

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7115 of 2024

M/s Suraj Singh Having its registered office at Radha Nagar, Ward No.9, P.O. and P.S. and District- Supaul, Bihar-852131 through its Proprietor namely Sri Suraj Singh (male), aged about 27 years, Son of Sri Anil Singh, Resident of Ward No.9, Radha Nagar, Near Williams High School, P.O. and P.S. and District- Supaul, Bihar-852131.

... .. Petitioner/s

Versus

1. The State of Bihar Through Principal Secretary, Rural Works Department, Government of Bihar, Patna.
2. The Principal Secretary Rural Works Department, Government of Bihar, Patna.
3. The Engineer-in-Chief Rural Works Department, Government of Bihar, Patna.
4. The Chief Engineer-2 Rural Works Department, Government of Bihar, Patna.
5. The Secretary to Engineer-in-Chief Rural Works Department, Government of Bihar, Patna.
6. The Superintending Engineer Rural Works Department, Government of Bihar, Madhepura.
7. The Executive Engineer Rural Works Department, Government of Bihar, Supaul.
8. The Tender Selection Committee In Relation to NIT No. RWD/State Scheme (NABARD/ HQ/ET/10/2023-24 represented through the Engineer-in-Chief Rural Works Department, Government of Bihar, Patna.
9. The Nodal Officer State Planning, Member of the Tender Selection Committee in relation to NIT No. RWD/State Scheme (NABARD/ HQ/ET/10/2023-24, Rural Works Department, Government of Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Ashish Giri, Advocate Mr. Sumit Kumar Jha, Advocate Mr. Riya Giri, Advocate
For the Respondent/s	:	Mr. Amish Jha, Advocate

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

Date : 09-05-2024



We have heard Mr. Ashish Giri, learned Advocate for the petitioner and Mr. Amish Jha, learned Government Advocate.

2. The writ petitioner, a registered Class-I contractor under the Rural Works Division, Government of Bihar on being aggrieved by the order of blacklisting as contained in Memo No. 668 dated 06.02.2024, has preferred the present writ petition seeking quashing of the same, issued under the signature of respondent No. 3 by which the petitioner has been blacklisted for four years.

3. The short facts which led to the filing of the writ petition are that in response to the NIT dated 16.08.2023, which dealt with various construction works including the work at Sl. No. 16 for construction of RCC HL bridge at 3rd Km of Kamalpur Kanuali Road, in the district of Supaul, the petitioner submitted his tender. The value of the work was of Rs. 629.792 lakhs.

4. As per the instructions of the bidders, Class-IV provided for the qualification criteria of the bidder. The relevant criteria for the present case being Clause 4.5 contemplates as follows:



"Satisfactorily completed as a prime contractor (or as a nominated subcontractor, where the subcontract involved execution of all main items of work described in the bid document, provided further that all the other qualification criteria are satisfied) at least one similar work of value not less than amount indicated in Appendix (usually not less than 25% (twenty five percent) of estimated value of contract)."

5. In terms of Clause 4.5 (b), the minimum value of the satisfactorily completed work was to be 25 per cent of the estimated value of contract, which came to Rs. 157.448 lakhs. The writ petitioner applied for the work at Sl. No. 16 of the NIT. In support of the experience criteria, the writ petitioner submitted an experience certificate bearing Letter No. 830 dated 21.07.2023 duly issued under the signature of the Executive Engineer, Rural Works Department, Works Division Virpur, Assistant Engineer and Junior Engineer. The experience certificate discloses the final bill value (construction) to the tune of Rs. 340.42980 lakhs which in the submission of the writ petitioner was beyond the minimum 25 per cent as required.

6. The evaluation of the tender bids of the participants was conducted by the Technical Bid Committee. The Technical Bid Committee after scrutiny of bid documents declared the petitioner disqualified as per Clause 4.5 (b) of the Information



to Bidder of the SBD. The Technical Bid Committee rejected the technical bid of the petitioner on two grounds firstly, the paper submitted in the tender which included an affidavit of key personal was found misleading and hence, false representation. Secondly, the experience certificate submitted by the petitioner is of ongoing work which was verified from the Technical Advisor, Rural Works Department, Work Division, Madhepura vide Letter No. 8828 dated 15.12.2023.

7. Mr. Ashish Giri, learned Advocate for the petitioner advertng to the aforesaid facts urged before this Court that the rejection of the technical bid on the grounds of false representation or misleading facts is in complete disregard to the principles of natural justice, besides that it also suffers from vice of arbitrariness. The Technical Bid Committee never sought any explanation regarding the said certificate of ongoing work before rejecting the technical bid of the petitioner irrespective of the fact that the experience certificate was issued by the Executive Engineer, Assistant Engineer and Junior Engineer or the Rural Works Department.

8. Learned Advocate for the petitioner further contended that the department has taken a conscious decision



vide its memo no. 6310 dated 12.12.2023 to re-tender the process and accordingly, re-tender was issued on 21.12.2023. The petitioner did not proceed to challenge the rejection of his technical bid, however, despite having taken a decision for re-tender, a show-cause notice has been issued to the petitioner vide Letter No. 6474 dated 21.12.2023, under the signature of respondent no. 3 as to why not the petitioner be blacklisted for four years for uploading experience certificate of ongoing work, showing it to be completed. The petitioner immediately submitted his explanation vide its letter dated 28.12.2023, with a categorical statement that no forged document has ever been submitted by the petitioner and the experience certificate which is suspected by the department could very well be verified from the concerned authorities.

9. Learned Advocate for the petitioner further drew the attention of this Court to the show-cause notice and submitted that it was clear that while issuing the said show-cause notice, the authorities concerned have made up their mind to hold the petitioner guilty of false representation. A detailed show-cause has been submitted in response to the show-cause notice. However, the Engineer-in-Chief, Rural Works



Department without considering the reply vide its order contained in memo no. 668 dated 06.02.2024 blacklisted the petitioner for four years stating that the experience certificate submitted by the petitioner is tampered with and wrong, relying upon a subsequent report of Executive Engineer, Work Division Virpur as contained in memo no. 111 dated 25.01.2024. The order of blacklisting is thus challenged before this Court.

10. Mr. Giri next contended that apart from the impugned order being without application of mind, it would be evident that the respondent authorities before arriving at the said conclusion, neither conducted any enquiry nor an opportunity was given to the petitioner to place his explanation. The entire exercise was done behind the back of the petitioner. The reliance on the *ex-parte* report of the Executive Engineer to blacklist the petitioner is arbitrary, mala fide and perverse. The report dated 25.01.2024 had never been provided to the petitioner. Moreover, there is no cogent material so as to specify as to on what basis the certificate of the petitioner is held to be tampered or wrong.

11. It is also contended that the impugned order dated 06.02.2024 also suffers from vice of mala fides for the simple reason that the petitioner while participating in the second NIT



also submitted the same experience certificate dated 21.07.2023, however, the respondent authorities did not disqualify the petitioner from the technical bid. The respondent authorities came up with a new ground that the bank guarantee submitted by the petitioner is not in accordance with Clause 16.1 (d) of the Information to Bidder of the SDB.

12. On the other hand, learned Government Advocate while countering the submission of the writ petitioner has contended that the Technical Bid Evaluation Committee convened its meeting on 11.12.2023 and evaluated the bids uploaded by all the bidders but none of the bidders were found responsive leading to a re-tender. In the meantime, a complaint was filed against the decision of the Technical Bid Committee. The respondent no. 3 called for a report from the Technical Advisor, Rural Works Department and also from the Executive Engineer, Rural Works Department, Work Division regarding the allegation levelled in the complaint.

13. In terms of the aforesaid letter, a spot verification was made by the Technical Advisor, Works Circle Madhepura and he submitted a report vide Letter NO. 828 dated 05.12.2023 enclosing therewith the photographs of the work of construction



of H.L. RCC bridge over Sanjha Dhar at Ch.-2.1 Km in Sripur Siringi Dinbhandhi Border to Siringi village is incomplete. The Executive Engineer, Rural Works Department, Works Division Virpur vide his Letter No. 111 dated 25.01.2024 also reported that the experience certificate enclosed by the petitioner with bid document was manipulated and wrong. The construction of RCC bridge over the site in question was incomplete as on 27.03.2022. The aforementioned inspection reports led to the issuance of the show-cause notice to the petitioner as to, why not he be blacklisted for uploading the ongoing work as completed work. The show-cause reply of the petitioner on being found not satisfactory, the impugned order of blacklisting came to be based on the provisions of Bihar Contractor Registration Rules, 2007, are the contentions of the respondents.

14. We have heard the learned Advocates for the respective parties and anxiously perused the materials available on record. From the record, it would be evident that the experience certificate, produced as Annexure-5 to the writ petition is issued under the signature of the Executive Engineer, RWD, Works Division Virpur, Assistant Engineer and Junior Engineer. The experience certificate clearly discloses the date of



start of the work of construction of RCC bridge on 28.05.2021, the date of completion is said to be 27.05.2022. Below the date of completion, there is actual date of completion which is said to be 27.03.2022. This obviously is a mistake since 27.05.2022 comes after 27.03.2022 and in all probability the actual completion is on 27.05.2022.

15. The certificate in question has never been doubted, as having not been issued by the authorities concerned. However, the impugned order, basing upon the Letter No. 111 dated 25.01.2024 states that the experience certificate submitted alongwith the bid documents is tampered with and incorrect. The said letter has been brought on record by filing a counter affidavit, the copy of which has been produced as Annexure-R/E. The letter issued by the Executive Engineer, Rural Works Department, Work Division reveals that on 27.03.2022, the construction of RCC bridge over Sanjha Dhar at Ch.-2.1 Km in Sripur Siriya Dinbhandhi Border to Siriya village was incomplete. The letter does not disclose what was the status of the construction on the date of completion of the work i.e. on 27.05.2022. There is also no explanation as to why a work-completed certificate was issued.



16. We also find that the clarification sought by the petitioner for uploading wrong documents in the related tender vide Letter No. 6474 dated 21.12.2023, was categorically replied by the petitioner on 28.12.2023 denying the charges of submission of false and incorrect experience certificate. The show-cause notice indubitably does not whisper about the letter no. 828 dated 05.12.2023 issued by the Technical Advisor, Rural Works Department whereby it has been informed that the work in question, as has been shown to be completed in the experience certificate is not complete. We also find that the impugned order is based upon the letter of the Executive Engineer, Works Division Virpur, who has reported through his Letter No. 111 dated 25.01.2024 that the work or experience certificate attached to the tender has been tampered with or is incorrect. These letters have never been served to the petitioner which are made the very basis of the impugned order of blacklisting.

17. Well settled it is that a person against whom any action is said to be taken or whose right or interests are being effected should be given a reasonable opportunity to defend himself. A quasi-judicial authority, while acting in exercise of its



statutory power must act fairly with an open mind while initiating the show-cause proceeding. A show-cause proceeding is meant to give the person proceeded against a reasonable opportunity of making his objection against the proposed charges indicated in the notice. An opportunity to deny his guilt and establish his innocence, which he can only do if he is told specifically, of the charges levelled against him and the allegation on which such charges are based. This is the mandate of the Constitution Bench in ***Khem Chand Vs. Union of India & Ors., AIR 1958 SC 300.***

18. The Hon'ble Supreme Court while highlighting the severity of the effects of the blacklisting and the resultant need for strict observance of the principles of natural justice before passing an order of blacklisting in the case of ***Erusian Equipment & Chemicals Ltd. Vs. State of West Bengal, (1975) 1 SCC 70*** has held as follows:

“12. ... The order of blacklisting has the effect of depriving a person of equality of opportunity in the matter of public contract. A person who is on the approved list is unable to enter into advantageous relations with the Government because of the order of blacklisting. A person who has been dealing with the Government in the matter of sale and purchase of materials has a legitimate interest or



expectation. When the State acts to the prejudice of a person it has to be supported by legality.

15. ... The blacklisting order involves civil consequences. It casts a slur. It creates a barrier between the persons blacklisted and the Government in the matter of transactions. The blacklists are "instruments of coercion".

20. Blacklisting has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for purposes of gains. The fact that a disability is created by the order of blacklisting indicates that the relevant authority is to have an objective satisfaction. Fundamentals of fair play require that the person concerned should be given an opportunity to represent his case before he is put on the blacklist."

19. It would be worthy to note that a show-cause notice not only contains the grounds which according to the department necessitates an action and particular penalty proposed to be taken but must contain the evidences/materials, which has been found or collected by the department forming the grounds for action. Defiance of the aforesaid principles may lead to miscarriage of justice. The fundamental purpose behind the serving of show-cause notice is to make the noticee understand the precise case set up against him which he has to meet. This would require the statement of imputations detailing



out the alleged breaches and defaults he has committed, so that he gets an opportunity to rebut the same, as was duly observed by the Hon'ble Supreme Court in the case of ***Gorkha Security Services Vs. State (NCT of Delhi), (2014) 9 SCC 105.***

20. Admittedly, in the case in hand, the petitioner has not been served with the inspection report of the Technical Advisor dated 05.12.2023 nor the report of the Executive Engineer, Works Division Virpur dated 25.01.2024. As such, in the opinion of this Court, the petitioner has been denied an adequate opportunity of hearing. The inspection as has been said to be conducted by the Technical Advisor has neither been done in the presence of the petitioner nor has he been asked to remain present at the site, besides the fact, the inspection report was not the part of the show-cause. Moreover, this Court also finds that it is not the case of the respondent that the experience certificate has not been issued by the concerned authorities rather it has only clarified that on 27.03.2022, the work in relation to which the experience certificate was submitted, was not completed. The experience certificate also contemplates the date of completion as on 27.05.2022, which has neither been denied nor clarified. The impugned order of blacklisting is also silent in this



respect.

21. In view of the discussions hereinabove, this Court finds that the impugned order of blacklisting is not based upon any substantive material, besides is in complete violation of the principles of natural justice. Accordingly, we set-aside the impugned order of blacklisting as contained in memo no. 668 dated 06.02.2024 produced as Annexure-P/10 to the writ petition.

22. The writ petition stands allowed.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	14.05.2024
Transmission Date	NA

