

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8928 of 2022

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M/s Infosystem and Solutions through its proprietor namely Abhishek Kumar Upadhyay having its Office situated at - 3rd floor, Devendra Laxmi Complex, Shaguna More, Patna - 801503.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Prohibition, Excise and Registration Department, Government of Bihar, Patna.
2. Principal Secretary, Prohibition, Excise and Registration Department, Government of Bihar, Patna.
3. Joint Secretary, Prohibition, Excise and Registration Department, Government of Bihar, at Patna.
4. Under Secretary, Prohibition, Excise and Registration Department, Government of Bihar, Patna.
5. Deputy Secretary, Prohibition, Excise and Registration Department, Government of Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Sumeet Kumar Singh, Advocate Mr.Kumar Avinash, Advocate
For the Respondent/s	:	Ms. Roona, AC to GP7

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

Date : 03-05-2023

A hard copy of the Counter affidavit is accepted.

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

“I. That the present writ application is being filed in the nature of Certiorari for quashing the letter no. 3214 dated 02.05.2022 (Annexure-P/17), issued under the signature of the Joint Secretary, Prohibition, Excise and Registration Department, Government



of Bihar by which order has been passed to cancel the agreement of the petitioner/company dated 21.02.2022 which was in relation to empanelment of man power placement agency for providing services (multi-tasking staff(MTS), data entry operator(DTO), office boy in the department), the Bank guarantee of Rs. 14 lakhs of the petitioner/company has been forfeited, the petitioner/ company has been blacklisted to participate in any future tenders of the department for 3 years till 31.03.2025; on the ground that the entire order passed by the respondent authority is without considering the show cause reply given by the petitioner/company, there is no finding with regard to the reply given by the petitioner to the authority, there is no consideration by the respondent of the fact that there is with regard to breach of the terms of the agreement, the grounds stated for cancellation of the agreement is beyond the purview of the terms of the agreement, the work dated 21.02.2022(work order) and letter 02.03.2022 does not speak of supply of manpower of 189 manpower; the action of the respondent is exceeding his jurisdiction and without following the principles of natural justice;

II. That the present writ application being filed in the nature of Mandamus for a direction to the Joint Secretary, Prohibition, Excise and Registration Department, Bihar at Patna to reinstate the petitioner/company in relation to the tender which was for selection of man power placement agency for providing the office staff like data entry operator, multi-tasking staff bearing NIT no. PRED/HQ/ADMN/SUPPORT/2021 in



terms of the agreement dated 21.02.2022 and to provide all consequential benefits;

III. And pass any such other order/ orders as this Hon'ble Court deem fit and proper.”

3. The petitioner was a successful bidder insofar as providing manpower to the Prohibition, Excise and Registration Departments, Government of Bihar. During the course of the contract, the respondents have noticed certain defects in executing the work. In this regard, the number of office orders were issued insofar as fulfilling the required manpower in terms of the agreement. The same has not been rectified by the petitioner. Further, he is involved in offences under the Excise Act. In this regard, he was arrested on 24.03.2022. While taking note of these two issues, the respondent issued notice on 01.04.2022, for which the petitioner is stated to have submitted his reply on 05.04.2022. Thereafter, an order of forfeiting ₹14,00,000/- (Rupees Fourteen Lakhs Only) and blacklisting for a period of three years which would be in vogue till 31.03.2025 has been ordered on 02.05.2022, hence the present writ petition.

4. Learned counsel for the petitioner submitted that the notice dated 01.04.2022 is not in compliance to Clause 14.1.4 of the agreement. It is further submitted that there is no specific averment in the notice that there is a proposal for forfeiting of



₹14,00,000/- (Rupees Fourteen Lakhs Only) and blacklisting for a period of three years i.e. upto 31.03.2025. In addition to these two counts, it is also submitted that merely he was involved in the offences under Excise Act in his personal capacity that too, the alleged incident had taken place at his residence. Such incident cannot be taken note of for the purpose of forfeiting and blacklisting the petitioner, in the absence of any such clause in the agreement.

5. *Per contra*, learned counsel for the respondent resisted the aforesaid contentions and submitted that the petitioner has failed to comply the various clauses of agreement insofar as providing or supplying manpower. In this regard, two office orders were issued on 21.02.2022 and 02.03.2022. The same has not been complied by the petitioner. That apart, he is involved in criminal proceedings. The same has been taken note of while issuing show cause notice on 01.04.2022 and proceeded to forfeiting of ₹14,00,000/- (Rupees Fourteen Lakhs Only) and blacklisting him for a period of three years i.e. upto 31.03.2025 *vide* order dated 02.05.2022 is in order. Therefore, it is also submitted that Clause 11.4 has been complied.

6. Heard the learned counsel for the respective parties.



7. Before advertng to the factual aspects of the matter it is necessary to reproduce the Clause 11.4 and 14.1.4 of the agreement which reads as under:-

“Clause 11.4. In the event of the agreement being terminated or rescinded due to non compliance of any of the clause/condition of the agreement by the FIRST Party, the Performance Guarantee shall stand forfeited in full on issue of notice of termination of Agreement and shall be absolutely at the discretion of DEPARTMENT.

Clause 14.1.4. FIRST PARTY becomes bankrupt or goes into receivership or liquidation or makes an assignment for the benefit of his creditors.

In any such events (other than the specified in Clause 14.1.4 where DEPARTMENT may terminate the AGREEMENT forthwith, DEPARTMENT may terminate this AGREEMENT by giving the FIRST PARTY 30 (thirty) days written notice on the effective date of which FIRST PARTY shall stop the performance of the SERVICES and during which FIRST PARTY shall take such action towards winding up of the SERVICES as DEPARTMENT may reasonably direct. In the event of such termination DEPARTMENT shall pay to the FIRST PARTY:

i) Amount earned by but unpaid to the FIRST PARTY prior to termination.

ii) Other reasonable costs determined solely by DEPARTMENT incidental to such winding up of SERVICES, provided that the Termination is not on account of reasons attributable to FIRST Party.”



8. No doubt, the respondents are empowered to invoke Clause 11.4. At the same time, they cannot brush aside the judicial pronouncements insofar as providing specific notice for blacklisting of a contractor. That apart, they have violated Clause 14.1.4 to the extent that notice dated 01.04.2022 stipulate within seven days he has to file his reply. On the other hand, Clause 14.1.4 specifically provide 30 days written notice.

9. Further, we noticed that notice is not specific insofar as blacklisting the petitioner for a period of three years. The respondents have taken extraneous material insofar as involvement of the petitioner in a criminal proceedings for the offences under the Excise Act. If a contractor is involved in criminal proceedings in that event there is no clause in the agreement, to the extent that contract would be terminated and a contractor would be blacklisted. Therefore, the respondents have taken extraneous material.

10. In the light of these facts and circumstances, on short ground, the petitioner has made out a case that notice is not in terms of Clause 14.1.4 and notice is not specific to the extent of blacklisting the petitioner for a period of three years i.e. till 31.03.2025.



11. Accordingly, Letter No. 3214 dated 02.05.2022 stands set aside and the present writ petition is allowed, reserving liberty to the respondents to initiate appropriate proceedings and in accordance with law. The concerned authorities are to take note of judicial pronouncements insofar as blacklisting how action is required to be taken.

12. In this regard Apex Court 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. & Anr.*** reported in **2023 LiveLaw (SC) 330** had taken note of as to how the authority was required to proceed before blacklisting a contractor. In this regard, the following points are required to be taken note of before proceeding further against the petitioner:-

“(i) The order of blacklisting involving civil consequences cast slur. Such an action can be taken only on the basis of objectives, satisfaction of the authority concerned. The fundamental of fair play required that the person concerned should be given an opportunity to present his case before he is put on blacklisting.

(ii) The order of blacklisting must specifically spell out the intention of blacklisting.

(iii) The order of blacklisting must be speaking order supported with reasons.



(iv) Blacklisting cannot be for an indefinite period and the period of blacklisting should be fixed based on doctrine of proportionality of the case.”

13. Further, action shall be taken against the petitioner within a period of four months from the date of receipt of this order.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

abhishekk/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	09.05.2023
Transmission Date	NA

