

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7734 of 2023

M/s Ganpati Construction having its Office at Village-Nijay, P.O. Sonsa, P.S. Rahui, District-Nalanda at Biharsharif through its Proprietor Ajit Kumar (Male), aged about-52 Years, Son of Ram Prasad Singh, resident of Village-Nijay, P.O. Sonsa, P.S. rahui, District-Nalanda at Biharsharif.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secreary, Government of Bihar, Patna.
2. The Principal Secreary, Minor Water Resources Department, Government of Bihar, Patna.
3. The Engineer-in-Chief, Minor Water Resources Department, Government of Bihar, Patna.
4. The Incharge Chief Engineer, Planning, Monitoring and Under Ground, Minor Water Resources Department, Government of Bihar, Patna.
5. The Superintending Engineer, Minor Water Resources Department, Minor Irrigation Circle, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Awnish Kumar, Advocate
For the Respondent/s	:	Mr. Vinay Kirti Singh (GA 2)

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

Date : 28-07-2023

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

"(i) For issuance of an appropriate writ in the nature of CERTIORARI for quashing the order dated 01.03.2023 contained in his memo no. 157 dated 01.03.2023, whereby and whereunder the petitioner has been blacklisted for 10 years under Rule-11A (ix) of the Bihar Contractor Registration Rules, 2007 in view of the recommendation of the Respondent no. 5.



(ii) For a declaration that since an order of blacklisting has the civil consequences, the impugned order passed by the Respondent no. 4 cannot be sustained in the eye of law, if it has been passed by the Respondent no. 4 without any notice to the petitioner and without providing any opportunity of hearing to the petitioner.

(iii) For issuance of any other appropriate writ/writs, order/orders, direction/directions for which the writ petitioner would be found entitled under the facts and circumstances of the case."

2. Short question for consideration in the present case is whether the petitioner has been heard before passing blacklisting order for a period of ten years. Perusal of the records, it is evident that respondents have issued show cause notice on 04.02.2023 but the same was not communicated to the petitioner in the manner known to the law.

3. Today, learned counsel for the respondents submitted that postal track record is available for having dispatch of show cause notice dated 04.02.2023 but he has not produced any material to show that show cause notice has reached the petitioner. There is a lack of communication between the respondents and petitioner insofar as serving show cause notice. On this short ground, the present impugned order is liable to be set aside.

4. Learned counsel for the respondents resisted the aforesaid contention and submitted that the petitioner has statutory



remedy of appeal against the blacklisting order. Therefore, the present petition is not maintainable.

5. Heard learned counsel for the respective parties.

6. It is undisputed fact that the petitioner has not been heard before blacklisting him. Even though show cause notice has been issued and dispatched on 04.02.2023, however, there are no records to show that it has reached the petitioner. Merely recording on postal track records insofar as dispatch of show cause notice to the petitioner, it does not amount service of show cause notice to the petitioner. Therefore, there is no harm in entertaining the present writ petition in order to provide an opportunity of hearing to the petitioner.

7. In the light of these facts and circumstances, the order of blacklisting dated 01.03.2023 vide Annexure-P-3 stands set aside. The petitioner is hereby directed to file his reply to the show cause notice dated 04.02.2023 within a period of two months from the date of receipt of this order. On receipt of petitioner's explanation/objections, if any, on the show cause notice dated 04.02.2023 the concerned official respondent is hereby directed to pass a detailed speaking order after due consideration of each of the contention to be raised by the petitioner against the show cause notice dated 04.02.2023. The above exercise shall be completed



within a period of three months from the date of receipt of this order.

8. Accordingly, the present writ petition stands allowed.

(P. B. Bajanthri, J)

(Jitendra Kumar, J)

Vikash/-

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

