

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4378 of 2016

=====

M/s Kirloskar Brothers Ltd. a Company having its Registered Office at "YAMUNA" Survey No. 98/3 to 7, Baner, Pune- 411045 Maharashtra, duly represented through its Authorized Signatory, Mr. Shripad Vivek Kulkarni

... .. Petitioner/s

Versus

1. The State Of Bihar through its Principal Secretary, Public Health Engineering Department, Government of Bihar, Patna.
2. District Magistrate cum Collector, Gaya, Bihar
3. Chief Engineer Urban, Public Health Engineering Department, Government of Bihar, Patna
4. Executive Engineer, Public Health Engineering Department, Gaya Division, Gaya

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Anurag Saurav, Advocate
For the Respondent/s	:	Mr. K.P. Gupta, GP-10
		Mr. Virendra Kumar, AC to GP-10

=====

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE A. ABHISHEK REDDY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 18-05-2023

Heard learned counsels for the parties.

2. In the instant petition, petitioner has prayed for following reliefs:-

"1. That this is an Application for issuance of appropriate Writ, Rule, directions in the nature of Mandamus and/or Certiorari, commanding / directing the Respondent authorities for the following relief:-

a) For quashing the Memo bearing Memo No. 727 dated 27.07.2015 issued by the Chief Engineer, Public Health Engineering Department, Government of



Bihar, Patna (Respondent No. 3), whereby and where under the said Respondent No. 3 had directed to en-cash the "Bank Guarantee" amounting Rs. 62,83,150.00/- of the Petitioner Company and had further decided to Blacklist the Petitioner company for a period of five years and the said Order dated 27.07.2015 was passed without serving any Show Cause Notice and without providing any opportunity of hearing to the Petitioner. As such, the aforesaid Order was passed in gross violation of the principles of Natural Justice and the same was also contrary to the Government's own Circular bearing Memo No. Pra 6/Da. Vi. Niyam 03-03/2004 2131(S) dated 18.03.2009, and from a mere perusal of the Circular mentioned above it appears that the Government had taken a conscious decision to debar only such Contractors who had completed less than 80% of the work, as per the Agreement. In the present case, the Contractor has already completed 92.2% of the allotted Work and the same is already on record and had a "Satisfactory Approval" from the Respondent authorities.

b) For quashing of the Memo bearing Memo No. 1242 dated 28.12.2015, issued by the Chief Engineer, Public Health Engineering Department i.e. Respondent No. 3 whereby and where under, the said Respondent No. 3 rejected the Review Application filed by the Petitioner (for review of the Order dated 27.07.2015), and while rejecting the same, ignored the fact that the said Order dated 27.07.2015 had been passed in gross violation of the established principles of Natural Justice, as no Show Cause notice was ever served to the Petitioner and the said Blacklisting was also per se contrary to the Government's own Circular bearing Memo No. Pra 6/Da. Vi. Niyam 03-03/2004 2131(S) dated 18.03.2009 which clarifies that the



Government themselves had taken decision to debar only such Contractors who had completed less than 80% of their work, as per the Agreement. In the present case, the Contractor had already completed 92.2% of the allotted Work and the same is already on record and also has a "Satisfactory Approval" of the Respondent authorities and while passing the said Order, the Respondent No. 3 had again not considered the offer given by the Petitioner that it was/is ready to complete the remaining "tit-bit" left over work within a period of four months.

c) For issuance of Writ in the nature of Mandamus any other Writ, order or orders for directing the Respondents to refund the Bank Guarantee Amount of Rs. 62,83,150/- which has been wrongfully encashed by the Respondent No. 3, against the Bank Guarantee No. 0521IFIBG070275 dated 12.05.2007 of the Petitioner as the petitioner company through the Bank Guarantee provided security for compliance with its obligation in Contract Agreement.

d) For issuance of any other relief or reliefs"

3. One of the contention raised by the petitioner is that impugned action dated 27.07.2015 is without hearing the petitioner. In this regard, learned counsel for the petitioner submitted that no doubt notice was prepared on 26.05.2015. However, the same has not been communicated to the petitioner. In this regard, the petitioner has specifically contended in his pleading at para 19. However, the same has been countered by the concerned respondent stating that notice was sent to his



address, but in support of para 35 to the counter affidavit no material information has been placed, like extract of dispatch register or registered post acknowledgment so as to apprise this Court notice dated 26.05.2015 or 31.05.2015 stated to have been communicated to the petitioner in the manner known to the law. In view of above facts and circumstances, petitioner has made out a case so as to interfere with the impugned orders date 27.07.2015 and 28.12.2015 (Annexure-1 series). Accordingly, they are set aside. The matter is remanded to the concerned authority to proceed in accordance with law.

4. The concerned authority is hereby directed to take note of the decision of the Apex Court decisions rendered in the case of *UMC Technologies Pvt. Ltd. vs. Food Corporation of India and Another*, reported in (2021) 2 SCC 551 read with *Isolators and Isolators through its Proprietor Mrs. Sandhya Mishra Vs. Madhya Pradesh Madhya Kshetra Vidyut Vitran Co. Ltd & Another* reported in 2023 LiveLaw (SC) 330 (para 34). Before taking further action in the matter. If the concerned respondent is of the view that matter is required to be re-visited and decided afresh, in such an event the above exercise shall be completed within a period of four months from the date of receipt of this order.



5. Accordingly, the present petition stands disposed
of.

(P. B. Bajanthri, J)

(A. Abhishek Reddy , J)

rakhi/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	19.05.2023
Transmission Date	N.A.

