

## Chhotiya Constructions Pvt. Ltd Vs State Of Bihar

**Court:** Patna High Court

**Date of Decision:** Sept. 12, 2022

**Hon'ble Judges:** Rajan Gupta, J; Mohit Kumar Shah, J

**Bench:** Division Bench

**Advocate:** Prabhat Ranjan, Ajit Kumar

**Final Decision:** Allowed

### Judgement

1. The present writ petition has been filed for quashing the letter dated 04.03.2022, by which, the Executive Engineer, Minor Irrigation Division,

District Gaya, Bihar i.e. the respondent no. 4 has debarred the petitioner from participating in future contracts.

2. The brief facts of the case, according to the petitioner, are that the petitioner is Class-I Contractor and is engaged in construction and civil works, as

such, in pursuance to notice inviting Re-tender no. 01/2019-20, issued by the Minor Irrigation Division, Gaya, the petitioner had participated in the bid

process, whereupon he was declared successful and was issued work allotment letter dated 24.09.2020 with a direction to proceed with the work

forthwith. However, vide Office Order dated 05.10.2020, the Chief Engineer, Minor Irrigation Department, Patna had cancelled the Work Allotment

Letter dated 24.09.2020 in terms of Clause 44 of the Tender Conditions after receipt of certain complaints but subsequently, it was found that the

allegations levelled against the petitioner were misconceived, thus the said Chief Engineer, vide Office Order dated 11.12.2020 cancelled the earlier

Office Order dated 05.10.2020 and directed for restoration of the work allotted to the petitioner forthwith. It is the case of the petitioner that though

the work was required to be completed by 24.06.2021 but the same could not be completed on account of reasons beyond the control of the petitioner,

hence, a letter was issued by the Executive Engineer dated 04.12.2021 to the petitioner to complete the work forthwith, failing which, appropriate

action in terms of the Standard Bidding Document would be taken. Again, the concerned Executive Engineer, vide letter dated 05.03.2022, directed

the petitioner to expedite the work and complete the same within one month, failing which, appropriate action under Standard Bidding Document and

Blacklisting would be recommended. It is also submitted that without issuing any show cause notice, contemplating an action for debarment of the

petitioner, the respondent no. 4, by the impugned order dated 04.03.2022, debarred the petitioner from participating in future contracts, till completion

of the work allotted to him.

3. The learned counsel for the petitioner has submitted that since no notice has been issued to the petitioner to put forth his defense prior to passing of

the impugned order of debarment dated 04.03.2022, the same is illegal and liable to be quashed. It is also submitted that the order of debarment can

only be issued by the Engineer-in-Chief of the department concerned, however, in the present case, the order of debarment has been issued by the

Executive Engineer which is also illegal, hence, the impugned order dated 04.03.2022 is fit to be set aside on this ground as well.

4. Per contra, the learned counsel for the respondent- State has submitted, by referring to the counter affidavit filed in the present case, that after

adhering to the due process of tender/ selection etc., the work of Extensive Renovation of Nagma Oraina Aahar Payne Irrigation System was allotted

to the petitioner and an agreement was entered into between the petitioner and the respondent no. 4 on 25.09.2020, wheereafter the work order was

issued on the same day and the work was required to be completed by 24.06.2021. It is the allegation of the respondent- State that upon various

inspections made by the Executive Engineer, Minor Irrigation Division, Gaya in the month of March and May, 2021, it was found that the work was

not being carried out properly by the petitioner, as such, the respondent no. 4 had issued certain directions to the petitioner vide letters dated

04.06.2021, 03.08.2021 and 21.10.2021 to complete the work in question but to no avail.

5. It is further submitted by the learned counsel for the respondents that despite repeated directions, the petitioner could execute only 50% of the total

work till the month of November, 2021, as such, the respondent no. 4, vide letter dated 04.12.2021, directed the petitioner to complete the work at the

earliest. Reference has also been made to Clause 4.8 of the Standard Bidding Document (Instructions to Bidders) which stipulates that the Bidders

are liable to be disqualified if their performance is poor and they engage in inordinate delay in completion of the work allotted to them. It is also

submitted that the Road Construction Department, Bihar, Patna vide letter dated 28.02.2018 as also the Minor Water Resources Department, Bihar,

Patna vide letter dated 29.05.2020 have issued instructions that in case, Contractors do not complete the work within the stipulated time or within the

extended period, they shall be debarred from participating in future tenders until they complete the pending works. In such view of the matter, the

petitioner was debarred from participating in future tenders by the impugned order dated 04.03.2022, passed by the respondent no. 4, till the petitioner

completes the pending works under the aforesaid agreement, since he had executed only 70% of the total work till the month of February, 2022

despite being reminded several times to complete the work forthwith. It is stated that the work in question has not been completed till date.

6. We have heard the learned counsel for the parties and perused the materials on record, from which, we find that the aforesaid order dated

04.03.2022, passed by the respondent no. 4, has not been preceded by any show cause notice, a fact which stands admitted on account of the

respondent-State having not denied the same, thus the Principles of Natural Justice have stood violated, inasmuch as the petitioner has been precluded

from being afforded an opportunity to represent its case before it is debarred. It is a trite law that since the order of blacklisting / debarment entails

civil consequences and it has the effect of preventing a person from entering into a lawful relationship with the Government for the purpose of gain,

any such order of blacklisting/debarment should be preceded by a legal and a valid show cause notice, duly served upon the person to be blacklisted/

debarred. In this regard, reference be had to the judgments rendered by the Hon'ble Apex Court in the case of Gorkha Security Services vs.

Government of NCT of Delhi and others reported in (2014) 9 SCC 105, in the case of Patel Engineering Ltd. vs. Union of India and other reported in

(2012) 11 SCC 257, in the case of M/S Kulja Industries Ltd. Vs. Chief General Manager, W.T. Project BSNL, reported in (2014) 14 SCC 731 and the

one reported in (2021) 1 SCC 804 (Vet India Pharmaceuticals Limited v. the State of Uttar Pradesh and another.)

7. Having regard to the facts and circumstances of the case and considering the submissions advanced by the learned counsel for the parties as also

taking into account the materials available on record, this Court finds that no show cause notice has been issued to the petitioner by the respondent

State, prior to passing of the impugned order of debarment dated 04.03.2022, hence, the petitioner has been precluded from being afforded an

opportunity to represent his case before being debarred, resulting in violation of the Principles of Natural Justice, thus the impugned order dated

04.03.2022, passed by the Executive Engineer, Minor Irrigation Division, District Gaya, Bihar stands vitiated in the eyes of law, therefore, is quashed,

however, liberty is granted to the respondent- state to proceed afresh in the matter, in accordance with law.

8. The writ petition stands allowed to the aforesaid extent.