

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7247 of 2020

=====

Kamladityya Construction Pvt. Ltd. Registered Under the Companies Act, 1956, having its Office at Plot No. 201, Co-operative Colony, Bokaro Steel Vity, Bokaro (Jharkhand) -through its authorized Signatory, Vinod Kumar Singh, Son of Late Krishna Deo Narayan Singh @ Lalan Singh, resident of Rampur, Noornagar, P.O. and P.S.- Jalalpur Bazar, District-Chapra (Saran)-at Present residing at 201, Co-operative Colony, Bokaro Steel City, Bokaro, Jharkhand-827001. Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. Principal Secretary, Water Resources Department, Government of Bihar, Patna.
3. Engineer-in-Chief, Headquarters, Water Resources Department, Government of Bihar, Patna.
4. Chief Engineer, Water Resources Department, Siwan.
5. Superintending Engineer, Planning and Monitoring-II, Water Resources Department, Government of Bihar, Patna.
6. Executive Engineer, Saran Canal Division, Mairwan, Bihar.

... .. Respondents

=====

Appearance :

For the Petitioner	:	Mr. Umesh Prasad Singh, Senior Advocate Mr. Rakesh Kumar, Advocate Mr. Kumar Saurav, Advocate
For the Respondents	:	Mr. Vikash Kumar, SC-11

=====

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 14-09-2021

The matter has been taken up for hearing *on-line* because of COVID-19 Pandemic restrictions.

2. Seeking exception to an order issued vide Memo. No. 1112 dated 06.05.2020 under the signature of Engineer-in-Chief, Water Resources Department, Government of Bihar (Respondent No.3), whereby the petitioner has been black-listed, invoking Rule 11(ka)(ii) of the Bihar Contractors Registration Rules, 2007, for ten years, the petitioner has filed this writ application under Article



226 of the Constitution of India. The petitioner is a company registered under the Companies Act, 1956.

3. The impugned order has been brought on record by way of Annexure-P/7 of the writ application from which it is evident that the same has been issued on the charge of failure on the part of the petitioner to complete its work under Agreement No. 02 SBD/201415 dated 26.02.2015 (Group No.9) for Restoration of Hathua Branch Canal (90.00 To 183.00 RD) and its Distribution System Guthani Distributory and its Distribution System Titra Sub Distributory and its Distribution System Under “RESTORATION Work of Western Gandak Canal System Bihar” (SARAN Main Canal and its Distribution System, Bihar (New Major ERM)”. The work was to be executed under the supervisory jurisdiction of the Chief Engineer, *Sinchai Srijan*, Siwan, Saran Canal Division, Mairwa.

4. Counter affidavit, supplementary counter affidavit and reply have been filed on behalf of the parties, which are there on record. Pleadings are thus complete.

5. Heard Mr. Umesh Prasad Singh, learned Senior Counsel appearing on behalf of the petitioner and Mr. Vikash Kumar, learned S.C.-11 for the State of Bihar.



6. Mr. Umesh Prasad Singh, learned Senior Counsel appearing on behalf of the petitioner has taken this Court to various factual aspects as pleaded in the writ application and other pleadings on record in order to make out the case that the impugned action of black-listing the petitioner suffers from the vice of malice in law apart from the same being non-speaking, having been issued in gross violation of principles of natural justice.

7. The gist of the allegation of the department for taking the action of black-listing against the petitioner is failure on its part to execute the work in terms of the agreement in question.

8. It is the petitioner's case on the other hand that failure on the part of the State respondents to make available the land free from all encroachments for the purpose of execution of work had been the main reason why the work could not pick-up the desired pace. It is also the petitioner's case that the State respondents failed to remove from the land other fixtures like electric poles etc., which were apparently causing obstruction in execution of work.

9. Mr. Singh, learned Senior Counsel has relied on a Supreme Court's decision in case of *UMC Technologies (P) Ltd. v. Food Corpn. of India*, reported in (2021) 2 SCC 551 to contend



that the impugned order is in utter breach of principles of natural justice inasmuch as neither the show cause notice issued to the petitioner can be said to be adequate nor the impugned order, speaking, disclosing any application of mind on the petitioner's explanation submitted in response to the said show cause notice. He has submitted that if the submission to the effect that the impugned order is in breach of principles of natural justice finds favour with this Court and this Court deems it fit and proper to interfere with the impugned order, no direction may be issued to the respondents to pass an order afresh. In support of his submission, he has relied on Supreme Court's decision in case of ***Thakur Birendra Singh v. State of M.P.***, reported in (1969) 3 SCC 489.

10. Mr. Vikash Kumar, learned S.C.-11 has argued that the impugned order does not require any interference for the reason that before passing of the impugned order, the petitioner was given an opportunity to show cause for the failure on its part to perform the work awarded to it in terms of the agreement. Referring to the impugned order itself, he has submitted that the petitioner's reply to the show cause notice was not found satisfactory. Subsequent show cause notices were issued to him on 20.02.2020 and 05.03.2020 asking him to explain as to why the



petitioner should not be black-listed since non-execution of work constituted misconduct under Rule 11(ka)(ii) of the Rules. He has further contended that under the said Rules itself, the petitioner has alternative remedy of appeal before the Departmental Commissioner. The petitioner having not availed of the remedy of appeal, which is efficacious and expeditious, this writ application deserves to be dismissed on the said score alone. He has further submitted that if the Court intends to interfere with the impugned order on the technical ground of breach of principles of natural justice, the right of the department to take action afresh may be reserved.

11. Considering the nature of controversy which has arisen on the basis of pleadings and counter pleadings on record, I do not intend to enter into the factual aspects of the matter in the present proceeding. I find force in submission made by Mr. Umesh Prasad Singh, learned Senior Counsel for the petitioner that the impugned order is non-speaking inasmuch as it does not disclose at all any application of mind on the petitioner's reply dated 20.03.2020 to the show cause notices issued to it vide letters dated 20.02.2020 and 05.03.2020. Show cause notice dated 20.02.2020 has been brought on record by way of Annexure-P/6 from which it appears that earlier a show cause notice was issued to the



petitioner on 20.12.2017. The petitioner had submitted its explanation on 08.01.2018. Nearly two years after the said communication dated 08.01.2018, the notice dated 20.02.2020 was issued, recording therein that upon analysis of the opinion received from the Chief Engineer *Sinchai Srijan*, Water Resources Department, Siwan, and a review made at the departmental level, the petitioner had been found to be guilty of not installing desired machinery at the work site, in breach of Clause 18 and 32 of the Agreement No. 02 SBD/2014-15 dated 26.02.2015 (Group No.9). The Chief Engineer, in his show cause notice dated 20.02.2020, opined that the said conduct of the petitioner constituted misconduct under Rule 11(ka)(ii) of the Rules. The petitioner was accordingly asked to submit his reply to the notice as to why his registration No. 11/2011 be not black-listed for a term of ten years. The petitioner had submitted its reply on 20.03.2020, which has been brought on record by way of Annexure-P/6/1 of the writ application. The petitioner took certain plea in his defence, in its said reply dated 20.03.2020 including plea based on an interim order passed by this Court dated 18.04.2019 in C.W.J.C. No. 6949 of 2019.

12. Subsequently, the impugned order came to be passed on 06.05.2020 issued vide Memo. No. 1112 under the signature of



Engineer-in-Chief (Headquarters) (Respondent No. 3). It appears from the impugned order that the Engineer-in-Chief has dealt with the effect of the interim order dated 18.04.2019 passed by this Court in C.W.J.C. No. 6949 of 2019 after obtaining legal opinion of the Law Department and reached a conclusion that the interim order of status quo passed by this Court would not affect any decision on the point of black-listing. There is absolutely no discussion in the impugned order on rest of the petitioner's explanation in response to the show cause notice. The only aspect, which has been considered in the impugned order pertains to the effect of the interim order of this Court dated 18.04.2019 on the point of black-listing.

13. In such view of the matter, the impugned order, in the Court's opinion, patently suffers from non-application of mind, which is a *sine qua non* for any order being passed by an authority exercising *quasi* judicial function. This cannot be disputed that effect of black-listing has serious consequences, which has been stated and reiterated by the Supreme Court in series of decisions including in **UMC Technologies (P) Ltd.** (supra). If an order has penal consequences, the authority passing such order is obligated to adhere to the principles of natural justice. Function of such authorities, it goes without saying, is *quasi* judicial in nature. The



contention on behalf of the State that the petitioner should be relegated to the appellate authority and this application is not maintainable as the petitioner has not availed such alternative remedy is not acceptable to this Court. This is for the reason that the Court has found the impugned order to be patently illegal, in violation of principles of natural justice.

14. The impugned order contained in Memo. No. 1112 dated 06.05.2020 is accordingly set aside.

15. At this juncture, the decision of the Supreme Court in case of ***Thakur Birendra Singh*** (supra), which has been relied upon by Mr. Singh, learned Senior Counsel needs to be taken note of. As has been noted above, Mr. Singh, with reference to this decision has urged that this Court may not 'direct' the authorities to pass an order afresh. Paragraph 4 and 5 of the decision, in case of ***Thakur Birendra Singh*** (supra), read thus :-

“4. In the result the High Court quashed the orders, dated June 3, 1960, January 14, 1963 and July 27, 1964 directing at the same time that “the case is remitted to the Collector for a fresh decision with advertance to the observations made in this order after giving to the petitioner an opportunity of being heard”.

5. It appears to us that the High Court had gone wrong in giving these further directions. The High Court was not sitting in appeal over the



decision of the Board of Revenue. The High Court should have quashed the orders without giving any further directions. It was urged before us — and not without some force — that the appellant had been compelled to come to this Court by way of special leave merely because of the observations of the High Court which the Collector and the Revenue Authorities were bound to give effect to. Once the orders complained of are quashed the matter should have been left at large without any further directions leaving the Revenue Authorities free to take any steps allowable under the law. We therefore allow the appeal making it clear that the Revenue Authorities will be entitled to take any steps for reviewing the earlier orders and making alterations in the records sanctioned by law. In doing so, they will not be bound by any expression of opinion of the High Court or the directions given by it. There will be no order as to costs.”

(underlined for emphasis)

16. It is clear on reading of paragraph 5 of the Supreme Court’s decision in case of **Thakur Birendra Singh** (supra), that the Supreme Court, while interfering with the direction of the High Court of Madhya Pradesh to quash decision of the Collector observed that the Revenue Authorities would be entitled to take any step for reviewing the earlier orders and making alterations in



the records sanctioned by law. In doing so, they would not be bound by any expression of opinion of the High Court or the directions given by the Court, the Supreme Court further observed.

17. Following the said decision, which has been relied upon by learned Senior Counsel appearing on behalf of the petitioner, it is observed that it shall be open to the respondents to take any decision on the petitioner's show cause reply dated 20.03.2020.

18. The competent authority shall also be at liberty reconsider the period of black-listing if the petitioner's explanation to the show cause reply does not find favour with it.

19. This application is allowed with the aforesaid observations.

20. There shall, however, be no order as to costs.

(Chakradhari Sharan Singh, J)

Pawan/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	15.09.2021.
Transmission Date	N/A

