

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18438 of 2022

Narayan Construction, Proprietor-Anju Kumari, aged about 36 years, Gender-Female, Wife of Arunjay Kumar Singh, Resident of Bahuara Bhuiya Vigha, Ledhaanchal, P.S.-Deo, District-Aurangabad. Presently residing at Sainik Colony, Near ITI School, Dumardaga, P.S.-Khelgaun, P.O.-Soognu, District and Town-Ranchi, Jharkhand.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Old Secretariat, Patna.
2. The Secretary, Rural Works Department, Visheweshraiya Bhawan, Bailey Road, Patna.
3. The Engineer-in-Chief, Rural Works Department, Visheweshraiya Bhawan, Bailey Road, Patna.
4. The Chief Engineer-2 Rural Works Department, Visheweshraiya Bhawan, Bailey Road, Patna.
5. The Superintending Engineer, Rural Works Department, Works Circle, Madhepura.
6. The Executive Engineer, Rural Works Department, Works Division, Triveniganj.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Lal Babu Singh, Advocate
For the Respondent/s : Ms. Archana Meenakshee, AC to GP-8

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

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

3 12-04-2023 In the instant petition, petitioner has prayed for the following relief(s):-

“(i) For quashing of the order dated 03.01.2022 contained in Memo No. 10 (Annexure - 13) passed by the respondent Engineer-in-Chief whereby the petitioner has been blacklisted for a period of ten years under the provisions of Rule- 11 (क) (ix) of the Bihar Contractor Registration Rule, 2007 and Clause - 8 (4) of the office order No. 154 dated 18.06.2015 of the Road Construction



Department, Bihar.

(ii) For quashing of the Appellate order dated 31.05.2022 contained in Memo No. 3152 (Annexure - 15) whereby the Respondent Secretary has dismissed the appeal preferred by the petitioner and affirmed the order of blacklisting dated 03.01.2022 contained in Memo No. 10.

(iii) For a direction to the Respondents not to act upon the order of the blacklisting dated 03.01.2022 contained in Memo No. 10 and the appellate order dated 31.05.2022 contained in Memo No. 3152 as if both orders never existed.

(iv) For appropriate declarations that -

a) The impugned order of blacklisting dated 03.01.2022 and the Appellate order are violative of principles of natural justice and fair play.

b) The proceeding of blacklisting of the petitioner pre-mature as the same fact and issue of submission of alleged forged BG is the subject matter of Triveniganj P.S. Case No. 308/2020 in which the investigation is still going on and therefore, unless the result of the criminal case is come out the finding and ground of blacklisting is non-existed and as such, is without jurisdiction.

c) The grounds taken by the petitioner in her reply are completely go by the respondents and without considering the plea taken by the petitioner in her reply the impugned orders have been passed.

d) Sitting tight over the reply of the petitioner and taking decision after 18 months i.e., also without considering the reply of the petitioner is violative of principles of natural justice and also against the principles of legitimate expectation.

e) Raising issue of submission of forged BG at the time of tender is unwarranted and uncalled for during execution of the work after declaring the petitioner as successful bidder in technical bid and in financial bid as well after proper verification on all document including BG and award of work in favour of the petitioner.

(v) For a direction to the respondents to allow the petitioner in participating in the future tender during pendency of the present writ application.



(vi) For any other relief(s) or consequential relief(s) to which the petitioner may be found entitled to in the facts and circumstances of this case.”

2. Short question for consideration in the present petition is before passing of impugned order of blacklisting for 10 years in the show cause notice, gist of blacklisting is not forthcoming. Apex Court in the case of ***UMC Technologies Pvt. Ltd. v. Food Corporation of India and Anr.*** reported in ***(2021) 2 SCC 551***, it is held that show cause notice must indicate proposed action of blacklisting and not merely stating that action would be taken in accordance with law. In other words, the concerned persons rights are affected. He must be made known the details of the proposed action of blacklisting for number of years.

3. Overall view of the Court insofar as blacklisting matters, the authorities were required to take note of the following issues depending upon each case.

(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.

4. Perusal of show cause notice at Annexure-12 dated 19.06.2020, it does not disclose proposal of blacklisting the petitioner for 10 years. On this short issue, the petitioner has made out a *prima facie* case so as to interfere with the impugned order dated 03.01.2022 (Annexure-13) stands set aside, reserving liberty to the concerned respondent to proceed in accordance with law within a period of three months from the date of receipt of this order. Before taking further action, if any, by the respondents, in that event, the concerned authority is hereby directed to take note of judicial pronouncements cited (*supra*).

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

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