

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5076 of 2023

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Titu Badwal Son of Late Sohan Singh Resident of Mohallah- Professors Colony, Milan Patty, Kishanganj, Police Station- Kishanganj (Muffasil), District- Kishanganj (Bihar).

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Building Construction Department, Government of Bihar, Nirman Bhawan, Bailey Road, Patna.
2. The Engineer-in-Chief-cum-Additional Secretary, Building Construction Department, Government of Bihar, Nirman Bhawan, Bailey Road, Patna.
3. The Chief Engineer Patna, Building Construction Department, Government of Bihar, Nirman Bhawan, Bailey Road, Patna.
4. The Superintending Engineer, South Bihar Circle, Punaichak, Patna.
5. The Executive Engineer, Gardanibagh Building Division, Behind Officers Flat, Bailey Road, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Dhanendra Chaubey, Advocate
		Mr. Prabhat Ranjan, Advocate
For the Respondent/s	:	Mr. Vikas Kumar, AC to AG

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

Date : 13-07-2023

1. Instant petition has been filed for following reliefs:

A. For quashing the impugned order (Annexure-16) by which the Respondent Engineer-in-chief suspended the petitioner's Registration No. Class I No. 1190033 for 03 9three) years from the date of the issuance of Suspension Order vide Letter No. 4778 (Bhawan) dated 24.08.2021 malafidely against the mandate of article 14 of the Constitution as well as in violation of



the basic principle of Natural Justice i.e. without considering the show cause submitted by the petitioner.

B. For quashing the Appellate order (Annexure-20) by which the Appellate Authority has upheld the impugned order (Annexure-16). The said order is mechanical, without application of mind against the Principle of Natural justice as well as against the material on record.

C. For staying the operation of the impugned suspension order by which the Engineer-in-Chief has suspended the petitioner's Registration No. Class-I 1190033 for 03 (Three) years vide Letter No. 4778 (Bhawan) dated 24.8.2021 as well as the Appellate order dated 01.03.2023 uphold the impugned order during the pendency of the writ application.

D. Any other relief or reliefs for which the petitioner is entitled to.

2. The petitioner's registration has been suspended in the light of Rule 11 of the Bihar Contractors Registration Rules, 2007. The petitioner had approached this Court on an earlier occasion as and when process of suspending his registration. This Court reserved the liberty to prefer appeal before the Appellate Authority and it was rejected.

3. In this backdrop, the petitioner has assailed the suspension of the registration for a period of three years.

4. It is necessary to reproduce Rule 11 of the Bihar Contractors Registration Rules, 2007, which reads as under:



11. Black-Listing and Suspension:-

(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:- (underline supplied)

(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. (underline supplied)

(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 black-listed.

(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.



5. The competent authority is permitted to invoke Rule-11 with reference to item nos. 1 to 10.

6. Admittedly, the petitioner stated to have not completed the work within the time limit stipulated. Therefore, the competent authority invoke the afore-mentioned Rule-11 and proceeded to suspend. The competent authority had option of suspicion of registration or black-listing. The competent authority has chosen to suspend the registration of the petitioner. In this regard notice was issued to the petitioner. The notice does not reveal the proposed action of suspending the registration for a period of three years. It speaks of only action could be taken in terms of Rule 11 of the Bihar Contractors Registration Rules, 2007.

7. Perusal of the impugned suspension of the registration for a period of three years, it is unreasoned order. In other words, each of the contentions stated by the petitioner has not been analyzed and decided. That apart, there is no specific notice for suspension of registration.

8. Hon'ble Apex Court time and again held that in so far as black-listing a person or a firm, specific notice is warranted. The same yardstick is applicable to the case in hand in so far as suspension of registration.

9. Accordingly, the petitioner has made out a case.



10. The impugned order of suspension dated 24.08.2021 stands set aside in the light of Hon'ble Apex Court decision in the case of *Isolators and Isolators Vr. Madhya Pradesh Madhya Kshetra Vidyut Vitran Co. Ltd. & Anr. [2023 SCC OnLine SC 444] (Paragraph 13 and 14) and UMC Technologies Private Limited Vs. Food Corporation of India & Anr. [(2021) 2 Supreme Court Cases 551] (Paragraph 20)*. The matter is remanded to the concerned / competent authority to issue specific notice of suspending the registration of the petitioner. The petitioner is permitted to file his detailed explanation or objection. Thereafter, the competent authority is hereby directed to pass a detailed speaking order and communicate the same to the petitioner. The above exercise shall be completed within a period of three months from the date of receipt of a copy of this order.

(P. B. Bajanthri, J)

(Jitendra Kumar, J)

skm/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	20.07.2023
Transmission Date	

