

(2019) 12 PAT CK 0057

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 20461 Of 2019

M/A Raghubar Singh Through

APPELLANT

Vs

State Of Bihar Through The Secretary And Ors

RESPONDENT

Date of Decision : 02-12-2019

Acts Referred:

Citation : (2019) 12 PAT CK 0057

Hon'ble Judges : Ashutosh Kumar, J

Bench : Single Bench

Advocate : Manish Sahay, Anil Kr. Sinha, Ajay

Final Decision : Disposed Of

Judgement

Learned counsel for the petitioner is permitted to make necessary correction in the prayer portion of the petition.

Heard Mr. Manish Sahay, learned advocate for the petitioner and Mr. Ajay, learned advocate for the State.

The petitioner has been blacklisted for ten years for not having completed the contractual work given to him of maintenance of roads.

It has been submitted on behalf of the petitioner that he was initially debarred from participating in future tender for non-completion of four projects, but on challenge, the order of debarment was set aside by a bench of this Court. Consequently the petitioner continued performing his part of the obligation under the contract. One of the projects could not be completed by the petitioner within time for which a notice was issued to him and he responded to the same. However, because of the delay in conclusion of the work, the contract with respect to the particular project for which there was an agreement between the petitioner and the respondent/Rural Works Department, the work was put to re-tender and this Court has been informed that it has successfully been completed. However, on the recommendation of the Chief Engineer, the matter was

considered for blacklisting the firm of the petitioner. Notice also was issued to him to which he had replied but it has been argued that the same has not been considered and a disproportionate order has been passed blacklisting the firm of the petitioner for ten years from participating in any tender of the department.

Learned counsel for the petitioner has several objections to the aforesaid order dated 19.08.2017 but a lot of stress has been put on the issue that though the notice for initiating the proceeding for blacklisting was dispatched to him on his Patna address but the order of blacklisting was sent to his village address and therefore, the petitioner was not in the know of the aforesaid development. This is the reason which he attributes to in not preferring an appeal before the departmental Secretary within time. The other reason is that only the official records and the recommendations have been gone into and the explanation offered by the petitioner has not at all been taken into consideration.

As opposed to the aforesaid contentions raised on behalf of the petitioner, Mr. Ajay submits that the conduct of the petitioner dis-entitles him for this petition to be entertained by this Court. He submits that because of the lack of interest shown by the petitioner in conducting the work of maintenance of roads, not only the work remained incomplete and the condition of road went on deteriorating but on re-tender, the same was effectively carried out. Thus, whatever explanation has been offered by the petitioner is only a sham.

Apart from this, it has been submitted that the department now does not consider him fit enough to be continued as a person who could be given such opportunities and such decision of the department ought not be likely interfered with as only the functionaries of the department know their best interest. In support of the aforesaid contention of the parties, several decisions have been referred to, which need not be discussed in the present order.

On going through the order impugned, it clearly appears that there is no mention of the grounds which have been urged by the petitioner against such a decision and this Court is in a quandary whether such submissions/grounds were taken into account by the authority before passing the order impugned. This makes the order suspect on the issue of non-application of mind.

Apart from this, if the notice of the proceeding was served upon the petitioner at his Patna address, there was no justification for dispatching the order of blacklisting at his village address. This factual aspect, though, has been disputed by the counsel appearing for the State but this Court under the circumstances viz. the debarment of the petitioner for ten years, which appears to be disproportionate and the pendency of an arbitration proceeding with respect to the breach of contract, this Court deems it appropriate that the petitioner be permitted to file an appeal before the departmental Secretary challenging the aforesaid order. Though more than two years have passed of the passing of the order but in the aforesaid circumstances, this Court is of the view that interest of justice would be satisfied, if the petitioner is given an opportunity of representing

his case by way of an appeal against the order of blacklisting before the departmental Secretary.

The limitation period as provided in the notification of the Rural Works Department with respect to preferring an appeal is hereby relaxed.

In case an appeal is filed by the petitioner within a period of two weeks of this order, the appellate authority shall consider the grounds raised by the petitioner and shall pass a reasoned order in accordance with law within a further period of thirty days of the receipt of such memo of appeal.

Since, an interim order of stay of the operation of the order has been passed by the predecessor bench, the order of stay shall continue in the meanwhile but it shall be subject to the final decision of the appellate authority.

With the aforesaid direction/observation, the writ petition is disposed of.