

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2625 of 2021

M/s Satyendra Kumar and Co. Const. Pvt. Ltd., a Pvt. Company registered under the Companies Act, 1956, having its registered office at G-7, Tara Tower, Behind Hotel Republic, Exhibition Road, Patna- 800001 through its Director Prashant Kumar S/o Lt. Shri Sunil Kumar Singh Resident of Flat No C-401, Dev Kutir Appt, Jagat Narayan Road, Kadamkuan, Patna- 800003, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Building Construction Department, Patna, Bihar.
2. The Principal Secretary, Building Construction Department, Patna, Bihar.
3. The Engineer in Chief, Building Construction Department, Patna, Bihar.
4. The Chief Engineer, Building Construction Department, Patna, Bihar.
5. The Executive Engineer, Building Construction Department, Patna, Bihar.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Sanjay Singh, Senior Advocate
For the Respondent/s : Mr. Syed Iqbal Ahmad, S.C. 20
Mr. Mahtab Alam, Advocate

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

(The proceedings of the Court are being conducted by Hon'ble the Chief Justice/ Hon'ble Judges through Video Conferencing from their residential offices/residences. Also, the Advocates and the Staffs joined the proceedings through Video Conferencing from their residences/offices.)

Date : 24-01-2022

The sole issue which arises for consideration is as to whether, without even issuing notice to show cause or



complying with the fundamental principles of natural justice, the petitioner can be, straightway black listed/debarred from participating in the other works, civil in nature, undertaken on behalf of the State of Bihar or not?

2. Vide impugned order dated 03.10.2020, the Building Construction Department, Government of Bihar, has *inter alia* debarred the petitioner with immediate effect. Impliedly, such order prohibits the petitioner from participating in all the works of civil nature undertaken by the said Department.

3. The other issue raised in the said communication is petitioner's alleged violation of the terms of agreement executed on 04.04.2018 concerning work of civil nature.

4. During the course of the hearing, Sri Sanjay Singh, learned Senior Counsel appearing for the petitioner, while confining the instant petition, only qua the issue of debarment, seeks liberty to agitate the other grievances under law, by initiating appropriate proceedings in terms of the agreement and/or as per law, before the appropriate forum.

5. Petitioner has prayed for the following relief(s):-

“(A) For issuance of an order/orders, direction/directions or writ/writs in the nature of Certiorari, quashing the order dated 03.10.2020 contained in Letter No.3034 (hereinafter referred as “Impugned Order”) passed by the Respondent No.4 whereby the petitioner has been declared as



defaulter and consequently has been debarred from participating in any future tender with immediate effect.

- (B) For issuance of an order/orders, direction/directions or writ/writs in the nature of Mandamus directing the Respondents to seeking a direction to the respondents to act forthwith on the application of the petitioner regarding closure of their contract after making all the requisite payments, i.e. carrying out the final measurement of the work carried out at the site and making the payment of the same along with approval of the time extension and release of the amount deducted under each bill under this head along with the release of Security Deposit and issuance of quantity wise completion certificate.
- (C) For any other Order/Orders/Direction/Directions which this Court Hon'ble Court may deem fit and proper in the facts and circumstances of the present case."

6. Liberty, as prayed for, is granted.

7. Coming to the sole surviving issue of blacklisting, we find the respondents not to have disputed the issue of the impugned communication, debarring the petitioner from participating in other works with immediate effect, without issuing a notice to show cause or conveying such intent prior to it.

8. Our specific attention is invited to the Bihar Contractors Registration Rules, 2007, whereby as per Rule 11, a contractor can be debarred only in terms of the conditions stipulated therein. But what is essential, as is also envisaged in



the Rules, is the requirement of first issuing a notice to show cause before taking action in terms thereof.

9. It is apt to refer to sub-rule (kha) of Rule 11 of the Rules which reads as under:

“(ख) किसी विशिष्ट श्रेणी के ठीकेदार को काली सूची में दर्ज करने अथवा पदावनत (Demote) करने अथवा निलंबन करने के पूर्व कारण बताओ नोटिस दिया जाना आवश्यक होगा।”

10. On merits, whether petitioner's case for debarment falls within any of the conditions stipulated therein is an issue which we may not examine, leaving it open to be considered by the authorities and what we need to examine is the effect of the order of blacklisting/debarment in the event of non-compliance of the Rules and fundamental principles of natural justice.

11. Sri Sanjay Singh, learned Senior 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.

16. Applying the principles above to the instant case, we notice that the agreement stood executed on 04.04.2018. The work was not completed, as is borne out from the record for various reasons, with both sides attributing breaches of the terms of the agreement and delay. We need not go into the merits thereof, save and except do notice that at some point of time, construction activity stood halted on account of third party intervention, i.e. the general public and that on petitioner's asking, the respondents had, in fact, got deployed police force.

17. On these accounts, we notice that the impugned action insofar as it relates to debarment is concerned, needs interference being in utter violation of fundamental principles of natural justice and the Bihar Contractor Registration Rules, 2007. Reference of such fact is only to highlight that if the parties were communicating with each other, then the least of the expectation was calling upon the petitioner to show cause as



to why action against him in the affirmative, for blacklisting/debarring be not taken. Hence, that part of the impugned communication dated 03.10.2020 issued by (Annexure-1 page 28) whereby the petitioner stands debarred is quashed and set aside.

18. For other prayers, liberty as prayed for.

19. The authorities are bound to comply with and adhere to the Rules as also fundamental principles of natural justice, which they are ignoring to do so, resulting into generating unnecessary litigation as also affecting public work and interest. Where the action of the authorities is ex-facie illegal, Courts are duty bound to interfere.

20. In the instant case, we refrain from imposing cost as also direct initiation of appropriate proceedings against the erring officer, but, however, warn the State to be careful in future. Resultantly, we direct Respondent no.2, namely the Principal Secretary, Building Construction Department, Patna, Bihar, to ensure that the authorized functionaries take action for blacklisting, strictly in accordance with law.

21. Mr. Syed Iqbal Ahmad, learned Standing Counsel 20, undertakes to apprise the said Respondent of the passing of the order.



22. The writ petition stands disposed of in the above terms.

23. Interlocutory Application, if any, shall stand disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

Sujit/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	28.01.2022
Transmission Date	NA

