

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13398 of 2021

1. Gandhu Chhapar Constructions Pvt. Ltd. a Company registered under the Provisions of the Companies Act Having its Registered and Local Office at Gandhi Chhapar, P.O.-Titra, P.S.-Mairwa, District-Siwan-841245, through one of its authorized Director namely Jay Narayan Tiwari, aged about 43 Years (Male), Son of Sri Mukti Nath Tiwari, Resident at Gandhu Chhapar, P.O.-Titra, P.S.-Mairwa, District-Siwan-841245.
2. Shashi Shekhar Shishodiya, Son of Baidya nath Singh Resident of Moti Chhapar Mairwa, P.O. and P.S.-Mairwa, District-Siwan-841239.
3. Rabindra Kumar Dube Son of Sri Viswanath Dube Resident At Kanhavli, P.O.-Bhikhpur Bhagwanpur, P.S.-M.H. Nahar, District-Siwan-841236
4. M/s Narayani Constructions Pvt. Ltd. a Company registered under the Provisions of the Companies Act Having its Registered and Local Office at Mission Compound Mahadeva, Siwan-P.O. and P.S. and District-Siwan-841226, through one of its authorized Director namely Ashraf Khan, aged about 55 Years (Male), Son of Samsul Hoda Khan, Resident at Mission Compound Mahadeva, Siwan P.O. and P.S. and District-Siwan-841226.
5. Jitendra Singh Son of Late Chandradeo Singh Resident At Dhanavti, P.O. and P.S.-Dhanavti, District-Siwan-841226.
6. Bhardwaj Constructions Pvt. Ltd. a Company registered Under the Provisions of the Companies Act Having its Registered and Local Office at Raj Compound, Ramnagar, P.O. and P.S. and District-West Champaran, Bettiah, through one of its authorized Director namely Awanish Pathak, aged about 34 Years (Male), Son of Saiyed Hussain, Resident at Shrinagar, Siwan, P.O.-Siwan, P.S.-Muffasil, District-Siwan-841226
7. Esrar Hussain Son of Saiyed Hussain, Resident At Shrinagar, Siwan, P.O.-Siwan, P.S.-Muffasil, District-Siwan-841226.
8. Abhishek Pandey Son of Vinay Pandey, Resident At Laxmipur Andar Dhala, P.O. and P.S. and District-Siwan-841226.
9. Vijay Pandey Son of Ganesh Pandey Resident At Langarpura Mairwa, P.O. and P.S.-Maiwa, District-Siwan-841239.
10. M/s Prasad Construction Pvt. Ltd., a Company registered Under the Provisions of the Companies Act Having its Registered and Local Office at Jangaliya kali Mandir Road, P.O. and P.S. and District-Gopalganj through one of its authorized Director namely Raj Kishor Prasad, aged about 64 Years (Male), Son of Bindeshwari Prasad, Resident at Jangaliya Kali Mandir Road, P.O. and P.S. and District-Gopalganj.
11. Ravi Kumar Singh Son of Ramesh Singh Resident At Singha Tola Tarwa, P.O. and P.S.-Hathuwa, District-Gopalganj-843436.
12. Balindra Chaudhary Son of Banarsai Chaudhary, Resident at and P.O.-Lakhrav, P.S. and District-Siwan-841226.
13. Fakhre Alam Son of Tajmul Hussain, Resident at Chhata Chhapiya, P.O.-Chhata, P.S. and District-Siwan-841226.
14. Prem Kumar Ray Son of Ramji Singh Resident At and P.O.-Jasauli Kharag, P.S.-Pachrukhi, District-Siwan.
15. Manju Devi Wife of Prabhunath Ray, Resident At and P.O.-Chitmath, P.S.-Mairwa, District-Siwan-841243.
16. Dasscon Infrastructure Pvt. Ltd. a Company registered Under the Provisions of the Companies Act Having its Registered and Local Office at Khurmabad, P.O. and P.S. and District-Siwan through its authorized Managing Director



namely Smt. Usha Devi aged about 53 Years (Female), Wife of Dayanand Tiwari, Resident at Khurmabad, P.O. and P.S. and District-Siwan.

17. Arun Kumar Jaiswal Son of Jagdish Prasad Jaiswal Resident of Village-Suruwal, P.O. and P.S.-Jiradai, District-Siwan.

... .. 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 Chief Engineer, Rural Works Department, Government of Bihar, Patna.
5. The Executive Engineer, Rural Works Department, Government of Bihar, Patna.
6. The Executive Engineer, Rural Works Department, Work Division Siwan-II
7. The Executive Engineer, Rural Works Department, Work Division Hathua, Gopalganj.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Ashish Giri, Advocate
For the Respondent/s : Mr. Ajay (GA-5)
Mr. Pratik Kumar Sinha, AC to GA-5

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL ORDER

3 07-10-2021 The present writ petition has been filed seeking the following reliefs:-

“i) To issue a writ/order/direction in the nature of certiorari for quashing the letter no. 1894 dated 02.07.2021 issued under the signature of the Engineer in Chief, Rural Works Department, Government of Bihar, by which the petitioner no. 1 has been debarred along with others at serial no. 5 in relation to the work of Koreya to Chhathiyan for not completing the work within the time prescribed by the agreement (Annexure-2 pg.99).



ii) To issue a writ/order/direction in the nature of certiorari for quashing the letter no. 1912 dated 05.07.2001 issued under the signature of the Engineer in Chief, Rural works Department, Government of Bihar, by which the petitioners no. 1 (Serial No. 24), petitioner no. 2 (Serial No. 15 & 23), Petitioner no. 3 (Serial No. 12, 16 & 17), Petitioner no. 4 (Serial No. 14), Petitioner No. 7 (Serial No. 13), Petitioner no. 10 (Serial No. 22), Petitioner no. 12 (Serial No. 28) and Petitioner no. 16 (Serial No. 27) have been debarred along with others for non-completion of the work within the time prescribed in the agreement. (Annexure-3, pg. 101).

iii) To issue a writ/order/direction in the nature of certiorari for quashing the order no. 2037 dated 13.07.2001 issued under the signature of the Engineer in Chief, Rural Works Department, Government of Bihar, by which the petitioners no. 1 (Serial No. 34, 48, 49 & 52), petitioner no. 5 (Serial No. 50), Petitioner no. 6 (Serial No. 56), Petitioner no. 8 (Serial No. 42), Petitioner No. 9 (Serial No. 29, 30, 55 & 58), Petitioner no. 11 (Serial No. 66), Petitioner no. 13 (Serial No. 41, 43, 44, 45 & 63), Petitioner no. 14 (Serial No. 68), petitioner no. 15 (Serial No. 57 & 65) and Petitioner no. 17 (Serial No. 39, 40, 62 & 64) have been debarred along with others for non-completion of the work within the time prescribed in the agreement. (Annexure-4, pg. 108).



iv) To hold and declare that the impugned orders of debar passed without any show cause notice is violative of Article 14 of the Constitution of India and as such not sustainable in the eyes of law and accordingly direct the respondents to immediately remove the name of the petitioners from the list of debar.

v) To pass interim/ex-parte interim order staying the operation of letters no. 1894 dated 02.07.2021, letter no. 1912 dated 05.07.2021 and letter no. 2037 dated 13.07.2021 and/or permit the petitioners to participate in other tenders including the subsequent tender issued by the Rural Works Department, Bihar vide NIT No. RWD/PMGSY-III/HQ/ET/21-22/10 in terms of which the last date of submission of the tender being 27.07.2021 upto 15:00 hrs. and/or direct the respondent authorities to consider the tenders/tender of the petitioners on merits in relation to the notice inviting tender issued subsequent to the impugned orders of debar.”

The learned counsel for the petitioner has submitted that the petitioners had entered into various agreements on various dates with regard to repair of road as also maintenance thereof, as has been described in paragraph no. 4 of the writ petition. The learned counsel for the petitioners has further submitted that the petitioners had started the work in question and according to them they have completed most of the



construction work in terms of the agreement and have also been engaging in the maintenance work. It is submitted that suddenly by the impugned orders dated 02.07.2021, 05.07.2021 and 13.07.2021, the petitioners have been debarred, from participating in future contracts on account of non-completion of the works in connection with the agreements mentioned therein i.e. in the chart appended to the aforesaid impugned orders. The learned counsel for the petitioners has submitted that a bare perusal of the impugned orders dated 02.07.2021, 05.07.2021 and 13.07.2021 would show that no show cause notice has been issued by the Engineer-in-Chief, Rural Works Department, Bihar, Patna, before passing of the said debarment orders, though the stand of the respondent State, as stated in the counter affidavit, is that the show cause notice was definitely issued to the petitioner, but then the same was issued by the Executive Engineer, Rural Works Department, hence the lacuna of non-compliance of the principles of natural justice would definitely render the aforesaid impugned orders, bad in law. The learned counsel for the petitioner has further submitted that the impugned orders dated 02.07.2021, 05.07.2021 and 13.07.2021 would further show that the petitioners have been debarred in perpetuity i.e. they have been precluded from



participating in all the future contracts, which is contrary to the law laid down by the Hon'ble Apex Court in the case of ***Kulja Industries Ltd. v. Western Telecom Project BSNL***, reported in ***(2014) 14 SCC 731***; paragraphs no. 25 to 29 whereof are reproduced herein below:-

“25. Suffice it to say that “debarment” is recognised and often used as an effective method for disciplining deviant suppliers/contractors who may have committed acts of omission and commission or frauds including misrepresentations, falsification of records and other breaches of the regulations under which such contracts were allotted. What is notable is that the “debarment” is never permanent and the period of debarment would invariably depend upon the nature of the offence committed by the erring contractor.

26. In the case at hand according to the respondent BSNL, the appellant had fraudulently withdrawn a huge amount of money which was not due to it in collusion and conspiracy with the officials of the respondent Corporation. Even so permanent debarment from future contracts for all times to come may sound too harsh and heavy a punishment to be considered reasonable especially when (a) the appellant is supplying bulk of its manufactured products to the respondent BSNL, and (b) the excess amount received by it has already been paid back.

27. The next question then is whether this Court



ought to itself determine the time period for which the appellant should be blacklisted or remit the matter back to the authority to do so having regard to the attendant facts and circumstances.

28. A remand back to the competent authority has appealed to us to be a more appropriate option than an order by which we may ourselves determine the period for which the appellant would remain blacklisted. We say so for two precise reasons:

28.1. Firstly, because blacklisting is in the nature of penalty the quantum whereof is a matter that rests primarily with the authority competent to impose the same. In the realm of service jurisprudence this Court has no doubt cut short the agony of a delinquent employee in exceptional circumstances to prevent delay and further litigation by modifying the quantum of punishment but such considerations do not apply to a company engaged in a lucrative business like supply of optical fibre/HDPE pipes to BSNL.

28.2. Secondly, because while determining the period for which the blacklisting should be effective the respondent Corporation may for the sake of objectivity and transparency formulate broad guidelines to be followed in such cases. Different periods of debarment depending upon the gravity of the offences, violations and breaches may be prescribed by such guidelines. While it may not be possible to exhaustively enumerate all types of offences and acts of misdemeanour, or violations of



contractual obligations by a contractor, the respondent Corporation may do so as far as possible to reduce if not totally eliminate arbitrariness in the exercise of the power vested in it and inspire confidence in the fairness of the order which the competent authority may pass against a defaulting contractor.

29. In the result, we allow this appeal, set aside the order [Kulja Industries Ltd. v. Western Telecom Project BSNL, WP (C)No.2289 of 2011, order dated 6-4-2011 (Bom)] passed by the High Court and allow Writ Petition No. 2289 of 2011 filed by the appellant but only to the extent that while the order blacklisting the appellant shall stand affirmed, the period for which such order remains operative shall be determined afresh by the competent authority on the basis of guidelines which the Corporation may formulate for that purpose. The needful shall be done by the Corporation and/or the competent authority expeditiously but not later than six months from today. The parties are left to bear their own costs.”

Per contra, the learned counsel for the respondent -State Shri Pratik Kumar Sinha, AC to GA-5 has submitted that the concerned Executive Engineer had issued show cause notices to the petitioners, however, it has not been denied that the competent authority i.e. the Engineer-in-Chief, Rural Works Department, Bihar, Patna, who has passed the impugned orders



had not issued any show cause notices to the petitioners. Nonetheless, it is submitted that in case this Court remands the matter back to the appropriate authority, the principles of natural justice would definitely be complied with and appropriate orders shall be passed, afresh.

I have heard the learned counsel for the parties and perused the materials on record from which it is apparent that firstly no show cause notice was ever issued by the Engineer-in-Chief, Rural Works Department, Bihar, Patna before passing the impugned orders of debarment dated 02.07.2021, 05.07.2021 and 13.07.2021, hence on this ground alone, the impugned orders are fit to be set aside inasmuch as the petitioners have been denied adequate opportunity to put forth their defence. This Court further finds that the impugned orders dated 02.07.2021, 05.07.2021 and 13.07.2021 have resulted in debarment of the petitioners in perpetuity i.e. they have been precluded from participating in all the future contracts, hence on this ground as well, the impugned orders dated 02.07.2021, 05.07.2021 and 13.07.2021, passed by the Engineer-in-Chief, Rural Works Department, Bihar, Patna are fit to be set aside especially in view of the issue in hand being squarely covered by the judgment rendered in the case of Kulja Industries Ltd.



(supra). This Court further finds that similar orders of debarment have also been quashed by a coordinate Bench of this Court by a judgment dated 31.08.2021 passed in CWJC No. 12520 of 2021 (Anand Mishra Construction Private Limited vs. the State of Bihar & Ors.).

Having regard to the facts and circumstances of the case and for the reasons mentioned herein above, the impugned orders dated 02.07.2021, 05.07.2021 and 13.07.2021, passed by the Engineer-in-Chief, Rural Works Department, Bihar, Patna are unsustainable in the eyes of law, hence are quashed to the extent the same relate to the petitioners, however, the matter is remanded back to the competent authority i.e. the Engineer-in-Chief, Rural Works Department, Bihar, Patna for proceeding afresh in the matter, if so warranted. It is needless to state that the petitioners shall be granted adequate opportunity to put forth their case, before any order is passed by the Engineer-in-Chief, Rural Works Department, Bihar, Patna.

The writ petition stands allowed.

(Mohit Kumar Shah, J)

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