

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.849 of 2015

In

Civil Writ Jurisdiction Case No. 12566 of 2014

With

Interlocutory Application No. 3785 of 2015

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Phular Construction Company Pvt. Ltd. Through its Managing Director,
Umesh Prasad Singh. At P.O.- Khabra, Adarsh Nagar, P.S.- Sadar, District
- Muzaffarpur.

.... Petitioner/ Appellant

Versus

1. The State of Bihar through the Principal Secretary, Water Resources
Department, Government of Bihar, Patna.
2. The Principal Secretary, Water Resources Department, Government of
Bihar, Patna.
3. The Engineer-in-Chief, Middle, Water Resources Department,
Government of Bihar, Patna.
4. The Chief Engineer, Water Resources Department, Bhagalpur.
5. The Superintendentineer, Irrigation, Circle, Khadakpur, Munger.
6. The Executive Engineer, Irrigation Division No. 1, Laxmipur, Jamui.

.... Respondents/Respondent/s

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Appearance :

For the Appellant/s : Mr. Vikas Kumar, Advocate

For the Respondent/s : Mr. Nasim Yahya, GP 13

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

3 13-05-2015

The appellant-Company was assigned the work in
respect of irrigation channel in the district of Jamui. Agreement
no. SBD/2010 was executed, the work was commenced on
15.3.2009 and it was required to be completed by 14.9.2011. It is
stated that the area is Naxalite-infested and within a short time
after commencement of the work, a clerk and four workers
engaged by the appellant were murdered by naxalites and the
machinery was burnt. It is stated that notwithstanding these
obstructions the appellant completed almost 80% of the work,
stipulated in the agreement.

The Engineer-in-Chief of the Government of Bihar, 3rd respondent herein, passed the order dated 27.6.2014 debarring the petitioner from being assigned any fresh work on the ground that there was lapse on its part in executing the work under the contract. Challenging the same, the appellant filed CWJC No. 12566 of 2014. The learned Single Judge dismissed the writ petition through order dated 25.3.2015. Hence this Appeal.

Heard Shri Vikash Kumar, learned counsel for the appellant and Shri Nasim Yahya, learned counsel representing the respondents.

The 3rd respondent is certainly conferred with the power not only to debar the contractors from being assigned any work but also to blacklist them, if the circumstances warrant. Such action of debarment is taken against the contractors who commit default in execution of the work, or commit any wrongful or objectionable acts either in the process of procuring the contract or thereafter. The settled principle of law is that whenever such punitive action is taken against the contractor, it must be served with notice, and a reasoned order must be passed.

In the instant case, the appellant was assigned the work of digging an irrigation channel in an area where predominantly extremist activities take place. In his writ petition, the appellant narrated the facts and circumstances, that hampered the progress of the work. He mentioned that as many as five employees engaged by them were murdered and machineries were burnt. The same was not disputed. On the other hand, in his letter dated 31.1.2013, the Executive Engineer informed the Superintending Engineer about these developments. He made the specific reference to the murder of five employees and the burning

of the machineries of the petitioner. Added to that, he mentioned that remaining part of the work assigned to the petitioner is to be executed in the forest area, and the Divisional Forest Officer is not according permission for completion of the work.

The order passed by the 3rd respondent debarring the petitioner did not take note of these facts and has proceeded as though there was deliberate default on the part of the appellant to execute the work. Though it is mentioned that a notice was issued and there was no response to it, the appellant categorically asserts that he did not receive any notice. During the pendency of the present appeal, the Superintending Engineer on 2.2.2015 requested the Civil Engineer to withdraw the order of debarment passed against the appellant.

Under these circumstances, we do not find any basis for the order dated 27.6.2014 passed by the 3rd respondent. The appeal is accordingly allowed. The order dated 25.3.2015 passed by the learned Single Judge in CWJC No. 12566 of 2014 is set aside. Consequently, the writ petition is allowed, and the order dated 27.6.2014 is quashed.

Interlocutory application, if any, shall stand disposed of.

There shall be no order as to costs.

(L. Narasimha Reddy,CJ)

(Sudhir Singh, J)

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