IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13995 of 2023

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1. M/s Diamond Power Project Pvt. Ltd. Ground Floor, Pacific Tower, Shukla Colony, Road No. 1, Ranchi (Jharkhand) through its Director Fasih Ahmed.
2. Fasih Ahmed, son of Syed Qutub Uddin Ahmed, Resident of Village-Sheikhpura, P.S.-Narhat, District-Nawada (Bihar).

... ... Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Department of Planning and Engineering, Government of Bihar, Patna.
2. South Bihar Power Distribution Company Limited Vidyut Bhawan, Bailey Road, Patna through the Chairman.
3. The Chief Engineer, Project (P and E), South Bihar Power Distribution Company Limited, Vidyut Bhawan, Bailey Road, Patna.
4. The Chief Engineer, Project-I (Rural), South Bihar Power Distribution Company Limited, Vidyut Bhawan, Bailey Road, Patna.
5. The Project Manager, South Bihar Power Distribution Company Limited, Vidyut Bhawan, Bailey Road, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sourendra Pandey, Advocate
		Mr. Rajesh Kumar Mishra, Advocate
For the Respondent/s	:	Mr. Kinkar Kumar, SC- 9
		Ms. Sushmita Sharma, AC to SC- 9
		Mr. Vinay Kirti Singh, Sr. Advocate
For SBPDCL	:	Mr. Anand Kumar Ojha, Sr. Advocate
		Mr. Ashok Kumar Karna, Advocate
		Mr. Abhishek Raj, Advocate
		Mr. Kunal Tiwary, Advocate

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date : 21-01-2025

We have heard Mr. Sourendra Pandey, the learned Advocate for the petitioners and Mr. Anand

Kumar Ojha, the learned Senior Advocate for the South Bihar Power Distribution Company Limited. The State is represented by Mr. Kinkar Kumar, the learned SC- 9.

2. The petitioner was chosen as a concessionaire by the South Bihar Power Distribution Company Limited *(in short the SBPDCL)* for constructing a power sub-station and allied works in the district of Nawada in the NIT floated by them on 16.02.2022 at an estimated cost of Rs. 6.94 Crores.

3. The SBPDCL found the performance of the petitioner to be very poor since the beginning of the project as the timelines were not adhered to. Ultimately, by order dated 30.08.2023, the SBPDCL passed an order terminating the contract of the petitioner on account of poor performance for the work of construction which was entrusted to it as also for invocation of contract performance bank guarantee along with blacklisting for a period of three years from the date of termination of the contract.

4. The order, referred to above, further stipulated that besides any other financial burden to be incurred by the SBPDCL in completion of the left-over work, would also be recovered from the petitioner in view of Clause 36 of the NIT.

5. The afore-noted order was put to challenge before this Court when an interim order of stay was passed with respect to blacklisting only for the reason of the order being devoid of any reasons and of non-consideration of the explanation given by the petitioner for not adhering to the timelines in the NIT.

6. The factual position today is that since the termination of the contract, the left-over work was entrusted to another agency for completion as it related to construction of Power Station for transmission of electricity, which is an important aspect in all walks of life.

7. After some arguments, Mr. Pandey limits his prayer to the issue of blacklisting only and not for termination of contract. However, he intends to press for

a communication from the SBPDCL with respect to his invocation of Clause 38 of the NIT for settlement of dispute by mutual consultation with respect to the other claims of the SBPDCL.

8. So far as blacklisting of the petitioner is concerned, we find that no reason has been given by the SBPDCL for effecting such order except that the performance was dismal right from the beginning.

9. Several grounds were raised by the petitioner, namely, the delayed handing over of the site for the work; the defective drawings of the boundary wall which needed rectification; request for cost escalation of civil works and no timely approval of drawings for control room building and non-payment of dues like performance bank guarantee; construction of the boundary wall; soil investigation and contour survey; earth filling and site levelling as per BOQ; sinking of tubewell and installation of motor, etc.

10. With respect to blacklisting, the law is very

clear that all grounds have to be taken into account and a reasoned order has to be passed.

11. We find that the order of blacklisting is bereft of any reason. Precisely for this reason, this Court *vide* order dated 13.10.2023, relying on ***Kranti Associates (P) Ltd. And Anr. vs. Masood Ahmed Khan and Ors., (2010) 9 SCC 496***, stayed the order or blacklisting till further orders.

12. Mr. Ojha, the learned Senior Advocate for the SBPDCL has submitted that if the issue of blacklisting is resolved now, it would be difficult to exclude the petitioner from any future contract on it being technically and financially responsive to the NIT ever floated.

13. This apprehension would not rectify the order of blacklisting, which is without any reason.

14. We are of the considered view that since the petitioner does not insist for setting aside of the termination of the contract, the SBPDCL would be under an obligation to pass a fresh order with respect to

blacklisting with reasons after taking into account the grounds raised by the petitioner opposing the same.

15. The petitioner would be entitled to furnish fresh grounds in its defence within a period of four weeks and the SBPDCL shall pass a reasoned order within a further period of four weeks, giving reasons.

16. We also observe that in case of invocation of Clause 38 of the NIT, the SBPDCL shall respond to the afore-noted proposal.

17. The writ petition stands disposed off with the afore-noted observation.

(Ashutosh Kumar, ACJ)

(Partha Sarthy, J)

Sauravkrsinha/
Praveen-II-

AFR/NAFR	NAFR
CAV DATE	NA
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