

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6384 of 2023

Sanjay Kumar Son of Shri Ramyash Ray, resident of Near Jain College,
Eastern Gate, Sankat Mochan Nagar, P.S. Ara Nawada, District- Bhojpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Water Resources Department, Government of Bihar, Patna.
2. The Engineer-in-Chief (Headquarters), Water Resources Department, Government of Bihar, Patna.
3. The Chief Engineer, Flood Control, Water Resources Department, Samastipur, District - Samastipur, Bihar.
4. The Superintending Engineer, Flood Control Circle, Darbhanga, District - Darbhanga, Bihar.
5. The Executive Engineer, Water Ways Division, Darbhanga, District - Darbhanga, Bihar.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Pushakar Narain Shahi, Sr. Advocate Mr.Shivam, Advocate
For the Respondent/s	:	Mr.Binay Kumar Sinha, Advocate Mr.Alok Ranjan, AC to AAG5

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

Date : 04-08-2023

In the instant petition, petitioner has prayed for the following relief(s):-

“(i) For setting aside the order as contained in Memo No. 547 dated 02.02.2023 issued under the signature of the Secretary, Water Resources Department, Government of Bihar, Patna as contained in Annexure-12 whereby and whereunder pursuant to setting aside the earlier appellate order as contained in Memo No. 3267



dated 05.08.2022 issued under the signature of the Secretary-cum-Appellate Authority, Water Resources Department, Government of Bihar, Patna vide oral judgment dated 28.11.2022 passed in CWJC No. 12933 of 2022, the Appellate Authority instead of himself passing a fresh order keeping in mind the observations made in oral judgment of this Hon'ble Court, directed the Engineer-in-chief (Headquarters), Water Resources Department, Government of Bihar, Patna to pass a fresh order.

(ii) For quashing order as contained in Memo No. 962 dated 24.02.2023 issued under the signature of the Engineer-in-Chief (Headquarters), Water Resources Department, Government of Bihar, Patna as contained in Annexure-14 whereby and whereunder the earlier order as contained in Memo No. 832 dated 04.03.2022 (Annexure-9) has been kept in tact whereby the petitioner has been blacklisted for a period of 10 years in terms of Rule 11 (ka)(viii) of the Bihar Contractors Registration Rules, 2007 read with Departmental order No. 201 dated 14.02.2016.

(iii) For setting aside the order as contained in Memo No. 832 dated 4.3.2022 issued under the signature of the Engineer-in-Chief (Headquarter), Water Resources Department, Government of Bihar, Patna as contained in Annexure-9 whereby the petitioner has been blacklisted for a period of 10 years in terms of Rule 11(ka)(viii) of the Bihar Contracts Registration Rules read with departmental order no. 201 dated 14.3.2016.



(iv) For grant of any other incidental/consequential or other appropriate relief/reliefs to which the petitioner may be found entitled in the facts and circumstances of the case fully enumerated hereinbelow.”

2. This is a third round litigation by the petitioner in respect of NIT dated 17.03.2021. The petitioner has failed to execute the agreement and it is resulted in forfeiture of security deposit, and further petitioner has been blacklisted for a period of 10 years. Initially, the petitioner has approached this Court questioning the validity of show-cause notice in CWJC No. 11825 of 2021 and it was decided on 25.01.2021, by which the petitioner was asked to file his reply before the authorities. On receipt of petitioner's reply read with the show-cause notice, the Engineer-in-Chief proceeded to blacklist the petitioner for a period of 10 years on 04.03.2022.

3. Feeling aggrieved and dissatisfied with the blacklisting order, petitioner has preferred an appeal before the Appellate Authority - Principal Secretary, Water Resource Department, Government of Bihar, Patna and suffered an order on 05.08.2022. Thereafter, the petitioner has invoked remedy before this Court in filing CWJC No. 12933 of 2022, and it was decided in favour of petitioner insofar as quashing the order dated 04.03.2022 and 05.08.2022, i.e., blacklisting and rejection of



petitioner's appeal on 28.11.2022. However, liberty has been granted to the concerned respondent to proceed afresh.

4. In this backdrop, fresh order has been passed in blacklisting the petitioner for a period of 10 years by the impugned order. Hence, the present petition insofar as challenge to the order dated 24.02.2023.

5. Learned counsel for the petitioner vehemently contended that this Court has already considered earlier blacklisting order and taken note of three issues, namely, inadequate period of responding to the show-cause notice, the order of blacklisting is contrary to the rules, and the period of blacklisting being grossly disproportionate. The first two issues are already decided, therefore, what remains is the third issue relating to period of blacklisting being grossly disproportionate and this has been taken note of in the earlier litigation to the extent it is harsh or disproportionate.

6. *Per contra*, learned counsel for the respondents resisted the contention and submitted that the petitioner has failed to execute the agreement. The work is relating to Darbhanga, whereas petitioner had worked at Patna, and the same has been executed. Therefore, there is no infirmity in punishing the petitioner for a period of 10 years.



7. Heard the learned counsel for the respective parties.

8. The concerned authority has failed to take note of the third issue, namely, the period of blacklisting grossly disproportionate. Having regard to the facts and circumstances, the same has not been appreciated by the blacklisting authority. The work was not executed in other words agreement has not been adhered by the petitioner, resulted in blacklisting him for a period of 10 years. It is to be noted that the petitioner has not commenced or executed any of the work allotted to him. Therefore, they have already forfeited the deposit. For not executing the work, and that too for the first time, in such circumstances the authorities should have taken a lenient view with reference to COVID period and other mitigating circumstances which compelled the petitioner in not taking of the work allotted and execution of the agreement. The Co-ordinate Bench in CWJC No. 12933 of 2022 decided on 28.11.2022 has already taken note of that blacklisting for a period of 10 years is grossly disproportionate.

9. Accordingly, the impugned order dated 24.02.2023 (Annexure-O) stands set aside. Writ petition allowed in part.

10. In the light of these facts and circumstances, the concerned authority is hereby directed to take note of and re-visit the matter and proceed to blacklist the petitioner for a period of 3



years since petitioner has already undergone blacklisting process on two occasions. In this regard, separate order shall be passed and communicated to the petitioner within a period of two months.

(P. B. Bajanthri, J)

(Jitendra Kumar, J)

abhishekk/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	10.08.2023
Transmission Date	NA

