

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7289 of 2024

=====

Titu Badwal, Son of Late Sohan Singh, R/o Milan Palli, Professor Colony,
P.S. and District- Kishanganj, Bihar (855108).

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Rural Works Department, Government of Bihar, Patna.
2. The Principal Secretary, Building Construction Department, Government of Bihar, Patna.
3. The Engineer-in-Chief-cum-Additional Commissioner-cum-Special Secretary, Rural Works Department, Government of Bihar, Patna.
4. The Engineer-in-Chief, Rural Works Department, Government of Bihar, Patna.
5. The Superintending Engineer, Rural Works Department, Kishanganj, Bihar.
6. The Executive Engineer, Rural Works Department, Kishanganj Circle-1, Kishanganj, Bihar.
7. The Executive Engineer, Rural Works Department, Kishanganj Circle-2, Kishanganj, Bihar.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Sriram Krishna, Advocate Mr. Amarjeet, Advocate
For the Respondent/s	:	Mr. Prabhat Kumar Singh, Advocate Mr. Standing Counsel 11

=====

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HARISH KUMAR)

Date : 30-04-2024

We have heard Mr. Sriram Krishna, learned Advocate for the petitioner and the learned Government Advocate for the State.

2. The petitioner, a Class-I Contractor registered with the department of the State of Bihar, on being aggrieved by



the order of blacklisting dated 30.03.2024 passed by the Engineer-in-Chief-cum-Additional Commissioner-cum-Special Secretary has filed the present writ petition seeking quashing of the same.

3. The writ petitioner also seeks setting aside of the decision of the Technical Bid Evaluation Committee passed in its meeting dated 29.02.2024 by which the petitioner has been declared ineligible in the technical scrutiny for package no. BR18P3R42, MRL47- Babandobha Haldagown to Mohgarh Bich Tola (Tender Id No. 131572) under PMGSY-III under Work Division Kishanganj-2.

4. In response to NIT Nos. RWD/PMGSY/HQ/ET/23-24/07 and RWD/PMGSY/HQ/ET/23-24/09, both dated 28.08.2023 issued by the Rural Works Department, Government of Bihar, inter alia, for construction of roads, the petitioner participated in the bid process of the three packages in the said tenders, the details of which have been mentioned in para.8 of the writ petition.

5. The petitioner submitted his On-line bid applications along with necessary documents for participating in the bid process with respect to three packages. After technical scrutiny, the petitioner was found eligible and declared as the



lowest bidder. However, vide order dated 09.02.2024, the Engineer-in-Chief, Rural Works Department, Government of Bihar cancelled the process and rejected the bids received on 04.09.2023 with respect to all the packages, including the packages against which the petitioner and others applied. The Department after cancellation of the bids, decided to start a new tender process with immediate effect. While the process was going on a show-cause notice dated 23.02.2024, produced as Annexure-P-15, issued under the signature of respondent no.3, was served upon the petitioner as to why not the petitioner be blacklisted for submitting wrong/incorrect documents with respect to Key Plant and Equipment in the tender bid submitted by him.

6. Adverting to the show-cause notice, learned counsel for the petitioner contended that the petitioner was directed to furnish his clarification within a period of seven days as to why he should not be blacklisted for a period of four years. The show-cause notice further contemplated that in case of failure in submission of reply within the time frame, an ex-parte order would be passed against the petitioner.

7. It is the case of the petitioner that the aforementioned show-cause notice dated 23.02.2024 was dispatched via



registered post on 28.02.2024. The notice was received by the petitioner on 04.03.2024 but by the time when the petitioner received the show-cause notice dated 23.02.2024 the seven days time given to file reply had already expired. Despite the fact; the petitioner immediately submitted his reply on 04.03.2024, itself; on the very same day after receiving the said notice. However, the respondent without considering the clarification/ reply of the petitioner came out with the impugned order dated 30.03.2024 blacklisting the petitioner for a period of four years.

8. Learned Counsel for the petitioner would thus contend that the blacklisting of the petitioner for four years without affording adequate opportunity of hearing or considering his show-cause was in clear violation of principles of natural justice. In consequence of the impugned order of blacklisting now the petitioner is unable to participate in the tender floated by the State, which is adversely affecting the petitioner's right to livelihood, apart from being violative of Articles 14 and 19(1)(g) of the Constitution of India.

9. Learned counsel for the petitioner also contended that in the meantime the Technical Bid Evaluation Committee in its meeting dated 22.02.2024 has also declared the petitioner ineligible in the technical scrutiny of the bid submitted with



respect to all the three packages, in question.

10. Questioning the order of blacklisting, learned Counsel for the petitioner reiterated that from the record it is manifest that the petitioner has received show-cause notice beyond the stipulated period under which he was directed to furnish reply and, as such, the petitioner has not been allowed proper opportunity to defend his case. He further contended that though the petitioner immediately submitted his clarification/reply to the charges levelled in the show-cause notice but the same has neither been taken into consideration nor discussed while passing the impugned order.

11. Learned Counsel for the petitioner has taken this Court to the impugned order and vigorously urged that the impugned order has been passed on 30.03.2024 but it is stated, contrary to the record, that the office of the respondent no.3 has not received any clarification/reply from the petitioner. Thus the respondent concluded that the petitioner does not want to say in his defence.

12. Having heard the learned Counsel for the respective parties and on perusal of the materials available on record, *prima facie*, this Court finds that the reply of the petitioner, which is produced as Annexure-P/14 to the writ



petition; there is only an initial on the reply showing the date as 04.03.2024. Neither is there a seal of the office nor it has been disclosed as to who received this reply. However, even going through the reply, this Court does not find that the charges levelled in the show-cause notice has been properly dealt with and answered. Furthermore, the contention of the petitioner that he has received the show-cause notice belatedly and has not been allowed sufficient opportunity to submit his reply has not even been spoken briefly. The very contention regarding a reply having been sent, is not established.

13. The impugned order is based upon the decision of the Technical Bid Evaluation Committee. The Committee in course of scrutiny found that all the documents in respect to Key Plant and Equipments are wrong and incorrect. The committee has found that the efforts were taken by the petitioner to obtain the tender by manipulating the documents. In the aforesaid premise, the respondent no.3 passed the order of blacklisting under Sub-Clause (ix) of Clause 11 (Ka) of Bihar Contractors Registration Rule (Rural Works Department), 2007.

14. It would be worthy to note that though the petitioner denied the charges as levelled in the show-cause notice, but no evidence has been brought on record to



substantiate his rebuttal and thus mere denial of the charges by the writ petitioner would not suffice to disprove the charges, unless there is evidence otherwise.

15. The Hon'ble Supreme Court while highlighting the scope or purpose of invocation of power of judicial review in matters relating to contracts/tenders/awards of contracts in the case of **Jagdish Mandal Vs. State of Orissa & Ors., (2007) 14 SCC 17** has held that, "When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out."

16. Exercising the power of judicial review, this Court is only concerned with the errors of law and fundamental procedural requirements, which may lead to manifest injustice. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It is equally settled



law that in judicial review Court has no power to trench on the jurisdiction of an administrative authority to appreciate the evidence and to arrive at its own conclusion.

17. We have been informed that against the order of blacklisting under the Bihar Contractors Registration Rules, 2007, the person aggrieved has remedy of appeal. Considering the facts and the discussions made hereinabove, this Court does not find any merit in the writ petition. Accordingly, the writ petition stands dismissed, reserving the liberty aforesaid, if the petitioner so desire.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

uday/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	03.05.2024
Transmission Date	NA

