

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5257 of 2020

M/s D. K. Chaudhary and Company through its proprietor namely Dharmendra Kumar Chaudhary aged about 55 years (male) S/o Late Chandra Narayan Chaudhary, R/o- Vill and P.O.- Panchobh, P.S.- Bishanpur, Distt- Darbhanga.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Rural Works Department, Government of Bihar, Patna.
2. The Chief Engineer-3, Rural Works Department, Government of Bihar, Patna.
3. The Superintendent Engineer, Rural Works Department, Work Circle, Darbhanga.
4. The Executive Engineer, Rural Works Department, Work Division-1, Distt- Darbhanga.
5. The Assistant Engineer, Rural Works Department, Sub Division Hanuman Nagar, Distt- Darbhanga.
6. The District Collector, Darbhanga.
7. The Junior Engineer Rural Works Department, Work Division, Hanuman Nagar, Dist Darbhanga.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Kedar Jha, Advocate
For the Respondent/s : Mr. Manish Kumar, AC to AAG 6

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

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

5 24-04-2023 In the instant petition, petitioner has prayed for the following relief(s):-

(i) That this is an application for issuance of a writ in the nature of certiorari for quashing the memo no 1777 dated 26.8.2019 issued under the signature of Executive Engineer Rural works Department WORK Division-1 Darbhanga. Whereby and where under the agreement no



23/SBD 16-17 was revoked and earnest money and amount of surety were seized contractor [Petitioner] was directed to deposit remaining amount of Rs 1,89,429/- through Bank draft in the name of Executive Engineer in the office of Executive Engineer, Rural Work Department-1, Darbhanga and remaining work of contract has to be done on risk and cost of contractor which action of respondent no 4 is highly illegal, arbitrary, biased, mala fide and against the principle of natural justice.

(ii) For issuance of a writ/direction upon the respondents to make payment of compensation of damage due to heavy flood in the work of contract in question which was calculated by the respondents as well as the amount of carriage soil which was done after damage caused by the heavy flood. moreover the petitioner had done the work in question partly by arranging the fund from the Bank and market on commercial interests (Compounding) @ 16%, hence the petitioner may be justifiably required to be paid the above compensation of damages due to heavy flood as prayed, and after request of the petitioner payment has not been done and the respondents have been sitting idle over the file and the payments and not trying to get the allotment for the payment of the work done. However the petitioner is still ready to complete the work as per the agreement after removal of difficulty with regards to the measurement and demarcation on the land in question and cost of carriage soil, which was not part of contract and amount of damages due to heavy flood calculated by the respondents.

(iii) For granting any other relief/reliefs for which the petitioner may be found entitled in the eye of law.

2. Impugned order dated 26.08.2019 reads as under:-



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प्रतिबद्धता नहीं दर्शायी जा रही है।

एकसमस्या की राशि

Sl.No.	Vr.Nu.	Date	S.R.	P.S.D.	EOT	Total
1.	09	22.08.2017	32,895.00	19,713.00		52,568.00
2.	01	05.08.2018	1,37,825.00	82,695.00		2,20,520.00
						Total-2,73,088.00

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रामकृष्ण मिश्र
सोमद्वीप
काठमाडौं, पश्चिमाञ्चल-१

लेखा पदाधिकारी
कलकत्ता-१

कार्यपालक अभियंता
प्रादेशिक कार्य विभाग
कार्य, प्रमाणन, परीक्षा
(क. १)

पत्रांक ३३१३ / कार्य-१३७ १३३३ लक्ष्मेश्वरशायक / दिनांक १६.०६.७७

प्रतिलिपि गेजर्ल डी. के. चौधरी एण्ड को. प्रा. लि. द्वारा कुलर चौधरी, ग्राम+ पोस्ट-पंजाब, जिला- हरनाथ
सचनार्थ एवं अनुपालनार्थ प्रेषित।

सामयिक विभाग, जयपुर प्रमोदल हरमंगा-1
25.8.19



3. Perusal of the aforementioned document, it is evident that petitioner has not been heard in the matter. In other words, specific show cause notice has not been issued seeking petitioner's explanation relating to impugned action. On this short ground, the petitioner has made out a case.

4. Apex Court in the case of *UMC Technologies Pvt. Ltd. v. Food Corporation of India and Anr.*, 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. and Anr.*, reported in *2023 LiveLaw (SC) 330*.

Overall view of the Court insofar as blacklisting matters, the authorities were required to take note of the following points.

(i) The order of blacklisting involving civil consequences cast slur. Such an action can be taken only on the basis of objectives satisfaction of the authority concerned. The fundamental of fair play require that the person concerned should be given an opportunity to present his case before he is put on blacklisting.

(ii) The notice of blacklisting must specifically spell out the intention of blacklisting.



(iii) The order of blacklisting must be speaking order supported with reasons.

(iv) Blacklisting cannot be for an indefinite period and the period of blacklisting should be fixed based on doctrine of proportionality of the case.

5. Accordingly, the petitioner has made out a *prima facie* case so as to interfere with the impugned order dated 26.08.2019 and it is set aside reserving liberty to the concerned respondent to proceed in accordance with law within a period of three months from the date of receipt of this order. Concerned respondent shall take note of the aforementioned decisions of the Apex Court.

6. Accordingly, the writ petition stands allowed.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

DKS/
Balmukund/-

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