

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20742 of 2021

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Bablu Kumar Bhagat through its proprietor, Mr. Bablu Kumar Bhagat aged about 46 years (M), S/o Ganesh Prasad Bhagat, having its registered office at Ward No. 16, Bus Stand Road ADB Chowk, P.O. - Araria, District - Araria.

... .. Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Government of Bihar, Patna.
2. The Chief General Manager, Bihar State Building Construction Corporation Limited, Government of Bihar Undertaking, Patna.
3. The Secretary, Building Construction Department, Government of Bihar, Patna.
4. Engineer-in-Chief-cum-Commissioner-Special Secretary, Building Construction Department, Govt. of Bihar, Patna.

... .. Respondent/s

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(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.)

Appearance :

For the Petitioner/s : Mr.Sourav Suman, Adv
For the Respondent/s : Mr.Sushil Kumar (SC22)

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

Date : 11-02-2022

Heard learned counsel for the parties.

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

“I. The present writ application is being filed for issuance of an appropriate writ order/ direction(s) in the nature of Certiorari for quashing and setting aside the Order of Suspension from participating in future tenders for next two years vide Letter No. 1057 dated 18.02.2021 (contained in Annexure-P/7) on the ground of same being blatantly illegal, without jurisdiction, malafide & violative of Bihar Contractors Registration Rules, 2007 and in complete contravention of principles of natural justice,

II. The present writ application is being filed for issuance of an appropriate writ order/ direction(s) in the nature of *mandamus* for a direction to the concerned Respondents to revoke the Order of Suspension of the petitioner and to enable to him to participate in future/upcoming tenders;

III. That the present writ application is being filed for issuance of an appropriate writ order/ direction(s) in the nature of *Mandamus* for a mandatory injunction commanding the Concerned respondents to forthwith withdraw, rescind and/or cancel the Order of suspension from participating in tender for 2 years and to allow him to participate in other/ different tender(s) issued by the concerned respondents.”

Briefly stated, the facts of the case is that petitioner is registered Class-I contractor of the Building Construction Department, Govt. of Bihar, and a NIT (2020-21) was issued by the respondent Bihar State Building Construction Corporation, for construction of Scheduled Castes Welfare Hostel, Kishanganj, in which petitioner along with others submitted their bid.

A letter was issued by the Chief Manager of Bihar State Building Construction Corporation, to the petitioner regarding submission of forged document along with bid documents and he was directed to submit his reply within three days from the date of receipt of said letter and petitioner submitted his reply asking for documents on the basis of which show cause notice was issued to him and same was made available to him on 05.12.2020 and thereafter petitioner submitted his detailed reply on 11.12.2020 and denied said forged document being submitted

by him. Petitioner in his reply stated that the work experience certificate was related to fire fighting, however, same was not demanded in the NIT as such there was no occasion for him to submit said certificate along with bid documents. He further submitted that his rival contractors in order to tarnish the reputation and image of petitioner as well as to disqualify him in a conspiracy and connivance with Operator of Cyber Cafe have committed this Act.

Chief Engineer, Bihar State Building Construction Corporation Ltd. by his letter dated 14.12.2020 and 08.01.2021 recommended to take action against petitioner under Bihar Contractor Registration Rules-2007 and pursuant to which show cause notice was issued to the petitioner and he submitted his reply. However, by order dated 18.02.2021 (Annexure-7) passed by Engineer-in-chief cum Additional Commissioner cum Special Secretary suspended/blacklisted petitioner for two years against which petitioner preferred appeal before the Secretary, Building Construction Department who rejected the appeal of petitioner by order dated 19.03.2021 (Annexure-9).

It is submitted by learned counsel for the petitioner that pursuant to show cause notice issued to him he submitted a detailed reply with respect to allegations made in show cause of

submitting forged experience certificate along with bid documents but his reply was not considered while passing the order of suspension for two years and no reasons have been assigned for not accepting the reply filed by petitioner and impugned order does not reflect that the reply of petitioner was considered by the authorities before passing the impugned order. Some reasons assigned by the Appellate Authority cannot cure the defect of the original authority who has passed the order without assigning any reason.

The Apex Court in the case of ***Kranti Associates Private Ltd and Others Vs. Masood Ahmed Khan and Others*** since reported in ***(2010) 9 SCC 496*** in para 47 has held as follows:-

“(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

(b) A quasi-judicial authority must record reasons in support of its conclusions.

(c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(e) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

(f) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(g) Reasons facilitate the process of judicial review by superior courts.

(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or “rubber-stamp reasons” is not to be equated with a valid decision-making process.

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in *Defence of Judicial Candor* [(1987) 100 Harvard Law Review 731-37] .)

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See *Ruiz Torija v. Spain* [(1994) 19 EHRR 553] EHRR, at 562 para 29 and *Anyia v. University of Oxford* [2001 EWCA Civ 405 (CA)] , wherein the Court referred to Article 6 of the European Convention of Human Rights which requires,

“adequate and intelligent reasons must be given for judicial decisions”.

(o) In all common law jurisdictions judgments play a

vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of “due process”.

For the reasons as stated above, the order passed by the Authorities as contained in order dated 18.02.2021(Annexure-7) and order dated 19.03.2021 (Annexure-9) is not sustainable in the eye of law and are accordingly, quashed.

The case is remanded to respondent no. 4 Engineer- in -Chief- cum- Addl. Commissioner cum Special Secretary, Building Construction Department, Govt. of Bihar, Patna, to pass a fresh speaking and reasoned order after considering the reply and assigning reasons to accept/reject the grounds/explanation furnished in reply filed by the petitioner.

The writ petition is disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

ranjan/-

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