

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12520 of 2021

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Anand Mishra Constructions Pvt Ltd, a company registered under the provisions of the Companies Act having its registered and local office at Village - Ramdas Baghai, P.O. - Baghai Bazar, P.S. - Kateya, District- Gopalganj, through one of its authorized Director namely Anand Mishra, aged about 46 years (Male), son of Sri Umesh Mishra, resident at Village - Ramdas Baghai, P.O. - Baghai Bazar, P.S. - Kateya, District- Gopalganj- 841441.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Rural Works Department, Government of Bihar, Patna.
2. The Principal Secretary, Rural Works Department, Government of Bihar, Patna.
3. The Engineer in Chief, Rural Works Department, Government of Bihar, Patna.
4. The Superintending Engineer, Rural Works Department, Work Circle Siwan.
5. The Executive Engineer, Rural Works Department, Work Division Gopalganj- I.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Ashish Giri

For the Respondent/s : Mr.Kumar Alok, SC 7

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

ORAL JUDGMENT

Date : 31-08-2021

The present writ application has been filed for quashing the letter no. 1894, dated 02.07.2021, issued by the Engineer-in-chief, Rural Works Department, Government of Bihar (Annexure 3), by which the petitioner has been debarred from participating in future contract/tender, for the reason of non-completion of the contract of construction of road, awarded to the petitioner, within time.



2. The fact involved in the present case is that the petitioner is a Class-I contractor, registered under the provisions of the Bihar Contractor Registration Rules, 2007 and was awarded various contract works by the respondent-Rural Works Department, for construction of road and according to the petitioner, it proceeded to complete the work as per the agreement, but due to intervening COVID-19 pandemic, which led to lockdown and imposition of various restrictions by the Government, the petitioner faced difficulties in timely completing the work. Further contention of the petitioner is that while the work was being executed, despite delay due to the lockdown and COVID-19 pandemic, yet prior to completion date, the respondent-Executive Engineer, Rural Works Department, Work Division, Gopalganj-I, vide letter no. 1183, dated 14.06.2021, took a unilateral decision and recommended for debarment of the petitioner due to non-completion of awarded contract work within time. Accordingly, the petitioner, vide his letters, dated 18.06.2021 and 19.06.2021, represented before the respondents-Executive Engineer, Rural Works Department, Work Division, Hathua and the respondent-Executive Engineer, Rural Works Department, Work Division, Gopalganj-I, that the petitioner suffered delay due to COVID-19 pandemic and due to extreme rainfall, which led to



the water logging at the construction site and requested for extension of time till October, 2021 (Annexures 4 and 4A).

3. Taking into consideration the representations of the petitioner, the respondent-Executive Engineer, Rural Works Department, Work Division, Gopalganj-I, vide his letter, dated 21.06.2021 (Annexure 5), informed the Superintendent Engineer, Rural Works Department, Work Division, Siwan, that the Department has granted extension of time to the contractors for 90 days due to COVID-19 pandemic and lockdown. Further, before the expiry of said 90 days extended period given to the contractors by the Department, the respondent no. 3-Engineer-in-Chief, Rural Works Department, Government of Bihar, vide letter no. 1894, dated 02.07.2021, has passed the impugned order debarring the petitioner from participating in future contract/tender. The respondent no. 3-Engineer-in-Chief, Rural Works Department, Government of Bihar, before passing the order of debarment of the petitioner did not issue any notice/show cause, as such, according to the petitioner, the impugned order was passed in violation of principle of natural justice and is completely arbitrary.

4. A counter affidavit has been filed by the respondents, stating therein that the petitioner was awarded contract for construction of road, which were required to be completed within



fixed time period, the details of which are mentioned in paragraph 5 of the counter affidavit, but the petitioner failed to complete the construction work within the stipulated time, for which various letters were issued to the petitioner. It has further been stated by the respondents that the petitioner did not comply the direction issued by the Department and failed to show any interest in the completion of the contract work, as such, the respondent-Executive Engineer, Rural Works Department, Work Division, Hathua, vide his letter no. 626, dated 28.05.2021, issued a show cause to the petitioner as to why the recommendation be not made to the competent authority to rescind the agreement and to blacklist the petitioner, with a direction to submit a reply thereof, but the petitioner did not respond to the aforesaid show cause. Similar show cause was also issued by the respondent-Executive Engineer, Rural Works Department, Work Division, Gopalganj-I, vide his letter no. 1019, dated 25.05.2021. The respondents, in its counter affidavit, further stated that in the aforesaid circumstances, the concerned authorities made recommendation to debar the petitioner from participating in future tender/contract and in the light thereof, the respondent no. 3-Engineer-in-Chief, Rural Works Department, Government of Bihar, passed the impugned order,



dated 02.07.2021, debarring the petitioner from participating in future tender/contract.

5. Learned Counsel for the petitioner vehemently argued that the impugned order of debarment amounts to blacklisting, which has been passed in complete violation of principle of natural justice and well settled law inasmuch as before passing the impugned order, the respondent no. 3 did not issue any show cause or notice to the petitioner, showing his intention to debar/blacklist the petitioner. He further submits that the alleged show cause issued by the respondents-Executive Engineer, Rural Works Department, Work Division, Hathua and Gopalganj-I, for recommending the name of the petitioner to the higher authority for blacklisting (Annexures B and C to the counter affidavit), dated 28.05.2021 and 25.05.2021, cannot be said to be show cause issued by respondent no. 3-Engineer-in-Chief, Rural Works Department, Government of Bihar, before passing of the impugned order of debarment, dated 02.07.2021. He further submits that after the aforesaid two show cause, a decision was taken by the Department, vide letter no. 1249, dated 21.06.2021 (Annexure-5) to grant extension of 90 days due to COVID-19 pandemic and lockdown to the contractors for execution of the work and before the expiry of the said extended period of 90 days, starting from



21.06.2021, on 02.07.2021 itself, the impugned order has been passed by the respondent no. 3.

6. Learned Counsel for the petitioner, in support of his argument, relied upon the decision rendered by the Supreme Court, in the case of **UMC Technologies Private Limited v. Food Corporation of India and Another**, reported in **(2021) 2 SCC 551** and paragraphs 14, 16, 17, 18 and 19 of the said case is quoted herein below:

“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, particularized and unambiguous show cause notice is particularly crucial due to the severe consequences of blacklisting and the stigmatization 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 takes 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.

16. The severity of the effects of blacklisting and the resultant need for strict observance of the principles of natural justice before passing an order of blacklisting were highlighted by this Court in *Erusian Equipment & Chemicals Ltd. v. State of West Bengal* in the following terms:

“12. ... The order of blacklisting has the effect of depriving a person of equality of opportunity in the matter of public contract. A person who is on the approved list is unable to enter into advantageous relations with the Government because of the order of blacklisting. A person who has been dealing with the Government in the matter of sale and purchase of materials has a legitimate interest or expectation. When the State acts to the prejudice of a person it has to be supported by legality.

* * *

15. ... The blacklisting order involves civil consequences. It casts a slur. It creates a barrier between the persons blacklisted and the Government in the matter of transactions. The black lists are instruments of coercion.

* * *

20. Blacklisting has the effect of preventing a person from the privilege and



advantage of entering into lawful relationship with the Government for purposes of gains. The fact that a disability is created by the order of blacklisting indicates that the relevant authority is to have an objective satisfaction. Fundamentals of fair play require that the person concerned should be given an opportunity to represent his case before he is put on the blacklist.”

17. Similarly, this Court in *Raghunath Thakur v. State of Bihar*, struck down an order of blacklisting for future contracts on the ground of non-observance of the principles of natural justice. The relevant extract of the judgement in that case is as follows:

“4. ... [I]t is an implied principle of the rule of law that any order having civil consequences should be passed only after following the principles of natural justice. It has to be realised that blacklisting any person in respect of business ventures has civil consequence for the future business of the person concerned in any event. Even if the rules do not express so, it is an elementary principle of natural justice that parties affected by any order should have right of being heard and making representations against the order.”

18. This Court in *Gorkha Security Services v. Government (NCT of Delhi) and Ors.* has described



blacklisting as being equivalent to the civil death of a person because blacklisting is stigmatic in nature and debars a person from participating in government tenders thereby precluding him from the award of government contracts. It has been held thus:

“16. It is a common case of the parties that the blacklisting has to be preceded by a show-cause notice. Law in this regard is firmly grounded and does not even demand much amplification. The necessity of compliance with the principles of natural justice by giving the opportunity to the person against whom action of blacklisting is sought to be taken has a valid and solid rationale behind it. With blacklisting, many civil and/or evil consequences follow. It is described as “civil death” of a person who is foisted with the order of blacklisting. Such an order is stigmatic in nature and debars such a person from participating in government tenders which means precluding him from the award of government contracts.”

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.”

7. Learned Counsel for the petitioner also relied upon the decision of the Supreme Court, in the case of **Union of India and Others v. Shiv Raj and Others**, reported in **(2014) 6 SCC 564**, paragraphs 17, 18 and 19 of which is reproduced herein below:

“17. This Court in Gullapalli Nageswara Rao (supra), held:

“31.Personal hearing enables the authority concerned to watch the demeanour of the witnesses and clear up his doubts during the course of the arguments, and the party appearing to persuade the authority by reasoned argument to accept his point of view. If one person hears and another decides, then personal hearing becomes an empty formality. We therefore hold that the said procedure followed in this case also offends another basic principle of judicial procedure.”

18. This Court in Rasid Javed & Ors. v. State of U.P. & Anr., AIR 2010 SC 2275 following the judgment in Gullapalli (supra), supra held that:

“51. a person who hears must decide and that divided responsibility is



destructive of the concept of hearing is too fundamental a proposition to be doubted.”

19. A similar view has been re-iterated by this Court in Automotive Tyre Manufacturers Association v. Designated Authority & Ors., (2011) 2 SCC 258, wherein this Court dealt with a case wherein the Designated Authority (DA) under the relevant Statute passed the final order on the material collected by his predecessor in office who had also accorded the hearing to the parties concerned. This court held that the order stood vitiated as it offended the basic principles of natural justice.”

8. Per contra, learned Counsel for the State submits that the petitioner failed to complete the work as per the terms of the agreement within the stipulated time and the respondents authorities, by its various letters/reminders, requested the petitioner to complete the work and at the last, show cause were issued by the concerned Executive Engineers as to why the name of the petitioner be not recommended before the higher authorities for taking appropriate decision of blacklisting/debarring the petitioner from future contract/tender. He further submits that in spite of the reminders, direction and show cause, the petitioner did not make any effort to complete the construction of road within the stipulated time and accordingly, the concerned Executive Engineers have recommended to debar the petitioner from



participating in any future contract/tender, in the light thereof, the respondent no. 3, by the impugned order, debarred the petitioner from participating in future tender/contract.

9. I have heard learned Counsel for the parties and have carefully gone through the materials available on record.

10. From perusal of the impugned order of debarment, it appears that the impugned order has been passed on the basis of some recommendation made by the Executive Engineers to the respondent no. 3 and further the impugned order also does not show that a show cause/notice was ever issued by the respondent no. 3 to the petitioner before arriving at the decision to debar the petitioner from participating in future contract/tender. Further, it appears that the specific statement made by the petitioner in paragraph 16 of the writ application, that the respondent no. 3 has never issued any notice to the petitioner in relation to his intention to debar the petitioner, has not been replied in the counter affidavit filed by the respondents.

11. In the light of the aforesaid discussion, on the point of fact as well as on law, I come to the conclusion that the show cause notice, giving opportunity to the petitioner to defend before taking a decision to debar and blacklist it, has not been given by respondent no. 3, which is a mandatory requirement of law,



particularly so, in decisions relating to blacklisting/debarring, which entail grave consequences for the entity being blacklisted/debarred. As such, in my opinion, the impugned order of debarment, dated 02.07.2021, passed by the respondent no. 3-Engineer-in-Chief, Rural Works Department, Government of Bihar, is contrary to the principle of natural justice.

11. Accordingly, the present writ application is allowed. The impugned order of debarment, dated 02.07.2021, passed by the respondent no. 3-Engineer-in-Chief, Rural Works Department, Government of Bihar, is hereby set aside.

12. However, there shall be no order as to costs.

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	17-09-2021
Transmission Date	N/A

