

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8530 of 2019

1. Shiva Consultancy Services (P) Ltd. having its Corporate Office at A-87, L.G.F., Malviya Nagar, Main Shivalik Road, New Delhi-110017 representing through its Authorized Signatory, namely, Arun Kumar Singh, Son of Late Ram Bahadur Singh Resident of Flat No.-7, Galaxy-2 Apartment, New Patlipura Colony, P.S.-Patliputra, District-Patna
2. Arun Kumar Singh Son of Late Ram Bahadur Singh Resident of Flat No.-7, Galaxy-2 Apartment, New Patliputra Colony, P.S.-Patliputra, District-Patna

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Industry, Government of Bihar, Patna
2. The Principal Secretary, Road Construction Department, Government of Bihar, Patna
3. The Engineer-in-Chief-Cum-Additional Commissioner-Cum-Special Secretary, Road Construction Department, Government of Bihar, Patna
7. The Infrastructure Development Authority, Bihar through its Managing Director, Patna
8. The Managing Director, Infrastructure Development Authority, Bihar, Patna
9. The Director, Project Execution, Infrastructure Development Authority, Bihar, Patna
10. The Executive Engineer (Technical), Infrastructure Development Authority, Bihar, Patna

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Pratik Kumar Sinha, Advocate
For the State	:	Mr. Rajeev Kumar Sinha, AC to AAG-7
For Respondent Nos. 7to10:		Mr. Vikash Kumar, Advocate
		Mr. Sriram Krishna, Advocate

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

Date : 25-04-2023

Heard learned counsels for the parties.

2. In the instant petition, petitioners have prayed for



following reliefs:-

"i. For issuance of a Writ/ Order in the nature of *Certiorari* for quashing the Letter as contained in Memo No.- 972/Tech dated 07.03.2019 issued under the signature of the Executive Engineer (Technical), Infrastructure Development Authority, Patna (a venture of Government of Bihar) by which the Petitioner Company has been Black listed for 5 years without any authority of law and as also against to the terms of the Agreement/ Contract and furthermore without considering the Show Cause which was submitted pursuant to the directives issued in CWJC No.- 10295/2018 and in consequence thereof, be pleased to direct the Respondents to pay all the Bills submitted against work order including payment of all consequential dues for which the Petitioner Company is entitled under law.

ii. For issuance of direction upon the respondents to ensure that the rights of the Petitioner company to participate in the fresh tenders likely to be floated/published by the Authorities within the State and further to ensure that the works being carried out with respect to other assignment being incidental or otherwise does not get affected in any manner during the pendency of instant writ application.

iii. For issuance of further order/ orders or writ/writs or direction/ directions to the respondents authorities which may be found deem, fit and proper in the interest of justice which is affecting the very source of livelihood of the petitioners for securing ends of justice."

3. On 24.03.2023 following order was passed:-

"Petitioner has been blacklisted



in the absence of any provision under the agreement. Further in para 8 of the counter affidavit it is stated as under:-

"8. That in compliance with the above judgment, the Executive Engineer (Technical) has passed the order Memo No. 972/Tech dated 07.03.2019 by which again blacklisted the design consultant for five years. Later it was found that there is a typing error in this Office Order and the Executive Engineer (PDA) has issued a corrigendum vide Memo No. 1973/PDA dated 27.05.2019 that the blacklisting period should be read as 03 years, instead of 05 years."

In the light of these facts and circumstances, question for consideration is whether blacklisting order is without jurisdiction or not? And further if blacklisting order is in order in that event whether it should be given effect for a period of five years or three years.

Learned counsel for the petitioner submitted that in so far as jurisdiction of the authority in blacklisting the petitioner is concerned, in the counter affidavit they have not specifically pointed out relevant source of power. On these issues, learned counsel for respondent has to address the Court on the next date of hearing.

Re-list this matter on 07.04.2023."

4. Today, learned counsel for respondent has filed counter affidavit. He is relying on guidelines relating to Infrastructure Development Authority (A Government of Bihar undertaking). Title of the document is Guideline for Registration



of Contractors in Infrastructure Development Authority. Even the title indicated that the guideline shall be called "*Infrastructure Development Authority Contractors Guideline, 2009*" and he is relying on para 10 of the guideline relating to Blacklisting and Suspension. Para 10 of the Guideline, 2009 reads as under:-

"10. 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 directors or employee or representative commits any of the following malpractices:-

- (i) Indiscipline behavior with any officer or employee of the client/ IDA.
- (ii) Failure to abide by conditions of Agreement and standing instructions therein during execution of work.
- (iii) Creating law & order problem in Government Office during receipt of tender papers, opening of tenders or any work related thereto;
- (iv) Subletting any work without consent of the department to another contractor or any other individual.
- (v) Threatening or attacking any officer or employee of the IDA.
- (vi) Selling Government



material like Cement, Steel and Bitumen etc.

(vii) On submission of false or forged security as earnest money.

(viii) On failure to execute the agreement within the stipulated period after allotment of work if repeated more than once.

(ix) On being convicted for any criminal activity.

(x) Participating in or boycotting tenders by forming a cartel.

(b) Before black-listing or suspension of any contractor, he shall be given an opportunity to show-cause. The contractor has to respond within 15 days of the notice otherwise unilateral action will be taken by IDA.

(c) 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.

(d) The contractor can file an appeal within 30 days against the punishment for black-listing/suspension before Managing Director, IDA.

(e) Blacklisting on the basis of action taken by other Departments also."

Reading of guideline, 2009 read with fact that the petitioner was a consultant and not a contractor. Insofar as consultant is concerned, at the best, the respondents are entitled to terminate the agreement entered with the consultant and not with the contractors. Clause 6.1.15- Termination of the agreement reads as under:-



"6.1.15 TERMINATION

This agreement may be terminated at any time by IDA upon one month's notice in writing being given to Consultant, if the Consultant's work is not found to be satisfactory according to the terms of the agreement. In case the agreement is terminated on account of Consultant's work not being satisfactory, IDA will get the work done at the risk and cost of the consultant and performance Guarantee shall be forfeited."

Further there is penalty under clause 6.2.1 of the agreement, which reads as under:-

"6.2.1. PENALTY

In case the Consultant fails to complete the work within the contract period or extended period mentioned in clause 6.1.7 and 6.1.10 above owing to reasons attributable to Consultant, liquidated damages @ 1% per week of the total fees subject to a maximum of 10% of the total fees payable shall be levied on the consultant. IDA shall be entitled to deduct such damages from the dues that may be payable to the Consultant."

5. There is no provision for blacklisting a consultant. Therefore, respondents cannot invoke guidelines, 2009 issued for the purpose of contractors. In other words, contractors cannot be equated to that of a consultant so as to invoke Contractors Guidelines, 2009.

6. In view of these facts and circumstances, petitioner has made out a case. Accordingly, Annexure- 28 dated 07.03.2019 stands set aside. The present petition stands



allowed.

7. Petitioner is at liberty to submit a detailed representation to the concerned official/ respondent in seeking any monetary dues. If such representation is submitted, the concerned authority is hereby directed to take appropriate action to resolve the pending issues, if any.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

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AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	02.05.2023
Transmission Date	N.A.

