

(2017) 04 JH CK 0066
In the Jharkhand High Court
Case No : 4303 of 2016

Pappu Rout @ Pappu Kumar Rout

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 20-04-2017

Acts Referred:

Citation : (2017) 04 JH CK 0066

Hon'ble Judges : Aparesh Kumar Singh

Bench : SINGLE BENCH

Advocate : Prashant Pallav, Sanjeet Nayak, Binod Singh

Judgement

1. Heard learned counsel for the parties.

2. Under NIT Reference No. WRD/MID/SIMDEGA/IFB-05/2015-16 work order was allotted to the petitioner on 2.7.2016(Annexure-4) by the Executive Engineer, M.I. Division, Simdega on being successful in the tender process for construction of Check Dams in the Simdega Circle . Under NIT No. WRD/MID/GUMLA-IFB-14/2015-16 (Annexure-3 to I.A. No.8164 of 2016) on being successful, an agreement was executed with the petitioner on 28.6.2016 for construction of certain Check Dams in the District of Gumla at Karcha Nala, Ghaghra Nala and Haroop Nala. Petitioner has contended that in respect of the work allotted in Simdega District, he has executed 60% of the work. In respect of agreement entered for work in Gumla District, he has not been able to execute any work because of intervening development and cancellation of the work order / agreement.

3. Petitioner approached this Court on issuance of a communication bearing no. 402 dated 29.6.2016 by the Engineer-in-Chief-II, Water Resources Department to the Chief Engineer, Minor Irrigation, Ranchi/Dumka (Annexure-5), referring to letter dated 27.5.2016 and letter dated 3.4.2014 of the Rural Works Department. It was directed that no work or agreement be entered with the petitioner as the Rural Works Department has informed through letter dated 3.4.2014 that

petitioner has been blacklisted by the said department. This was on the complaint of one M/s Saurav Constructions, Bishunpur, Gumla. Petitioner apart from challenging memo no. 1257 dated 3.4.2014(Annexure-6), order of blacklisting, sought quashing of the impugned letter dated 29.6.2016 where under the Respondent Authorities of the Minor Irrigation Department were directed not to execute agreement in his favour.

4. When the matter was taken up on 5.9.2016, learned counsel for the petitioner sought and was allowed liberty to assail the order of blacklisting by the Rural Works Department in a separate proceeding if so aggrieved. Petitioner thereafter has assailed the order of blacklisting dated 3.4.2014 issued by the Engineer-in-chief cum Additional Commissioner cum Special Secretary, Rural Development Department in W.P.C. No. 5524 of 2016. In the meantime in the present writ petition, petitioner sought stay of the re-tendering process initiated by the Respondents through I.A. No. 8164 of 2016 in respect of same work in the District of Gumla. Interim order was passed on 14.12.2016 where under Respondents were allowed to process the bid invited under e-Procurement Notice dated 1.12.2016(Annexure-4) but were restrained from allotting the work in favour of any person. In the meantime such e-Procurement notice has also been issued on 6.1.2017 for same work in Simdega District. I.A. No. 413 of 2017 was filed for stay of re-tendering process vide NIT dated 6.1.2017 in respect of same work in the District of Simdega. By way of I.A. No. 1541 of 2017, petitioner sought to assail the decision of the Tender Committee dated 30.9.2016(Annexure 9 and 10 to the instant I.A) where under a decision was taken to cancel the allotment of work with respect to the District of Gumla and Simdega respectively on account of his blacklisting by the Rural Works Department as had concealed this fact while participating in the instant tenders. Petitioner also sought to assail the order contained in letter no. 547 dated 5.10.2016(Annexure-11 to the instant I.A) and letter no. 548 dated 5.10.2016(Annexure-12 to the instant I.A) where under a decision was communicated by the Engineer-in-Chief-II of the Water Resources Department to the Chief Engineer, Minor Irrigation Department for cancellation of work of construction of series of Check Dam awarded to the petitioner in the District of Gumla and Simdega respectively.

5. Respondents have appeared and filed counter affidavit in the matter on 30.1.2017 . Supplementary counter affidavit have also been filed on 16.2.2017 and 23.3.2017. Respondents by referring to the statements made in the counter affidavits have made following submission:- (i) Petitioner was under obligation in terms of the NIT and standard bid document, Column no. 1.11 to categorically disclose the history of litigation and file affidavit in specific terms as to whether he has been blacklisted or debarred in any other work by any other department or agency. It was also required to state in categorical terms whether any current litigation or arbitration is pending in respect of the said agency. Petitioner was also required to stated whether any work allotted to it was pending beyond 6 months after completion of the work.

(ii) Petitioner admittedly never disclosed before the Respondents that he had been blacklisted by the Rural Works Department in relation to the work allotted to it under Package No. JH0512 for construction of road from Dumka to Mortanga, from R.E.O Road to Dhamna Road, R.E.O road to Bankathi Road and Road work from Jitpur to Darbarpur Path. The work was to be completed within a period of 12 months. Affidavit furnished by the petitioner also failed to state that he had been blacklisted for such work by the State or any other Instrumentality / Organization. This fact was brought to light on verification by the Rural Works Department on complaints made by one M/s Saurav Constructions. Accordingly direction was issued to the Chief Engineer, Minor Irrigation Department by the Engineer-in-Chief, Water Resources Department not to allot the work or enter into any agreement with the petitioner vide letter dated 29.6.2016. The Tender committee sat to take decision on the instant question on 30.9.2016 in respect of both the NITs for the District of Gumla and Simdega where the petitioner was found to be successful. The Tender Committee came to a considered opinion that petitioner had failed to disclose the factum of blacklisting and had concealed facts. Therefore the work or agreement entered with him could not be allowed to be carried out. It had to be cancelled.

(iii) Learned counsel for the Respondent State further submits that on the date on which the decision was taken by the Tender Committee, the order of blacklisting was in operation. The impugned decision therefore cannot be said to suffer from any non-application of mind, consideration of irrelevant materials or in violation of terms and conditions of the agreement either. It was the petitioner who had suppressed the fact related to blacklisting at the time of allotment of work in teeth of the provisions of the standard bid document.

6. Learned counsel for the Respondent State also submits that quashing of the order of blacklisting by this court vide order dated 16.3.2017 in W.P.C.5524 of 2016 would not render the decision taken by the Respondent Authorities relating to cancellation of work order and agreement with the petitioner illegal as the same were based on correct state of facts prevalent on the date of decision. The order of blacklisting has been quashed on the ground of violation of principles of natural justice and merits of the decision has not been gone into by this Court.

7. Learned counsel for the petitioner in reply submitted that the entire basis for cancellation of the work order and agreement entered with the petitioner is on the only ground that petitioner has failed to disclose the factum of his blacklisting by the Rural Works Department vide order dated 3.4.2014. However, if the Hon"ble Court has found that the order of blacklisting was not preceded by any proper show cause notice in the eye of law to enable the petitioner to defend himself though it entails adverse civil consequences, petitioner cannot be attributed the knowledge or information of existence of order of blacklisting at the time of submission of his bid in the instant 2 NITs in question. It first came to the knowledge of the petitioner through impugned letter dated 29.6.2016(Annexure-5) where after petitioner had promptly assailed the same

on all available grounds of law and fact. The order of blacklisting having been quashed , the decision to cancel the work order and agreement with the petitioner cannot be sustained on that ground. Learned counsel for the petitioner has relied upon a judgment rendered by the Apex Court in the case of Gorkha Security Services Vrs. Govt.(NCT of Delhi) and Ors. reported in (2014) 9 SCC 105 in support of his submission.

8. Considered the submission of the parties and the relevant material fact pleaded and referred to herein above. It is evident from the composite reading and understanding of the entire gamut of facts referred to hereinabove that the impugned decision to cancel the work order and agreement entered into with the petitioner is based on the findings that petitioner had failed to disclose the subsistence of order of blacklisting operating against him in relation to the work allotted to it by the Rural Works Department in the District of Dumka. The order of blacklisting dated 3.4.2014 became the subject matter of challenge in W.P.C. 5524 of 2016. This Court after consideration of the submission of the rival parties and the material on record, came to a considered findings that the impugned decision of blacklisting was not preceded by proper show cause in the eye of law to enable the petitioner to defend himself. Discussion on the point made in the said case is quoted herein under for better appreciation. "I have considered the submissions of the learned counsel for the parties in the light of the relevant material facts noted hereinabove. The merits of the decision is not subject to scrutiny at this stage under judicial review of this Court. However, whether the impugned decision of blacklisting was preceded by a proper show cause notice enabling the petitioner to offer his reply in his defence is squarely in question here. Though the letter dated 04.11.2013, Annexure-D has been relied upon by the respondents as notice to the petitioner but the content thereof do not show that it is in the nature of show cause notice. It rather contends that despite lapse of 26 months, petitioner has not been able to complete the work though he has been informed on telephone and letters time to time. It also conveys that the agreement has been rescinded. Revised estimate has been submitted to the Department. In this background, recommendation has been made to blacklist the petitioner. Though the respondent contend through letter dated 16.02.2013, Annexure-B that Director, Information and Public Relation Department, Jharkhand, Ranchi was requested to issue press release in two local daily newspaper, but no paper publication containing the press release have been enclosed in support thereof. The impugned decision at Annexure-1 (Annexure- F to the counter affidavit) is in respect of four such contractors including the petitioner at serial no. 3. The decision also does not indicate whether any notice was served upon the petitioner or others and whether any show cause was filed or not by the concerned persons including the petitioner. It refers to the Jharkhand Contractors Registration Rules, 2008 and certain letters to record that execution of work of these contracts were not found to be up to the mark. Therefore, on the recommendation of the Executive Engineer, they are being blacklisted. The discussion made hereinabove shows that the impugned decision

of blacklisting has not been preceded by a proper show cause notice in the eye of law to enable the petitioner to defend himself. The order of blacklisting entails adverse civil consequences. It also affects the exercise of fundamental right to freedom to carry on business under Article 19(1)(g) of the Constitution of India. The requirement of proper notice has been held to be mandatory before such adverse decision is taken as per the judgment rendered by the Apex Court in the case of Gorkha Security Services V. Govt. (NCT of Delhi) and Ors. reported in (2014) 9 SCC 105. Accordingly, the impugned order dated 03.04.2014 is quashed. Liberty is, however, reserved with the respondents to take a fresh decision in the matter after due notice to the petitioner. This writ petition is accordingly allowed in the manner and to the extent indicated hereinabove".

9. Upon quashing of the order of blacklisting by the judgment dated 16.3.2017, the order of blacklisting has been wiped out. It can therefore be also said that petitioner was oblivious of the fact of blacklisting. The order of blacklisting was quashed as it entailed adverse civil consequences without giving opportunity to the petitioner. Such course was held to be untenable in law in view of the judgments rendered by the Hon'ble Supreme Court and also reiterated in the case of Gorkha Security Services(supra). If the order of blacklisting was not in the knowledge of the petitioner, he cannot be attributed with the charges that he had deliberately suppressed the fact at the time of filing of tender papers and award of the work under instant NITs. This fact admittedly came to the notice of the petitioner on issuance of the impugned letter dated 29.6.2016(Annexure-5). Thereafter petitioner has succeeded in his challenge to the said blacklisting. The decision of the Tender Committee dated 30.9.2016 and the impugned order dated 5.10.2016 were issued by the Engineer-in-Chief -II for cancellation of the work order and agreement entered with the petitioner based on the finding that petitioner had suppressed the factum relating to order of blacklisting. However, as observed above, in view of the judgment rendered in W.P.C. No. 5524 of 2016, this basis has been wiped out.

10. If that is so, then the impugned decision cannot be sustained in the eye of law. It can, however also be observed, that while quashing the order of blacklisting, liberty has been reserved to the Respondents to take a fresh decision in the matter after due notice to the petitioner. It is up to the concerned Respondents to take a decision after compliance of the principles of natural justice. Consequence which may flow on such contingent act, however cannot sustain the present impugned actions for the reasons discussed herein above. Accordingly, the impugned letter dated 29.6.2016(Annexure-5), decision taken by the Tender Committee dated 30.9.2016(Annexure 9 and 10 to the I.A. No. 1541 of 2017) and order no. 547 and 548 dated 5.10.2016 (Annexure-11 and 12 to I.A. No. 1541 of 2017) are quashed.

11. The writ petition is accordingly allowed in the manner and to the extent indicated hereinabove. All the pending I.A.s are also disposed of.