

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5097 of 2019

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Chandan Kumar S/o Ashok Kumar, resident of Village Lodipur, Police Station
-Khizar Sarai, District- Gaya.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Rural Development Department, Government of Bihar, Patna
2. Engineer-in-chief Rural Development Department, Government of Bihar, Patna
3. Chief -Engineer-I Rural Development Department, Government of Bihar, Patna
4. Chief Engineer-II Rural Development Department Government of Bihar, Patna
5. Superintending Engineer Rural Works Department Works Circle, Gaya
6. Executive Engineer Rural works Department, Works Division, Nimchak Bathani, Gaya
7. Assistant Engineer Rural Works Department Works Division Nimchak Bathani, Gaya
8. Junior Engineer Rural Works Department Works Division, Nimchak Bathani, Gaya

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Manish Kumar No.2, Advocate
For the Respondent/s : Mr.Anjani Kumar (AAG-4)

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

Date : 24-02-2023

Heard learned counsels for respective parties.

2. In the instant petition, petitioner has prayed for
following reliefs:-

"(i) For setting aside the order
dated 02.08.2018 contained in Memo No.
8610 issued by the Respondent No. 2,



Engineer-in-Chief, whereby and whereunder the Contractorship License of M/S Kumar and Kumar Construction Proprietor Shri Chandan Kumar bearing License No. 2161212/ Grade- II has been blacklisted.

(ii) For issuance of direction to the respondent authorities to restore the license of the petitioner bearing License No. - 2161212/ Grade-II which has been illegally blacklisted by the respondent authorities without considering the reply of the show-cause and other materials available on the record.

(iii) And/or for any other relief or reliefs to which the petitioner may be found entitled encourse of hearing of this writ application."

3. The petitioner was granted license for contract work bearing License No. 2161212/Grade-II. Petitioner was issued show cause notice as to why his firm shall not be blacklisted. Such a proposal was based on the allegation relating to the fact that the petitioner and another threatened the Executive Engineer while visiting his house as well as in the office. In this regard, criminal proceedings are pending consideration. Meanwhile, the concerned respondents have proceeded to blacklist the petitioner's firm. Against show cause notice petitioner had submitted his reply on 13.10.2017. However, on 02.08.2018 petitioner's firm has been treated as blacklisted for ten years.

Order dated 02.08.2018 reads as under:-



"बिहार सरकार.

ग्रामीण कार्य विभाग

सकारण आदेश

सकारण आदेश संख्या-14 / अ 0 प्र 0-03-122/ 2017 8610 / पटना,
दिनांक-2-8-18

कार्यपालक अभियंता, ग्रामीण कार्य विभाग, कार्य प्रमंडल, नीमचक बथानी के पत्रांक 804 दिनांक 16.08.2017 द्वारा संवेदक मेसर्स कुमार एण्ड कुमार कन्सट्रक्शन प्रो०:- श्री चन्दन कुमार पता:-ग्राम - लोदीपुर, खिजरसराय, जिला-गया (निबंधन संख्या:- 2161212 / श्रेणी -02) को उनके अभद्र व्यवहार एवं कर्मियों के साथ मारपीट करने के कारण काली सूची में डालने का अनुरोध किया गया।

इस आशय की सूचना कार्यपालक अभियंता, कार्य प्रमंडल, नीमचक बथानी द्वारा जिला पदाधिकारी, गया के साथ ही साथ सभी शीर्ष पदाधिकारियों को दी जा चुकी है। उक्त संवेदक के विरुद्ध कार्यालय कर्मी द्वारा स्थानीय थाना सिविल लाइन, गया में प्राथमिकी संख्या 336/2017 दर्ज करायी जा चुकी है।

इस हेतु मुख्य अभियंता - 01 ग्रामीण कार्य विभाग, पटना का पत्रांक 3178 अनु० दिनांक 31.08.2017 एवं अधीक्षण अभियंता, ग्रामीण कार्य विभाग, कार्य अंचल, गया का पत्रांक 1858 अनु० दिनांक 22.08.2018 से उक्त संवेदक को काली सूची में डालने की अनुशंसा की जा चुकी है।

ऐसी स्थिति में विभागीय पत्रांक 11015 दिनांक 21.09.2017 द्वारा संवेदक से स्पष्टीकरण की माँग की गयी। जिसके अनुपालन में संवेदक ने अपने पत्रांक 452 / 17 दिनांक 13.10.2017 द्वारा साष्टीकरण विभाग को समर्पित किया गया जिसमें मूल रूप से संवेदक द्वारा पदाधिकारियों / कर्मचारियों को दोषी ठहराने का उल्लेख किया गया है। विभागीय पत्रांक 12925 अनु० दिनांक 23.11.2017 से मुख्य अभियंता - 2 ग्रामीण कार्य विभाग, पटना को निर्देश दिया गया कि पूरे प्रकरण की जाँच कर प्रतिवेदित किया जाय।

मुख्य अभियंता - 02, ग्रामीण कार्य विभाग, पटना द्वारा अपने पत्रांक 1240 अनु० दिनांक 12.03.2018 द्वारा कार्यपालक अभियंता, कार्य प्रमंडल, नीमचक बथानी के प्रतिवेदन संख्या 248 अनु० दिनांक 08.03.2018 के आलोक में संवेदक को कालीकृत करने हेतु सहमति प्रदान की गयी है।



अतएव वर्णित तथ्यों के आलोक में संवेदक संवेदक मेसर्स कुमार एण्ड कुमार कन्सट्रक्शन प्रो०:- श्री चन्दन कुमार पता:-ग्राम - लोदीपुर, खिंजरसराय, जिला-गया (निबंधन संख्या:- 2161212 / श्रेणी -02) से प्राप्त स्पष्टीकरण को अस्वीकृत करते हुए बिहार सरकार ग्रामीण कार्य विभाग की अधिसूचना संख्या-8123 दिनांक 19.12.2007 के कंडिका- 11 (क) उप कंडिका- I एवं III में निहित प्रावधानों एवं बिहार सरकार पथ निर्माण विभाग के कार्यालय आदेश संख्या -154 दिनांक 18.06.2015 के कंडिका-8 के उप कंडिका-2 में निहित प्रावधानों के आलोक में 10 (दस) वर्षों के लिए विभागीय काली सूची में डाला जाता है।"

Perusal of the decision to blacklist the petitioner's firm for ten years, the contentions of the petitioner, reply to the show cause notice dated 13.10.2017 has not been taken note of and not considered each of the contentions.

4. Thus, the petitioner has remedy of judicial review against blacklisting order dated 02.08.2018, as an unreasoned order has been passed by authority on 02.08.2018. On the ground of non-speaking order and for not considering the petitioner's reply to the show cause notice, petitioner has made out a prima facie case so as to interfere with Annexure-5 dated 02.08.2018.

5. At this stage, it is necessary to take note of Apex Court's Decision in the case of **Kranti Associates (P) Ltd. and Another V. Masood Ahmed Khan & Ors.** reported in **(2010) 9 SSC 496** and in para 47 it is held as under:-



“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 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).

(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 EHRR, at 562 para 29 and Anya v. University of Oxford, 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”.

6. In the light of Apex Court's decision, petitioner has made out a *prima facie* case so as to interfere with Annexure-5 dated 02.08.2018. Accordingly, it is set aside reserving liberty to the concerned respondent to proceed strictly in accordance with law after taking note of the principles laid down in the decision cited (*supra*).

7. Accordingly, the present petition stands allowed.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

rakhi/-

AFR/NAFR	NAFR
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