

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1193 of 2022

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Arvind Kumar Singh S/O Lalji Singh Resident of Village - Amra, P.S. -
Mufassil, District- Gaya.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Government of Bihar, Rural Works Department, Bisheshwariya Bhawan, Bailey Road Patna.
2. The Principal Secretary, Government of Bihar, Rural Works Department, Bisheshwariya Bhawan, Bailey Road Patna.
3. The Engineer in Chief, Rural Works Department, Bisheshwariya Bhawan, Bailey Road Patna.
4. The Chief Engineer - 1, Bisheshwariya Bhawan, Bailey Road Patna.
5. The Superintending Engineer, Rural Works Department, Works Division Gaya, District- Gaya.
6. The Executive Engineer, Rural Works Department, Works Division Gaya, District- Gaya.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Ravindra Kumar Sinha, Advocate
For the Respondent/s : Mrs.Archana Meenakshee (GP 6)

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ARUN KUMAR JHA)

Date : 21-03-2023

Heard learned counsel for the petitioner and learned
counsel for the respondents.

2. The present writ petition has been filed “for
quashing the order dated 04.01.2022 passed by the Engineer in
chief, Rural Works Department, Bihar, Patna, issued vide memo
no.46 dated 05.01.2022 by which and where under the petitioner
has been blacklisted for the period of ten years and for issuance



of any appropriate writ or writs, order or orders, direction or directions as your lordships may deem fit and proper”.

3. The short facts, according to the petitioner, are that the petitioner entered into an agreement on 15.01.2018 for construction of road and its maintenance under Pradhan Mantri Gram Sarak Yojna (PMGSY), L143-Tengara Road to Manik Bigha (Track 143), Package No. BR-12R-926. The work was to commence from 29.12.2017 and it was to be completed by 29.12.2018. Thereafter, the petitioner started the work and completed some work. In the meantime, some antisocial elements caused hindrance in construction of work for which the petitioner made complaint before the local police and due to this reason, the work could not be completed in time. Thereafter, on 21.02.2019, the petitioner filed representation before the Secretary, Rural Works Department for extension of time for completion of work, but he was informed by the Executive Engineer, Works Division, Gaya vide letter dated 30.11.2019 that the agreement no. 112/PMGSY/SBD/17-18 was rescinded and security money as well as earnest money were forfeited and the petitioner was directed to deposit a sum of Rs.85,521/- through bank draft within a week, failing which a certificate case was to be lodged against him. Thereafter, the petitioner



filed an application before the Empowered Standing Committee for reconsideration of rescinding order with regard to package no. BR-12R-926 and the matter was fixed for hearing on 09.03.2020 in arbitration. However, the petitioner received a letter dated 15.05.2020 issued by the Executive Engineer, Rural Works Department, Works Division, Gaya wherein it has been stated that the amount of Rs.85,521/- recoverable for non-completion of work was not deposited by the petitioner. Hence, it was decided to recover the amount from another bill of the petitioner. Thereafter, without considering the representation of the petitioner and without waiting for result of the arbitration, the Executive Engineer, Rural Works Department, Works Division, Gaya invited re-tender for the aforesaid work on 05.06.2020. Thereafter, on 11.06.2020, the petitioner filed a representation before the authority concerned requesting therein that the re-tender of Package No.BR-12R-926 be stayed and he be allowed to complete the rest of the work. Against the order dated 30.11.2019, the petitioner filed CWJC No. 1255 of 2021 before this Court which was disposed of vide order dated 16.11.2021 with a direction to the appropriate authority to consider and decide the representation/application to be filed by the petitioner within a period of three months and as per the



direction of this Court, the petitioner preferred Reference Case No. 55 of 2021 on 20.12.2020 before the Works Contracts Disputes Arbitration Tribunal, Patna and the same is pending for adjudication. In the meantime, without issuing any show cause notice with regard to blacklisting, the petitioner received order dated 04.01.2022 (impugned order) by which petitioner has been blacklisted for a period of ten years. Being aggrieved by the said order of blacklisting, the petitioner filed the present Writ.

4. The learned counsel for the petitioner submitted that the work was delayed due to hindrance caused by local antisocial elements and the area being infested with naxal who restrained the petitioner and demanded levy for which the petitioner filed several representations before the authorities concerned, but without considering the same, his agreement has been rescinded and the petitioner has been blacklisted without giving the opportunity to be heard. The learned counsel for the petitioner further submitted that the aforesaid work was under progress and the bitumen was purchased by the petitioner for pitching the road. In the meantime, the agreement of the petitioner has been rescinded without any show cause notice and later on, a fresh tender was invited by the authority concerned, which was allotted to the petitioner, he completed the work



within time and payment was made to him. The learned counsel further submitted that the delay was not due to any fault of the petitioner. Then before passing the order of blacklisting, the petitioner was not served with any notice. Further blacklisting the petitioner for ten year is unduly harsh. The respondents have also not considered the fact about the petitioner was again awarded the same work in re-tender which he successfully completed. Thus, the learned counsel submitted that the impugned order dated 04.01.2022 is illegal, improper and bad in law and, as such, the same is fit to be quashed in the interest of justice.

5. On the other hand, the learned counsel for the respondents while justifying the reasons for blacklisting of the petitioner, vehemently contended that the petitioner has not made out any ground which would justify his action in pursuance of which the impugned action was taken after compliance of principles of natural justice as the blacklisting was done after serving notice to the petitioner.

6. Having considered the material available on record and rival submissions, we do not find the impugned order dated 04.01.2022, as contained in Memo No. 46 dated 05.01.2022, issued by the Engineer-in-Chief, Rural Works Department,



Bihar, Patna has been passed following the principles of natural justice. Passing of such kind of orders entails civil consequences, inasmuch as the petitioner stands blacklisted/debarred for a period of ten years from the date of passing of the order.

It may be noted that strict observance of the principles of natural justice before passing an order of blacklisting has been highlighted in the cases of *Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and Anr.*, reported in *AIR 1975 SC 266*, *Raghunath Thakur V. The State of Bihar and Ors.*, reported in *(1989) 1 SCC 229*, *Gorkha Security Services V. Govt. (NCT of Delhi) and Ors.*, reported in *(2014) 9 SCC 105*, *UMC Technologies (P) Ltd. v. Food Corporation of India*, reported in *(2021) 2 SCC 551*. In *Kulja Industries Ltd. v. Western Telecom Project BSNL*, *(2014) 14 SCC 731*, the Supreme Court laid down that any decision of blacklisting will be open to scrutiny not only on the touchstone of the principles of natural justice but also on the doctrine of proportionality. A fair hearing to the party being blacklisted is an essential precondition for a proper exercise of power and a valid order of blacklisting made pursuant thereto. Paragraph 17 of the decision in case of M/s Kulja Industries Limited (supra) can be usefully



referred to, which reads as under:-

"17. That apart, the power to blacklist a contractor whether the contract be for supply of material or equipment or for the execution of any other work whatsoever is in our opinion inherent in the party allotting the contract. There is no need for any such power being specifically conferred by statute or reserved by contractor. That is because "blacklisting" simply signifies a business decision by which the party affected by the breach decides not to enter into any contractual relationship with the party committing the breach. Between two private parties the right to take any such decision is absolute and untrammelled by any constraints whatsoever. The freedom to contract or not to contract is unqualified in the case of private parties. But any such decision is subject to judicial review when the same is taken by the State or any of its instrumentalities. This implies that any such decision will be open to scrutiny not only on the touchstone of the principles of natural justice but also on the doctrine of proportionality. A fair hearing to the party being blacklisted thus becomes an essential precondition for a proper exercise of the power and a valid order of blacklisting made pursuant thereto. The order itself being reasonable, fair and proportionate to the gravity of the offence is



similarly examinable by a writ court."

7. In the instant case, though the record shows the petitioner has been given a notice before blacklisting but perusal of impugned order makes it apparent that there is no discussion of the same in the order of blacklisting. So it appears to be empty formality on part of the respondents.

It also appears that vide impugned order, the respondents have not assigned any reason, much less plausible, for having blacklisted/debarred the petitioner for a period of ten years. The principle of proportionality has not been considered. The effect of debarment entails both civil and penal consequences. In view of these facts, the order of blacklisting for 10 years appears to unduly harsh.

It is also to be noted that the petitioner was again retained and assigned the same work which he has successfully completed. Further, the respondents have completely ignored the reason furnished by the petitioner for delay in completion of the project which was on account of hindrance caused by antisocial elements and it was beyond his control.

8. In the light of these facts and circumstances, the petitioner has made out a *prima-facie* case so as to interfere with the impugned action of blacklisting. Accordingly, the impugned order dated 04.01.2022, as contained in Memo No.46 dated



05.01.2022, passed by the Engineer-in-Chief, Rural Works
Department, Bihar, Patna is set aside.

9. Accordingly, this writ petition stands allowed.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

V.K.Pandey/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	29.03.2023
Transmission Date	N.A.

