

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15293 of 2022

1. Raghib Iqbal, son of Nazrul Mobin, Resident of Mohalla- Mohabbatpur, Ward No. 15, Near Coconut Tree, P.O. and P.S.- Dhaka, District- East Champaran at Motihari.
2. Md. Imteyaz Zafeer @ Imteyaz, son of Zafeer Ahmad, resident of Village- Barharwa Parsa, P.O. Barharwa Lakhan Sen, P.S. Dhaka, District- East Champaran at Motihari.
3. Rambabu Sah, son of Sitaram Sah, Resident of Mohalla- Rajepur, Ward No. 1, P.O. and P.S. Dhaka, District- East Champaran at Motihari.
4. Rakesh Kumar Singh, son of Late Ujjain Singh, Resident of Village and P.O. Gurhanwa, Ward No. 9, P.S. Dhaka, District- East Champaran at Motihari.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Urban Development and Housing Department, Government of Bihar, Patna.
2. The District Magistrate, East Champaran at Motihari, District- East Champaran at Motihari.
3. The Sub- Divisional Officer, Sikrahana, District- East Champaran at Motihari.
4. The Executive Engineer, Urban Development Division (BUIDCO), East Champaran at Motihari, District- East Champaran at Motihari.
5. The Dhaka Nagar Parishad, P.O. and P.S. Dhaka, District- East Champaran at Motihari through the Executive Officer.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. S.B.K.Manglam, Advocate Mr.Awnish Kumar, Advocate Mr. Kumar Gaurav, Advocate
For the Respondent/s	:	Mr.Yogendra Prasad Sinha (AAG 7)

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

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 : 11-11-2022

Petitioners have prayed for following relief(s) :-

“(i) For issuance of an appropriate writ in the nature of CERTIORARI for quashing of the letter dated 13.09.2022 issued under the signature of Respondent no.5 and contained in his memo no.935 dated 13.09.2022, whereby and whereunder he has been pleased to debar the petitioners for 10 years from their for any contract under Nagar Parishad Dhaka and has been further pleased to forfeit the security deposit of the petitioners in the form of Term Deposit (TD) /Saving Deposit(SD) National Saving Scheme (NSC), which the petitioners had submitted by way of security amount of the contract awarded to them on the ground that the said order of debarment has been passed by the Respondent no.5 without any notice to the petitioner and without providing any opportunity of hearing to them.

(II) For a declaration that if for delay in completion of contract, the petitioners cannot be held responsible in the facts and circumstances of the case, the Respondent no.5 was not at all justified to pass the impugned order debar the petitioners form tender and direct for forfeiture of their security deposit.

(III) For issuance of an appropriate writ in the nature of MANDAMUS, commanding and directing the Respondent Authorities not only to release the security deposited by the petitioners with the Respondent Municipality but also for payment of their outstanding dues of contract which the Respondent no.5 has not paid so far, though the petitioners have already completed their work and they have informed the Respondent



no.5 in this regard much before.

(IV) of any other appropriate writ/writs, order/orders, direction/directions for which the writ petitioners would be found entitled under the facts and circumstances of the case.”

We notice that the impugned order debarring the petitioners for participating in any of the works of the respondent-Department, for a period of ten years, does not contain any reason. The order entails civil consequences, inasmuch as petitioners’ right to participate in the contracts to be awarded by the respondents would stand stunted. This Court in CWJC No.2625 of 2021, titled as **Satyendra Kumar and Co. Const. Pvt. Ltd. Company vs. The State of Bihar & Ors.** decided on 24.01.2022, while extensively dealing with the issue of following due process, as stipulated under the Bihar Contractors Registration Rules, 2007, has already warned the State to be careful in future.

In the instant case, we also reiterate the principles laid down by Hon’ble the Apex Court in **Kranti Associates (P) Ltd. v. Masood Ahmed Khan, (2010) 9 SCC 496**, emphasizing the need for the authorities to assign reasons. The relevant portion is extracted hereinunder:-

“47. Summarising the above discussion, this Court holds:

(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 aforesaid reasons, we quash and set aside the order dated 13.09.2022 (Annexure-7, Page-30) passed by Respondent No. 5, namely the Executive Officer, Dhaka Nagar Parishad, East Champaran, debarring the petitioners as contractors for a period of ten years and the matter is remanded back to the concerned authority to pass a speaking and reasoned order afresh, in accordance with law, within a period of one month from the date of receipt/production of a copy of this order.

The petition stands allowed in the above terms.



Interlocutory Application, if any, shall stand
disposed of.

(Sanjay Karol, CJ)

(Partha Sarthy, J)

Sujit/chn

AFR/NAFR	
CAV DATE	
Uploading Date	25.11.2022
Transmission Date	

