

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3626 of 2024

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M/s Krison Infratech Pvt. Ltd. a Company Constituted under the Companies Act, 2013 Having registered address at C/o-Krishna Nandan Singh, Ramnagar, Ward No. 04, Ramdiri, District-Begusarai, Bihar-851129 through its authorized signatory/ Director Ravish Kumar, aged 31 years, Son of C/o-Krishna Nandan Singh, resident of Ramnagar, Ward no 4, Ramdiri, PS Matihani, District Begusarai, Bihar-851129.

... .. Petitioner/s

Versus

1. The State of Bihar through its Principal Secretary, Public Health Engineering Department, PHED Bhawan, Bailey Road, Patna, Bihar-800015.
2. Bihar Police Building Corporation Ltd. through its Managing Director, Kautilya Nagar, Near B.M.P.-5, Campus, Patna-800014.
3. The Chief Engineer, Design, Public Health Engineering Department, PHED Bhawan, Bailey Road, Patna.
4. The Chief Engineer, (North Bihar), Public Health Engineering Department, PHED Bhawan, Bailey Road, Patna.
5. The Executive Engineer, Regional Engineering Department, Zone 01, Darbhanga.
6. The Chief Engineer, Bihar Police Building Corporation Ltd., Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Manu Tripurari, Advocate Mr. Apurv Harsh, Advocate Mr. Raghu Raj Pratap, Advocate Mr. Hritik Anand, Advocate Mr. Almanyia, Advocate
For the Respondent/s	:	Government Pleader No. 22 Mr. Prasoon Sinha, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE HARISH KUMAR)

Date : 26-02-2024



Heard the parties.

2. By filing the present writ petition, the petitioner, which is a Company registered under the Companies Act, 2013, seeks quashing of the order dated 27.12.2023 as contained in Office Order No. 6 ए/वि01-101/2020, whereby the petitioner has been blacklisted for a period of five years. The petitioner further seeks quashing of Letter No. HQ 2007 dated 08.06.2023, whereby the petitioner has been recommended to be blacklisted for all work contracts of the concerned department without providing a proper opportunity and thereby affecting its goodwill and credibility. Besides the aforesaid relief(s), the petitioner also sought a direction upon the respondent(s) to release the earnest money deposited to the tune of Rs. 11,57,400/-.

3. Assailing the impugned orders, learned counsel for the petitioner, contends that the Company has been in the infrastructure/work contracts field for a period of five years and working as a Class-1 Contractor in the State of Bihar, participated in a bid and uploaded all the supporting documents as required in the Notice Inviting Tender in pursuance of the Invitation for Bids dated 18.05.2022 issued by the respondent Bihar Police Building Corporation Limited for allotment of



work for construction and electrification of police buildings.

4. Learned counsel further contends that as per the conditions mentioned in the tender documents, the requisite documentation, including an experience certificate dated 24.09.2020, for successfully developing building of a 400 bedded Girls Hostel in campus of Ramshringari Girls High School, Kamtaul, Jale, was also uploaded as part of experience. However, in course of verification, the said document has been found forged and fabricated, though in the humble submission of the petitioner, the said experience certificate was not signed/verified by the Company; rather the signature appearing on the same is forged and seems to have been signed using photoshop of such application. However, as soon as on notice issued by the Executive Engineer, Regional Engineering Department, Zone 01, Darbhanga (Annexure-P/3), the petitioner realized that such mistake has happened and immediately communicated to the Superintending Engineer, BPBCC, stating all the facts. But, in addition to disqualification intimation, the petitioner received a show-cause notice from the respondent no.4, vide Memo No. 1442 dated 28.07.2023, seeking explanation as to why the petitioner should not be blacklisted on the charge of false and fabricated experience certificate.



5. It was further contended that an FIR has also been instituted against the petitioner bearing Hawai Adda P.S. Case No. 105 of 2023 under the diverse Sections of the Indian Penal Code. However, despite the afore-noted facts and the submissions made by the petitioner, showing his inadvertent mistake; for reason of the documents being forged and fabricated without the genuine signature of the Director, the respondent no.3, vide its order dated 27.12.2023 (Annexure-P/10) has passed the order of blacklisting for a period of five years.

6. Learned counsel for the petitioner further drew the attention of this Court to the terms and conditions of the NIT and adverting thereto, he submits that it is nowhere provided that such punishment of blacklisting would be imposed in the facts of the present case.

7. Reliance has also been made on a judgment rendered by the Hon'ble Apex Court in the case of **Daffodils Pharmaceuticals Ltd. & Anr. v. State of Uttar Pradesh and Another [(2020) 18 SCC 550]**, that the effect of passing such a blanket order of blacklisting based on assumptions and without any affirmative evidence is violative of the principles of natural justice, especially when long duration of blacklisting is



disproportionate. Further reference has also been made to a judgment rendered by the Hon'ble Apex Court in the case of **Vetinda Pharmaceuticals Ltd. v. State of U.P., [(2021) 1 SCC 804]**, that an order of blacklisting beyond three years or maximum of five years was disproportionate, particularly when the tender was not awarded and there was no enforceable contract between the parties.

8. Having heard the learned counsel for the parties and after perusal of the materials available on record, it would be pertinent to note that there is a specific stipulation in the NIT, especially in Clause 41 thereof, obligating the petitioner to compulsorily submit an affidavit in relation to the particular information required under Clause 41(ka to Anga) and in case the bidder is found guilty of providing incorrect, fake and forged document, appropriate legal action is to be taken and the authority shall be at liberty to put his registration under blacklist, apart from institution of an FIR. Clause 43 of the NIT also stipulates that in course of inquiry, if any document is found to be incorrect, the Corporation shall be entitled to take appropriate action.

9. Besides the afore-noted specific stipulation, the power to blacklist a contractor, whether the contract be for



supply of material or equipment or for the execution of any other work whatsoever is inherent in the party awarding the contract and there is no need for any such power being specifically conferred by statute or reserved by awarder, as has been held by the Hon'ble Apex Court in **Kulja Industries Limited v. Chief General Manager, Western Telecom Project Bharat Sanchar Nigam Limited and Others [(2014) 14 SCC 731]**.

10. It would also be relevant to note that admittedly the experience certificate uploaded by the petitioner has been found to be forged, though the same is being disputed by the petitioner, this fact cannot be adjudicated in a writ jurisdiction under Article 226 of the Constitution of India.

11. Exercising the power of judicial review, it is only the decision making process and not the decision itself, which is to be examined. Moreover, it is not the case of the petitioner that before passing the impugned order, show-cause notice has not been caused to be served or he has not been afforded proper opportunity. There arises no violation of principles of natural justice.

12. However, considering the fact that the order of blacklisting is beyond a period of three years and neither was



the tender awarded nor was there any enforceable contract between the parties, this Court deems it fit and proper to give liberty to the petitioner to file a proper representation before the competent authority, who shall be obliged to look into the quantum of blacklisting in the light of the judgement(s) referred hereinabove and pass appropriate orders.

13. The writ petition stands dismissed with the liberty aforesaid.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

rohit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	04-03-2024
Transmission Date	

