

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13715 of 2024

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M/S R.S Construction, having its Registered Office at Kali Asthan Chowk, Begusarai, District Begusarai, through its Partner namely, Pankaj Kumar, aged about 51 years, Male, son of Rameshwar Prasad Singh, resident of village Sihma, Police Station Matihani, District Begusaria, Bihar.

... ... Petitioner/s

Versus

1. The Bihar Police Building Construction Corporation, (Government of Bihar Enterprise) Kautilya Nagar, Patna 800014 through its The Chairman -cumManaging Director, Bihar Police Building Construction Corportation, Kautilya Nagar, Patna 800014.
2. The Chairman -cum- Managing Director cum Appellate Authority, Bihar Police Building Construction Corporation, Kautilya Nagar, Patna 800014.
3. The Chief Engineer cum Registering Authority, Bihar Police Building Construction Corporation, Kautilya Nagar, Patna 800014
4. The Superintending Engineer, Bihar Police Building Construction Corporation, Kautilya Nagar, Patna 800014.

... ... Respondent/s

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Government Contract—Blacklisting—petitioner/firm was blacklisted for three years—review petition of petitioner/firm was rejected—respondents invited tender with one of the pre-conditions that bid of only such firms would be considered who would upload their experience certificate of carrying out work of the Central Government/State Government/Public Sector Undertakings of similar nature along with proof thereof—petitioner had submitted his performance/experience certificate along with the tender documents—respondents on finding that the certificate of experience enclosed by the petitioner/firm was a forged one, filed a criminal case, registered against all the partners of the petitioner/firm along with the power of attorney holder—petitioner never stated before any Authorities that its experienced certificate is genuine—act of the petitioner/firm in providing misleading information for meeting the qualification threshold, dis-entitles the petitioner/firm from seeking any relief—no interfere with the decision of the respondents in blacklisting the petitioner/firm for three years—petition dismissed. (Paras 21, 25 and 26)

(1975) 1 SCC 70; (2006) 11 SCC 548; (2014) 14 SCC 731; (2012) 11 SCC 257; 2024 SCC Online SC 1896; (1985) 3 SCC 398 —Relied Upon.

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... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Umesh Prasad Singh, Sr. Advocate
Mr. Sanjeet Kumar, Advocate
For the Respondent/s : Mr. Prasoon Sinha, Sr. Advocate
Mr. Prabhat Kumar, Advocate

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

Date : 27-02-2025

Heard the learned counsel for the parties.

2. The petitioner, a partnership firm, has



approached this Court against the order dated 22.06.2023 passed by the Chief Engineer-cum-Registering Authority, Bihar Police Building Construction Corporation, Patna, blacklisting the registration of the petitioner/firm for an indefinite period, which *vide corrigenda* dated 03.07.2023 was altered to blacklisting for five years, to be effected from 21.07.2022, as also the order dated 19.01.2024 passed in appeal by the Chariman-cum-Managing Director of Bihar Police Building Construction Corporation, by which, the order passed by the Chief Engineer (respondent No. 3) was modified and the petitioner/firm was blacklisted for three years, but made it operative for other Departments of the Government also.

3. It is also noted here that the review petition of the petitioner/firm filed on 12.02.2024 was also rejected.

4. The Chief Engineer, Bihar Police Building Construction Corporation (*hereinafter referred to as the*



Corporation) had invited tender for construction and electrification of Police Stations and Out-houses in the District of Gaya, apart from other works. The last date for uploading of the bids was extended from time to time.

5. One of clauses of the Notice for Inviting Tender (*in short the NIT*), namely, Clause 35 was that the bid of only such firms would be considered who would upload their experience certificate of carrying out work of the Central Government/State Government/ Public Sector Undertakings of similar nature along with proof thereof.

6. The petitioner/firm along with eight others had submitted their bids for the work in question. The petitioner had submitted his performance/experience certificate along with the tender documents. The certificate was purportedly issued by the Managing Director of the Jharkhand State Tribal Cooperative Vegetable Marketing Federation, Ranchi (*in short the VEGFED*). On verification of the documents, it was found that no such performance/experience certificate as was



uploaded by the petitioner was ever issued from the office of VEGFED. This was communicated by the Managing Director of VEGFED *vide* his communication dated 24.04.2023.

7. One of the partners of the petitioner/firm had also filed an affidavit that all the certificates enclosed with the bid are true and that if any wrong information is detected, the competent authority would be at liberty to take legal action, including blacklisting the registration of the firm. The affidavit also reiterated that in that event, an FIR also could be lodged.

8. The Corporation on finding that the certificate of experience enclosed by the petitioner/firm was a forged one, filed a criminal case, registered as Airport P.S. Case No. 106 of 2023, against all the partners of the petitioner/firm along with the power of attorney holder, *viz.*, Deepak Kumar for offences punishable under Sections 467, 468, 471, 420, 120(B) and 511 of the Indian Penal Code.



9. Since in the Standard Bidding Documents (*in short the SBD*), it was clearly stated that a bidder could be disqualified if he would make any misleading or false representations in the forms, statements and attachments submitted in proof of the qualification requirements, the Technical Evaluation Committee rejected the bid of the petitioner.

10. Invoking the provisions of the Bihar Contractor Registration Rules, 2007, a show-cause notice was issued to the petitioner on 01.06.2023, asking the firm to explain within one week of the receipt of the notice as to why the registration be not suspended and the petitioner/firm be not blacklisted on the charge of forgery, cheating and uploading a forged experience certificate along with the bid documents. This was sent by speed-post on 02.06.2023 at the address provided by the petitioner/firm at the time of its registration. However, the letter was returned on 07.06.2023 by the Postal Department with a note that the address was not correct



and complete. This also raised suspicion about the petitioner/firm not having provided its correct address. Thereafter, the impugned order of blacklisting the petitioner/firm, initially for an indefinite period but later modified for a period of three years, was passed.

11. The appeal preferred by the petitioner/firm was also dismissed.

12. It was argued on behalf of the petitioner/firm before the Appellate Authority that the order of blacklisting was beyond jurisdiction in as much as on the day of issuance of the show-cause notice, *i.e.*, 01.06.2023, the Chief Engineer had ceased to be the registering authority as the registration of the petitioner/firm had expired on 21.12.2022. A firm, it has been argued, whose registration had already expired could not have been blacklisted for such to be effective.

13. It has further been argued that the allegations in the FIR, referred to above, was still pending investigation and the blacklisting order was passed after



the bid validity period of the tender process was over, leaving no occasion for the respondents, in absence of extension of bid validity, to open the bid documents and process the same. The other contention on behalf of the petitioner/firm was that the show-cause notice was never served.

14. Neither in the writ petition nor before the Appellate Authority or the Reviewing Authority, as we have noticed, the petitioner/firm has stated about the experience certificate to be genuine.

15. The communication made by the Managing Director of VEGFED clearly demonstrates that the certificate of experience uploaded by the petitioner/firm was never issued by the VEGFED, *prima facie*, proving that a misleading document was uploaded by the petitioner.

16. It further appears from the records that the last date for uploading the bid documents was 21.07.2022 and the date for opening the technical bid



was 22.07.2022. In presence of the Superintending Engineer, Circle-I of the Corporation, the technical bids uploaded on-line by the bidders were opened and after completing the required process, those were placed before the Evaluation Committee on 25.04.2023. One of the terms of the SBD permitted the bidder to withdraw his bid after the bid opening when the period of bid validity expired and in that case, the bidder's earnest money would not be forfeited. Contrary thereto, if any bidder withdrew the bid after the bid opening during the period of bid validity, the earnest money would be forfeited.

17. The petitioner/firm had preferred to continue with the bid process, which is evident from the fact that it did not withdraw its bid after the opening of the bid, although the period of bid validity had expired.

18. So far as notice to the petitioner/firm is concerned, its service is denied.

19. Blacklisting has always been viewed by the Courts as one of the most drastic remedies and the



orders passed have always been subjected to rigorous scrutiny. The law need not be adumbrated further that notice to the bidder/contractor is a must, which notice ought to convey clear intent of the punitive action to be taken against the defaulter. Apart from that, there has to be an element of protection of public interest from such defaulters/contractors who are non-responsible, lack business integrity or engage in dishonest or illegal conduct or are otherwise unable to perform satisfactorily [refer to ***Erusian Equipment & Chemicals Ltd. Vs. State of W.B : (1975) 1 SCC 70; B.S.N. Joshi & Sons Ltd. Vs. Nair Coal Services Ltd. : (2006) 11 SCC 548; Kulja Industries Ltd. Vs. Chief General Manager, Western Telecom Project Bharat Sanchar Nigam Ltd. & Ors. : (2014) 14 SCC 731; Patel Engineering Ltd. Vs. Union of India : (2012) 11 SCC 257*** and ***Blue Dreamz Advertising Pvt. Ltd. & Anr. Vs. Kolkata Municipal Corporation & Ors. : 2024 SCC OnLine SC 1896***].

20. Submitting of forged certificate leading to the registration of an FIR, even though the investigation



with respect to the same is pending, is a serious matter which affects and jeopardizes the trust of the Corporation and it is the duty of every Corporation to warn the other counterparts regarding such persons.

21. In the case of the petitioner/firm, even if it is assumed that the notice was not served, which is because of the incorrect address provided by the petitioner at the time of registration, the petitioner/firm had every opportunity of defending himself before the Appellant Authority, which, in its wisdom, reduced the period of blacklisting from five years to three years. It matters not if the registration of the petitioner/firm has expired. The act of the petitioner/firm in providing misleading information for meeting the qualification threshold, dis-entitles the petitioner/firm from seeking any relief.

22. The *audi alteram partem* principle has varied facets, including the service of a notice to any person against whom a prejudicial order may be passed



and providing an opportunity to explain the evidence collected.

23. It would be profitable to refer to a paragraph of the Supreme Court in ***Union of India vs. Tulsi Ram Patel : (1985) 3 SCC 398***, which encompasses the complete amplitude of the principle of *audi alteram partem*, which reads as follows :-

“96. The rule of natural justice with which we are concerned in these appeals and writ petitions, namely, the audi alteram partem rule, in its fullest amplitude means that a person against whom an order to his prejudice may be passed should be informed of the allegations and charges against him, be given an opportunity of submitting his explanation thereto, have the right to know the evidence, both oral or documentary, by which the matter is proposed to be decided against him, and to inspect the documents which are relied upon for the purpose of being used against him examined in his presence and have the right to cross-examine



them, and to lead his own evidence, both oral and documentary, in his defence. The process of a fair hearing need not, however, conform to the judicial process in a court of law, because judicial adjudication of causes involves a number of technical rules of procedure and evidence which are unnecessary and not required for the purpose of a fair hearing within the meaning of audi alteram partem rule in a quasi-judicial or administrative inquiry.”

24.The petitioner/firm got an opportunity to explain the evidence against it and represent why it should not be blacklisted, in the appeal.

25. We, even at the cost of repetition, state that there is no statement on behalf of the petitioner/firm that the certificate uploaded by it is not forged.

26. Considering this aspect of the matter, we do not wish to interfere with the decision of the respondents in blacklisting the petitioner/firm for three years.



27. The petition is dismissed.

28. Interlocutory application/s, if any, also
stands disposed off accordingly.

(Ashutosh Kumar, ACJ)

(Partha Sarthy, J)

Praveen-II/
Sauravkrsinha-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	04.04.2025
Transmission Date	NA

