

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16909 of 2023

Ashique Alam @ Md. Ashique Alam Son of Masuir Alam Resident of Village-Bela Prasad, Jhalari, P.S.-Rupauli, District-Purnea.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Road Construction Department, Bihar, Patna.
2. The Executive Engineer, Road Construction Department, Road Division, Purnea.
3. The Nagar Aayukta, Nagar Nigam, Purnea.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Bijendra Kumar Singh, Advocate
For the Respondent/s : Mr. Kumar Manish, SC-5

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HARISH KUMAR)

Date : 27-02-2024

Heard the parties.

2. The petitioner by filing the present writ petition, seeks quashing of the order contained in memo no. 1769 dated 15.12.2022 as contained in Annexure 7, whereby the petitioner has been blacklisted. The petitioner also sought quashing of the recommendation letter as contained in memo no. 3066 dated 13.12.2022, whereby the respondent no. 3 has made a recommendation, to put the petitioner in the blacklist.

3. The petitioner on being successful bidder in response to tender no. 14/2020-2021 for construction of PCC Road for an amount of Rs. 24,65,600/-, was awarded tender



of construction of works vide letter no. 24 dated 08.02.2022.

The work order was also issued with a clear stipulation to complete the work within four months from the issuance of the work order and in case of default, 10% of the amount will be deducted.

4. Learned counsel for the petitioner contends that as the petitioner was not keeping good health, despite getting work order, could not perform the construction work. Nonetheless, in the mean time, in response to the notices issued by the respondent no. 3, the work was started by the petitioner by lifting the bitumen and such information was given to the Assistant Engineer but, due to rain, again serious impediment has caused to perform the work and thus, he requested to extend the time to complete the work.

5. It was further contended that apart from the petitioner being a petty 4th Grade Contractor and has been seriously ill in the said period, he was not allowed a single penny in advance to start the work. Moreover, vide letter no. 2728 dated 14.11.2023, the respondent no. 3 knowingly and maliciously asked the petitioner to complete the work within 7 days, failing which he was warned with consequences. Later on, the respondent no. 3 requested the respondent no. 2 to blacklist the petitioner under the provisions of Bihar



Contract Registration Rules, 2007.

6. The petitioner denied the allegation that before issuance of the letter dated 13.12.2022, marked as annexure 5 to the writ petition, the work has not been started, rather the petitioner requested to respondent no. 3 by his representation dated 15.12.2022, to make payment of the work which was done by the petitioner, irrespective of the fact the impugned order contained in memo no. 1769 dated 15.12.2022 came to be passed and the petitioner has been blacklisted with effect from 15.12.2022.

7. Learned counsel for the petitioner while assailing the impugned orders, vehemently contended that the entire action of the respondents are arbitrary and without application of mind apart from being malafide, affecting the civil rights of the petitioner, in as much as, in absence of any provision authorizing the authority to blacklist the contractor, the impugned order is wholly without jurisdiction.

8. Per contra, learned counsel for the respondents by referring to the averments made in the counter affidavit have submitted that despite lapse of the stipulated period to complete the work, when the petitioner did not start the work till 17.06.2022, a reminder was issued vide letter no. 134



dated 17.06.2022 (annexure R/1) to the counter affidavit.

9. Thereafter, consistently letters were issued, the copies of which have been marked as annexure R/2, directing the petitioner to start the work, but the same has not been done nor any response has been made. Finally, a show-cause notice has been caused to be served upon the petitioner as to why not action be taken in terms of PWD code, but, having found no response, Municipal Commissioner, Purnea made a recommendation to blacklist the petitioner and consequent thereupon, the Executive Engineer, Road Construction Department, Works Division, Purnea came with the impugned order of blacklisting vide memo no. 1769 dated 15.12.2022.

10. At this juncture, learned counsel for the petitioner advertng to the order of this Court dated 07.12.2023, has submitted that this Court taking note of the fact that the blacklisting has been done by the respondent without any period specified and the same has continued for almost one year stayed the impugned order and directed to produce the agreement and also queried as to how they get the power to blacklist the contractor on default/defect in the work carried out.

15. It is thus argued that during the pendency of the



writ petition, the competent authority revisited the order of blacklisting and has passed a fresh order of blacklisting confining it for a period of two years but nevertheless, it is contemptuous as the same has been passed in the interregnum period of interim order of stay.

17. Having gone through the records, it is manifest that the further order as produced before this Court by the Government Advocate, contained in letter no. 1590 dated 23.12.2023 prescribing the period of blacklisting for 2 years has not been put to challenge. So far the contention of the petitioner regarding the competence of the respondent authority to impose the punishment of blacklisting, the Bihar Contractors Registration Rules, 2007, especially Rule 11 thereof, clearly prescribes the power to blacklist a registered contractor in case the contractor is found indulging in misconduct(s) on the grounds noted therein.

18. It would also be worth noting here that the power to blacklist a contractor is inherent in the party allotting the contract and this issue has already been set at rest by a decision of the Hon'ble Supreme Court in the case of *Kulja Industries Limited vs. Western Telecom Project, BSNL (2014) 14 SCC 731*. It would be appropriate to quote paragraph 17 thereof:



“17. That apart, the power to blacklist a contractor whether the contract be for supply of material or equipment or for the execution of any other work whatsoever is in our opinion inherent in the party allotting the contract. There is no need for any such power being specifically conferred by statute or reserved by contractor. That is because "blacklisting" simply signifies a business decision by which the party affected by the breach decides not to enter into any contractual relationship with the party committing the breach. Between two private parties the right to take any such decision is absolute and untrammelled by any constraints whatsoever. The freedom to contract or not to contract is unqualified in the case of private parties. But any such decision is subject to judicial review when the same is taken by the State or any of its instrumentalities. This implies that any such decision will be open to scrutiny not only on the touchstone of the principles of natural justice but also on the doctrine of proportionality. A fair hearing to the party being blacklisted thus becomes an essential precondition for a proper exercise of the power and a valid order of blacklisting made pursuant thereto. The order itself being reasonable, fair and proportionate to the gravity of the offence is similarly examinable by a writ court.”

19. The aforesaid view has also been reiterated subsequently in the case of ***Vetindia Pharmaceuticals***



Limited vs. The State of UP (2021) 11 SCC 809 and Matipone Pharmaceuticals (India) Pvt. Ltd. vs Post Graduate Institute of Medical Education and Research, (2021) 11SCC 339.

20. In view of the aforementioned facts and settled legal position, as also the subsequent development, as has been informed to this Court that the error, if any, in passing a blacklisting order without any period specified has been reviewed and rectified by limiting it to a period of 2 years, preceded by a show-cause notice, this Court does not find any merit in the present writ petition, all the more when the subsequent order limiting the period of blacklisting for two years has not been put to challenge.

21. The writ petition stands dismissed.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

supratim/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	02.03.2024
Transmission Date	NA

