

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.25824 of 2019

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Gopal Prasad Singh @ Gopal Singh Son of Ramesh Singh Resident of
Village- Lohanda, P.S.- Sikandra, District- Jamui.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Rural Works Department, Govt. of Bihar, Patna.
2. The District Magistrate, Lakhisarai.
3. The Engineer-in-Chief cum Additional Commissioner cum Special Secretary, Rural Works Department, Bihar, Patna.
4. The Chief Engineer-1, Rural Work Division, Bihar, Patna.
5. The Superintending Engineer, Rural Work Department, Work Division, Munger.
6. The Executive Engineer, Rural Work Department, Sheikhpura.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mrs. Kalpana, Advocate
For the State	:	Mr. Pratik Kumar Singh, AC to GA-V Mr. Ajay, Advocate

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

Date : 20-03-2023

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

“(i) for quashing letter no. 596 dated 22.5.2014 issued by respondent no. 6 whereby respondent no. 3 has been informed that action is being taken for recovery from petitioner and further recommendation has been made for black listing the registration of the petitioner;

(ii) for quashing letter no. 1355 dated 11.10.2014 issued under the signature of



Executive Engineer, Rural Works Department, Sheikhpura, whereby petitioner has been directed to deposit the amount of Rs. 10,91,762.00 after adjusting the security money and other amount against the agreement for construction of To-3 Shivsona to Halsi Road being agreement no. 04(PMGSY)/2009-2010 Package No. BR-19R-061.

(iii) for payment of all the due amount for the work done by the petitioner with respect to construction of Shivsona to Halsi Road being agreement no. 04 (PMGSY)/2009-2010 Package No. BR-19R-061 according to Measurement Book with appropriate interest.

(iv) for direction to the respondents to execute fresh agreement with enhanced rate in favour of the petitioner and permit the petitioner to complete the work according to enhanced estimate for which modified technical sanction was accorded on 20-04-2013.

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

2. During pendency of the present petition, petitioner has filed an interlocutory application while assailing the blacklisting order dated 31.03.2015. The petitioner is a contractor and had executed agreement on 30.10.2009 for a period of five years insofar as execution of construction and maintenance of (TO3) Shivsona Village to Halsi Road under PMGSY (Package no. BR-19R-061).

3. In not executing the awarded work on time the official respondent proceeded to take action for recovery of certain



amount and adjustment of EMD vide communication dated 22.05.2014 item no. 4 in Annexure-5 is in relation to the petitioner. Further in Annexure-5 there is a proposal for blacklisting the petitioner and blacklisting was ordered on 31.03.2015.

4. Learned counsel for the petitioner submitted that impugned action of recovery and blacklisting are not speaking decisions. It is further submitted that there is no reference to issuance of show-cause notice and consideration of the petitioner's reply insofar as both the actions of the recovery and blacklisting, therefore, they are liable to be set aside.

5. *Per-contra*, learned counsel for the respondent resisted the aforesaid contentions and submitted that the petitioner had earlier approached this Court thereafter, invoked remedy before the Bihar Public Works Contracts Disputes Arbitration Tribunal and Arbitration Tribunal which refused to entertain Reference Case No. 153 of 2015, hence once again the petitioner has approached this Court. There is a delay in filing the writ petition and it is also submitted that by means of Interlocutory Application blacklisting order has been challenged. Learned counsel for the respondent vehemently contended that all the formalities have been completed before



6. Heard learned counsel for the respective parties.

[illegible]

And it is also necessary to reproduce blacklisting order
dated 31.03.2015 which reads as under:-

[illegible]

8. Perusal of the aforesaid decisions, it is crystal clear that there is no *iota* of reference to show-cause notice and reply, even though it is submitted that number of show cause notices and reply has been received by the official respondents. Both the impugned action of recovery and blacklisting are amenable to judicial review as in such circumstances speaking order should have been passed. Official respondents cannot improve a document by means of filing counter-affidavit and contending that large number of show cause notice and other formalities have been completed. Further it is to be noted that petitioner has not assailed the order of termination of contract dated 12.02.2014, merely in not challenging the termination of contract that does not come in way of challenging recovery and blacklisting. It is to be noted that blacklisting is for an indefinite period. Apex Court recently in the case of ***M/S Chauhan Builders Raibareli vs The State Of Uttar Pradesh*** reported in ***2022 Livelaw (SC) 694*** wherein held that indefinitely blacklisting cannot be ordered. In the light of these facts and circumstances the petitioner has made out a *prima-facie* so as to interfere with the impugned action of recovery and blacklisting. They are set aside reserving liberty to the concerned official respondents to proceed in accordance with law, if it is warranted at this belated stage. Petitioner is at



liberty to invoke appropriate remedy insofar as any disputed issue is concerned, which is required to be adjudicated.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

Daya/
Himanshu/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24.03.2023
Transmission Date	NA

