

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3958 of 2023

=====

Neha Singh, wife of Sri Sudarshan Kumar Singh, resident of Swaraj Sadan,
Anand Vihar Colony, Kazipur, P.S. Kahalgaon, District Bhagalpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Road Construction Department, Government of Bihar, Patna.
2. The Engineer in Chief (Works Management) cum Additional Commissioner cum Special Secretary, Road Construction Department, Government of Bihar, Patna.
3. The Chief Engineer, National Highway Wing, Road Construction Department, Bihar, Patna.
4. The Superintending Engineer, National Highway Circle, Bhagalpur, District Bhagalpur, Bihar.
5. The Executive Engineer, National Highway Division, Bhagalpur, District Bhagalpur, Bihar.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Prabhat Ranjan, Advocate
For the Respondent/s : Mr. K.K. Singh AC to GP 22

=====

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

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

3 13-04-2023 In the instant petition, petitioner has prayed for the

following relief(s):-

“(i) Quashing of the Notice to Show Cause contained in Letter No. 6745 dated 25.09.2020 whereby the petitioner has been asked to submit her explanation within a period of 7 days as to why, for the reasons stated therein, appropriate action be not taken in terms of the relevant provisions of the Bihar Contractors Registration Rules, 2007 and also the agreement;
(ii) Quashing of the Consequential order bearing Memo No. 8095 (E) dated 03.12.2020 whereby the petitioner has been blacklisted for a period of 10



years in terms of Clause 11 (क) (vii) of the Bihar Contractors Registration Rules, 2007 read with Clause 8 (1) (d) of Order No. 154 dated 18.06.2015 issued by the Road Construction Department, Government of Bihar, Patna:

(iii) Quashing of the order dated 26.10.2022 contained in Memo No. 6426 (E) passed by the Additional Chief Secretary, Road Construction Department (Annexure 11) whereby, the appeal filed by the petitioner in terms of the Bihar Contractors Registration Rules, 2007 has been rejected and the order dated 03.12.2020 contained in Memo No. 8095 by which, the Registration of the petitioner was blacklisted for a period of 10 years have been confirmed; and

(iv) Staying the operation of the order bearing Memo No. 8095 (e) dated 03.12.2020 issued by the Engineer in Chief (Works Management) contained in Annexure 8 whereby the petitioner has been blacklisted for a period of 10 years in terms of Clause 11 (क) (vii) of the Bihar Contractors Registration Rules, 2007 read with Clause 8 (1) (d) of Order No. 154 dated 18.06.2015 issued by the Road Construction Department, Government of Bihar, Patna.”

2. The petitioner had undertaken maintenance work of the road in NH-80 at 136 KM on an emergency basis. The work was stated to have been inspected on 08.09.2017 thereafter the official respondents were stated to have found certain alleged shortcomings while executing the maintenance work. Therefore, they have initiated proceedings to blacklist the petitioner and the petitioner has been blacklisted on 03.12.2020 vide memo no. 8095(E) passed by the Engineer in Chief (Works Management) Road Construction Department, Government of Bihar. She had remedy of appeal against the blacklisting order, on the other



hand, she had approached this Court. This Court disposed of the writ petition while relegating her to appellate authority. The petitioner had filed her memorandum of appeal before the appellate authority, which is running to 16 pages, the appellate authority rejected the petitioner's appeal on 26.10.2022, hence the present writ petition.

On 22.03.2023 the following order was passed:-

“First respondent-Principal Secretary, Road Construction Department, Government of Bihar, Patna is hereby directed to file counter affidavit. Counter affidavit must disclose as to whether Annexure-11 is a speaking order or not? To the extent, in considering the petitioner's memorandum of appeal. Each of the contentions raise in the memorandum of appeal and so also reply to the show cause notice. Relist this matter on 12.04.2023.”

3. Counter affidavit has been filed. Perusal of the counter affidavit it is nothing but improving the impugned order dated 26.10.2022. When the appellate authority's order is amenable to writ jurisdiction, in such an event, the appellate authority while exercising quasi judicial function is bound to consider each and every contention stated in the memorandum of appeal. In other words, appellate authority's order cannot be improved by furnishing further material information in this case.

4. Apex Court in the case of ***Kranti Associates Private Limited and Anr. Vs. Masood Ahmed Khan and Ors.*** Reported



in **(2010) 9 SCC 496**, para 47 of which read 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 a 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 [(1987) 100 Harvard Law Review 731-37].)

(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 [(1994) 19 EHRR 553] EHRR, at 562 para 29 and Anya v. University of Oxford [2001 EWCA Civ 405 (CA)] , 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”.

5. Apex Court in the Case of ***UMC Technologies Pvt. Ltd. v. Food Corporation of India and Anr.***, reported in ***(2021) 2 SCC 551.***, examined elaborately insofar as



blacklisting issue is concerned. Perusal of blacklisting order read with the appellate authority order it is evident that the ingredients with reference to judicial pronouncements are not forthcoming.

The blacklisting authority, namely, Engineer-in-chief and so also appellate authority have not taken note of.

6. Gist of the various judicial pronouncements on blacklisting orders are as follows:-

(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.

7. In view of the above analysis, the petitioner has



made out a, *prima facie*, case so as to interfere with the appellate authority order dated 03.12.2020 (Annexure-8) and it is set aside. The matter is remanded to the Principal Secretary, Road Construction Department, Government of Bihar, Patna to undertake fresh exercise of considering the petitioner's memorandum of appeal dated 28.03.2022 afresh after considering each of the contentions stated in the memorandum of appeal.

8. Above exercise shall be completed within a period of three months from the date of receipt of this order.

9. With the above observation, writ petition stands allowed.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

DKS/
Balmukund/-

U			
---	--	--	--

