

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14200 of 2021

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Baba Bateshwar Construction Pvt. Ltd. having its registered Office at Topra Tola, P.O. Sirmatpur, P.S.- Pirpainti, District - Bhagalpur, Bihar through its Managing Director, Sushil Kumar, aged about 42 years, Male, Son of Late Satya Narayan Singh, resident of Village Topra Tola, P.O. Sirmatpur, P.S. Pirpainti, District - Bhagalpur, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Rural Works Department, Government of Bihar, Patna.
2. The Engineer in Chief, Rural Works Department, Government of Bihar, Patna.
3. The Chief Engineer-II, Rural Works Department, Bihar, Patna.
4. The Superintending Engineer, Rural Works Department, Katihar Circle, District - Katihar.
5. The Executive Engineer, Rural Works Department, Works Division, Katihar, District - Katihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Prabhat Ranjan, Adv.
For the Respondent/s	:	Ms.Archana Meenakshee , GP-6
		Mr. Karandeep Kumar, AC to GP-6

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL ORDER

7 06-10-2021 The present writ petition has been filed for quashing the order dated 5.7.2021 passed by the Engineer-in-Chief, Rural Works Department, Bihar, Patna, whereby and whereunder the petitioner has been declared as a defaulter on account of his failure to complete the work and has been debarred from participating in future contracts.

The learned counsel for the petitioner has



raised a short point for consideration to the effect that first of all, no show cause notice was issued prior to debarment of the petitioner firm and secondly, the debarment order dated 5.7.2021 postulates that the petitioner has been debarred from participating in all future contracts, hence, it is submitted that firstly, the principles of natural justice has not been complied with and secondly, the order of debarment in question cannot be in perpetuity inasmuch as the same entails civil consequences. The learned counsel for the petitioner has relied on a judgment rendered by the Hon'ble Apex Court in the case of ***Kulja Industries Ltd. vs. Chief General Manager, Western Telecom Project Bharat Sanchar Nigam Limited & Others.,*** reported in **(2014) 14 SCC 731**, paragraphs no. 25 to 29 whereof are reproduced hereinbelow:-

“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 State, Ms. Archana Meenakshee (GP-6), assisted by Karandeep Kumar (AC to GP-6), submits that a bare perusal of paragraph no. 11 of the counter affidavit would show that the Assistant Engineer, Rural



Works Department, Works Sub-Division, Barari, vide letter dated 12.8.2020 and the Executive Engineer, Rural Works Department, Works Division, Katihar, vide letter dated 18.8.2020, directed the petitioner to complete the contract work within time, failing which it was postulated that appropriate action shall be taken in terms of the agreement, thus, it is submitted that adequate opportunity was granted to the petitioner before passing of the debarment order dated 5.7.2021. As regards the order dated 5.7.2021, envisaging debarment in perpetuity, it is submitted that generally, such orders are for a fixed time.

I have heard the learned counsel for the parties and gone through the materials on record from which this Court finds that though two letters have been written to the petitioner dated 12.8.2020 and 18.8.2020 to complete the work in question, but no show cause notice has been served upon the petitioner before passing of the debarment order dated 5.7.2021, which contemplates action of debarment, hence, the



petitioner has been precluded from grant of adequate opportunity to furnish its defence to the proposed action of debarment, resulting in violation of the principles of natural justice, consequently the order dated 5.7.2021, stands vitiated in the eyes of law. This Court further finds that the debarment order cannot be for a permanent period i.e. for all times to come, inasmuch as the same entails civil consequences, hence, the order dated 5.7.2021 postulating debarment in perpetuity i.e. debarring the petitioner from participating in all future contracts, is not sustainable in the eyes of law, especially, in view of the law laid down by the Hon'ble Apex Court in the case of ***Kulja Industries Ltd. (supra)***, thus, on this ground as well, the impugned order dated 5.7.2021 is fit to be set aside.

Having regard to the facts and circumstances of the case and for the grounds mentioned hereinabove, the impugned order dated 5.7.2021, passed by the Engineer-in-Chief, Rural Works



Department, Bihar, Patna, is quashed, to the extent, the same relates to the petitioner, whose case has been mentioned at Sl. 69 of said order dated 5.7.2021, however, the Respondent authorities may proceed afresh, in accordance with law.

The writ petition stands allowed.

(Mohit Kumar Shah, J)

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