

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3493 of 2024

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M/s. Sharda Construction having its Registered Office at Phulwari, P O Amawa Majhar, P S Muffasil Bettiah, District West Champaran, Bihar through its Partner Shreekrishna Prasad, aged about 54 years, Male, son of Late Ambika Prasad, resident of village Phulwari, P O Amawa Majhar, P S Muffasil Bettiah, District West Champaran, Bihar

... .. Petitioner/s

Versus

1. The State of Bihar Through the Additional Chief Secretary, Department of Education, Government of Bihar, Patna.
2. The Bihar State Educational Infrastructure Development Corporation Limited (A Government Of India Undertaking) Siksha Bhawan, Bihar Rashtrabhasha Parishad Campus, Acharya Shivpujan Sahay Path, Saidpur, Patna through its Managing Director.
3. The Managing Director, Bihar State Educational Infrastructure Development Corporation Limited (A Government Of India Undertaking) Siksha Bhawan, Bihar Rashtrabhasha Parishad Campus, Acharya Shivpujan Sahay Path, Saidpur, Patna.
4. The Chief Engineer, Bihar State Educational Infrastructure Development Corporation Limited (A Government Of India Undertaking) Siksha Bhawan, Bihar Rashtrabhasha Parishad Campus, Acharya Shivpujan Sahay Path, Saidpur, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Prabhat Ranjan, Advocate
For the Respondent/s	:	Mr. P.K. Shahi, AG
		Mr. Girijish Kumar, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 27-02-2024

The petitioner has filed the above writ



petition challenging the Bihar State Educational Infrastructure Development Corporation Ltd. Contractors Registration Rules, 2012 which stood amended by Order No. 73 dated 02.06.2022. The ground raised was also that the Managing Director was the Registering Authority and that as per Rule 4 (ख) and as per sub-rule (ग) the order of suspending or blacklisting a contractor can only be passed by Registering Authority or by any other higher authority. Rule 8 (घ) provides for an appeal to be preferred within thirty days of the order before the Managing Director of the Corporation. The Rule is bad for reason of the Registering Authority, who is also the authority conferred with the power to impose penalty, is again the Appellate Authority. It is also stated that the amendment by Office Order No. 73 dated 02.06.2022, introduced several corrupt practices and prescribed specific period for blacklisting. The cause of action is alleged to be the amendment brought in on 02.06.2022.

2. The learned Government Advocate appearing for the respondents immediately when the matter was taken up on yesterday pointed out that the petitioner



was blacklisted as per Annexure-P-4 order dated 11.05.2023, which was challenged unsuccessfully in another writ petition.

3. The learned counsel for the petitioner simultaneously asked for an adjournment to produce a document. On hearing the learned Government Advocate's submission it was the submission of the learned counsel for the petitioner that this was the reason why an adjournment was sought.

4. In the above circumstances, we specifically queried the learned counsel as to any averment made in the present writ petition regarding the earlier challenge; which was admittedly, glaringly absent. Despite that, the learned counsel repeatedly argued that this was the reason, an adjournment was sought when the matter was taken up, at the outset.

5. We specifically notice the fact that the earlier writ petition was also filed by the very same counsel and in that circumstances, we were not inclined to accept the contention of the learned counsel; at which point the learned counsel sought for withdrawal of the writ petition,



which we declined.

6. We adjourned the matter for a day and the matter has come up today before us.

7. Today also the learned counsel sought for withdrawal of the writ petition, which we were not inclined to grant. We notice that in *C.W.J.C. No. 18068 of 2023* by decision dated 30.01.2024, the identical petitioner's challenge against Annexure-P/4 was rejected, which order was produced in the earlier writ petition, as Annexure-P/4 itself. The petitioner had been debarred for ten years by the said order. The grounds taken at the earlier instance was that that the petitioner was not informed of the fraudulent experience certificate produced by him, the blacklisting having been issued by the authority which is not the Registering Authority and the amended Rules dated 02.06.2022, having come into effect only after the Notice Inviting Tender (for brevity, NIT) which was of 30.05.2022.

8. We found that despite the petitioner having not been issued a show-cause notice regarding the allegation of producing a fraudulent certificate, the authority, who issued the NIT had verified with the



concerned department issuing an experience certificate, who confirmed that it was a forged document. The petitioner has not also raised a contention in that writ petition, anywhere, that the experience certificate was in fact a genuine one.

9. We found in this context that a relegation for issuance of a proper show-cause, was a futile exercise and an useless formality. On the ground raised of the blacklisting having been carried out by an authority other than the authority granting registration, the Division Bench specifically negated the same. It was found that the blacklisting done by an authority issuing NIT, on the ground of a fraudulent experience certificate having been issued, does not necessarily result in cancellation of the registration.

10. We also did not find favour with the contention regarding the amendments to the Rules having come into force after the NIT.

11. It is crystal clear that the contention raised herein was not raised at the earlier instance. The rules framed for a department for issuance of tenders by itself



does not confer any *locus* on a contractor to challenge the same. Only when he applies under the rules and some prejudice is caused to him, there could be a challenge raised against the rule framed by the Department.

12. In the present case, the challenge against the prejudicial order passed against the petitioner was rejected by this Court and hence, no cause of action inures on the petitioner to challenge the rule. The grounds raised, in this writ petition also was not raised earlier which was the challenge at the first instance against the prejudicial order.

13. Further, under the guise of challenging the rule, the petitioner has produced Annexure-P-4 dated 11.05.2022, without specifying that the same was challenged once before this Court, unsuccessfully.

14. We would any day appreciate legal ingenuity employed by lawyers but it shall not be reduced to cheap tricks of hoping that, the Court which is confronted with a number of cases on the same lines and the different Government Advocates assigned; would not notice that the challenge raised was one which was already rejected.



Chicanery may bring undue benefits to the client, but raises questions on the role of Advocates; who are first and foremost the Officers of Court. We strongly deprecate the manner in which the writ petition has been filed. We find the explanation of the learned counsel that when the matter was called up yesterday, he had sought for an adjournment to produce the judgment at the earlier instance to be a further attempt to cover up the glaring duplicity employed. The production of the earlier judgment was incumbent even when the second writ petition was filed and further, there is not even an averment made regarding the earlier challenge to Annexure-P/4.

15. We do not say anything further regarding the conduct of the Advocate. We have to notice that even the petitioner was aware of the earlier proceeding and he has executed an affidavit specifically affirming the statements made in the writ petition. The statement made in paragraph no. 2 that the self same relief arising out of the impugned order has not been claimed is on the face of it a deliberate malicious act of deception. Though the challenge against the rule was not raised in the earlier writ petition, the



prejudicial order which gave the petitioner cause of action was already upheld, rejecting the other grounds of challenge raised therein.

16. In such circumstances, we impose a cost of Rs. 10,000/- on the petitioner payable to the Bihar State Legal Services Authority. The petitioner shall pay the said amount within a period of two weeks, and if not, the Bihar State Legal Services Authority shall be entitled to proceed for recovery by taking measures similar to recovery of arrears due on land through the District Magistrate; in which event the petitioner shall be liable for the charges incurred for making such recovery, which have to be recovered by the State.

17. We see that at the earlier instance in ***C.W.J.C. No. 18608 of 2023*** we had directed the respondent-authority to consider the claim of reduction of the period of black-listing, if the petitioner approaches them and points out identical cases wherein a shorter period of blacklisting was granted. Considering the fact that the petitioner has deliberately tried to mislead this Court we are of the opinion that unless the cost as directed herein is paid,



there shall be no reconsideration by the respondent-authority regarding blacklisting. However, if the costs are paid within two weeks and the receipt of the Bihar State Legal Services Authority produced before the respondent-authority, the prayer shall be considered.

18. The writ petition is dismissed with exemplary costs as above.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

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AFR/NAFR	AFR
CAV DATE	
Uploading Date	05.03.2024.
Transmission Date	

