

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2992 of 2023

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Ram Shovit Yadav Son of Narsu Yadav, Resident of Village - Baggha, P.O. -
Jalwana, P.S.- Kamtaul, District - Darbhanga.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Rural Works Department,
Government of Bihar, Patna.
2. The Secretary, Rural Works Department, Bihar, Patna.
3. The Engineer-in-Chief, Rural Works Department, Bihar, Patna.
4. The Chief Engineer, Rural Works Department, Bihar, Patna.
5. The Superintending Engineer, Rural Works Department, Work Anchal,
Darbhanga.
6. The Executive Engineer, Rural Works Department, Works Division,
Benipatti, Darbhanga.
7. The Assistant Engineer Rural Works Department, work Sub-Division,
Kewati, Darbhanga.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. D.K. Sinha, Advocate Mr. Girish Chandra Jha, Advocate Mr. Ashish, Advocate Mr. Alexandar Ashok, Advocate
For the Respondent/s	:	Mr. Ajay (GA-5) Mr. Pratik Kumar Sinha, AC to GA-5

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

6 27-07-2023 Counter affidavit filed on behalf of respondent Nos. 1

to 5 is taken on record. With the consent of the respective

parties, matter is taken up for final disposal.



2. In the instant petition, petitioner has prayed for the following relief(s):-

“That the present writ application has been filed for issuance of appropriate writ/writs for setting aside the order dated 26.05.2022 vide memo no. 706 issued by the Respondent no. 6 whereby and whereunder the agreement vide no. 01/MBD/2020-21 dated 03.06.2020 was rejected in view of clause 59.1.2 (a), (h) and (i) of MBD and also for setting aside the order 17.01-2023 dated 18.01.2023 vide memo no. 365 issued by the respondent no. 3 by which the petitioner was black listed for 10 years in view of Bihar contractor Registration Rules (Rural works Department), 2007 vide clause no. 11 (ka), (vi) and vide office order no. 154 dated 18.06.2015 vide its clause 8 (i) (b) and issuance of appropriate writ or writs to reinstate the registration vide no. 1170117 to its original place as the petitioner is ready to complete the works allotted to him and/or issuance of any other writ/writs under the facts and circumstances of the case.”

3. The petitioner has invoked remedy of appeal insofar as cancellation of contract. Therefore, the present petition is being restricted to blacklisting of the petitioner for a period of ten (10) years, and it is to be decided.

4. Perusal of the show cause notice dated 14.07.2022, there is no mention of blacklisting for a specific period. In the absence of mentioning specific period of proposed blacklisting, the petitioner has made out a case so as to interfere with the blacklisting order dated 17.01.2023, for a period of ten (10) years. In this regard, he has cited earlier decision of this Court



dated 12.05.2023 passed in C.W.J.C. No. 5760 of 2023.

5. *Per contra*, learned counsel for the respondents resisted the aforesaid contentions that show cause notice before blacklisting a person or a firm need not be indicated the number of years of blacklisting as it would be pre-judging the blacklisting issue. Such a contention cannot be appreciated, for the reasons that Apex Court in the case of ***UMC Technologies Pvt. Ltd. vs. Food Corporation of India and Another***, reported in ***(2021) 2 SCC 551*** read with ***Isolators And Isolators Through Its Proprietor Mrs. Sandhya Mishra vs. Madhya Pradesh Madhya Kshetra Vidyut Vitran Co. Ltd. & Anr.*** reported in ***2023 SCC Online SC 444***, it is held that before blacklisting a person or a firm, a detailed show cause notice is required to be issued, since his livelihood is at stake.

6. Further, we have taken note of earlier decision of this Court dated 12.05.2023 passed in C.W.J.C. No. 5760 of 2023 (***Ram Sovit Yadav Vs. The State of Bihar & Ors.***) and we find that the present matter is identical matter. Hence, the petitioner has made out a case.

7. Accordingly, impugned order dated 17.01.2023 insofar as blacklisting the petitioner, stands set aside and matter is remanded to the concerned authority to proceed to issue a detailed specific notice in the light of Apex Court's decision.



8. On receipt of such a detailed show cause notice, the petitioner is hereby directed to furnish his explanations/objections, if any. Thereafter, the concerned authority is hereby directed to pass a detailed speaking order after due consideration of each of the contention to be raised by the petitioner in his explanation to the show cause notice.

9. The above exercise shall be completed within a period of three (3) months from the date of receipt of this order. The Appellate Authority is hereby directed to decide the petitioner's memorandum of appeal within a reasonable period of time.

10. At this stage, learned counsel for the respondents submitted that the petitioner has a remedy of appeal before the Appellate Authority insofar as blacklisting order is concerned. Alternative remedy could be ignored, for the reasons that blacklisting order has been passed without specifying the period of blacklisting in the show cause notice and the matter is covered by Apex Court and this Court's decisions. Even if the petitioner is asked to invoke remedy of appeal, things will not change and it would be futile exercise. Further, it would go to the root of the matter to the extent that there is a violation of principles of natural justice. Moreover, recently Apex Court in



the case of *M/s Godrej Sara Lee Ltd. vs. The Excise and Taxation Officer-cum-Assessing Authority and Ors.*, reported in *2023 SCC OnLine SC 95* and it is observed that the mere availability of an alternative remedy of appeal or revision would not by itself oust the jurisdiction of the High Court under Article 226 and render a writ petition “not maintainable”. Hence, petitioner need not to invoke remedy of appeal against the blacklisting order.

(P. B. Bajanthri, J)

(Jitendra Kumar, J)

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