
(2008) 04 JH CK 0103
In the Jharkhand High Court

Toppers Construction (P) Ltd.

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 30-04-2008

Acts Referred:

Citation : (2008) 3 JCR 573

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Narendra Nath Tiwari, J.—In this writ petition the petitioner has prayed for quashing the order issued by Memo No. 2693 dated 6.7.2007, issued by the Joint Secretary (Engineering), Water Resources Department, Ranchi (respondent No. 3), whereby, the petitioner has been black-listed on the allegation of its failure to properly execute the work, allotted to it.

2. Grievance of the petitioner is that the impugned order of black-listing is based on no material on record and the same is contrary to the reports of the Chief Engineer, Minor Irrigation, Ranchi and the Secretary (Technical), as contained in Annexure-11/A and 17 respectively to this writ petition. Annexure-11/A is the report of the Chief Engineer, Minor Irrigation, on the proposal of black-listing the petitioner. The said report is based on the reports of the concerned officials. The report goes to show that the petitioner had executed the work to the full satisfaction of the authorities. On the basis of its overall performance and the reports of the officials of the department, the Chief Engineer had recommended payment of the amount to the petitioner and opposed the proposal of black-listing. The Secretary (Technical), Government of Jharkhand, Ranchi, on the basis of official reports had noted that there was no cogent evidence of any irregularity against the petitioner and the proposal of its black-listing is not justified. In spite of the said reports and recommendations in favour of the petitioner, the impugned order has been passed arbitrarily, black-listing the petitioner until further orders. It has been submitted that the impugned order is mechanical,

contrary to the reports of the high officials of the department and is wholly without any basis. The same is not sustainable and is liable to be quashed.

3. The writ petition has been contested by the respondents. In their counter affidavit it has been stated, inter alia, that the enquiry was conducted by the Flying Squad Wing of Water Resources Department and on the basis of the enquiry report, the decision has been taken for blacklisting the petitioner. There is no arbitrariness or illegality in the said decision. The petitioner has not been solely held responsible but there are other officers who have been held guilty for putting pressure on the petitioner to complete the work in a short period of two and half months. It has been further stated that even if there was any such undue pressure on the petitioner, it being a Class I contractor, it should have maintained the quality and specification of the work, ignoring the departmental pressure. The petitioner was given notice to show cause. After considering its reply and on the basis of the enquiry report, the said order dated 6.7.2007 has been passed.

4. I have heard learned Counsel and considered the facts and materials on record. The petitioner has brought on record the reports of the Chief Engineer and the Secretary (Technical), which go to show that the petitioner was not at fault in completing the work within a short period. The work was completed under the pressure of the department. It is an admitted fact that the pressure was put on the petitioner for completing the work within a short span of time inspite of the petitioner's objection. The Chief Engineer and the other officers considering the same were not in agreement with the proposal of black-listing the petitioner and they had made recommendations in favour of the petitioner.

5. In the counter affidavit it has been stated that an enquiry was conducted by the Flying Squad Wing of the Water Resources Department but neither any notice of such enquiry was given nor any opportunity of participation in the said enquiry was served on the petitioner. Any material, collected in absence of the petitioner and used against it, without giving the petitioner opportunity of hearing or representation, cannot be made the basis for black-listing it. There has been flagrant violation of the rules of natural justice in coming to the said decision, as contained in Annexure-14 to this writ petition. The conclusion has absolutely no foundational basis and the same is perverse. In view of the above, the impugned order dated 6.7.2007, as contained in Annexure-14 to this writ petition, is quashed and the writ petition is hereby allowed.

6. If the department has got any material against the petitioner to proceed against it or any adverse material has been collected in enquiry, the respondents are at liberty to proceed against the petitioner in accordance with law, after giving due opportunity of hearing or representation and complying with the rules of natural justice.