

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12936 of 2023

Srishti Nirman through its proprietor Mr. Baljeet Singh Barnala, aged about 42 years (Male), son of Late Uday Shankar Ray, resident of Mohalla-Ashiyana More, B.M.P. Road, P.O.-B.V. College, P.S.-Airport Thana, District-Patna-14.

... .. Petitioner/s

Versus

1. Bihar Police Building Construction Nigam through its Chairman-cum-Managing Director, Kautilya Nagar, B.M.P.-5 Campus, Patna-800014.
2. The Chairman-cum-Managing Director Bihar Police Building Construction Nigam, Kautilya Nagar, B.M.P.-5 Campus, Patna-800014.
3. The Chief Engineer, Bihar Police Building Construction Nigam, Kautilya Nagar, B.M.P.-5 Campus, Patna-800014.
4. The Superintending Engineer-2, Bihar Police Building Construction Nigam, Kautilya Nagar, B.M.P.-5 Campus, Patna-800014.
5. The Executive Engineer, Bihar Police Building Construction Nigam, Muzaffarpur Division Camp, Hajipur.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 13296 of 2023

Ram Vinay Kumar Son of Sri Ramadhar Sharma Resident of Village-Mahmadpur, P.O. and P.S.-Ghoshi, District-Jehanabad, Pin-804406, At Present Resides at Mohalla 3/2015, B.M.P. Campus, P.O.-B.V. College, P.S.-Airport Thana, District-Patna.

... .. Petitioner/s

Versus

1. Bihar Police Building Construction Nigam through its Chairman-Cum Managing Director, Kautilya Nagar, B.M. P-5 Campus, Patna-800014.
2. The Chairman-Cum-Managing Director, Bihar Police Building Construction Nigam, Kautilya Nagar, B.M.P-5 Campus, Patna-800014.
3. The Chief Engineer, Bihar Police Building Construction Nigam, Kautilya Nagar, B.M.P-5 Campus, Patna-800014.
4. The Superintending Engineer-2, Bihar Police Building Construction Nigam, Kautilya Nagar, B.M.P-5 Campus, Patna-800014.
5. The Executive Engineer, Bihar Police Building Construction Corporation, Purnea Division, P.O.-Purnea, P.S.-K Hat, Purnea.

... .. Respondent/s



Appearance :

(In Civil Writ Jurisdiction Case No. 12936 of 2023)

For the Petitioner/s : Mr. Rajendra Narain, Sr. Advocate
Mr. Manish Sahay, Advocate
Mr. Anil Kumar Sinha, Advocate
Mr. Siddharth Aditya, Advocate

For the Respondent/s : Mr. Prasoon Sinha, Advocate

(In Civil Writ Jurisdiction Case No. 13296 of 2023)

For the Petitioner/s : Mr. Rajendra Narain, Sr. Advocate
Mr. Manish Sahay, Advocate
Mr. Anil Kumar Sinha, Advocate
Mr. Siddharth Aditya, Advocate

For the Respondent/s : Mr. Prasoon Sinha, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 30-07-2024

The writ petitions are filed by two contractors, who appeared under the same Notice Inviting Tender (for brevity 'NIT') but for different works. The NIT stood cancelled and a fresh NIT was issued. Both the petitioners were proceeded against for submitting fraudulent documents when tenders were submitted as per the earlier NIT. The question raised is as to whether a black-listing could be ordered when the NIT was not proceeded with and also beyond the period of validity of the registration as a contractor.

2. Sri Rajendra Narayan, learned Senior Counsel appearing for the petitioners would refer to the records and contend that the black-listing period of 5 years goes beyond the period of validity of registration. Reliance is placed on *M/s*



Sonbhadra Construction v. State of Bihar in C.W.J.C. No.1922 of 2024 dated 07.02.2024; which according to the learned Senior Counsel prohibited cancellation beyond the period of validity of registration. It was also argued that when the earlier NIT was cancelled, there was no reason why a proceeding should be taken against the petitioners.

3. Sri Prasoon Sinha, learned counsel appearing for the respondent, however, pointed out that the earlier NIT stipulated that if any wrong information was provided or any record submitted was found to be false, fake or forged, the competent authority would be entitled to impose lawful punishment including black-listing and lodging of F.I.R; which condition was agreed to by the appellant. The NIT, insofar as the two works for which the tenders were submitted by the petitioners could not be proceeded with for reason of the disqualification of the petitioners, which led to there being only a sole tenderer, qualified at the technical evaluation stage. This was the sole reason for cancellation of the tender for which the petitioners were responsible and they had submitted forged documents.

4. The Notice Inviting Tender under which the petitioners applied is produced as Annexure-P/2, wherein clause



41(e) and (f) provides for a declaration that a certificate, document and details attached with the tender are true and that, if the tenderer is found guilty of providing any wrong information or submitting a false, fake and forged document, the competent authority would be entitled to impose lawful punishment including black-listing of the registration and lodging an F.I.R.

5. In the case of the petitioner at first, there was an order issued of black-listing for an indefinite period. Subsequently, an order was issued, as is seen from Annexure-P/20, in C.W.J.C. No.12936 of 2023 limiting the black-listing for 5 years from the last date of uploading the tender, i.e. 21.07.2012. The reason stated therein is also that a fake experience certificate was produced. The second supplementary affidavit dated 19.06.2024 states that there were 3 tenderers under the NIT and during scrutiny, the experience certificate of the petitioner in C.W.J.C. No.12936 of 2023 was found to be forged and fabricated and hence, he was disqualified. The provision in the NIT under which the petitioner applied clearly requires him to be truthful in the facts stated and also the documents produced; failing which it invites the penalty of black-listing. There is no dispute raised as to the fabricated



experience certificate. We find absolutely no reason to interfere with the order of black-listing.

6. The further contention taken by the learned Senior Counsel for the petitioner is based on ***Sonbhadra Constructions (supra)***. Therein, the grievance was with respect to the cancellation of registration which was for a period which extended beyond the period of its validity. It was in that circumstances that a Co-ordinate Bench of this Court held that the cancellation can only extend up to the validity period and after that when a registration is sought afresh, it would be for the registering authority to decide as to whether it should be granted or not. This has no application insofar as the black-listing of a contractor; that too on the ground of producing fake and forged documents.

7. We also refer to the decision in ***Vaishnavi Buildtech Pvt. Ltd., v. The Bihar Police Building Construction Corporation*** in C.W.J.C. No. 10031/23 dated 25.06.2024, relied on by the learned Counsel for the respondents. The disqualification carried out was for reason of an earlier black-listing having not been revealed. The black-listing order though subsequently interfered with, existed as on the date of tender and it was the finding of the Co-ordinate Bench that the



disqualification was valid. We do not think that the dictum of the said judgment applies squarely herein, wherein the grievance is of a black-listing having been carried out for a period beyond the validity of registration and with respect to an earlier NIT which stood cancelled.

8. We have already found that the black-listing even beyond the period of validity of registration is proper since it applies to the firm, which has been black-listed. When the firm seeks a fresh registration, the black-listing definitely would stand against the firm. Even during the validity of registration, the black-listed contractor would have to suffer the rigour of black-listing. The question regarding the penalty imposed, as per the NIT which was cancelled also has to be answered against the petitioner and in favor of the respondents.

9. As far as C.W.J.C. No.13296 of 2023 is concerned, the facts are similar and the supplementary counter affidavit dated 19.06.2024 filed in the above case also reveals that there were 4 tenderers bidding for the specific work which the petitioner also bid. The experience certificate submitted by the petitioner was found to be a forged and fabricated one and the petitioner was disqualified. Two other bidders also did not pass the threshold technical evaluation; one having withdrawn



and the other having not satisfied the turn-over requirement.
Again the NIT was cancelled for reason of one bidder alone remaining after technical evaluation.

10. On the reasoning above, we find absolutely no reason to interfere with the black-listing order in C.W.J.C. No.13296 of 2023 also. The writ petitions are dismissed leaving the parties to suffer their respective costs.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

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CAV DATE	
Uploading Date	01 .08.2024
Transmission Date	

