

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 2268 of 2021

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Nursing Construction having its Office at H. No. 23 Road No. 3A Mahesh Nager Patna 800024 through Proprietor Rajeev Kumar aged about 35 years, Gender- Male, son of Munip Kumar Prasad, resident of Road No. 3A, Mahesh Nagar, P.S. Patliputra, District Patna.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Department of Public Health Engineering Department, Patna.
3. The Engineer in Chief cum Special Secretary, Public Health Engineering Department, Patna.
4. The Chief Engineer, Public Health Engineering Department, Patna.
5. Superintending Engineer, Public Health Engineering Department, Patna.
6. Executive Engineer, Public Health Engineering Division, Patna East, Patna.
7. Assistant Engineer, Public Health Engineering Department, Patna East Patna.

... .. Respondent/s



Appearance :

For the Petitioner : Mr. Devendra Kumar Sinha, Senior Adv.
Mr. Abhinav Raj, Adv.
For the Respondent/s. : Mr. S.D. Yadav, AAG-9.

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date: 03-08-2021

The instant case has been taken up for consideration through the mode of Video conferencing in view of the prevailing situation on account of COVID 19 Pandemic, requiring social distancing.

2. Heard the Ld. Senior counsel for the petitioner, Shri D.K. Sinha, assisted by Shri Abhinav Raj, Advocate as also the Ld. counsel for the respondent State, Shri S.D. Yadav, AAG-9.

3. The present writ petition has been filed seeking the following reliefs:-

i To quash the order contained in Memo No. 2217 dated 18.06.2020 (Annexure-7) by which agreement has been cancelled, forfeited the security amount and recommended for black listing.

ii. To quash the order no. 335 dated 31.10.2020
rejection/ show cause (Annexure-



15).

iii. To quash order no. 357 dated 26.11.2020 black listing of the petitioner (Annexure-7) which has been passed during pendency of the appeal.

4. At the outset, the learned counsel for the petitioner has submitted that as far as termination/ cancellation of the agreement in question and forfeiture of the security amount is concerned, the petitioner shall be invoking the arbitration clause i.e. Clause 25 of the General conditions of Contract in accordance with the provisions of the Arbitration and Conciliation Act, 1996, however, it is submitted that in view of the amendment made in the Arbitration and Conciliation Act, 1996 and in view of the judgment rendered by the Hon'ble Apex Court in the case of **Voestalpine Schienen GMBF v. Delhi Metro Rail Corporation Limited**, reported in (2017) 4 SCC 665, it is now a settled law that the Arbitrator cannot be an official of the respondent State, hence, this Court may order accordingly.

5. The learned counsel for the respondent State, Shri S.D. Yadav, AAG-9 has got no objection in case the petitioner invokes the A



and gets the dispute resolved through the arbitral process.

6. Accordingly, this Court grants liberty to the petitioner to invoke clause-25 of the NIT/GCC in question for the purposes of resolution of the dispute regarding cancellation of the agreement and forfeiture of the security amount. It is needless to state that in case the parties decide to get the matter resolved through arbitral process, it will be open for them to agree on the mode of appointment of the Arbitrator as also they would be at liberty to take recourse to such other remedies as are available under the Arbitration and Conciliation Act, 1996 for the purposes of appointment of an Arbitrator.

7. Now coming to the issue regarding blacklisting of the petitioner vide order No. 357 dated 26.11.2020, the learned Senior counsel for the petitioner has submitted that this Hon'ble Court, in the earlier round of litigation by an order dated 5.10.2020 passed in CWJC No. 7284 of 2020 had granted liberty to the petitioner to submit its explanation afresh before the Executive Engineer, Public Health Engineering Division, Patna East, Patna, whereafter the said Executive Engineer was directed to evaluate such explanation of the petitioner in proper perspective at

r in speaking terms and it was



further directed that the process of finalizing the contract/ agreement with any third party for the unfinished work shall not be taken till passing of the fresh order by the aforesaid Executive Engineer. It is submitted that thereafter, the petitioner had filed a detailed explanation dated 12.10.2020 and then the aforesaid Executive Engineer had passed the order dated 31.10.2020, rejecting the representation of the petitioner. It is also submitted that though the impugned order of blacklisting dated 26.11.2020 states about the notice dated 09.07.2020 having been issued to the petitioner calling for furnishing explanation/ reply from the petitioner as to why the petitioner should not be blacklisted since the agreement in question, entered into with the petitioner, has been cancelled and the security deposit has been forfeited, but the fact is that no such notice dated 09.07.2020 was ever served upon the petitioner, hence, the order of blacklisting dated 26.11.2020 is de-horse the principles of natural justice, thus it stands vitiated in the eyes of law. It is stated that blacklisting of the petitioner for three years will not only cause great prejudice to the petitioner but also has civil consequences qua the petitioner herein.

8. Per contra the learned counsel for the State, Shri S.D.



Yadav, submits, by referring to paragraphs no. 25 to 27 of the counter affidavit, that the Chief Engineer (Urban), PHED vide letter dated 09.07.2020 had issued a show cause notice to the petitioner, directing it to file its reply with regard to the recommendations made by the Executive Engineer, Public Health Engineering Division, Patna East, Patna for blacklisting the petitioner, however, the petitioner did not file any reply, hence the impugned order of blacklisting dated 26.11.2020 has been passed whereby and where-under the petitioner firm has been blacklisted for a period of three years, thus, there is no illegality in the impugned order dated 26.11.2020 passed by the Chief Engineer, Public Health Engineering Department, Patna.

9. I have heard the learned counsel for the parties and gone through the materials on record from which I find that though the impugned order of blacklisting dated 26.11.2020 mentions about issuance of show cause notice dated 09.07.2020, however, the respondent State in its counter affidavit, has failed to substantiate the fact that the said show cause notice dated 09.07.2020 was actually served upon the petitioner, hence, this Court finds that since the order of blacklisting has civil consequences and it has the effect of preventing a person from



the privilege and advantage of entering into a lawful relationship with the Government for the purpose of gain, any such order of blacklisting should be preceded by a legal and a valid show cause notice, duly served upon the person to be blacklisted. In this regard, reference be had to the judgments rendered by the Hon'ble Apex Court in the case of **Gorkha Security Services vs. Government of NCT of Delhi and others** reported in (2014) 9 SCC 105, in the case of **Patel Engineering Ltd. vs. Union of India and other** reported in (2012) 11 SCC 257 as also in the case of **M/S Kulja Industries Ltd. Vs. Chief General Manager, W.T. Project BSNL**, reported in (2014) 14 SCC 731.

10. Having regard to the facts and circumstances of the case and considering the submissions advanced by the learned counsel for the parties as also taking into account the materials available on record, this Court finds that there is no valid service of show cause notice upon the petitioner, prior to passing of the impugned order of blacklisting dated 26.11.2020, consequently, the petitioner has been precluded from being afforded an opportunity to represent its case, before it is put on blacklist, resulting in violation of the principle of natural justice, thus the



impugned order dated 26.11.2020 passed by the Chief Engineer, Public Health Engineering Department, Patna, blacklisting the petitioner for a period of three years, stands vitiated in the eyes of law, hence is quashed, however, liberty is granted to the respondent State to proceed afresh in the matter in accordance with law, if so advised.

11. The writ petition stands disposed of on the aforesaid terms.

(Mohit Kumar Shah, J)

Tiwary/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	12-08-2021
Transmission Date	N/A

