
(1992) 09 PAT CK 0009
In the Patna High Court
Case No : CWJC No. 6417 of 1992

Lalit Construction and Others	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 25-09-1992

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1992) 09 PAT CK 0009

Hon'ble Judges : S.K. Singh, J; S. Hoda, J

Bench : Division Bench

Advocate : Binod Shankar Tiwary and Ram Rang Tiwary, for the Appellant; G.P. for Respondent 4, for the Respondent

Final Decision : Allowed

Judgement

1. The present application under Articles 226 and 227 of the Constitution of India has been filed for quashing the order, vide memo No. 1496 dated 9.6.1992, contained in Annexure-6 by Joint Secretary, Department of Water Resources, Respondent-3, by which the registration of the licences of the Petitioners have been cancelled and the firms have been black-listed. In pursuance of the said order all agreements entered into with the Petitioners by the Irrigation Department for different contract works have also been cancelled and the payments to the Petitioner firm, for the works already done has also been withheld.

2. The short facts giving rise to the present application are that the Petitioners are firms which are registered with the Department of Water Resources in category of Class-2 and since then they are, doing different contract works assigned to them to the satisfaction of the authorities concerned and at no point of time any complaint has been made against the Petitioner firm.

3. Petitioner-1 made an application in the year 1980 for its registration as Class-2 contractor in the Department of Irrigation. The said firm after due

verification was registered as Class-2 contractor vide an order issued by the Engineer-in-Chief vide Registration No. 1682/86. After its registration as Class-2 contractor, Petitioner-1, was allowed several works by the department and has already done satisfactorily contract work worth more than rupees five lacs. In 1989, Petitioner-1 made an application for renewal of its registration as the initial registration was only for three years. The renewal was made vide an order issued by the Engineer-in-Chief bearing Memo No. 3495 dated 28.6.1989 with effect from 7.5.1989 to 6.5.1992. Sri Subhas Chandra Pathak, who is an engineer and partner of Petitioner-1, was directed to file an affidavit and the same was filed by him on 6.11.1985. On 9.2.1992 Petitioner-1 was served with a letter dated 22.1.1992 issued by the Secretary to the Engineer-in-Chief asking him to give information within seven days from the date of the issuance of the letter as no show cause has been filed by him in pursuance to the notice dated 7.12.1991. Said letter is annexed as Annexure-4 to the writ petition. In reply thereto, the Petitioner asked for copy of the charges from the Engineer-in-Chief so that an effective show cause could be filed. But a letter under the signature of the Joint Secretary, department of Water Resources, Government of Bihar was sent to the, Petitioner by which the registration of Petitioner-1 was cancelled and the firm was blacklisted. By the same order, registration of five other firms who are Petitioners-2 to 6 to the present writ application were also cancelled and they were blacklisted, a copy of which has been annexed as Annexure-6 to this writ application.

4. It has further been stated that the reasons assigned in Annexure-6 for cancellation of registration and blacklisting of Petitioners firm is that at the time of registration, the firm produced an affidavit filed by an unemployed engineer and partner of the firm stating therein that the said engineer was not a partner in any other firm except the firm for which he made application for its registration, but after inquiry it was found that the said engineer partner was partner in other firms also. As such the firm had committed forgery by submitting a false, affidavit and deserves cancellation of its registration and blacklisting.

5. Similarly Petitioner-2 also made an application for its registration as Class-2 contractor in the department of Water Resources. The authority after being satisfied that the Petitioner-2 fulfilled all the criteria for registration as Class-2 contractor, granted permission vide registration No. 1515/85 by order dated 12th August, 1985. Subsequently, after a lapse of the period of three years, Petitioner-2 made a prayer for renewal of registration and by order dated 10th April, 1991 registration of Petitioner-2 was renewed from 12.8.1991 to 11.8.94.

6. It has further been stated that a letter issued under the signature of the Secretary to the Engineer-in-Chief, Water Resources Department dated 22.1.1992 was received by Petitioner-2 in which it was stated that vide letter No. 364 dated 7.12.1991 a show-cause notice was issued to Petitioner-2 against certain charges, but Petitioner-2 has not replied to the same, as such by this

letter he was asked to reply within seven days from the date of issuance of said letter i.e. from 22.1.1992. As the Petitioner-2 has not received letter dated 7.12.1991 as such, he wrote to the Engineer-in-Chief, Department of Water Resources on 10.2.1992 stating therein that he has not received the letter dated 7.12.1991 and, as such, he was not in a position to file his show-cause. But instead of serving with a copy of the charges, he was served with a copy of Annexure-6 by which his registration was cancelled and the firm was blacklisted.

7. Similarly Petitioners had also made an application and was registered as Class-2 contractor in the Department of Irrigation by memo No. 1312 dated 12th April, 1989. Petitioner-3 also made an application for renewal of registration in April, 1992 which is pending before the authority concerned Petitioner-3 was also served with a letter dated 21.1.1992 on 3.2.1992 issued under the signature of Secretary to the Engineer-in-Chief and he was also informed that why he has not filed a show-cause to the charges which was served on him on 7.12.1991 and was directed to file his show cause within seven days from the date of issuance of the present letter. Though Petitioner-3 was asked to file his show cause within seven days from 22.1.1992 the date of issuance of the letter of Secretary to the Engineer-in-Chief, but actually the said letter was received by him on 3.2.1992 which is much later than time given for filing of the show cause, as such, there was no question of filing the show cause. Petitioner-3 informed about these facts to the Engineer-in-Chief, Water Resources Department by letter dated 4.2.1992 and requested him to serve a copy of the charges so that effective show cause could be filed. But by Annexure-6 his registration was also cancelled and the firm blacklisted.

8. Petitioner-4 made an application in the year 1987 for registration as Class-2 contractor before the authority and also produced an affidavit filed by Sri Motilal Yadav, who was an unemployed Engineer and one of the partners of Petitioner-4 firm stating therein that he is not a partner in any other firm. The authorities after verifying his contentions enlisted Petitioner-4 as a contractor vide registration No. 1970 of 1987 as Class-2 contractor. Subsequently, by an agreement among the partners, Sri Motilal Yadav decided not to remain as partner of the firm and an affidavit was sworn on 3.10.1987. One Guru Prasad Chaudhary, an unemployed Engineer became the partner of the firm and an affidavit was sworn to this effect by him on 3.10.1987. Sri Guru Prasad Chaudhary also filed affidavit on 3.12.1987, stating therein that he is an unemployed Engineer and he is not partner in any other firm except Petitioner-4 and a fresh deed of partnership was executed on 30.11.1987. The company decided to retain its old name. In 1987 itself Petitioner-4 informed the Engineer-in-Chief regarding fresh development. Since registration of Petitioner-4 was valid till February, 1990, an application for renewal of registration was made by Petitioner-4 and thereafter renewal was made till, 1.5.1993, Vide letter No. 365 dated 7.12.1991 issued under the signature of Joint Secretary, Respondent-3. Petitioner-4 was asked to show cause as to why his registration be not cancelled and Petitioner firm be blacklisted. In the said letter it was stated that from

inquiry it has come to the notice of the authorities that his registration has been made on the basis of the bank balance and also taking into consideration that one of the partners Sri Motilal Yadav is also an unemployed Engineer but the authorities got information that the said Sri Motilal Yadav is partner of many other firms, also, which is against the Rules. In reply to the letter dated 7.12.1991 Petitioner-4 filed show cause giving details as to how Sri Motilal Yadav left the firm and in place Anr. person had joined the firm and the authorities were duly informed about the development. Petitioner-4 also supplied the relevant documents including the affidavit sworn by Sri Motilal Yadav and Guru Prasad Chaudhary, who was an unemployed Engineer, and had joined this firm as a partner but by Annexure-6, registration of Petitioner-4 was also cancelled and the firm was blacklisted.

9. Similarly Petitioner-5 on the basis of bank deposit certificate and after showing partnership deed that one of its partners Sri Subhas Chandra Pathak being an unemployed Engineer, was registered as Class-2 contractor vide registration No. 2211/87. Petitioner-5 after registration has completed many contract works satisfactorily. Petitioner-5 received a letter No. 431 dated 22.1.1992 issued under the signature of the Secretary to the Engineer-in-Chief whereby he was also informed that, he was asked to file by letter dated 7.12.1991, a show cause about certain charges leveled against him but even after a lapse of such a long period no explanation has been given by Petitioner-5 within seven days of the issuance of said letter. After receipt of said letter dated 22.1.1992, Petitioner-5 sent a letter to the Engineer-in-Chief, Department of Water Resources on 13.2.1992 stating therein that he has not received the letter dated 7.12.1991 asking to file show cause and as such, it was difficult for him to submit his show cause. But by Annexure-6, an order was passed by Respondent-3 against Petitioner-5 canceling the registration of licence and blacklisting the firm.

10. Petitioner-6 was registered as Class-2 contractor in the year 1988 vide registration No. 2373/88. As this Petitioner-6 also had no experience of works as such he submitted bank deposit certificate before the authority concerned. An affidavit was also filed that one of its partner was an unemployed Engineer. Registration of petitioner-6 was renewed on 9.4.1991. By Annexure 16 it would be abundantly clear that Sri Motilal Yadav who was an unemployed Engineer Partner of Petitioner-4 has disassociated with firm in the year 1987 and as such, Petitioner 4 firm allowed Sri Motilal Yadav to join Petitioner-6 firm as a partner. Sri Motilal Yadav remained in Petitioner-6 firm till 6.5.1991. On that day, he expressed his desire to disassociate himself with the firm and thereafter, other partners of the firm decided to enter into agreement with Anr. unemployed Engineer Sri Dharmendra Kumar to join the firm as a partner from 15.6.1991, a letter to this effect was written to the Engineer-in-Chief on 11.7.1991. An affidavit to the effect that he is an unemployed Engineer was also sworn by Sri Dharmendra Kumar. Petitioner-6 received a letter issued under the signature of the Joint Secretary, Department of Water Resources dated 7.12.1991 whereby he was asked to show cause as on inquiry it has, come to the knowledge of the

authorities that the registration of Petitioner firms as contractor was made on the basis of the firm having a partner an unemployed Engineer. It was also stated that Sri Motilal Yadav is the partner of Petitioner-6 whereas on information it has come to the knowledge of the authority that the unemployed Engineer was a partner of many other firms which was against the Rule. Petitioner-6 submitted his show cause to the Joint Secretary, Department of Water Resources on 7.1.1992 stating therein that Sri Motilal Yadav had already left the firm and Sri Dharmendra Kumar, an unemployed Engineer had joined firm as one of the partners. It was also stated that this new development has already been communicated to the Department vide letter dated 20.7.1991. But without considering the show cause filed by Petitioner 6 the impugned order as contained in Annexure-6 was passed blacklisting Petitioner firms as well as cancelling its registration.

11. Learned Counsel appearing for the Petitioners has submitted that by a notification, the government has issued guideline to be followed for registered contractors in the Water Resources Department. It has been contended that the said guideline which is annexed as Annexure-1 will go to show that unemployed Engineer partner of a firm is not restrained from joining more than one firm. It has also been stated that before incorporating new criteria, rule already existing should have been annulled or amended. It has further been submitted that the action of Respondents is punitive in nature and as such, an opportunity of hearing should have been granted to the Petitioners but Petitioner Nos. 1 to 3 and 5 were never heard in the matter though by specific letter they have demanded a copy of the charge-sheet so that effective show cause could be filed, but still the same was not supplied to them. As such the order as contained in Annexure-6 is violative of principle of natural justice and on this ground alone it should be quashed. It has further been submitted that the Petitioner Nos. 4 and 6 who had filed show cause, had established in the show cause that on, the date of which registrations were made, the unemployed Engineer partners were partner of their firms only and whenever there was a change of partner, the same was duly communicated to the Engineer-in-Chief, but without taking these facts or the show cause into consideration and without assigning any reason, Annexure-6 has been passed.

12. A counter affidavit has been filed on behalf of Respondents in which it has been stated that registration of Petitioner firms have been validly and legally cancelled, because, at the time of their initial registration they had submitted fake and false documents, it has been stated that consequent to the cancellation of their registration, they have been blacklisted. As regards the payment for the works already done by Petitioner firms, it has been stated that the Petitioners have remedy before a competent civil Court, by filing of a suit, as it is purely a money claim, and as such, this Court should not interfere with the order of Respondent No. 3 as contained in Annexure-6. In support of their contentions, learned Counsel appearing on behalf of Respondents has stated that one Sri Subhash Chandra Pathak is said to be a partner of Petitioner-1 firm and had also

filed an affidavit to that effect. Said Sri Subhsh Chandra Pathak has filed Anr. affidavit saying that he was partner of the Petitioner-5 firm and was not attached with any other firm. As such, two affidavits of Sri Subhash Chandra Pathak, himself will make both his affidavits redundant. Specific instances have also been cited, to show, that Sri Pathak was partner of at least five firms. When the aforesaid illegalities came to the knowledge of the authorities, show cause was issued to Petitioners, but, no reply was filed by them. As such, department has taken action on their own. Similarly regarding other Petitioners, it has also been stated that show cause notice was served on them but they have failed to file show cause. As such, the department has taken action against them. Regarding Petitioner-4 it has been stated that though show cause was filed by Petitioner-4 firm but after due consideration and proper verification of the records, the same was found to be unsatisfactory and as such, department has no option but to reject the same, in accordance with the Rule, cancelling the registration of licence and blacklisting the firm.

13. Regarding Petitioner-6 also, it has been stated that show cause filed by him was considered and on verification it was found to be unsatisfactory and as such, the same was rejected and the order of cancellation and blacklisting of the firm was passed. It has further been submitted by learned Counsel appearing for the State, that the department has taken extra precaution and before passing of the order of cancellation of registration as well as blacklisting the Petitioner firms, Petitioners had been issued a show cause and as no reply was received, second show cause was also sent to them but even after that when no reply was filed by Petitioners-1 to 3 and 5, the authorities have no option but to pass a final order. As regards Petitioners-4 and 6, the order was passed after taking into consideration the show cause filed by them. As such according to him, there is no merit in the present writ application and the same should be dismissed.

14. Admittedly, even on their own showing, the Respondents' case is that the order as contained in Annexure-6 was passed as a punitive measure, as the Petitioners had filed false affidavits before the Respondents for getting their firm registered as Class-2 contractors. Learned Counsel appearing for the State could not substantiate his argument before this Court that show cause notices were served on the Petitioners before passing of the order as contained in Annexure-6. The Rules/Guidelines governing appointment/registration of such contractors in Water Resources Department also does not go to show that the unemployed engineer partner in the firm seeking registration cannot be a partner in more than one firm. Without entering into the point, as to whether new criteria could be laid down without amending or annulling the existing Rules, the present writ application has to be allowed solely on the question of Annexure-6 being a non-speaking order and the same being passed without giving an opportunity of hearing to the Petitioners. As the Respondents could not establish that the Petitioners-1 to 3 and 5 were heard before passing of the impugned order and Petitioners-4 and 6 though had filed show cause but the impugned order which is a general order, concerning many other similarly situated persons, does not go to

show that their show cause had been taken into consideration before passing of the said order.

15. For the reasons, as stated above the order dated 9.6.1992 passed by Joint Secretary, Department of Water Resources, Respondent-3, as contained in Annexure "6" is quashed to the extent it relates to the Petitioners. But it will be open to the Respondent-3 to pass a fresh order in accordance with law after giving an opportunity of hearing to the Petitioners.

16. In the result, the writ application succeeds to the extent as indicated above but there shall be no order as to cost.