

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8868 of 2020

M/s Rajendra Singh and Brothers (A Partnership Firm) through its Managing Partner Seema Singh, age- 41 years, D/o Sri Bir Bahadur Singh, C/o Pramila Singh, Ratu Road, Badri Narayan Bhavan, P.S.- Hehal, Dist- Ranchi, Jharkhand-834005 and local office at Rajendra Bhavan, Jay Prakash Path, Dumra Road, P.O.- Sitamarhi, P.S.- Mehsaul, Dist- Sitamarhi- 843302.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Road Construction Dept., Bihar, Bishweshraiya Bhavan, Bailey Road, Patna.
2. The Engineer in Chief, Road Construction Department, Bihar, Bishweshraiya Bhavan, Bailey Road, Patna.
3. The Engineer in Chief (Contract, Work Maintenance and Safety) Road Const. Dept., Bishweshraiya Bhavan, Bailey Road, Patna.
4. The Chief Engineer (North), Road Construction Department, Bihar, Bishweshraiya Bhavan, Bailey Road, Patna.
5. The Ex. Engineer, Road Const. Dept., Road Division, Sitamarhi.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Ms. Usha Kumari, Advocate Mr. Shiv Bhushan Singh, Advocate
For the Respondent/s	:	Mr. Uday Shankar Sharan Singh, GP-19 Mr. R. K. Chandran, AC to GP-19

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

7 01-09-2023 In the instant writ petition, the petitioner has prayed
for the following relief(s):-

i) For quashing the impugned order- प्र. 2019 /164-04-(कारवाई) विविध /7- (E2808 पटना दिनांक 16.04.20-passed by the Engineer In Chief (Management, Work Maintenance & Safety), Road Construction Department, Bihar, Patna by which he has blacklisted the Registration no. 1180078 dt-03.12.18 of



petitioner firm for ten years U/s 11(क) (VI) of departmental office order no. 154 dated 18.06.2015 along with impugned order 'dt-14.09.2020 passed by Appellate authority under Bihar Contractors Registration Rules 2007 vide order no. प्र.-7/विविध (कार.)-04-164/2019 -6318(ह)/पटना दिनांक-14.09.2020 without consider the withdrawal of bids by the petitioner due to upload the forge work experience certificate on 04.12.2018 in the tender of RCD/ SITAMARHI /02/2018-19, Work: 01 for construction of Widening and Strengthening of Rasulpur- Bajpatti- Garha Road from km. 20.5 to 40.0 1-19.5 km under Ex. Engineer, Road Division, Sitamarhi for the year 2018-19 though the petitioner already withdrew its bids earlier on 20.05.19 after expiry of bids validity mentioned in Para no.5 of tender proceeding dt-31.05.2019 prior to accept/open the bids which was denied and not accepted by the respondents and respondents asked show cause but petitioner requested to supply the relevant documents for reply but respondents did not supply after two times request. The petitioner firm is class-I registered contractor has been engaged in the work of road/ building/bridge etc for ten years but in utter violation of the same the impugned order passed which is going to affect the petitioner adversely. Thus impugned orders and its consequential orders are patently illegal, bad and required to be quashed on account of violation of principle of "NATURAL JUSTICE" also and the both impugned orders passed against the petitioner may be stayed during the pendency of writ petition.

ii) For directing the respondent concerned not to disqualify or cancel the



tender earlier and debar for the next tenders of the petitioner prior to the impugned order, till disposal of the case, as taking advantage of the said impugned order, the respondents can cancel/disqualify the petitioner from participating/ getting the tenders submitted through "e-tenders".

iii) Further for restraining the respondents from passing any further order debarring the petitioner taking advantage of the impugned order with respect to cancel the other tenders, which have been submitted earlier to the impugned order, and if during pendency of the writ any such order is 7 passed then the Hon'ble court may hold the same as bad and illegal, as the petitioner has apprehension that the respondent under oblique motive to cause irreparable loss to the petitioner; and also to oblige the other contractors of their choice, under political reasons such as the tenders submitted, The respondents are going to disqualify the petitioner's "e- tenders", which is patently illegal as any order may take effect prospectively and in any case the impugned order if may be found to be valid, even then, it may not be operated with retrospective effect, hence the impugned order is bad from all the corners of law, and fit to be quashed.

iv) For granting any other relief/s for which the petitioner be found entitled in the eye of law.

02. During pendency of the present writ petition, petitioner's memorandum of appeal is stated to have been disposed on 20.08.2020, which has been placed on record by means of interlocutory application bearing I.A. No. 01 of 2023.



The same is taken on record.

03. Learned counsel for the petitioner submitted that the petitioner has been blacklisted for a period of ten years on the alleged allegation relating to uploading of certain documents which were alleged to be fake documents. Learned counsel further submitted that there is no specific notice before blacklisting the petitioner for a period of 10 years. It is further submitted that in identical circumstances, the concerned authority has proceeded to blacklist similarly situated persons with the punishment of blacklisting for a period of six months to one year and in some of the cases with certain warnings. The said yardstick has not been taken note of in the present case.

04. *Per-contra*, learned counsel for the respondents resisted the aforesaid contentions and submitted that uploading of fake documents is a serious issue, therefore, there is no infirmity in the blacklisting order and so also the appellate authority's order. Hence, the present writ petition is liable to be dismissed.

05. Heard the learned counsel for the respective parties.

06. The petitioner has been blacklisted for a period of ten years on the alleged allegation relating to uploading of



certain alleged fake documents with reference to NIT and the same is not disputed by the petitioner, then what remains in the present petition is relating to quantum of blacklisting period. On this point, learned counsel for the petitioner submitted that in identical circumstances, the very same authority proceeded to blacklist the similarly situated persons for a period of six months to one year and in certain cases warnings have been issued. Aforementioned issue has not been taken note of by the appellate authority while passing the order on 20.08.2020. Further, before blacklisting the petitioner for a period of ten years, he is entitled to a specific notice in order to overcome any hardship or to meet the civil consequences. Further, we have noticed that the appellate authority's order is bereft of reasons, in fact, there is not even reference to petitioner's memorandum of appeal stated to have been filed by him on 15.05.2020. On these points, the petitioner has made out a case.

07. Accordingly, the appellate authority's order dated 20.08.2020 is set aside and the writ petition stands allowed.

08. The appellate authority is hereby directed to proceed to pass afresh order after due consideration of discrimination in so far blacklisting period with reference to identical matters contractor/s were blacklisted for six months to



one year and in certain cases warnings have been ordered and so also there is no specific notice. In this regard, the appellate authority is permitted to issue a detailed specific notice to the petitioner and proceed to pass afresh order on the memorandum of appeal. The above exercise shall be completed within a period of three months from the date of receipt of a copy of this order. Concerned authority may take note of judicial pronouncements of Hon'ble Apex Court's decisions in case(s) like *State Bank of India and Ors. Vs. Rajesh Agarwal and Ors.* reported in *(2023) 6 SCC 1*, *UMC Technologies Pvt. Ltd. vs. Food Corporation of India and Anr.*, reported in *(2021) 2 SCC 551* and later decision in the case of *Isolators and Isolators Through Its Proprietor Mrs. Sandhya Mishra vs. Madhya Pradesh Madhya Kshetra Vidyut Vitran Co. Ltd. and Anr.*, reported in *2023 LiveLaw (SC) 330 (Para-34)* and principles laid down therein.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

Ashish/-
Himanshu/-

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