

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19858 of 2018

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M/s Gangotri Enterprises Ltd. Having its registered office in B-158, Sector-!, Mahanagar, Lucknow-226006, Uttar Pradesh through its Authorized Signatory namely Indra Bahadur Mall, aged about 42 years, Son of Raj Kumar Mall, R/o E- 3/412, Vinay Chand-3, P.S.- Gomtinagar, Lucknow, Uttar Pradesh- 226010.

... .. Petitioner/s

Versus

1. The State Of Bihar through its Secretary, Road Construction Department, Govt. of Bihar, Patna.
2. The Secretary, Road Construction Department, Govt. of Bihar, Patna.
3. The Engineer-in-Chief cum Additional Commissioner-cum-Special Secretary, Road Construction Department, Government of Bihar, Patna
4. The Chief Engineer, National Highways Wing, Road Construction Department, Govt. of Bihar, Patna.
5. The Executive Engineer, National Highways Division, Road Construction Department, Jainagar, District-Madhubani.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Vivek Anand Amritesh, Advocate

Mrs. Kalpana, Advocate

For the Respondent/s : Mr. Mr. A.K. Dubey, AC to AAG9

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

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

4 11-04-2023 In the instant petition, petitioner has prayed for the following relief(s):-

“(i) In the nature of "Certiorari" for setting aside the order dated 15.5.2018 vides Memo no. 3286(E) issued



under the signature of Engineer-in-Chief cum Additional Commissioner cum Special Secretary, Road Construction Department, Govt. of Bihar, Patna whereby and whereunder the petitioner has been blacklisted for a period of Ten years under the provision of Section 8(1) (a) and Departmental order no. 154 under Memo no. 5403 (S) dated 18/6/2015 and clause 11(k) (ii) of Bihar Contract Registration Act, 2007.

(ii) For issuance of Declaration that the order Impugned as contained in Annexure-I is also hit by Bihar Litigation Policy as well as in the teeth of order dated 27.7.2016 passed in CWJC NO 2981/2015.

(iii) For any other relief/reliefs for which the petitioner is entitled in the facts and circumstances of the instant case.”

On 27.03.2023 the following order was passed.

“The Engineer-in-Chief who has passed the order on 15.05.2018 blacklisting the petitioner for a period of ten years is hereby directed to file his personal affidavit as to whether petitioner has been provided comments or report of the Executive Engineer received by him with reference to Executive Engineer's report or comments dated 01.08.2017 and it has been provided to the petitioner before impugned action is taken or not? Further affidavit must reveal, was there any proposal for blacklisting the petitioner for a period of ten years so as to ascertain whether he has been provided opportunity or not? The concerned authority shall also to take note of contents of show cause notice dated



16.01.2017 and 20th February, 2017.

It is reliably learnt that subject-matter of arbitration award was passed in favour of the petitioner on 06.12.2017 before blacklisting the petitioner whether the Engineer-in-Chief was party to the arbitration, if he is party in that event why such award has not been taken note of before passing of blacklisting order against the petitioner. These information shall be reflected in the personal affidavit to be filed.

Re-list this matter on 10.04.2023.”

Engineer-in-Chief has filed affidavit. In the affidavit it is admitted that the petitioner has not been provided material information collected by the Engineer-in-Chief from the Executive Engineer (comments and report). Therefore, the petitioner has not been provided opportunity of his say on the Executive Engineer's comments/report.

Accordingly, the petitioner has made out a case so as to set aside the impugned order and the matter is remanded to the concerned authority to proceed in accordance with law. The concerned authority shall complete the process within a period of three months from the date of receipt of this order. The concerned authority is hereby directed to take note of judicial pronouncement in the case of ***UMC Technologies Pvt. Ltd. v. Food Corporation of India and Anr.***, reported in



(2021) 2 SCC 551.

Overall view of the Court insofar as blacklisting matters, the authorities were required to take note of the following points.

(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 require that the person concerned should be given an opportunity to present his case before he is put on blacklisting.

(ii) The notice 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.

At this stage, learned counsel for the petitioner submitted that the petitioner has already undergone the blacklisting for a period of five years. In the event of again remanding the matter and passing of the fresh order at this belated stage would be a hardship to the petitioner. Therefore,



in the interest of justice, the impugned order of blacklisting
for 10 years is restricted to till date.

With the above observation, the writ petition stands
disposed of.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

Balmukund/
DKS/-

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