
(2020) 01 PAT CK 0305

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 1127 Of 2020

Star Build Max Pvt. Limited Balua Tal

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 21-01-2020

Acts Referred:

Citation : (2020) 01 PAT CK 0305

Hon'ble Judges : Ashutosh Kumar, J

Bench : Single Bench

Advocate : Bindhyachal Singh, Kundan Kumar, Ranjeet Kumar, Chitranjan Sinha

Final Decision : Disposed Of

Judgement

The petitioner, a Class-I Contractor, who had been allotted the work of construction of road has been blacklisted for 15 years for not having executed the work to the satisfaction of the concerned respondent and in accordance with the specifications provided in the agreement. The petitioner was subjected to a notice for explaining as to why the thickness of the road at particular/specified places were less than the tolerance limit.

The notice was not responded in the beginning but later, a show cause reply was filed which was not found to be satisfactory and the petitioner has been blacklisted for participating in any government contract of the department for 15 years.

Two grounds have been raised by Mr. Bindhyachal Singh, learned advocate for the petitioner, to challenge the aforesaid order. The first and foremost flaw in the impugned order, as has been argued, is that the show cause notice does not intimate the noticee about the proposed final action in the event of the explanation not being found satisfactory. This element missing in the notice, it is no notice in the eyes of law.

In support of the aforesaid contention, learned counsel for the petitioner has

cited *Gorkha Security Services vs. Government (NCT of Delhi) and Others* (2014) 9 SCC 105 wherein the Supreme Court has held that in order to fulfill the requirements of principle of natural justice, a show cause notice should meet the following two requirements viz. (1) the materials/grounds must be stated, which according to the department, necessitates an action; (2) particular penalty/action which is proposed to be taken.

In the aforesaid case, the Supreme Court has adumbrated that for a notice to be complete, it has to have definite information to the noticee the grounds on which charge rests and what would be the fall out if the charges are proved. However, the Supreme Court has specifically provided that even if such fallout of the non-acceptance of the show cause reply is not stated or specifically proposed in the notice but if it is found that it can clearly and safely be discerned from the reading thereof, that would be sufficient to meet the requirement.

From the perusal of the show cause notice, it appears that though there is no specific description of the fallout which the petitioner would suffer in case his explanation is not found worthy but the last paragraph of the notice clearly indicates that the petitioner must respond to the lapses specified in the notice to explain as to why he should not be proceeded against in accordance with Bihar Contractors Registration Rules, 2007. This, it has been urged on the behalf of the respondent, is a definite indication of the fallout of blacklisting in case the reply of the petitioner was not found to be acceptable.

It further appears from the records that when an inspection was made by the flying squad, its report was placed before the technical committee which formulated the lapses, to be notified to the petitioner. The show cause notice was not initially responded and therefore a decision was taken to cancel the contract with the petitioner, encash the bank guarantee furnished by him and give the work to another agency for completion at the risk and cost of the petitioner.

These measures are the strictest measures in case of a defaulting contractor and with the respondent having taken a decision to cancel the agreement, the only action left was suspension or blacklisting of the firm.

Thus, this Court finds that the show cause notice cannot be faulted with on this ground.

However, the other ground which has been urged by the petitioner is that notwithstanding the aforesaid facts, the period for which the petitioner has been blacklisted is highly disproportionate in relation to the deficiencies in the work at three places only and for which the petitioner has furnished an explanation that the inspection was conducted behind his back and much later i.e. after the onset of the monsoon season.

This aspect does require a re-look.

Under the aforesaid circumstances, this Court provides that in case the petitioner prefers an appeal before the Departmental Secretary and places every fact

before him, he shall take a holistic view of the matter including the ground of bias which has been raised during the course of argument by the petitioner and shall pass a reasoned order in accordance with law within a period of sixty days.

The appellate authority shall also take a call on the issue whether the order of blacklisting be deferred till the final decision by the Tribunal in Case No. 129 of 2009.

With the aforesaid direction/observation, the writ petition stands disposed off.