

Vikash Construction and Etc. Vs. State of Bihar and ors.

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SooperKanoon Citation : sooperkanoon.com/130926

Court : Patna

Decided On : Apr-22-2008

Judge : Navaniti Prasad Singh, J.

Appellant : Vikash Construction and Etc.

Respondent : State of Bihar and ors.

Disposition : Petition allowed

Judgement :

Navaniti Prasad Singh, J.

1. In both these writ applications the order passed by the Engineer-in-Chief, Road Construction Department, blacklisting the two petitioners of the writ applications under the provision of the Bihar Contractor Registration Rules, 2007 is in question. The facts are not in dispute.
2. Counter affidavits in both cases and rejoinders have been filed.
3. With the consent of the parties, the Writ applications have been heard and are being disposed of at the stage of admission itself.
4. Petitioners, in both the writ applications are Class 1A contractor, whose registering authority under the said rules is the Engineer-in-Chief. Both had undertaken some works with the Road Construction Department. The Secretary-

cum-Commissioner, Road Construction Department, issued separate notices to both the petitioners to show cause against proposed blacklisting in terms of the rules aforesaid. Both the petitioners filed their show causes before the said Secretary-cum-Commissioner. They were not granted any hearing by any person but ultimately the impugned order blacklisting the petitioners has been passed by the Engineer-in-Chief, Road Construction Department and not by the Secretary-cum-Commissioner, Road Construction Department.

5. The validity of the order has been challenged primarily on two grounds. Firstly, it is submitted that only a person who is competent to pass the final order could initiate the proceeding under the rules. In other words, a person must be competent to initiate the proceeding and he must be competent to pass the final order based on such notice. Secondly, it is urged that the Secretary-cum-Commissioner, is the appellate authority from any order of blacklisting passed under the rules. In the present case he himself has initiated the proceeding though the final order was passed by the Engineer-in-Chief. Thus, the initiation of the proceeding was by the appellate authority. As such even if the petitioner preferred an appeal it would be an empty formality as the appellate authority himself initiated the proceeding. On these two grounds the action is impugned.

6. Having considered the matter I am of the view that the writ petitions must succeed.

7. As per the rules aforesaid initiation of proceeding for blacklisting a contractor is not as a matter of course nor is it mechanical. It is discretionary and is based on a subjective satisfaction of the designated authority, who has to pass the final order. In my view, it is a notice of assumption of jurisdiction to take punitive action, in absence whereof there would be no jurisdiction to pass a final order. If notice is issued by one then it is he who assume jurisdiction to adjudicate and pass final order. A person not competent to pass a final order, at the first instance, cannot assume jurisdiction to initiate a proceeding otherwise it would lead to innocuous result and chaos. For example, in a case where the designated authority is of the opinion that no case is made out to initiate a proceeding he may be pre-empted by a superior initiating the proceeding and then transferring the matter to him leaving

him with a little thought to disagree with his superior. I am therefore, of the view that it is only an authority, which assume jurisdiction by issuance of notice, who is competent to pass the final order upon adjudication pursuant to notice issued by him. In the present case, the notice was undisputedly issued by the Secretary-cum-Commissioner of the Department. He is the senior most officer. He also happens to be the only appellate authority available under the rules. The scheme is clear that by implication he cannot initiate a proceeding himself, for, where he does so he would render the provision of appeal otiose. That surely would not be the intention of the rule maker. In the present case, the Engineer-cum-Chief, who passed the final order did not assume jurisdiction in the matter by issuance of any notice. As indicated above though notice is issued on subjective satisfaction of the authority, the final orders are to be passed on objective consideration by the same authority. This, in my view, is sufficient to vitiate the impugned orders of both the writ applications.

8. The second part of submission I have already discussed above and I only reiterate. The Secretary-cum-Commissioner being the appellate authority himself could not have initiated the proceeding even if he would otherwise be competent to do so then having initiated the proceeding it is he who should pass the order. In substance I hold that one who initiate the proceeding must conclude the proceeding except where administrative exigency provides otherwise. Where a proceeding is initiated by Sub-divisional Officer it must be concluded by a Subdivisional Officer though a person may change, the office remain. A Collector cannot then usurp the proceeding and pass an order or the proceeding having been initiated for the purposes of final order, the Block Development Officer cannot be authorized unless law provides for such delegation. No such delegation brought to my notice, the provision of Rules 11 and 12 are clear and unambiguous.

9. In view of the finding of this Court I do not think it proper to decide other issues as raised by the parties.

In the result, both the writ petitions are allowed and the impugned orders blacklisting the petitioners of both the writ applications are set aside.

