

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.19449 of 2021**

Jai Bajrang Bali Construction through, its Proprietor, Shachidanand Tiwari, Male, aged 59 years, Son of Kedar Tiwari, Resident of Village - Palaundha, Police Station - Chenari, District - Bhabua, Kaimur.

... .. Petitioner/s

Versus

1. The State of Bihar through Rural Works Department, Government of Bihar, Vishweshwaraiya Bhawan, Jawaharlal Nehru Marg, Patna, Bihar - 800001
2. The Secretary, Rural Works Department, Government of Bihar, Vishweshwaraiya Bhawan, Jawaharlal Nehru Marg, Patna, Bihar - 800 001
3. The Additional Chief Secretary, Rural Works Department, Government of Bihar, Vishweshwaraiya Bhawan, Jawaharlal Nehru Marg, Patna, Bihar - 800 001.
4. The Engineer - in - Chief, Rural Works Department, Government of Bihar, Vishweshwaraiya Bhawan, Jawaharlal Nehru Marg, Patna, Bihar - 800 001.
5. The Executive Engineer, Rural Works Department, Work Division, Forbesganj.

... .. Respondent/s

**Appearance :**

For the Petitioner/s : Mr. Abhishek Kumar, Advocate  
For the Respondent/s : Mrs. Archana Meenakshee, Advocate

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

**Date : 14-07-2022**

Heard learned counsel for the parties.

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

- i. In the nature of certiorari, for quashing the decision, contained, in, Memo No. 3835, dated 20.09.2021, issued, in terms of Clause 11(a)(vi) of



Bihar Contractor of Registration Rules (Rural Works Department) 2007, under the signature of Engineer-in-Chief, Rural Works Department, Government of Bihar, Patna whereby the petitioner has been blacklisted for a period of 10 years;

- ii. In the nature of certiorarified mandamus, for calling upon the respondents to produce the records/letter no. 2104, dated 03.08.2021 and further for quashing the said letter, issued by the Executive Engineer, Rural Works Department, Work Division, Forbesganj whereby the Agreement No. 02 SBD PMGSY 2018-19, executed for construction of the Road from Phetehpur Balua Hat Near Nawal Jha House to Adiwasi Tola Waard No. 11, Pithora Sima was terminated and further it was recommended to blacklist the petitioner;
- iii. In addition, for issuance of a writ in the nature of certiorarified, again calling upon the respondents to produce the letter no. 3228, dated 13.08.2021 and for quashing the said letter, issued by the Engineer-in-Chief, Rural Works Department, Patna whereby the petitioner was asked to submit explanation within seven days, regarding, recommendation made for blacklisting the petitioner, by the Executive Engineer, Rural Works Department, Work Division, Forbesganj;
- iv. Furthermore, for issuance of a writ, in the nature of mandamus, directing, the respondents to release the performance security, deposited in terms of clause 46 of the General Conditions of Contract 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 20.09.2021 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;

We say so for the reason that there is no report indicating that the notice issued to him was ever served upon the petitioner.

At this stage, Ms. Archana Meenakshee, learned counsel for the respondent states that she has already instructed the department that henceforth notices be sent in terms of the stipulated rules, by Registered post with A/D and/or Speed Post, which in the instant case was sent by ordinary post.

(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 the 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 20.09.2021, passed by Respondent No. 4, namely the Engineer-in-Chief, Rural Works Department, Government of Bihar, Vishweshwaraiya Bhawan, Jawaharlal Nehru Marg, Patna (Annexure-3) is quashed and set aside;

(b) Petitioner shall make himself available in the office of respondent no. 4, namely, the Engineer-in-Chief, Rural Works Department, Government of Bihar, Vishweshwaraiya Bhawan, Jawaharlal Nehru Marg, Patna on 1<sup>st</sup> of August, 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)**

Amrendra/-PKP

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