

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5629 of 2023

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Ajay Kumar Pandey S/o Late Sheosagar Pandey resident of Village- Kanhara
Hardas, P.O.- Kanhara, P.S.- Bochahan, District- Muzaffarpur

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Building Construction Department, Bihar, Patna.
2. The Engineer-in-Chief-cum-Additional Commissioner-cum-Special Secretary, Building Construction Department, Bihar, Patna.
3. The Chief Engineer (North), Building Construction Department, Bihar, Patna.
4. The Superintending Engineer, Building Construction Department, Building Circle, Muzaffarpur.
5. The Executive Engineer, Building Construction Department, Building Division, Muzaffarpur

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Raju Kumar, Advocate
For the Respondent/s : Mr. Amit Prakash, (GA13)

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

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

4 12-05-2023 Pursuant to the NIT issued in the year 2021-2022 the petitioner was a successful bidder for construction of lift well in court buildings of Civil Court, Muzaffarpur. The petitioner is stated to have committed certain wrongs. In other words, he has violated certain clauses for which the respondent-Engineer-in-Chief, Building Construction Department, Bihar, Patna proceeded to suspend his registration for a period of one year. Feeling aggrieved by such decision of the Engineer-in-Chief, petitioner has presented this petition.



2. Learned counsel for the petitioner submitted that suspension of registration is impermissible in the light of Rule 11b(ii) of Bihar Registration of Contractors Rules, 2007 (for short Rules, 2007). It is necessary to reproduce Rule 11 which relates to blacklisting and suspension.

“11(a)Contractors registered in any of the classes shall be liable for black-listing or demotion to a lower class or suspension for a specified period if he personally or any partner of the firm or company, or any of its director(s) or employee(s) or representative(s) indulge (s) in any of the following malpractices:-

- (i) indisCIPLINED behavior with any officer or employee of the concerned department.*
- (ii) Creating law & order problem in Government Office during receipt of tender papers, opening of tenders or any work related thereto;*
- (iii) Threatening or attacking any officer or employee of the department.*
- (iv) Participating in or boycotting tenders by forming a cartel.*
- (v) On failure to execute the agreement within the stipulated period after allotment of work if repeated on more than one occasion.*
- (vi) Failure to abide by conditions of Agreement and standing instructions therein during execution of work.*
- (vii). Subletting any work without consent of the department to another contractor or any other individual.*
- (viii) Selling Government material like Cement, Steel and Bitumen etc.*
- (ix) On submission of false or forged security as earnest money and forged documents.*
- (x) On being convicted for any criminal activity.*
- (xi) Submission of tender in such circle in which his close relative(s) is/are posted as divisional accountant or any officer not*



below the rank of junior engineer. Close relative means husband/wife /mother/father/ brother of sister.

(xii) In the event of a contractor being blacklisted by any other Government department.

(b) (i) If any person as mentioned in clause 11(a) of this rule indulges in any malpractice as described in sub clause (i) to (v) of 11 (a) then the registration of the concerned contractor may be demoted to a lower class permanently. If he indulges in more than one malpractice as described in sub clause (i) to (v) of 11 (a) then the concerned contractor may be blacklisted.

(ii) If any person as mentioned in clause 11(a) of this rule indulges in any malpractice as described in sub clause (vi) to (xii) of 11(a) then the concerned contractor may be black listed.

(c) Before black-listing or demoting or suspending any contractor, he shall be given an opportunity to show-cause.

(d) The order for black-listing/suspension shall be passed by the officer who is competent to register the contractor or by the officer under whom the registering officer works.

(e) The contractor can file an appeal within thirty days against the punishment related black-listing/demotion/suspension before the Commissioner and Secretary/Secretary of the Department.”

3. Rule 11 is consisting of blacklisting and suspension. The concerned respondent proceeded to invoke suspension of registration with reference to the alleged fact that the petitioner had produced fake documents. Fake documents would fall under Rule 11(a)(ix) cited (supra). It is submitted that if there is any violation or malpractice in respect of sub clause (vi) to (xii) of Rule 11(a), in that event, concerned contractor



may be blacklisted and not suspended.

4. *Per-contra*, learned counsel for the respondents resisted the aforesaid contention and submitted that there is no infirmity in suspension of registration in the light of Rule 11(a) of Rules 2007 read with sub clause (ix) of Rule 11(a).

5. Heard learned counsel for the respective parties.

6. Reading of Rule 11(a)(ix) and 11(b)(ii), it is evident that if there is any malpractice in respect of sub-clause (vi) to (xii) of Rule 11(a), invariably, the concerned authority is empowered to blacklist the concerned contractor. In other words, for suspension of registration the relevant malpractice clauses are (i) to (v) of Rule 11(a), whereas, the allegations against the petitioner would fall under sub clause(ix), therefore, authority is required to punish the petitioner only by blacklisting him in accordance with due procedure.

7. In view of these facts and circumstances, the petitioner has made out a case. Accordingly, the order vide Memo No.25/2022 dated 16.01.2023 (Annexure-8) stands set aside, reserving liberty to the concerned authority to invoke appropriate clause(s) of Rules 2007 and proceed in accordance with law. If the authority intends to take any action against the petitioner, in that event, all formalities shall be completed like



issuance of show-cause notice, receipt of petitioner's explanation and thereafter passing a speaking order after due consideration of each of the contentions to be raised by the petitioner in his explanation. The concerned authority is hereby directed to take note of Supreme Court's decision, namely, ***UMC Technologies Pvt. Ltd. vs. Food Corporation of India and Anr.***, reported in ***(2021) 2 SCC 551*** and later decision in the case of ***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*** (Para-34).

8. Accordingly, the writ petition stands allowed.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

Himanshu/-
Ashish/-

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