

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12933 of 2022

Sanjay Kumar son of Shri Ramyash Ray, Resident of Near Jain College,
Eastern Gate, Sankat Mochan Nagar, P.S.-Ara Nawada, District-Bhojpur.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Water Resources Department, Government of Bihar, Patna.
2. The Engineer-in-Chief (Headquarters), Water Resources Department, Government of Bihar, Patna.
3. The Chief Engineer, Flood Control, Water Resources Department, Samastipur, District-Samastipur, Bihar.
4. The Superintending Engineer, Flood Control Circle, Darbhanga, District Darbhanga, Bihar.
5. The Executive Engineer, Water Ways Division, Darbhanga, District Darbhanga, Bihar.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Shivam, Advocate
For the Respondent/s : Mr. Anjani Kumar, AAG4

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 28-11-2022

Petitioner has prayed for the following relief(s):

“(1) For quashing order as contained in Memo No. 3267 dated 5.8.2022 issued under the signature of the Secretary-cum-Appellate Authority. Water Resources Department, Government of Bihar, Patna whereby and whereunder the appeal preferred by the petitioner under Clause 11 (gha) of the Bihar Contractors Registration Rules, 2007 against the



order dated 4.3.2022 as contained in Memo No. 832 passed by the Engineer-in-Chief (Headquarter). Water Resources Department, Government of Bihar, Patna whereby the petitioner has been blacklisted for a period of 10 years in terms of Rule 11 (ka)(viii) of the aforesaid Rules read with departmental order No. 201 dated 14.3.2016, has been rejected.

(ii) For quashing the order as contained in Memo No. 832 dated 4.3.2022 issued under the signature of the Engineer-in-Chief (Headquarter). Water Resources Department, Government of Bihar, Patna whereby the petitioner has been blacklisted for a period of 10 years in terms of Rule 11(ka)(viii) of the Bihar Contractors Registration Rules read with departmental order No. 201 dated 14.3.2016.

(iii) For grant of any other incidental/consequential or other appropriate relief/reliefs to which the petitioner may be found entitled in the facts and circumstances of the case fully enumerated hereinbelow.”

Petitioner was awarded contract pursuant to NIT no.03/2020-21 in Group nos. 2,3 and 5. The petitioner, being successful bidder, was allotted work on 11.4.2021. Undisputedly, the nature of work is construction contract. It is matter of record that the petitioner did not carry out any activity of construction which led to the passing of the impugned order of blacklisting dated 04.03.2022 (Annexure-8 of page 32), as affirmed in an appeal by the competent authority. The period for



which the petitioner stands black-listed is 10 years. Challenge to the order of blacklisting is laid on three counts: (a) Inadequate period for responding to the show cause; (b) The order of blacklisting is contrary to the rules itself; and (c) The period of blacklisting being grossly disproportionate.

On all three counts, we are of the considered view that the petition needs to be allowed.

The notice to the show cause was issued affording only three days' time. In our considered view, reasonable opportunity ought to have been granted to the petitioner. We notice that as per instructions, unless the period is dispensed with in public interest, two weeks' time is provided for. We also notice that the construction activity could not be carried out on account of the petitioner's attending circumstances.

Well, this issue we need not dilate upon and we leave it to the authority to consider in accordance with law. On the second issue, we notice the Bihar Contractors Registration Rules, 2007 provide as under:

“That Clause 11 of the Bihar Contractors Registration Rules, 2007 defines altogether 10 corrupt practices and in the present case, Clause 11(ka) (viii) of the 2007 Rules is relevant which reads thus:

"एक से अधिक बार कार्य आवंटित होने पर निश्चित अवधि तक एकरारनामा नहीं करना।"



These rules are applicable to the instant contract.

In the response, it is not the pleaded case of the State that on an earlier occasion petitioner had defaulted. This aspect stands ignored and needs to be examined afresh by the respondents.

The next issue is of proportionality. We extensively dealt with this issue in **CWJC No. 16989 of 2017**, titled as **Raman Kumar Singh Vs. Bihar State Food and Civil Supplies Corporation Ltd., Bihar Patna & Ors.** Blacklisting the petitioner for a period of 10 years and, that too, without assigning any reason, is an exercise conducted with illegality.

As such, on all three counts, we quash and set aside the impugned order of blacklisting the petitioner by Memo no.3267 dated 5.8.2022, with liberty to the respondent authorities to initiate fresh action, if so required and desired, in accordance with law. Needless to add, if the respondents choose to do so, petitioner shall fully cooperate and the authority shall take a decision at the earliest in accordance with law.

Petition is disposed of in the aforesaid terms.



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

(Sanjay Karol, CJ)

(Partha Sarthy, J)

Bibhash/-

AFR/NAFR	
CAV DATE	
Uploading Date	29.11.2022
Transmission Date	

