

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18608 of 2023

M/s. Sharda Construction having its Registered Office at Phulwari, P O Amawa Majhar, P S Muffasil Bettiah, District West Champaran, Bihar through its Partner Shreekrishna Prasad, aged about 54 years, Male, son of Late Ambika Prasad, residentaof village Phulwari, P O Amawa Majhar, P S Muffasil Bettiah,District West Champaran, Bihar

... .. Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Government of Bihar, Patna.
2. The Bihar State Educational Infrastructure Development Corporation Ltd., (A Government of Bihar Undertaking), Shiksha Bhawan. Bihar Rastra Bhasha Parishad Campus Acharya Shivpujan Sahay Path, Saidpur, Patna 800004 through its Managing Director.
3. The Managing Director, Bihar State Educational Infrastructure Development Corporation Ltd., Shiksha Bhawan, Bihar Rastra Bhasha Parishad Campus, Acharya Shivpujan Sahay Path, Saidpur, Patna 800004.
4. The Chief Engineer, Bihar State Educational Infrastructure Development Corporation Ltd., Shiksha Bhawan, Bihar Rastra Bhasha Parishad Campus, Acharya Shivpujan Sahay Path, Saidpur, Patna 800004.
5. The Executive Engineer, Head Quarter, Bihar State Educational Infrastructure Development Corporation Ltd., Shiksha Bhawan, Bihar Rastra Bhasha Parishad Campus, Acharya Shivpujan Sahay Path, Saidpur, Patna 800004.
6. The Executive Engineer, Rural Works Department, Works Division, Bettiah, West Champaran, Bihar.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Prabhat Ranjan, Advocate
For the BSEIDC	:	Mr. Girijish Kumar, Advocate
For the State	:	Mrs. Binita Singh, SC-28

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJIV ROY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 30-01-2024

The petitioner is a contractor registered under the Bihar Contractors Registration Rules, 2007 (for brevity, the Rules). He applied under a notice inviting tender for



construction of girls hostels at K.G.B.V. Campus, Block-Sidha (Bagaha: 2), K.G.B.V. Campus, Block-Piprasi & K.G.B.V. Campus, Block- Madhubani, Dist- West Champaran.

2. The notice inviting tender issued by the Bihar State Infrastructure Development Corporation Ltd. (for brevity, 'the Corporation') is produced as Annexure-P/2, as per which the last date of submission of application was 24.06.2022. The petitioner was then issued with Annexure-P/3, a notice where he was threatened with blacklisting for ten years since the experience certificate produced by him was a forged document. The petitioner does not have a contention that he has filed a reply to the same. The petitioner was then issued with Annexure-P/4, order dated 11.05.2023, blacklisting him for ten years. From Annexure-P/4 it is seen that 'the Corporation' verified the experience certificate with the Executive Engineer of the concerned department; the concerned department being North Bihar Power Distribution Company Ltd, Patna, and was informed that that the experience certificate was a fake one.

3. The learned counsel for the petitioner contended that the show-cause notice was bereft of material particulars and essential recitals, and in such circumstances, no effective reply could have been submitted. It is also submitted



that the registration issued to the petitioner, under the Rules, as is evident from Annexure-P/1, was issued by the Chief Engineer of the Rural Works Department. In such circumstances, there can be no cancellation of the registration, which is the effect of the blacklisting; which can only be done by the registering authority under the Rules. Further, it is argued that the show-cause notice issued in terms of the amended Rules was invalid since the amendment was brought into effect on 02.06.2022, and the notice inviting tender was of 30.05.2022.

4. The learned counsel for the petitioner would rely on Annexure-P/6 judgment, allegedly in an identical case. Therein, the blacklisting was interfered with, finding it to be not a speaking order and that the facts with respect to the document, required to establish that the petitioner has misled the respondent-Corporation was not forthcoming in the show-cause notice.

5. We do not have any dispute with the above proposition, but it has to be noticed that in the order passed, the specific document, rather the experience certificate issued by the North Bihar Power Distribution Company Ltd., was spoken of as being the questionable document. It is very pertinent that the petitioner has not made even an averment in the writ petition



that the document is in fact genuine. The petitioner has also not thought it fit to produce the said document.

6. Further, the petitioner has not impleaded the said distribution company, whose document was verified with the authority by the respondent and on whose clarification the proceedings were issued.

7. The respondent, on the other hand, has filed a counter affidavit producing the questionable document as Annexure-R2-5/A, the query made to the distribution company by the respondent as Annexure-R2-5/B, and the reply received from that distribution company as Annexure-R2-5/C on the basis of which the proceedings were initiated and concluded.

8. We have to remind ourselves that the petitioner has invoked an extraordinary discretionary remedy and there is no automatic relief permissible even if the petitioner has a valid claim. The petitioner by their own failure to produce the document and make at least an averment that the said document is genuine has made invocation of the extraordinary remedy impossible. We are disinclined to entertain the writ petition.

9. The further argument of the learned counsel for the petitioner is that the registration of the petitioner is under



a Rule granted by a different authority. It is hence claimed that only the original registering authority will have the power to cancel such registration.

10. We cannot but notice that in the present case, what is challenged is a blacklisting and not a cancellation of registration. A department, who issues a notice for tender, to which a contractor applies, based on the registration issued under the Rules, is not disabled from issuing a blacklisting, if the contractor has contravened any of the provisions of the contract, or as in this case, produced a fraudulent certificate to establish the contractor's credentials which determine the essential qualification to apply under the notice inviting tender. The Rules provide for a penalty of blacklisting and a remand in the present case would be a futile exercise, and it would not be desirable, especially for the petitioner having not placed all the cards on the table by necessary pleadings and impleadment of necessary parties. The blacklisting may very well result in the contractor being rendered disabled in applying to the other departments, which again is not a cancellation of the registration issued under the Rules of 2012. After the blacklisting period, the contractor could apply again on the very same registration, and he would not be required to get a fresh registration. We find no



reason to find the blacklisting to be without proper authority.

11. We do not find any reason to invoke the extraordinary remedy under Article 226 of the Constitution of India and decline discretion in the instant case for all the reasons stated above.

12. The learned counsel for the petitioner points out that in identical cases, the respondent authority has only blacklisted the bidder for one year. The petitioner could definitely seek indulgence from the respondent authorities but, we would leave the consideration to the absolute discretion of the authority.

13. The writ petition is dismissed *in limine* with the above liberty.

(K. Vinod Chandran, CJ)

(Rajiv Roy, J)

aditya/-

AFR/NAFR	
CAV DATE	
Uploading Date	06.02.2024.
Transmission Date	

