IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.344 of 2024

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Bhupendra Singh Son of Janardan Singh, Proprietor of Lal Enterprises, At and P.O.- MT Devipur, Via- A.G. Bazar, P.S.- Kursaila, District- Katihar. At present resident of Mohalla- Vikramshila Nagar Colgong, Kahalgaon, P.S. Kahalgaon, District- Bhagalpur.

... ... Petitioner/s

Versus

1. The Ministry of Power, Govt. of India through its Principal Secretary, Bhikaji Cama Place, New Delhi-110066.
2. The Director (HR), National Thermal Power Corporation Ltd. Core 7, Scope Complex, 7 Institutional Area, Lodhi Road, New Delhi.
3. The Executive Director (CC-EOC), National Thermal Power Corporation Ltd. 2nd Floor EOC Annex Plot no. A 8A, Sector 24 Noida, Uttar Pradesh.
4. The Executive Director (WR-11) RED/CEO, Plot no. 87, Sector-24, Atal Nagar, Nava Raipur, Chhatisgarh, NTPC.
5. The General Manager (CC-EOC), Contract Services NTPC Ltd, 2nd Floor EOC Annex Plot no. A8A, Sector-24 Nodia, Uttar Pradesh.
6. The Regional Executive Director ER-1, National Thermal Power Corporation Ltd. Loknayak Jay Prakash Bhawan Eastern Regional Head Quarters-1 2nd Floor Fraser Road, Dak Bunglow Chowk, Patna, Bihar.
7. The General Manager (C and M) NTPC Ltd., Eastern Region Headquarters, Dak Bunglow Crossing 2nd floor Loknayak Jay Prakash Bhawan, Patna, Bihar.
8. The Dy. General Manager (C and M) NTPC Ltd./MTPS Kanti Muzaffarpur, Bihar.
9. The Head of Project, Muzaffarpur Thermal Station Kanti Muzaffarpur, Bihar, NTPC.
10. The Assistant General Manager (BMD/Civil) NTPC Ltd. MTPS Kanti Muzaffarpur, Bihar.
11. The Assistant Manager (Law) NTPC Ltd/KTPS Kanti Muzaffarpur, Bihar.
12. The Chief Vigilance Officer, NTPC New Delhi.
13. Utility Powertech Limited, Muzaffarpur Thermal Power Station Kanti Muzaffarpur Bihar through its Resident Manager.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sanjeev Kumar Jha, Advocate
For the UOI	:	Ms. Poonam Kumari Singh, Advocate
For the NTPC	:	Mr. Tuhin Shankar, Advocate
For the Respondent no.13	:	Mr. Arun Kumar, Advocate

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

Date : 08-04-2024

The writ petitioner is aggrieved with Annexure-P/12 order, which banned business dealings of the respondent with the petitioner for a period of two years from the date of issuance of the speaking order. The petitioner contends that the order was passed in violation of the order of the CBI Court produced as Annexure-P/4 dated 06.02.2023. It is also submitted that the reasons stated in the order passed, are not in consonance with the show-cause notice issued. The petitioner's contention is also that when in the criminal case lodged, the CBI has given a final report, there is no cause for proceeding against the petitioner for blacklisting.

2. We heard the learned counsel for the petitioner and learned counsel appearing for the respondent-authority. The learned counsel appearing for the 13^{th} respondent, who had given a sub-contract to the petitioner also entered appearance.

3. The petitioner, a contractor was entrusted with civil maintenance work of 'plant area' for three consecutive years based on tenders. The purchase order for contract value of Rs. 91.482 lakhs dated 11.10.2012, another for Rs. 87.86 lakhs

dated 13.09.2014 and the last for Rs. 101.505 lakhs dated 04.12.2015 were subjected to scrutiny both on the administrative side and on the vigilance side. A surprise check was conducted by the vigilance team of the National Thermal Power Corporation (for brevity, the NTPC), Kahalgaon in respect of the aforesaid maintenance work. There were many allegations raised which are evident from Annexure-P/5, show-cause notice dated 16.01.2019, issued to the petitioner. The show-cause notice indicated manipulation in gate passes and challans, furnishing of invoices of construction materials; which had not really entered the premises of the plant, entries being made through petitioner's own purchase invoices and so on.

4. Based on the vigilance report the F.I.R. was registered. However, later the CBI filed a closure report as is evident from Annexure-P/4. In Annexure-P/4, it has been specifically stated that the closure report filed by the CBI indicated that during investigation no criminality has been found and the NTPC also did not object to the closure report. The closure report, hence was accepted by the CBI Court and the seized documents were directed to be returned to the concerned authorities.

5. We have to immediately notice that there is no

order or direction as such of the Special Court the mere closure of the criminal case would not lead to absolution of the petitioner/contractor from the misdemeanors alleged, which can be proceeded with on the administrative side. It is trite that in criminal proceedings the standard, is proof beyond reasonable doubt whereas on the administrative side, it is the preponderance of probabilities that reign supreme. Merely, because a criminal case is closed or even the accused is acquitted, it does not necessarily absolve the delinquent from proceedings on the administrative side.

6. In this context, we would refer to the report of the CBI produced along with Annexure-P/13 series. A reading of the report would indicate that there was no physical verification of the executed work during the vigilance enquiry conducted and it is impossible for verification of any work at this stage, since it related to the period 2012-16. It was found that quantities of materials supplied were inflated by altering figures in purchase invoices/challans but it could be established in only 31 purchases invoices or letter heads by comparison with the CISF register maintained at the entry point. The CISF register produced was of a later period and the vehicle and the material incoming register also could not be produced by the CISF unit.

7. It was found that the oral and documentary evidence collected during the investigation is not sufficient to prove the offence alleged in the F.I.R. The presumption is that the investigating agency thought that there could be no proof offered beyond reasonable doubt. The CBI report, however, also noticed that in view of the manipulation in purchase invoices/letter heads, there could be a blacklisting of the firm from any other work in the NTPC. Definitely, when the closure report has been filed, the CBIs role is over and the recommendation made for blacklisting is only to be taken as a recommendation made on the vigilance angle.

8. As was noticed, there was a notice issued at Annexure-P/5, as alleged in 2019. The delay occurred only because of the investigation carried out in the criminal case. The closure report was filed and Special Court accepted the closure report on 06.02.2023. The proceeding for blacklisting was commenced after the said date. Annexure-P/12 order was passed.

9. We find that the grounds raised in the show-cause notice has been repeated in the Annexure-P/12 notice. There was also an oral hearing given to the petitioner as is evident from the order passed. It was found that there was no

satisfactory explanation given and this was the reason for banning the business dealings for a period of two years.

10. We find absolutely no reason to interfere with the order passed, in a judicial review under Article 226 of the Constitution of India, where we are not looking at the decision itself which is based on the facts and the objective satisfaction of the authority. The decision making procedure cannot be faulted and in that circumstances, we find no reason to entertain the writ petition. The writ petition would stand dismissed.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

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AFR/NAFR	
CAV DATE	
Uploading Date	10.04.2024.
Transmission Date	