

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15819 of 2017

=====

Bhuwneshwar Pathak Construction Private Limited is a registered company under the company act having the registered office at Saguna, Gandhi Murti, Danapur Cant, Patna through the Director namely Bhuwneshwar Pathak son of Late Shyam Raj Pathak, Resident of Saguna, Gandhi Murti, Danapur Cant, P.S. Danapur Cant, District- Patna.

... .. Petitioner/s

Versus

1. The Mines and Geology Department through the Mines Commissioner- Cum- Principal Secretary, Mines and Geology Department, Government of Bihar, Patna.
2. The State of Bihar through the District Magistrate, Patna, District Patna.
3. The District Magistrate, Patna, District Patna.
4. The Assistant Director, District Mines Department, Patna, District- Patna.
5. The Additional Collector, Patna, District- Patna.
6. The Sub Divisional Officer, Danapur, District- Patna.
7. The Sub Divisional Officer, Paliganj, District Patna.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Ms. Alka Singh, Advocate Mr. Sumeet Kumar Singh, Advocate
For the State	:	Mr. AAG-6 Mr. Sanjeet Kumar Singh, AC to AAG-6
For Mining	:	Mr. Naresh Dikshit, Advocate Ms. Kalpana, Advocate

=====

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

Date : 18-04-2023

Heard learned counsels for the parties.

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

"That the present writ application is being filed in the nature of *Certiorari* for quashing the memo no- 765 dated 21.09.2017 issued by the District Magistrate, Patna, respondent no-4 for the District Mines



Department, Patna by which the petitioner-company has been blacklisted for future tender of such nature and has been informed to other department, the earnest money deposited by the petitioner-Company has been forfeited by the respondent Mines Department; on the ground that the order of blacklisting is without jurisdiction, without giving opportunity of hearing, the show cause notice is contrary to the order passed dated 21.09.2017, the order dated 21.9.2017 is beyond the show cause notice; the action is contrary to the tender notice published in the newspaper dated 01.09.2017;

II. That the present writ application is being filed in the nature of *Certiorari* for quashing the memo no- 759 dated 20.9.2017 issued by the Assistant Director, District Mines Department, Patna, respondent no-5 by which the petitioner has been asked to give reply within 24 hours; on the ground that the petitioner has not been opportunity of hearing in the matter, the show cause notice is contrary to the order passed dated 21.09.2017;

III. That the present writ application is being filed in the nature of *Mandamus* for a direction to the District Magistrate, Patna and the Assistant Director, District Mines Department to return the earnest Money deposit of Serial No. 1, 2, 3, 4, 6, 7, 8, 9, 21, 22 and Serial No. 23 of total Rs. 11,43,250/-; on the ground that the show notice dated 20.9.2017 and the order dated 21.09.2017 is contrary to each other, no opportunity of hearing has been given to the petitioner.

IV. For any other relief/reliefs for which the petitioner is entitled for."

3. Petitioner's company is a registered company and a successful bidder insofar as lifting of sand. Petitioner has failed to comply various conditions imposed insofar as execution of work.



Therefore, the official respondent proceeded to blacklist the petitioner forever, so also EMD amount has been forfeited etc. Perusal of Annexure-5, blacklisting forever, is contrary to decision of the Apex Court rendered in the case of ***M/s Chauhan Builders Raibareli vs. State of Uttar Pradesh & Ors.*** in ***SLP (C) No. 32840 of 2018***. Therefore, petitioner has made out a *prima facie* case on this short score. Accordingly, impugned order dated 21.09.2017 stands set aside reserving liberty to the concerned authority to pass a fresh order after due taking note of Apex Court's decision (cited supra) and proceed to pass fresh order. In the meanwhile, petitioner is permitted to file additional reply to the show cause notice and proposed show cause notice insofar as blacklisting and consequential order. Above exercise shall be completed within a period of three months from the date of receipt of this order, by the competent authority.

4. Accordingly, the present petition stands disposed of.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

rakhi/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	25.04.2023
Transmission Date	N.A.

