

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14474 of 2023

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Kumar Mritunjay Construction Pvt. Ltd. through its Managing Director
Kumar Mritunjay, Male, aged about 53 years, Son of Late Tej Narayan Singh,
Resident of Nai Sarai, P.S. Biharsharif, District Nalanda, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Minor Water Resources Department, Government of Bihar.
2. The Chief Engineer (Planning, Monitoring and Geology), Minor Water Resources Department, Government of Bihar, Patna.
3. The Chief Engineer, Minor Water Resources Department, Government of Bihar, Patna.
4. The Superintending Engineer, Minor Water Resources Department, Government of Bihar, Patna.
5. The Executive Engineer, Minor Water Resources Department, Division Nalanda, Distt Nalanda, Bihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Prabhat Ranjan, Advocate
For the Respondent/s	:	Mr. Vinay Kirti Singh (G.A 2)
		Mr. Akhileshwar Singh, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJIV ROY)

Date : 07-12-2023

The petitioner's firm has preferred the writ petition
for the following reliefs:

*(i) quashing of the ex-parte order of
blacklisting contained in Memo No. 923 dated
27.08.2019 (Annexure 4) by which, the Chief
Engineer Cum Registering Authority, without
issuing any show cause notice and without
providing the relied upon documents proceeded to*



blacklist the registration of the petitioner (Registration No. 03/2019) for a period of 10 years in terms of Rule 11 (क) (ii) of the Bihar Contractors Registration Rule, 2007;

(ii) restraining the Respondent from giving the effect to ex-parte order of blacklisting dated 27.08.2019 as contained in Memo No. 923 during the pendency of the present writ application; and

(iii) declaration to the effect to the ex-parte order of blacklisting dated 27.08.2019 would not be an impediment in the future contracts issued by the various departments within the state of Bihar.

2. The facts of the case is/are as follows:-

3. The petitioner is a Class I Contractor bearing Registration No. 03/2019 dated 08.03.2019 registered in terms of **Bihar Contractors Registration Rules, 2007** (hereinafter for short 'the 2007 Rules') and claims to perform various Civil Works for the Government of Bihar.

4. The Executive Engineer, Minor Water Resources Department, Minor Irrigation Division, Nalanda (respondent no. 5) invited Tender No. 01/2018-19 dated 04.02.2019 for the work of "**Extensive Renovation of Dosut, Dev Bigha, Bena Bengauriya, Mora Ahar Pyne Scheme**". The petitioner participated and was declared lowest bidder and accordingly,



letter of acceptance (**LOI**) was issued by the respondent no. 5 vide its office letter no. 762 dated 08.03.2019 for Rs. 3,14,96,800/- only (Annexure-P/2).

5. Accordingly, an agreement was executed between the petitioner and the respondent-Executive Engineer on 11.03.2019 vide an agreement no. 04 SBD/2018-19 for which the date of commencement was 11.03.2019 and the work was to be completed within 3 (three) months i.e. 11.06.2019.

6. However, the petitioner could not complete the work within the time allotted (11.06.2019) whereafter the Superintending Engineer, Minor Irrigation Division, Patna vide Office letter no. 2213 dated 14.08.2019 as also the letter of the Chief Engineer, Minor Water Resources Department, vide letter no. 2083 dated 26.08.2019, recommendation were made for blacklisting the petitioner.

7. In the light of the said recommendation, the petitioner was blacklisted for a period of 10 years vide memo no. 923 dated 27.08.2019 (Annexure-P/4 to the petition).

8. Four years later, the present writ petition has been filed by the petitioner alleging that before passing the order in question, no notice was issued to him.

9. Learned counsel for the petitioner submits that



even otherwise, the Contractor cannot be blacklisted for a period of 10 years for delay in execution of work *inasmuch* as the exigency and consequences of delay in execution of the work is expressly provided under the agreement of the petitioner which has been executed on the SBD Format.

10. As per Clause 5 read with Clause 2 of the Standard Bidding Document (**SBD**), in case of delay in the execution of work, the Contractor can be saddled with the penalty under the Liquidated Damages Clause and in case the Contractor still is unable to complete the work, the Engineer-In-Charge can rescind the agreement under Clause 3 of the SBD.

11. Learned counsel submits that though he was blacklisted, as stated above in 2019 itself, the respondents allowed him to complete the work which he diligently did as would appear from the letter no. 91 dated 10.01.2023 issued by the Chief Engineer, Minor Water Resources Department, Government of Bihar, Patna (respondent no.3). As per the said letter dated 10.01.2023 addressed to the Engineer In-chief, the work period was extended/approved up-to 20.08.2021 (Annexure-P/5).

12. A counter affidavit has been filed on behalf of the Chief Engineer, Minor Water Resources Department,



Government of Bihar, Patna stating therein that since the petitioner could not complete the work within the stipulated period, he was given an extension of time. But even thereafter only 45.21% work was completed by the petitioner.

13. Thereafter vide office letter no. 2213 14.08.2019 the Superintending Engineer, Minor Irrigation Circle, Patna recommended debarment/blacklisting to the Chief Engineer, Minor Water Resource Department.

14. It is further stated that thereafter the Chief Engineer, Minor Water Resources Department Patna intimated the Chief Engineer (Planning + Monitoring & Geology) vide office letter no. 2083 dated 26.08.2019 to take action against the petitioner under Rule 11 (k) Contractors (ii) of 'the 2007 Rules'.

15. This followed the letter/memo no. 923 dated 27.08.2009 issued by the Chief Engineer (Planning + Monitoring + Geology), Minor Water Resources Department, Patna blacklisting the petitioner for a period of 10 years.

16. Learned State Counsel took us to 'the 2007 Rules' specially Clause 4(b) to show that both the Engineer In-Chief and the Chief Engineer have been notified by the State Government to be the Registration Officer and as such, the Chief Engineer too is empowered to blacklist the Contractor.



17. We have gone through the facts of the case and perused the records. The petitioner was blacklisted on 27.08.2019 (Annexure P/4 to the writ petition) after he failed to execute the work within the stipulated period. However, he preferred the writ petition only in the month of October, 2023 i.e. more than 4 years thereafter. Upon query regarding such an inordinate delay in filing the petition, Mr. Prabhat Ranjan, learned counsel submits that as the petitioner was incarcerated for a long period, only after he came out of the jail, the writ petition could be filed.

18. When this Court looked into the petition, no such averment was there. Further, even the learned counsel for the petitioner failed to provide the period for which the petitioner was in judicial custody. We are not happy with such submissions put forward by the learned counsel for the petitioner without there being any statement in the writ petition and/or he having any knowledge of the period of custody and/or whether actually he was in custody or not. We must also note that once the Chief Engineer extended/approved the period of completion of work to 20.08.2021 vide office letter dated 10.01.2023, even then the petitioner could have approached the Court but still he took 10 months in filing the writ petition. The



delay in filing the writ petition was sufficient cause for dismissing the same but for the manner in which the officials have acted which need to be incorporated in the present order.

19. It is an admitted fact that the petitioner was allotted the work and an agreement was signed between the parties on 08.03.2019 for Rs. 3,14,96,800.00/-. Further, he was to complete the work by 11.06.2019 (within three months from the commencement of work, 11.03.2019). As he failed to do so, a short extension of time was granted to him but as the work could not be completed on the extended time too, as stated above, the respondent Chief Engineer issued office memo no. 923 dated 27.08.2019 blacklisting him for the next 10 years. However, it is not the case of the respondents that before the order in question was passed, the petitioner was put on show cause.

20. Worse, on the one hand, the respondents blacklisted the petitioner for the next 10 years, on the other hand, he was allowed to carry on the work allotted to him which he ultimately completed two years later on 20.08.2021, as would reflect from the letter dated 10.01.2023. From the contents, of the aforesaid letter, it is also clear that the respondent no-3, Chief Engineer justified the delay in completing the work



incorporating that due to COVID-19, the work could not be completed in time.

21. While incorporating the said facts, the respondent -Chief Engineer failed to realize that the work was allotted to the petitioner in March, 2019 which was to be completed by June, 2019 whereas COVID-19 came in India in early 2020 and the lock-down occurred only in the month of March, 2020 i.e. a year after the work was allotted to the petitioner.

22. The entire facts have been recorded only to show how the Rural Works Department, Bihar, Patna is functioning. Here is a case where:

(i) the petitioner is allotted a work of over Rs. Three crores which he was supposed to complete within three months, whether the work could have been completed within the said period or not and/or a reasonable time was granted or not, the same is not the subject matter in the petition;

(ii) immediately after the three months period came to an end and noticing that he has completed only 40 percent of the work, 15 days was granted to him to complete the next 60 percent of work, as would reflect from the counter affidavit of the respondent- Chief Engineer a practical impossibility;



(iii) the work could not be completed within the next stipulated 15 days whereafter came the letter no. 923 dated 27.08.2019 by the respondent-Chief Engineer blacklisting him for next 10 years;

(iv) before passing such an order blacklisting him for 10 years, the respondent-Chief Engineer did not even consider putting the petitioner on notice;

(v) further, though he was blacklisted for 10 years, the petitioner was also allowed to complete the allotted work which finally came to an end next two years later on 20.08.2021;

(vi) the work period was later extended upto 20.08.2021 by the officials citing COVID-19 for the delay;

(vii) in other words, the respondent-Chief Engineer justified the delay in the execution of work.

23. From the aforesaid facts, it is clear that the faulty orders are being passed only to benefit the contractors. It is high time the highest authorities of the State Government (the Chief Secretary and the Principal Secretary) takes cognizance of these facts and sensitize its officials so that the orders are passed in accordance with law and not according to the whims and caprices of the Officers.



24. So far as the present case is concerned, admittedly, before blacklisting the petitioner for 10 years, no notice was served upon him. On this ground alone, the memo no. 923 dated 27.08.2019 passed by the respondent-Chief Engineer needs interference and is accordingly set aside.

25. The petitioner will be appearing before the respondent-Engineer In-Chief, Minor Water Resources Department, Bihar Patna along with the order/representation on 19.01.2024 who shall look into the matter and pass necessary order in accordance with law after hearing him . The concerned respondent shall be free to fix the next date of hearing once the petitioner appear before him on 19.01.2024. The respondent shall also take into account the fact that the petitioner has, in any event, completed the work, though delayed.

26. The writ petition is disposed of with the aforesaid observation.

(K. Vinod Chandran, CJ)

(Rajiv Roy, J)

Jagdish/-

AFR/NAFR	
CAV DATE	N/A
Uploading Date	12.12.2023
Transmission Date	

