

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1097 of 2022

M/s. Memerej Construction Pvt. Ltd. A company registered under Companies Act, 1956, having its registered office at Bhardua, Chenari, P.S. Chenari, Sasaram, Dist. - Rohtas through one of its directors, namely Hari Shankar Dubey, aged about 54 years, Mle, son of Shri Nathuni Dubey, Resident of Flat No. 84, Balaji Colony, Samneghat, P.S. Bhagwanpur, District- Varanasi (Uttarpradesh).

... .. 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 Chief Engineer, Rural Works Department Officer, Bihar, Patna.
4. The Superintending Engineer, Rural Works Department, Works Division, Sasaram, Dist. - Rohtas.
5. The Executive Engineer, Rural Works Department, Works Division, Sasaram, Dist. - Rohtas.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. S.D.Sanjay, Sr. advocate Mr.Mohit Agarwal, Advocate Mr. Akshat Agrawal, Advocate
For the Respondent/s	:	Mr.Kumar Alok (SC-7)

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 21-03-2022

On the oral request of Sri S.D. Sanjay, learned counsel for the petitioner, Engineer-in-Chief, Rural Works Department, Government of Bihar, Patna, be impleaded as party respondent no. 2(a).

Registry to make necessary correction in the cause

title of the petition, both in the physical as also the digital file.

Heard learned counsel for the parties.

Petitioner has prayed for the following relief(s).

- “i] For quashing of the impugned order of Blacklisting the Petitioner Company for a period of 10 years by Respondent No. 3 vide Memo No. 2076 dated 15.07.2021 for alleged non-completion of the road project awarded to the Petitioner Company vide Agreement No. 62 SBD/2008-09 as the same has been passed without issuance/service of any Show-Cause Notice and hence, being in violation of Principles of Natural justice;
- ii] For holding that non-service of the impugned order of blacklisting the Petitioner and uploading the same on the official web-site of the Respondent is completely arbitrary act on part of the Respondents as the same must not have been uploaded on the website before service of the same upon the Petitioner Company;
- iii] For holding that the passing of the impugned order of blacklisting is in violation of principles of Natural justice for being passed without issuance of any show-cause notice upon the petitioner proposing blacklisting muchless proposing any action against the Petition in the year 2021 admittedly after closure/completion of contract way back in the year 2016; and/or for any other relief[s] for which the Petitioner may be found entitled to in the facts & circumstances of the present case.”

We are of the considered view that the impugned order dated 15th of July 2021 needs to be quashed on two grounds-

(a) Petitioner was never served upon the notice calling upon him to show cause as to why he be not blacklisted in terms of the Bihar Contractor Registration Rules, 2007 of Rural Works Department in accordance with law as stipulated in law;

(b) That in any event, the order, blacklisting the petitioner for a period of 10 years, is assailable on the ground of disproportionality.

On both counts, we are of the considered view that the petition needs to be allowed, for the order of blacklisting entails civil consequences, inasmuch as, *inter alia*, petitioner stands debarred from participating in fresh tenders.

11. Learned Counsel appearing for the petitioner, invites our attention to the decisions rendered by Hon'ble Apex Court in State of Orissa and others versus Balram Sahu, (2009) 2 SCC 652; Patel Engineering Limited Versus Union of India and another, (2012) 11 SCC 257; Gorkha Security Services Versus Government (NCT of Delhi) and others, (2014) 9 SCC 105; and Kulja Industries Limited Versus Chief General Manager, Western Telecom Project Bharat Sanchar Nigam Limited and others, (2014) 14 SCC 731.

12. The principles enunciated in the said decisions can be

summarized as under:-

- (a) The effect of blacklisting is to exclude a person from entering into a lawful relationship with the government for a gainful purpose.
- (b) The power of the State and the Union under Article 298 of the Constitution extends to carrying on any form of trade, the acquisition, holding or disposal of property and entering into any related contracts. Such exercise of power may be with or without a law, on the books, subjected of course to Part III of the Constitution, including Article 14 and 21.
- (c) Public contracts are subject to equality of opportunity. The State's right to trade must be executed with due observance of equality.
- (d) An individual may choose to or not to deal with a particular person but the government does not have such Liberty. It cannot discriminate similarly situated person.
- (e) Blacklisting deprives a person of equality of opportunity in a public contract, disabling them from participating, in spite of eligibility. A person transacting business with the State possesses a legitimate expectation that any act done by the State will be backed by legality.
- (f) The ground of prejudice being caused to the petitioner on non issuance of Show cause, is as a matter of practice, generally, not available to the State.
- (g) The issuance of show Cause Notice, unless

otherwise warranted, must precede blacklisting.

- (h) Blacklisting is not a simple event. It is followed by many civil consequences, or those of another nature. It is also termed “civil death.”
- (i) Given the stigmatic nature of an order of blacklisting it must be issued with great caution as it entirely precludes a person who has been blacklisted from the award of government contracts.
- (j) An order of blacklisting is open to be weighed on the scales of natural justice and the doctrine of proportionality.
- (k) An essential precondition for a duly issued order of blacklisting is a fair hearing on the Show Cause Notice issued.

13. The principles as mentioned earlier stand reiterated by Hon'ble the Apex Court in *Vetindia Pharmaceuticals Ltd. State of Uttar Pradesh and another*, (2021) 1 SCC 804, wherein it is further observed as under:

“12.An order of blacklisting operates to the prejudice of a commercial person not only *in praesenti* but also puts a taint which attaches far beyond and may well spell the death knell of the organisation/institution for all times to come described as a civil death. The repercussions on the appellant were clearly spelt out by it in the representations as also in the writ petition, including the consequences under the Rajasthan tender, where it stood debarred expressly because of the present impugned order. The possibility always remains that if a proper show-cause notice had been given and the reply furnished would have been considered in accordance with law, even if the respondents decided to blacklist the appellant, entirely different considerations may have prevailed in their minds especially with regard to the duration.

13. This Court in *Kulja Industries Ltd. v. Western Telecom Project BSNL* [Kulja Industries Ltd. v. Western Telecom Project BSNL, (2014) 14 SCC 731] , despite declining to interfere with an order of blacklisting, but noticing that an order of permanent debarment was unjustified, observed: (SCC p. 744, para 28)

“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.”

14. The principles of natural justice are attracted whenever a person suffers a civil consequence, or prejudice is caused to him because of some administrative action. Civil Consequences mean infraction of personal property rights, violation of civil liberties, material deprivation or sufferance of non-pecuniary damages. It is also settled law that mere violation of Natural Justice Principles is not sufficient for Judicial intervention unless such breach also entails avoidable prejudice caused to the person. [Natwar Singh v. Director of Enforcement, (2004) 13 SCC 255; SEBI v. Akshaya Infrastructure (P) Ltd., (2014) 11 SCC 112]

15. We also take note of what Hon’ble Apex Court held in *H.L Trehan v. Union of India*, (1989) 1 SCC 764, where it was

held that even when the statutory authority had the power to take action without hearing, it would be arbitrary to take action without hearing, and thus, be violative of Article 14 of the Constitution.

As such, we dispose of the present petition on the following mutually agreeable terms:-

(a) Impugned order dated 15th of July, 2021, passed by Respondent No. 2(a), namely Engineer-in-Chief, Rural Works Department, Government of Bihar, Patna (Annexure-3) is quashed and set aside;

(b) Petitioner shall make himself available in the office of respondent no. 2(a), namely, Engineer-in-Chief, Rural Works Department, Government of Bihar, Patna on 4th of April, 2022 at 10:30 A.M., when the notice to show cause, be it the old one or afresh, be supplied to the petitioner;

(c) Petitioner undertakes to fully cooperate and not take any unnecessary adjournment;

(d) Petitioner shall respond within a period of two weeks;

(e) Fresh order, if so required and desired, be passed within a period of four weeks thereafter;

(f) Copy of the order, assigning reason, shall be supplied to the petitioner;

(g) Liberty reserved to the petitioner to challenge the order in accordance with law;

(h) Pending such consideration, it shall be open for the petitioner to participate in the works of the department.

Petition stands disposed of in the aforesaid terms.

Interlocutory Application(s), if any, shall stand disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

veena/rajiv-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	