

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11067 of 2021

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1. The Shital Prasad Construction Pvt. Ltd., 165, A.P. Colony, P.S. - Rampur, Gaya (Bihar) through its Proprietor namely Shital Prasad.
 2. Shital Prasad, Son of Budhdeo Prasad Yadav, resident of Ganesh Chak, Itwan, P.S. - Mohanpur, District- Gaya.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Rural Work Department, Government of Bihar, Patna.
2. The Engineer-in-Chief, Rural Work Department, Government of Bihar, Patna.
3. The Superintending Engineer, Rural Work Department, Circle-Gaya, Government of Bihar, Gaya.
4. The Executive Engineer, Rural Work Department, Government of Bihar, Sherghati Division, Gaya.
5. The Assistant Engineer, Rural Work Department, Sherghati, Gaya.
6. The Dy. Secretary of Government, Rural Work Department, Gaya.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Krishna Kant Singh, Advocate
For the Respondent/s : Mr.Kumar Alok, S.C.-7

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH
and
HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 24-03-2022

An order dated 31.08.2020 passed by the Engineer-in-Chief, Rural Works Department, Government of Bihar, whereby Shital Prasad Construction Pvt. Ltd. (Petitioner No.1) has been blacklisted for ten years in exercise of the powers under the Bihar Contractors Registration Rules (Rural Works Department), 2007, is under challenge



in the present writ application. An appeal was preferred against the said order of blacklisting, which has been dismissed by the Secretary, Rural Works Department, Government of Bihar, by an order dated 18.02.2021, which has also been put to challenge in the present writ application.

2. It appears from the pleadings on record that the petitioner was asked to submit his explanation by a letter dated 27.03.2018 issued by the Executive Engineer, Rural Works Department (Works Division), Sherghati, in the light of departmental letters dated 18.08.2015 and 21.03.2018. The said letter dated 18.08.2015 has not been brought on record. The letter dated 21.03.2018 was admittedly enclosed with the said letter dated 27.03.2018.

3. The petitioner appears to have not responded to the said communication dated 27.03.2018. Nearly nine months thereafter, another letter was sent to him, vide Memo No.2806 dated 26.12.2018, asking the petitioner to submit his explanation. The petitioner is said to have submitted his explanation in response to the said letters dated 27.03.2018 and 26.12.2018 on 22.02.2019, a copy of which has been brought on record by way of Annexure 4 to the writ application. The said explanation apparently does not deal with the contents of the letter dated 18.08.2018, in respect of



which the petitioner was required to submit his explanation through communication dated 27.03.2018 and 26.12.2018. There is no statement in the said so-called explanation submitted by the petitioner on 22.02.2019 that the petitioner was not aware of the letter dated 18.08.2015 and the contents thereof. He simply stated in his explanation that he had submitted the tender documents online and the petitioner had no role to play in the decision making process while deciding tenders.

4. Considering the nature of the petitioner's explanation, the competent authority passed the impugned order blacklisting the petitioner on the ground that the petitioner had concealed the fact about his existing commitments about two projects which were pending with him, while submitting his tender.

5. Petitioner's technical bid was approved because it had not made correct disclosure and suppressed the fact regarding pending projects with him against the Clause: 'existing commitments'.

6. Considering the petitioner's conduct, the Chief Engineer passed the aforesaid impugned order of blacklisting. The petitioner preferred an appeal against the said order of blacklisting, which has been rejected by an order dated 18.02.2021 by the



departmental Secretary, which is also being assailed in the present writ application, as has been noted above.

7. Mr. Krishna Kant Singh, learned counsel appearing on behalf of the petitioner has submitted that the impugned order of blacklisting has been passed for alleged suppression of material facts in relation to the tender issued, vide Reference No.BR-12R-249A, which was cancelled and subsequent thereto, the same was re-tendered, vide Reference No.2012-6923-BR-12R-249-310. He submits that there would be no question of suppression in a tender process which stood cancelled. He has accordingly submitted that the impugned orders require interference.

8. A counter affidavit has been filed on behalf of the State of Bihar, wherein it has been stated that pursuant to the NIT bearing Tender I.D. No.2012 ECBIH-4631-1, Tender Reference No.BR-12R-249-E8 dated 15.02.2012 for construction work of road from Majhulia to Karjara under PMGSY Scheme under Works Division, Shergharti, Gaya, the petitioner had participated. Another Contractor, namely, Ranjan Kumar Singh, had also participated. After acceptance of the bid documents submitted by both the bidders, the Technical Bid Committee made an evaluation of the bids submitted by them and decided the tender in favour of the petitioner. Subsequently, said Contractor Ranjan Kumar Singh



filed a complaint alleging irregularities made by the petitioner in submission of his bid, leading to an enquiry conducted by the Executive Engineer, Rural Works Department, Works Division, Quality Management-2, who submitted his report on 13.11.2014 to the Superintending Engineer, Quality Management, Rural Works Department, Patna, with a finding that though the petitioner had disclosed the work relating to Works Division, Sherghati, he had not disclosed the work pending under the Works Division, Sherghati-2. It was accordingly reported that the petitioner had concealed about the existing commitment and on-going work at least in respect of two projects of Works Division, Gaya. The petitioner was awarded contract because he had concealed the aforementioned material fact. Before award of contract, had the petitioner disclosed the correct facts about pending commitment, the work would not have been allotted to him and there would have been a re-tender.

9. Learned State Counsel has submitted that indisputably, the disclosure made by the petitioner in his tender documents regarding existing commitment has been found to be incorrect upon an enquiry conducted after receipt of a complaint in this regard. He has submitted that there is no procedural irregularity in passing of the impugned orders inasmuch as the



petitioner was given an opportunity to explain and the impugned order of blacklisting has been passed upon due consideration of the petitioner's explanation. He has submitted that the orders passed by the original authority and the appellate authority do not suffer from any illegal infirmity requiring this Court's interference.

10. On consideration of the pleadings on record and the rival submissions made on behalf of the parties, as noted above, it is evident that the petitioner admittedly made incorrect disclosures and declaration by submitting information and documents to be correct which were, in fact, not correct. In the aforesaid background, the respondent-authorities have recorded their findings after giving the petitioner due opportunity to explain. Further, the petitioner did not put forth any explanation in relation to the aforesaid concealment of facts for securing award of contract in its favour.

11. We do not find any merit in the submission made on behalf of the petitioner that the action is unjustified because the tender process in respect of which the allegation has been made, has been cancelled. Allegation against the petitioner is of making wrong disclosures in his bid documents. The ultimate result of the said process of tender is inconsequential for the purpose of determination of correctness of the impugned action against the



petitioner in the facts and circumstances of the case. It was apparently because of disclosure of incorrect facts that the work was awarded to the petitioner. Had the fact regarding wrong disclosure been not brought to the authority by the another participant, the petitioner would have continued with the said contract obtained by non-disclosure of the correct facts regarding the existing commitments as on the date of submission of the bid documents.

12. In our considered opinion, the petitioner has not been able to make out a case of violation of any procedure leading to issuance of the impugned orders. The findings recorded by the authorities in the two orders, which are impugned, cannot be said to be perverse as the same cannot be said to be based on irrelevant materials or without evidence. The impugned orders, on the other hand, disclose application of mind by the authorities.

13. In such view of the matter, we are not inclined to interfere with the impugned orders in a proceeding of judicial review under Article 226 of the Constitution of India. This application stands dismissed accordingly.

14. However, Mr. Singh, learned counsel appearing on behalf of the petitioner has submitted that the action of blacklisting



for a period of ten years in the background of nature of allegation of misconduct is harsh, which requires reconsideration.

15. In the facts and circumstances of the case, while not interfering with the impugned orders, it is observed that the petitioner shall be at liberty to approach the competent authority by making a representation for reduction of period of blacklisting, which shall be considered by the competent authority, in accordance with law, in the background of nature of allegations.

(Chakradhari Sharan Singh, J)

(Madhuresh Prasad, J)

PNM

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	
Transmission Date	N.A.

