, Bihar, Patna, wherein discussion had been made with regard to the status of Shankar-Saraiya to Chhapwa Road and it had been pointed out that the work had been done as per the specifications mentioned in the agreement dated 31.01.2018, apart from rebutting point-wise to the allegations / deficiencies pointed out in the said show cause notices, the respondent authority i.e. the Chief Engineer, Road Construction Department, Bihar, Patna, while passing the impugned order dated 27.01.2020, has failed to deal with the contentions of the petitioner, hence on this ground as well, the impugned order dated 27.01.2020 is fit to be set aside inasmuch as the same has failed to either consider the reply of the petitioner or give cogent reason for not accepting the reply submitted by the petitioner resulting in the impugned order dated 27.01.2020 having been passed in an arbitrary and unreasonable manner.

7. Per contra, the learned counsel appearing for



the State, Sri Mahendra Prasad Verma (AC to SC-20), has submitted by referring to the counter affidavit filed in the present case that the Executive Engineer, Flying Squad No. 4, Road Construction Department, Bihar, Patna, had inspected the road in question on 11.04.2019 and had submitted a preliminary report on 24.04.2019, whereafter a comparative study of actual work done viz-à-viz the entries made in the measurement book was undertaken by the said Executive Engineer and then he had submitted his report vide letter dated 12.06.2019 to the Joint Secretary (Flying Squad), Road Construction Department, Bihar, Patna, and it was found that the petitioner firm had committed gross irregularities and the work had not been completed as per the agreement leading to a show cause notice being issued to the petitioner, not once but thrice, granting the petitioner firm ample opportunity to file its show cause reply, however, the reply submitted by the petitioner was not



found to be satisfactory, hence, the petitioner firm has been blacklisted for a period of 10 years by the impugned order dated 27.01.2020. The learned counsel for the Respondent-State has further referred to the supplementary counter affidavit to submit that the petitioner had received payment without executing the work in question and had completed the work after receiving the payment, which is also an irregularity. It is thus submitted that the impugned order dt. 27.01.2020 is a well reasoned and a self-speaking order, hence, requires no interference by this Court.

8. I have heard the learned counsel for the parties and perused the materials on record. Upon a query made by this Court as to whether the inquiry reports dated 11.04.2019, 12.06.2019 and the one dated 14.11.2019 had ever been supplied to the petitioner firm, the learned counsel for the Respondent-State could not demonstrate that the same had been supplied to the petitioner firm. This



Court had further made a query from the learned counsel for the Respondent-State as to whether in the show cause notices dated 14.08.2019, 09.10.2019 and 06.01.2020, there is any whisper about the proposed action of blacklisting the petitioner firm, to which the learned counsel for the Respondent-State has fairly admitted that the proposed action of blacklisting has not been mentioned in either of the three show cause notices, issued to the petitioner firm.

9. This Court finds that the materials, on the basis of which the charges contained in the show cause notices are based, have admittedly not been supplied to the petitioner firm, hence, the petitioner firm has been precluded from being afforded an opportunity of rebutting the same and putting forth its defence, resulting in non-compliance of the principles of natural justice inasmuch as the three inquiry reports dated 11.04.2019, 12.06.2019 and 14.11.2019, on the



basis of which the show cause notices have been issued to the petitioner, have admittedly not been supplied to the petitioner. Moreover, the show cause notices dated 14.08.2019, 09.10.2019 and 06.01.2020 do not depict that there is intention on the part of the respondents to blacklist the petitioner inasmuch as there is no whisper about the proposed action of blacklisting the petitioner firm in the said notices. In this regard, this Court would also refer to a judgment rendered by the Hon'ble Apex Court in the case of **UMC Technologies (P) Ltd. vs. Food Corporation of India & Anr.**, reported in **(2021) 2 SCC 551**, paragraphs no. 13, 14, 19, 21 and 25 whereof are reproduced herein below:-

"13. At the outset, it must be noted that it is the first principle of civilised jurisprudence that a person against whom any action is sought to be taken or whose right or interests are being affected should be given a reasonable opportunity to defend himself. The basic principle of natural justice is that before adjudication



starts, the authority concerned should give to the affected party a notice of the case against him so that he can defend himself. Such notice should be adequate and the grounds necessitating action and the penalty/action proposed should be mentioned specifically and unambiguously. An order travelling beyond the bounds of notice is impermissible and without jurisdiction to that extent. This Court in *Nasir Ahmad v. Custodian General, Evacuee Property* [*Nasir Ahmad v. Custodian General, Evacuee Property*, (1980) 3 SCC 1] has held that it is essential for the notice to specify the particular grounds on the basis of which an action is proposed to be taken so as to enable the noticee to answer the case against him. If these conditions are not satisfied, the person cannot be said to have been granted any reasonable opportunity of being heard.

14. Specifically, in the context of blacklisting of a person or an entity by the State or a State Corporation, the requirement of a valid, particularised and unambiguous show-cause notice is



particularly crucial due to the severe consequences of blacklisting and the stigmatisation that accrues to the person/entity being blacklisted. Here, it may be gainful to describe the concept of blacklisting and the graveness of the consequences occasioned by it. Blacklisting has the effect of denying a person or an entity the privileged opportunity of entering into government contracts. This privilege arises because it is the State who is the counterparty in government contracts and as such, every eligible person is to be afforded an equal opportunity to participate in such contracts, without arbitrariness and discrimination. Not only does blacklisting take away this privilege, it also tarnishes the blacklisted person's reputation and brings the person's character into question. Blacklisting also has long-lasting civil consequences for the future business prospects of the blacklisted person.

19. In light of the above decisions, it is clear that a prior show-cause notice granting a reasonable opportunity of being heard is an essential element of all



administrative decision-making and particularly so in decisions pertaining to blacklisting which entail grave consequences for the entity being blacklisted. In these cases, furnishing of a valid show-cause notice is critical and a failure to do so would be fatal to any order of blacklisting pursuant thereto.

21. Thus, from the above discussion, a clear legal position emerges that for a show-cause notice to constitute the valid basis of a blacklisting order, such notice must spell out clearly, or its contents be such that it can be clearly inferred therefrom, that there is intention on the part of the issuer of the notice to blacklist the noticee. Such a clear notice is essential for ensuring that the person against whom the penalty of blacklisting is intended to be imposed, has an adequate, informed and meaningful opportunity to show cause against his possible blacklisting.

25. The mere existence of a clause in the bid document, which mentions blacklisting as a bar against eligibility, cannot satisfy the mandatory requirement of a clear



mention of the proposed action in the show-cause notice. The Corporation's notice is completely silent about blacklisting and as such, it could not have led the appellant to infer that such an action could be taken by the Corporation in pursuance of this notice. Had the Corporation expressed its mind in the show-cause notice to blacklist, the appellant could have filed a suitable reply for the same. Therefore, we are of the opinion that the show-cause notice dated 10-4-2018 does not fulfil the requirements of a valid show-cause notice for blacklisting. In our view, the order of blacklisting the appellant clearly traversed beyond the bounds of the show-cause notice which is impermissible in law. As a result, the consequent blacklisting order dated 9-1-2019 cannot be sustained."

10. This Court further finds that the petitioner firm has been precluded from being afforded an opportunity of rebutting the materials on the basis of which the charges contained in the show cause notices have been based, hence, the same has



resulted in the petitioner firm having been not granted proper opportunity, resulting in non-compliance of the principles of natural justice, hence, on this ground alone, the present writ petition is liable to succeed, thus, the impugned order of blacklisting dated 27.01.2020 passed by the Engineer-in-Chief, Road Construction Department, Bihar, Patna, is quashed, in view of the principles of law laid down by the Hon'ble Apex Court in the cases of **UMC Technologies (P) Ltd.** (supra) and in the case of **M/s Cobra Industrial Security Forces (India) Ltd.** (supra).

11. This Court further finds that the show cause notices dated 14.08.2019, 09.10.2019 and the one dated 06.01.2020, admittedly do not contain any particular about the penalty / action proposed to be taken against the petitioner firm, hence, on this ground as well, the impugned order dated 27.01.2020 passed by the Engineer-in-Chief, Road Construction Department, Bihar, Patna, is fit to be



set aside in view of the law laid down by the Hon'ble Apex Court in the case of **M/s Gorkha Security Services** (supra) and in the case of **UMC Technologies (P) Ltd.** (supra).

12. Having regard to the facts and circumstances of the case and for the reasons stated herein above, the impugned order of blacklisting of the petitioner firm dated 27.01.2020 passed by the Engineer-in-Chief, Road Construction Department, Bihar, Patna, is set aside.

13. As a consequence of quashing of the impugned order dated 27.01.2020, the matter is remanded back to the respondent authorities with liberty to serve a fresh show cause notice to the petitioner firm, not only enclosing the documents/ inquiry reports, which have been relied upon by the respondent authorities for forming an opinion that the petitioner firm has committed gross irregularities and the work has not been completed as per the agreement but also disclosing the



proposed penalty / action to be taken against the petitioner firm in case, the show cause reply of the petitioner is not found satisfactory.

14. With the aforesaid observations/ directions, the writ petition stands allowed.

(Mohit Kumar Shah, J)

Ajay/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	16.07.2021
Transmission Date	NA

