

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3860 of 2023

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Rajiv Kumar, Son of Sri Awadh Kishore Sharma, Resident of Village
Bishunpur, P.O.- Ghejan, P.S.- Sakurabad, District- Jehanabad, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Minor Irrigation Department, Government of Bihar, Patna.
2. The Engineer in Chief, Minor Irrigation Department, Government of Bihar, Patna.
3. The Superintendent of Police, District Gaya, Bihar.
4. The Chief Engineer, Minor Irrigation Department, Government of Bihar, Patna.
5. The Superintending Engineer (Head Quarters), Planning, Minor Irrigation Circle, Patna, District Patna, Bihar.
6. The Executive Engineer, Minor Irrigation Division, Gaya, District Gaya, Bihar.
7. The Officer in Charge, Vishnupad Police Station, District Gaya, Bihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Prabhat Ranjan, Advocate Mr. Chandan Kumar, Advocate
For the Respondent/s	:	Mr.Ajay Kumar, G.A.-9

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

Date : 20-04-2023

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

2. The present writ petition has been filed by the
petitioner claiming the following reliefs :-

*“(i) Quashing of the Notice to Show Cause
dated 11.10.2022 contained in Letter No.*



2311 issued by Executive Engineer, Minor Irrigation Division, Gaya (Annexure 3) whereby the petitioner has been asked to Show Cause as to why for the alleged act of tampering in the "work done value" which is not as per the terms of the Tender; appropriate action under Bihar Contractors Registration Rules, 2007 and IPC/ CrPC be not taken;

(ii) Quashing of the consequential order dated 20.02.2023 as contained in Letter no. 107 (Annexure 5) by which, the Incharge Chief Engineer, Minor Irrigation Department, Patna has blacklisted the Registration of the petitioner for a period of 10 years in terms of Rule 11(a) (vii) of the Bihar Contractors Registration Rules, 2007 on the basis of a Show Cause Notice issued by an incompetent authority and without even referring to the causes shown by the petitioner

(iii) Declaration to the effect that the aforesaid exparte order of blacklisting shall not be made applicable retrospectively in connection with those tenders in which the last date for submission of the Tender documents has already lapsed and the petitioner has submitted the Tender documents and which tenders are pending disposal; and

(iv) Restraining the Respondents from giving effect to taking any precipitative / coercive



action arising out of the aforesaid order of blacklisting and the dispute during the pendency of the present writ application and/or without the leave of this Hon'ble Court.”

3. Briefly stated the facts of the case, according to the petitioner, are that the petitioner is a registered contractor under the Minor Irrigation Department, Government of Bihar, Patna. The Chief Engineer, Minor Irrigation Department, floated a Notice Inviting Tender No. 13/2021-22 dated 23.03.2022 relating to various renovation and restoration works in the District of Gaya, Arwal, Nawada, Kaimur, Mohania and Patna under different irrigation schemes. The petitioner responded to the aforementioned NIT and submitted his Bid document along with all other valid certificates. It has come to the knowledge of the petitioner that during processing of the Tender, a complaint of general nature with regard to genuineness of the certificates being submitted by the prospective Bidders was lodged at the instance of one of the contractors, viz. M/s. R K Associate, intimating the Department that certain contractors are submitting certificates relating to eligibility criteria with interpolations in it. The Technical Bid Evaluation Committee convened its meeting on 30.07.2022 and, after considering the complaint, decided to disqualify the petitioner and the



Committee resolved to recommend/ report the matter to the Departmental Tender Committee headed by the Additional Chief Secretary. Thereafter, the Departmental Tender Committee comprising four members presided by the Additional Chief Secretary convened its meeting on 27.09.2022 and considered the recommendation of the Chief Engineer as contained in Letter no. 1637 dated 30.07.2022 and accepted the proposal of the Technical Bid Evaluation Committee rejecting the Technical Bid of certain Contractors and directed the Chief Engineer to initiate an appropriate action against such contractors. In compliance of the direction contained in the aforesaid proceedings of the Departmental Tender Committee, the Executive Engineer vide his letter no. 2311 dated 11.10.2022 issued a Notice to Show Cause against the petitioner seeking an immediate reply as to why appropriate action be not taken under the provisions of Bihar Contractors Registration Rules, 2007 for interpolating in "work done value". The petitioner responded to the aforesaid Show Cause Notice vide Letter dated 05.12.2022 explaining all the circumstances and requested for exoneration and dropping of the proceedings. Thereafter, the Chief Engineer (In-charge) vide order contained in Letter No. 107 dated 20.02.2023, blacklisted the Registration of the petitioner



(Registration No. 20/2019 Class I) for a period of 10 years in terms of Rule 11(क)(vii) of the Bihar Contractors Registration Rules, 2007. Being aggrieved by the said order of blacklisting, the petitioner filed the present Writ.

4. The learned counsel for the petitioner while challenging the impugned show cause notice dated 11.10.2022 vehemently submitted that the manner in which the impugned show cause notice has been issued is absolutely arbitrary, discriminatory and in violation of principles of the natural justice and *de hors* the provisions of Bihar Contractors Registration Rules, 2007. From perusal of the impugned notice to show cause, it is evident that the allegation made therein is vague, and lacks material particulars, and as such, the same is based upon conjectures and surmises. The respondent authorities, by their purported action, have contravened the right of the petitioner of fair hearing inasmuch as from the perusal of the impugned notice to show cause, it is evident that no evidence has been put forward, nor any documents have been supplied by the authorities so as to accord the petitioner the opportunity to submit an effective reply. However, the reply was submitted because of continuous reminders from the competent authority. The learned counsel further submitted that the



allegation made in the impugned show cause notice is absolutely vague and cryptic inasmuch as the respondents have not stated as to which document was interpolated and what was the nature of the interpolation. Further, on one hand, the petitioner has been given no opportunity to present his side of the case, and on the other hand, the Department on the basis of the impugned notice to show cause had been rejecting the tenders of the petitioner one after another. Moreover, the proceedings sought to be conducted after the issuance of the impugned notice to show cause was an empty formality since Additional Chief Secretary, Minor Irrigation Department, Government of Bihar Patna and the Chief Engineer, Minor Irrigation Department, Government of Bihar Patna have already applied their mind on the merits of the case of the petitioner and have recorded a conclusive finding of guilt against the petitioner. The learned counsel further submitted that the Executive Engineer, Minor Irrigation Department, Government of Bihar, Patna, was not at all competent to issue the impugned notice to show cause, rather it is the Registering Authority who has the competence to initiate proceedings under Bihar Contractors Registration Rules, 2007 and therefore, the impugned show cause notice is beyond jurisdiction and *de hors*



the express provisions of Bihar Registration Rules, 2007.

5. The learned counsel for the petitioner further challenging the order of blacklisting submitted that the order of blacklisting dated 20.02.2023, as contained in Letter No. 107, is absolutely arbitrary, unconstitutional and suffers from all other vices including the violation of principles of natural justice on which an administrative decision can be quashed under writ jurisdiction by this Court. The learned counsel further submitted that a valid show cause is a condition precedent for a valid proceeding/ adjudication contemplating blacklisting in terms of Bihar Contractors Registration Rules, 2007 and the impugned order of blacklisting has been issued without a notice to show cause from the competent authority i.e. the Registering Authority contemplating such action. Therefore, there was no notice and this fact is evident from perusal of Annexure 6. Even otherwise also, the impugned order was not preceded by a show cause notice contemplating the penalty proposed to be taken in as much as Letter No. 2311 dated 11.10.2022, which is being relied upon by the respondents to be treated as the show cause notice does not mention the contemplated action and therefore, is in express contradiction of the law laid down by the Hon'ble Apex Court in the case of ***Gorkha Security Services V. Govt.***



(NCT of Delhi) and Ors, reported in *(2014) 9 SCC 105*. The learned counsel further submitted that the impugned order of blacklisting is also absolutely non-speaking and does not assign any reason for rejecting the causes shown by the petitioner and, therefore, could not stand the scrutiny of law and, thus, would be a nullity in the eyes of law. The learned counsel further submitted that the principle of requirement of a reasoned order by way of compliance of natural justice is well settled in number of cases decided by the Hon'ble Apex Court, viz. *Siemens Engineer and Manufacturing Company of India Vrs. Union of India and others* reported in *AIR 1976 SC 1785*, *S L Kapoor Vrs. Jagmohan and others* reported in *AIR 1981 SC 136*, *S N Mukherjee Vrs. Union of India* reported in *AIR 1990 SC 1984* or even a Division Bench of this Court in the case of *Chandan Kumar Yadav @ Chandan Yadav Vrs. State of Bihar* reported in *2013 (2) PLJR 605*. Even otherwise, the impugned order dated 20.02.2023 takes into consideration the three letters/ recommendations viz. (i) Letter No. 405 dated 07.02.2023 issued by the Chief Engineer, Minor Irrigation Department, Patna; (ii) Letter No. 441 dated 30.01.2023 issued by the Executive Engineer, Minor Irrigation Division, Gaya; (iii) Letter No. 225 dated 01.02.2023 issued by the Superintending



Engineer, Minor Irrigation Circle, Gaya. All the aforesaid letters/ recommendations which have been relied upon by the adjudicating authority are subsequent to the so called show cause notice which was issued as early as on 11.10.2022. Therefore, fresh materials, post issuance of the show cause notice have been taken into consideration for taking the impugned decision and, therefore, on aforesaid account also, the impugned order of blacklisting could not be sustained legally.

6. The learned counsel for the petitioner further submitted that blacklisting for a period of 10 years amounts to permanent blacklisting inasmuch as all the works department in the State of Bihar do not take into consideration, as a credential / eligibility criteria, any work experience which relates to a period which is beyond 5 years from the date of issuance of the notice inviting tender. The learned counsel further submitted that even otherwise also the registering authority cannot proceed to blacklist the registration of any person for a period longer than for which the Registration Certificate is valid inasmuch as registration is granted for a period of 5 years only. The learned counsel further submitted that the period of blacklisting cannot travel beyond the period of registration and on this score also, the impugned order of



blacklisting is bad in law. The learned counsel further submitted that the order of blacklisting have been passed and issued on 20.02.2023 just for the reason that on 21.02.2023, CWJC No. 914 of 2023 filed on 06.02.2023 by the petitioner challenging the decision of the Technical Bid Evaluation Committee rejecting the technical bid of the petitioner was directed to be listed. The learned counsel further submitted that CWJC No. 914 of 2023 was filed by the petitioner for quashing of the decision of the Technical Bid Evaluation Committee dated 07.12.2022 in connection with Tender No. 27367 whereby, the Technical Bid of the Petitioner has been held to be not responsive merely on the ground that on an earlier occasion the Petitioner had annexed a forged document in connection with some other tender and restraining the respondents from finalizing/ creating third party rights in connection with Tender ID NO. 27367 pursuant to the decision of the Technical Bid Evaluation Committee dated 07.12.2022 during the pendency of the writ application without the leave of this Court. The learned counsel further submitted that in view of the fact that the very jurisdiction of the respondent is under challenge, the impugned order is passed in violation of the principles of natural justice, the impugned order has a direct bearing upon the fundamental



rights as guaranteed under Part III of the constitution of India, the institution of the present writ application can not be open to challenge for the reasons of availability of the alternate remedy. The learned counsel further submitted that the firm has participated in a number of tenders prior to issuance of the order of blacklisting. All the tenders have been submitted much prior to the issuance of the aforesaid order of blacklisting but all of them are pending disposal and, therefore, the respondents may be restrained from giving effect to the order of blacklisting retrospectively in connection with those tenders in which the petitioner has already participated and the tender process is awaiting disposal and finalization. Thus, the learned counsel submitted that the impugned order of blacklisting is illegal, improper and bad in the eyes of law and, as such, the same is fit to be quashed in the interest of justice.

7. 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. So, no



interference is required by this Court in the present matter. The learned counsel further submitted that the official respondent was not even required to give reasons while passing the orders against the petitioner in the light of proposition of law as elucidated by the Hon'ble Supreme Court. There can be no role of principles of equity and natural justice in commercial functions. This Court could not sit an appellate court over the decision of the official respondent.

8. The learned counsel for the respondents further submitted that the Apex Court in the case of ***Shobikaa Impex (P) Ltd.(supra)*** in paragraph 21 held as under :

“21. In Jagdish Mandal v. State of Orissa [Jagdish Mandal v. State of Orissa, (2007) 14 SCC 517, it has been ruled that:

“22. ... When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked



to protect private interest at the cost of public interest, or to decide contractual disputes.”

9. The learned counsel for the respondents further submitted that the Apex Court in the case of ***Silppi Constructions Contractors Vs. Union of India (supra)*** held in paragraphs 19, 20 & 25 as under :

“19. This Court being the guardian of fundamental rights is duty-bound to interfere when there is arbitrariness, irrationality, mala fides and bias. However, this Court in all the aforesaid decisions has cautioned time and again that courts should exercise a lot of restraint while exercising their powers of judicial review in contractual or commercial matters. This Court is normally loathe to interfere in contractual matters unless a clear-cut case of arbitrariness or mala fides or bias or irrationality is made out. One must remember that today many public sector undertakings compete with the private industry. The contracts entered into between private parties are not subject to scrutiny under writ jurisdiction. No doubt, the bodies which are State within the meaning of Article 12 of the Constitution are bound to act fairly and are amenable to the writ jurisdiction of superior courts but this discretionary power must be exercised with a great deal of restraint and caution. The courts must realise their limitations and the havoc which needless interference in commercial matters can cause. In contracts involving technical issues the courts should be



even more reluctant because most of us in Judges' robes do not have the necessary expertise to adjudicate upon technical issues beyond our domain. As laid down in the judgments cited above the courts should not use a magnifying glass while scanning the tenders and make every small mistake appear like a big blunder. In fact, the courts must give "fair play in the joints" to the government and public sector undertakings in matters of contract. Courts must also not interfere where such interference will cause unnecessary loss to the public exchequer.

20. *The essence of the law laid down in the judgments referred to above is the exercise of restraint and caution; the need for overwhelming public interest to justify judicial intervention in matters of contract involving the State instrumentalities; the courts should give way to the opinion of the experts unless the decision is totally arbitrary or unreasonable; the court does not sit like a court of appeal over the appropriate authority; the court must realise that the authority floating the tender is the best judge of its requirements and, therefore, the court's interference should be minimal. The authority which floats the contract or tender, and has authored the tender documents is the best judge as to how the documents have to be interpreted. If two interpretations are possible then the interpretation of the author must be accepted. The courts will only interfere to prevent arbitrariness, irrationality, bias, mala fides or perversity. With*



this approach in mind we shall deal with the present case.

25. That brings us to the most contentious issue as to whether the learned Single Judge of the High Court was right in holding that the appellate orders were bad since they were without reasons. We must remember that we are dealing with purely administrative decisions. These are in the realm of contract. While rejecting the tender the person or authority inviting the tenders is not required to give reasons even if it be a State within the meaning of Article 12 of the Constitution. These decisions are neither judicial nor quasi-judicial. If reasons are to be given at every stage, then the commercial activities of the State would come to a grinding halt. The State must be given sufficient leeway in this regard. Respondents 1 and 2 were entitled to give reasons in the counter to the writ petition which they have done”.

10. Thus, the learned counsel for the respondents submitted that there is no infirmity in the action of the official respondents against the petitioner and hence there is no merit in the writ petition and the same be dismissed.

11. Having considered the material available on record and rival submissions, we find the impugned order of blacklisting dated 20.02.2023, as contained in letter no.107, issued by the In-charge Chief Engineer, Minor Irrigation Department, Patna suffers from a number of vices and has not



been passed following the principles of natural justice. Passing of such kind of orders is itself manifestation of arbitrariness and irrationality.

12. It is relevant to quote the order of blacklisting dated 20.02.2023, which is impugned herein:-

मुख्य अभियंता का कार्यालय
(योजना अनुभवण+भूगर्भ)
लघु जल संसाधन विभाग,
जल भवन, तृतीय तल्ला, राइडिंग रोड शेखपुरा, पटना-14
ईमेल- ce.pmg-bih@goy.in दूरभाष- 0612-2215035
संचिका लज्ज०सं०वि०- (पी०एम०जी०) डिवार/ कालीकृत-11/2023-

/ पटना, दिनांक-

आदेश

मुख्य अभियंता, लघु जल संसाधन विभाग, पटना के पत्रांक- 405 दिनांक 07.02.2023, कार्यपालक अभियंता, लघु सिंचाई प्रमंडल, गया के पत्रांक-441 दिनांक 30.01.2023 एवं अधीक्षण अभियंता, लघु सिंचाई गया के पत्रांक- 225 दिनांक 01.02.2023 द्वारा श्री राजीव कुमार निबंधन संख्या- 20/2010 (प्रथम श्रेणी) वैधता अवधी दिनांक 04.07.2019 से 03.07.2024 को निविदा आमंत्रण सूचना संख्या-13/2021-22 के ग्रुप सं०- 03 (बुडवा आहर पोखर का जिर्णोद्धार कार्य) एवं ग्रुप सं० - 04 (बकरौर हथियार आहर पर्इन का जिर्णोद्धार कार्य) में डाले गये कागजात/अभिलेखों में मात्रा का छेड़-छाड़ कर निविदा में भाग लेने का आरोप प्रतिवेदित करते हुए इन्हें कालीकृत करने की अनुशंसा की गई है।

कार्यपालक अभियंता, लघु सिंचाई प्रमंडल गया का पत्रांक-2380 दिनांक- 17.10.2022 एवं पत्रांक-2905 दिनांक 01.12.2022 द्वारा कारण पृच्छा की गई है। अतएव अब कारण पृच्छा की आवश्यकता प्रतित नहीं होती



है।

अतः उक्त के आलोक में विषय की महत्ता के मदेनजर कार्यपालक अभियंता, लघु सिंचाई प्रमंडल, गया/अधीक्षण अभियंता, लघु सिंचाई अंचल, गया एवं मुख्य अभियंता, लघु जल संसाधन विभाग, पटना द्वारा उपलब्ध कराये गये अभिलेखों में वर्णित तथ्यों के आधार पर प्राप्त प्रस्ताव एवं अनुशंसा के आलोक में संवेदक श्री राजीव कुमार, ग्राम-विशुनपुर, पोस्ट-घेजन थाना सकुराबाद, जिला-जहानाबाद, पिन कोड 804408 निबंधन संख्या लज्ज०सं०वि०-20/2019 श्रेणी (प्रथम) को बिहार ठेकेदारी निकांन नियमावली-2007 के 11 क vii में निहित शर्तों एवं प्रावधानों के आलोक में अगले 10 (दस) वर्षों के लिए कालीकृत किया जाता है।

ह 0/-

प्रभारी मुख्य अभियंता
(योजना+अनुश्रवण+भूगर्भ),
लघु जल संसाधन विभाग, पटना।

पत्रांक:-

/पटना, दिनांक:-

प्रतिलिपि श्री राजीव कुमार, ग्राम-विशुनपुर पोस्ट भेजन, थाना-सकुराबाद, जिला-जहानाबाद, पिन कोड-804408 निबंधन संख्या-लज्ज०सं०वि०-20/2019 श्रेणी (प्रथम) को सूचनार्थ प्रेषित।

ह 0/-

प्रभारी मुख्य अभियंता
(योजना + अनुश्रवण+भूगर्भ),
लघु जल संसाधन विभाग, पटना।

13. The impugned order of blacklisting dated 20.02.2023 shows that the official respondent held that there was no need to issue any show cause before blacklisting the petitioner as the show cause has already been issued vide letter



no.2380 dated 17.10.2022 and letter no.2905 dated 01.12.2022. But from perusal of both the letters dated 17.10.2022 and 01.12.2022, it appears that the Executive Engineer issued show cause on 17.10.2022 and 01.12.2022 against the petitioner seeking an immediate reply as to why appropriate action be not taken under the provisions of Bihar Contractors Registration Rules, 2007 for interpolating in "work done value". It was not a notice to show cause against blacklisting. Thus, it appears that no show cause notice has been issued before blacklisting the petitioner.

14. It further appears that order of blacklisting is absolutely non-speaking and does not assign any reason for rejecting the causes shown by the petitioner and, therefore, could not stand the scrutiny of law. There is no consideration of reply of the petitioner to the show cause notice. The principle of requirement of a reasoned order by way of compliance of natural justice is well settled in a catena of cases decided by the Hon'ble Apex Court.

15. This Court on 17.03.2023 has passed following order:-

“Respondent No. 5- the Superintending Engineer (Head Quarters), Planning, Minor Irrigation Circle, Patna is hereby directed to



appear in person, he must also file a personal affidavit as to why the petitioner's has not been provided an opportunity of hearing or issuance of show-cause notice and other formalities despite repeatedly judicial orders are being pronounced that before black listing any contractor he must be provided an opportunity of hearing and heard in the matter. Therefore, he shall be present in the Court on the next date of hearing and apprise this Court as to how he can skip in issuing show-cause notice and completing formalities in the light of the Apex Court decisions as well as this Court.

Re-list this matter on 07.04.2023."

16. In terms of the aforesaid order, a supplementary counter-affidavit has been filed by the Superintending Engineer-cum-Chief Engineer (Hq), Planning, Minor Irrigation Circle, Patna (Respondent No. 5). It is relevant to quote paragraph nos. 4 to 13 of the aforesaid affidavit.

"4. That, it is stated that with this regard vide letter no. 2311 dated 11.10.2022, letter no. 2380 dated 17.10.2022 and letter no. 2905 dated 01.12.2022 show cause has been sought by the petitioner which the petitioner himself has admitted in paragraph no. 12 of the writ petition.

5. That, it is further stated that in pursuant thereto reply to the show cause dated 05.12.2022 has also been submitted by the petitioner to the Chief Engineer, Minor Irrigation Department, Government of Bihar, Patna in which he himself admitted that he has



submitted the forged experience certificate stating to be a bonafide mistake.

6. That it is further stated that in the light of the reply filed by the petitioner vide letter no. 1250 dated 06.06.2022 the Executive Engineer Minor Irrigation Division Gaya has asked the Engineer Minor Irrigation Madhubani as to whether the experience certificate submitted by petitioner is true or not.

7. That thereafter the Executive Engineer Minor irrigation Madhubani vide its letter no. 969 dated 09.09.2021 has sent the experience certificate which did not tally with the certificate supplied by the petitioner which shows that the forged certificate has been deliberately submitted by the petitioner.

8. That, the petitioner has been provided the ample opportunity of being heard and after the consideration of the reply filed by the petitioner, order of blacklisting has been passed, so, there is no violation of principle of natural justice.

9. That, it is submitted that as per Clause 22 of the NIT, the bidders had to submit declaration on affidavit with regard to authenticity of the documents enclosed with Tender papers in following form:-

"I, the undersigned, do hereby certify that all statements made in the required attachments made in the required attachments are true and correct, and if found fake/forged, the undersigned will be liable for infliction upon the F.I.R. and lawful punishment as well as blacklisting."

The petitioner has on oath said that he



has attached all the documents which are all true and if found forged then he may be blacklisted for the same.”

10. That, in Clause 30 of the NIT, it has clearly been stipulated that if any document submitted by the bidders if found fake or forged, their bid shall be declared Invalid.

11. That, it is apparent from the aforesaid facts that the petitioner submitted fake and fabricated documents along with his tender papers in complete violation of the aforesaid terms and conditions of the NIT. The conduct of the petitioner also amounts to misconduct under Rule 11 (a) (vii) of the Bihar Contractors Registration Rules, 2007 for which he is liable to be inflicted with punishment of blacklisting suspension or demotion.

12. That, the Department has issued direction vide letters no. 136 (Mo) dated 24.01.2023 to take strong action against such Contractors who submitted fake and forged documents to procure tender.

13. That it is further relevant to mention here that if the work is being allotted to the petitioner on the grounds of fake documents then it will set a wrong impression to the other contractors and the said practice will be continued by the other contractors as well.”

17. 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."

18. The Apex Court in the case of **Gorkha Security**

Services (supra) held in paragraph 21 as under :

"21. The central issue, however, pertains to the requirement of stating the action which is proposed to be taken. The fundamental purpose behind the serving of show-cause notice is to make the noticee understand the precise case set up against him which he has to meet. This would require the statement of imputations detailing out the alleged breaches and defaults he has committed, so that he gets an opportunity to rebut the same. Another requirement, according to us, is the nature of action which is proposed to be taken for such a breach. That should also be stated so that the noticee is



able to point out that proposed action is not warranted in the given case, even if the defaults/breaches complained of are not satisfactorily explained. When it comes to blacklisting, this requirement becomes all the more imperative, having regard to the fact that it is harshest possible action”.

19. Recently, the Apex Court in the case of ***M.P. Power Management Co. Ltd. v. Sky Power Southeast Solar India (P) Ltd., (2023) 2 SCC 703*** held in paragraph 58 as follows :

“58. In Mahabir Auto Stores v. Indian Oil Corpn. [Mahabir Auto Stores v. Indian Oil Corpn., (1990) 3 SCC 752] , the appellant complained that the respondent, which was a company incorporated under the Companies Act was denying or discontinuing to deal with the appellant, which had been dealing with the respondent for nearly eighteen years. We listen to the following words spoken by this Court :

“12. It is well settled that every action of the State or an instrumentality of the State in exercise of its executive power, must be informed by reason. In appropriate cases, actions uninformed by reason may be questioned as arbitrary in proceedings under Article 226 or Article 32 of the Constitution. Reliance in this connection may be placed on the observations of this Court in Radhakrishna Agarwal v. State of Bihar [Radhakrishna Agarwal v. State of Bihar, (1977) 3 SCC 457] . It appears to



us, at the outset, that in the facts and circumstances of the case, the respondent company IOC is an organ of the State or an instrumentality of the State as contemplated under Article 12 of the Constitution. The State acts in its executive power under Article 298 of the Constitution in entering or not entering in contracts with individual parties. Article 14 of the Constitution would be applicable to those exercises of power. Therefore, the action of State organ under Article 14 can be checked. See Radhakrishna Agarwal v. State of Bihar [Radhakrishna Agarwal v. State of Bihar, (1977) 3 SCC 457] , SCC at p. 462 but Article 14 of the Constitution cannot and has not been construed as a charter for judicial review of State action after the contract has been entered into, to call upon the State to account for its actions in its manifold activities by stating reasons for such actions. In a situation of this nature certain activities of the respondent company which constituted State under Article 12 of the Constitution may be in certain circumstances subject to Article 14 of the Constitution in entering or not entering into contracts and must be reasonable and taken only upon lawful and relevant consideration; it depends upon facts and circumstances of a particular transaction whether hearing is necessary and reasons have to be stated. In case any right conferred on the citizens which is sought to be interfered, such action is subject to Article 14 of the Constitution, and must be reasonable and can be taken only upon lawful and relevant grounds of



public interest. Where there is arbitrariness in State action of this type of entering or not entering into contracts, Article 14 springs up and judicial review strikes such an action down. Every action of the State executive authority must be subject to rule of law and must be informed by reason. So, whatever be the activity of the public authority, in such monopoly or semi-monopoly dealings, it should meet the test of Article 14 of the Constitution. If a governmental action even in the matters of entering or not entering into contracts, fails to satisfy the test of reasonableness, the same would be unreasonable. In this connection reference may be made to E.P. Royappa v. State of T.N. [E.P. Royappa v. State of T.N., (1974) 4 SCC 3 : 1974 SCC (L&S) 165] , Maneka Gandhi v. Union of India [Maneka Gandhi v. Union of India, (1978) 1 SCC 248] , Ajay Hasia v. Khalid Mujib Sehravardi [Ajay Hasia v. Khalid Mujib Sehravardi, (1981) 1 SCC 722 : 1981 SCC (L&S) 258] , Ramana Dayaram Shetty v. International Airport Authority of India [Ramana Dayaram Shetty v. International Airport Authority of India, (1979) 3 SCC 489] and also Dwarkadas Marfatia & Sons v. Port of Bombay [Dwarkadas Marfatia & Sons v. Port of Bombay, (1989) 3 SCC 293] . It appears to us that rule of reason and rule against arbitrariness and discrimination, rules of fair play and natural justice are part of the rule of law applicable in situation or action by State instrumentality in dealing with citizens in a situation like the present one. Even though the rights of the citizens are in the nature of



contractual rights, the manner, the method and motive of a decision of entering or not entering into a contract, are subject to judicial review on the touchstone of relevance and reasonableness, fair play, natural justice, equality and non-discrimination in the type of the transactions and nature of the dealing as in the present case.

17. We are of the opinion that in all such cases whether public law or private law rights are involved, depends upon the facts and circumstances of the case. The dichotomy between rights and remedies cannot be obliterated by any strait-jacket formula. It has to be examined in each particular case. Mr Salve sought to urge that there are certain cases under Article 14 of arbitrary exercise of such “power” and not cases of exercise of a “right” arising either under a contract or under a statute. We are of the opinion that that would depend upon the factual matrix.

18. Having considered the facts and circumstances of the case and the nature of the contentions and the dealing between the parties and in view of the present state of law, we are of the opinion that decision of the State/public authority under Article 298 of the Constitution, is an administrative decision and can be impeached on the ground that the decision is arbitrary or violative of Article 14 of the Constitution of India on any of the grounds available in public law field. ... It is true that there is discrimination between power and right but



whether the State or the instrumentality of a State has the right to function in public field or private field is a matter which, in our opinion, depends upon the facts and circumstances of the situation, but such exercise of power cannot be dealt with by the State or the instrumentality of the State without informing and taking into confidence, the party whose rights and powers are affected or sought to be affected, into confidence. In such situations most often people feel aggrieved by exclusion of knowledge if not taken into confidence.”

20. It 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.

21. In the light of these facts and circumstances and law laid down by the Hon'ble Apex Court, the petitioner has made out a *prima-facie* case so as to interfere with the impugned action of blacklisting.

22. Accordingly, the impugned order dated 20.02.2023, passed by the In-charge Chief Engineer, Minor Irrigation Department, Patna is set aside. The matter is remanded to the concerned respondent for taking a fresh decision in accordance



with law as well as in the light of discussions made hereinabove.

The concerned authority shall complete the process within a period of three months from the date of receipt/production of a copy of this judgment.

23. Accordingly, this writ petition stands allowed.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

V.K.Pandey/-

AFR/NAFR	A.F.R.
CAV DATE	07.04.2023
Uploading Date	20.04.2023
Transmission Date	N.A.

