

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11169 of 2023

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Rajeev Kumar Singh, S/o Shyamanand Singh, Resident of Dahiyawan Tola,
Bye Pass Road, Distirct-Chapra, PIN 841301.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Rural Works Department, Govt. of Bihar, Patna PIN 800015.
2. The Secretary, Rural Works Department, Govt. of Bihar, Patna
3. The Deputy Secretary, Rural Works Department, Govt. of Bihar, Patna.
4. The Engineer-in-Chief, Rural Works Department, Vishweshariya Bhawan, Bailey Road, Govt. of Bihar, Patna. 800015.
5. The Chief Engineer, Rural Works Department, Govt. of Bihar, Vishweshariya Bhawan, Bailey Road, , Patna. 800015.
6. The Superintending Engineer, R.W.D., Works Circle, Chapra, Saran, Bihar.
7. The Executive Engineer, RWD, Works Division, Chapra-2 at Chapra.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sanjay Singh, Sr. Advocate Mr. Suresh Pd Singh No.1, Advocate Ms. Kumari Rashmi, Advocate Mr. Aditya Raj, Advocate
For the Respondent/s	:	Mr. P.K. Shahi, Advocate General Mr. Kumar Alok (SC-7) Mr. Satyeshwar Prasad, AC to SC-7

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

Date : 28-03-2024

The petitioner, a contractor, who was awarded a work by the Rural Works Department, is aggrieved with the rescinding of the contract and also the blacklisting carried out; which orders are respectively produced as Annexure-7 and Annexure-10 in the writ petition.



2. We heard Shri Sanjay Singh, learned Senior Counsel for the petitioner and the learned Advocate General for the respondent-Rural Works Department.

3. Shri Sanjay Singh, learned Senior Counsel pointed out that both the rescinding order and the blacklisting was without any notice. Admittedly, there was some delay in the work being completed which was the construction of a road, which delay was not due to the fault of the contractor. There was considerable delay in disbursement of payments on the running bills, the pandemic intervened and there was also a flood situation which hampered the construction as also resulted in the constructed portions being washed away.

4. The contract period was between 14.06.2020 to 13.04.2021. The period was extended by the respondent authorities. On 21.07.2022, the samples were sent to the office of the Executive Engineer which reached the office only on 23.07.2022. The order rescinding the contract was issued on 22.07.2022 itself, even before the samples were tested in a laboratory. There was no method by which the materials used could be termed as substandard. A false allegation was also raised of the petitioner having forcefully kidnapped the Executive Engineer, at gun point and threatened him and his



family for which an F.I.R. was registered.

5. The order of rescinding the contract is produced as Annexure-7. Later, a show-cause notice was issued on 03.08.2022 threatening blacklisting without any reasons being shown; which show-cause notice is produced as Annexure-8. Later, Annexure-10 order was passed blacklisting the petitioner for 15 years. It is pointed out from the order itself that there is no clause (k) to the Registration Rules and there can be no allegation of violation of clause (iv) of Rule 11, which refers to participating in or boycotting tenders by forming a cartel. Specific reference was made to the Rules and clause (b) of Rule 11, which speaks of malpractices in Clause (i) to (v) of Rule 11 (a) attracting the consequence of demotion to a lower class permanently; which consequence was never contemplated by the authority. It is the contention that at the first instance this should have been considered and only then a blacklisting.

6. The blacklisting for 15 years was also on the ground of two misconducts having been alleged; one of which led to the registration of an F.I.R. which is a deliberate falsehood. It is also argued that a guideline was issued by the department regulating the period for blacklisting, which interferes with the discretion conferred on the authority under



the Rules. Sub-clause (x) of Rule 11 (a) is also specifically referred, to point out that conviction for a criminal activity is one of the allegations which could lead to a blacklisting, in which event, the mere registration of an F.I.R. cannot lead to such consequence.

7. The learned Advocate General, on the other hand, submits that the provisions as noticed in Annexure-10 order were mistakenly noticed and that is no reason for interfering with the order since Annexure-10 is a detailed order listing out the facts which led to the blacklisting. Even going by the facts narrated, it is clear that the petitioner can be alleged with misconducts under sub-clause (i), (iii) and (vi). The mere allegation under sub-clause (vi) could lead to a blacklisting, as is evident from Clause (b)(ii). The ground raised of no show-cause notice having been issued is also specifically denied pointing out the various communications addressed to the petitioner by the department. It is also submitted that the specific averments made in the counter affidavit have not been controverted and the reference to a communication addressed to the petitioner as found in Annexure-7, has not been denied in the writ petition.

8. We have given anxious consideration to the



contentions raised, based on the documents produced before Court and also the Bihar Registration of Contractors Rules (Rural Works Department) 2007. As far as the order of rescinding, we have been supplied with a translated copy of Annexure-7. Annexure-7 specifically speaks of a wrong alignment having been adopted by the petitioner for the construction of the road which was different from the approved alignment in the DPR. The road construction awarded to the petitioner was under the Mukhya Mantri Village Link Road Scheme (S.C). The road construction was one between Mukhya Mantri Gram Sadak to Pokhara via Sahwa to Hanuman Ganj S.H. Annexure-7 order specifically refers to Letter No. 1279 dated 14.07.2022 issued by the office of the Executive Engineer wherein a clear direction was given to take corrective measures and rectify the alignment as approved in the D.P.R. It was specifically informed that otherwise the entire work will have to be rejected, the agreement rescinded and a recommendation made to the higher officers for blacklisting. It has also been stated that the Executive Engineer visited the work site and found Bituminous works being carried out on the wrong alignment. The Executive Engineer had specifically asked the work to be stopped, which directions were not complied with



and the Bituminous work completed, in the wrong alignment.

9. It is also specifically stated in the order that on 21.07.2022 the Executive Engineer was forcefully taken to the residence of the petitioner, at gun point and life threats were made against the Executive Engineer and his entire family. An F.I.R. is also instituted in the Mufassil Police Station, Saran at Chapra. It is for the aforesaid reasons that the contract awarded was rescinded.

10. The respondent-Rural Works Department has filed a counter affidavit dated 22.09.2023. It is stated therein that the Executive Engineer, Rural Works Department at Chapra had issued Letter No. 1249 dated 07.07.2022 directing the petitioner to execute the work strictly in accordance with the alignment as provided under the DPR; which communication is produced at Annexure-R/C. The aforesaid communication was returned on the refusal of the petitioner to accept the same. The photo copy of the envelop of the returned postal article is produced as Annexure-R/D.

11. Learned Senior Counsel for the petitioner submitted that the petitioner was under arrest when the same was received; on the F.I.R. registered by the Executive Engineer. However, we see from Annexure-R/D that the letter issued on



07.07.2022 was returned due to refusal by the addressee on 09.07.2022, as is indicated in the endorsement (9/7) in the returned postal article. On 09.07.2022, the F.I.R. was not even registered and in such circumstance, the contention that the refusal was on account of the petitioner's arrest cannot at all be countenanced.

12. The counter affidavit further states that another communication was issued bearing No. 1262 dated 11.07.2022, produced as Annexure-R/E and following it up, again Communication No. 1279 dated 14.07.2022 was issued, produced as Annexure-R/F. It is the letter dated 14.07.2022 that has been specifically referred to in Annexure-7 order which rescinded the contract. Annexure R/F dated 14.07.2022 specifically directed rectification of alignment, failing which rejection of the work, rescinding of the agreement and recommendation for blacklisting was threatened.

13. We do not think that, there can be any ground raised of the procedure having not been scrupulously followed or the petitioner having not been properly issued with a show-cause notice. It is trite that under Article 226 of the Constitution of India we would only be on a judicial review of the procedure adopted by the authority, in rescinding a contract awarded and



cannot look into the facts to either validate the cancellation nor reverse it. Admittedly, there is an arbitration clause which the petitioner would have to invoke for considering whether the cancellation of the contract was justified or not. We express no opinion on the same and while refusing to interfere with the order; having found no procedural irregularity, we reject the contentions of the petitioner only to that extent and reserve liberty to agitate the cause on facts before the appropriate forum; herein the remedy of arbitration.

14. Now, we come to the blacklisting order passed which is of 15 years. The notice for blacklisting is produced at Annexure-8, which does not contain any of the reasons stated for rescinding the contract; neither the wrong alignment having been constructed nor the kidnapping of the Executive Engineer. However, Annexure-10 has comprehensively dealt with all these matters. Only since the learned Senior Counsel attempted to plug holes in the order on the provisions under the Registration Rules, we notice the said contentions for completion.

15. The reference to Rule 11(k) is essentially a reference to Rule 11(a) and the (k) is (क) in the vernacular. The Registration Rules show that sub-clause (i) of Rule 11(a) refers to “*Indisciplined behaviour with any officer or employee of the*



concerned department”, Clause (iii) refers to “Threatening or attacking any officer or employee of the department”; both of which prima facie appears to be relevant in the petitioner’s case, since the allegation is of a kidnapping at gun point and threats levelled against the life of the Executive Engineer and his family. Further reference is to Clause (iv), which is on an allegation of “Participating in or boycotting tenders by forming a cartel”. Obviously, there is no such allegation against the petitioner and the facts as indicated in Annexure-10 would show that the clause intended was Clause (vi) which is “Failure to abide by conditions of Agreement and standing instructions therein during execution of work.”

16. Now, we refer to Clause (b) of Rule 11, which we extract hereunder:-

“(b) (i) If any person as mentioned in clause 11(a) of this rule indulges in any malpractice as described in sub clause (i) to (v) of 11(a) then the registration of the concerned contractor may be demoted to a lower class permanently. If he indulges in more than one malpractice as described in sub clause (i) to (v) of 11(a) then the concerned contractor may be blacklisted.

(ii) If any person as mentioned in clause 11(a) of this rule indulges in any malpractice as described in sub clause (vi) to (xii) of 11(a) then the concerned contractor may be blacklisted.



17. Sub-clause (i) has two limbs, one with respect to demotion to a lower class permanently, when the malpractice is as described in sub-clause (i) to (v) of Rule 11(a). It also indicates that if the registered contractor indulges in more than one malpractice as described in sub-clause (i) to (v) of Rule 11(a) then the concerned contractor may be blacklisted. Here, obviously, there are two allegations against the petitioner, though on the same transaction under sub-clauses (i) and (iii) of Rule 11(a). Further, sub-clause (ii) of Clause (b) as extracted hereinabove, also brings in the consequence of blacklisting if the malpractice is as described in sub-clause (vi) to (xi). The facts, as noticed in the order, would indicate that sub-clause (vi) is applicable in the case of the petitioner since the clear allegation is of constructing the road in an alignment in conflict with the approved alignment.

18. We cannot but also observe that merely because conviction in any criminal activity is a malpractice under sub-clause (x) of Rule 11(a), it does not refer specifically to any criminal activity committed as in the present case, against the officials of the department. An F.I.R. has been registered by the Executive Engineer against the petitioner and the investigation is in progress. The department cannot wait till the completion of



the investigation, filing of a Final Report and also the trial after which alone there could be any allegation of conviction raised. However, an indisciplined behaviour with the officers of the department or threatening or attacking any officer of the department, stands distinctly termed as a malpractice in the Registration Rules, which can also be proceeded with, without waiting for a conviction. We find absolutely no reason to interfere with the order for the ground argued before us.

19. The further ground is with respect to the guidelines issued; which the learned Advocate General specifically points out is based on the decision of the Hon'ble Supreme Court in *M/s Kulja Industries Limited v. Chief General Manager W.T. Proj. BSNL & Ors.* There were instances of the officers under the Registration Rules acting capriciously in issuing blacklisting orders for various periods and also indefinitely, more than often. This led to a number of litigations and it was to ensure a common tenor in the matter of blacklisting that the department had issued guidelines regulating the period to be imposed; specifically to avoid any blacklisting on the whims and fancies of the concerned officer also in compliance with the directions of the Hon'ble Supreme Court.

20. Having answered the contentions, we are still of



the opinion that the blacklisting was done without a proper notice. Hence, only on that ground, we set aside Annexure-10 order but in the light of the contentions of the petitioner having been rejected, we deem it to be a show-cause notice issued under Rule 11(a) (i), (iii) and (vi). The petitioner would be granted three weeks’ time to file his objections and on filing the objections the petitioner would be afforded a hearing after which the authority would pass a reasoned order, in accordance with law.

21. With the above observation and reservation, we dispose of the writ petition.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

P.K.P./-

AFR/NAFR	
CAV DATE	
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