

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3580 of 2015

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M/s Macro Ranjan Construction Pvt. Ltd. through its Director, Rajeev Ranjan, S/o Late Thakur Girija Nandan Singh, resident of village- Khilwat, P.S.- Bidupur, District Vaishali having its registered office at Usha Complex, Bidupur Bazar (Khilwat), District Vaishali

.... Petitioner

Versus

1. The State of Bihar through the Secretary, R.W.D., Govt. of Bihar, Bishweshraiya Bhawan, Bailey Road, Patna
2. The Engineer in Chief cum Spl. Secretary cum Addl. Commissioner, RWD, Bishweshraiya Bhawan, Bailey Road, Patna
3. The Executive Engineer, RWD, Work Division, Jhanjharpur, District Madhubani
4. The Superintending Engineer, RWD, Works Circle, Darbhanga
5. The Secretary, Building Construction Department, Govt. of Bihar cum Chairman of Tender Committee, Bishweshraiya Bhawan, Bailey Road, Patna
6. The Chief Engineer, (South), Building Construction Department, Govt. of Bihar, Patna
7. The Superintending Engineer, BCD, Building Circle, Bhagalpur, Sheikhpura
8. The Executive Engineer, Building Division, Lakhisarai at Lakhisarai

.... Respondents

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Appearance :

For the Petitioner : Mr. Suresh Pd Singh No.1,
Mrs. Kumari Rashmi, Advocates

For the Respondents : Mr. Ranjay Kumar Singh, AC to SC 16

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 24-09-2015

The present writ petition has been filed for quashing letter no.11369 dated 04.10.2013 issued under the signature of the Engineer-in-Chief – cum - Additional Commissioner – cum - Special Secretary, Rural Works Department by which the petitioner has been debarred from participating in future tenders without any notice and also overlooking that the same respondent has issued letter no.35 dated 16.09.2013 i.e. just a fortnight before, wherein he had recalled the order of debarment finding the petitioner as not defaulter and for connected reliefs.



2. It is submitted on behalf of the petitioner that earlier, an order of debarment of the petitioner relating to construction of road from *Chhotki Sangi to Hulaspatti* and from *Kako to Motipur* under the *Pradhan Mantri Gramin Sarak Yojna* (for short, “PMGSY”) had been lifted in terms of Memo No.10609 dated 16.09.2013 (Annexure-4) issued by the Engineer-in-Chief-cum-Additional Commissioner-cum-Special Secretary, Rural Works Department. Barely a fortnight later on 26.09.2013, it was reported by the Incharge Executive Engineer by letter no. 919 dated 26.09.2013 (Annexure-7) that the petitioner had completed less than 80% of the work in respect of the aforesaid two works, pursuant to which the petitioner has over again been debarred in terms of Memo No. 11369 dated 04.10.2013 (Annexure-6/A). It is further submitted that such debarment is wholly illegal and unsustainable in law having been passed without grant of any opportunity of hearing and without any show cause notice having been issued prior to passing of the order of debarment. As a result of such debarment, the petitioner has been deprived of the chance to participate in the various tenders.

3. A counter affidavit has been filed on behalf of respondent nos. 1 to 4 which, however, does not disclose that any show cause notice was in fact issued to the petitioner prior to passing of the order of debarment. On the other hand, it has categorically been stated

in paragraph 6 thereof that “the grievances of the petitioner have been redressed and his name has been deleted from the debar list at Sl. No. 674 because the petitioner has now completed the said work” and to that effect, office order contained in Memo No. 9044 dated 22.07.2015 had already been issued by the Engineer-in-Chief, Rural Works Department. It has further been clarified in paragraph 10 of the counter affidavit that the petitioner had completed 87.5% of the said works as on 19.04.2011.

4. Having regard to the specific stand of the respondents and with consent of the parties, the writ petition is disposed of with an observation that the impugned order dated 04.10.2013 (Annexure-6/A), which was clearly passed in violation of the principles of natural justice, shall not stand in the way of the petitioner in participating in the tenders. Such benefit to the petitioner shall relate back to the date of passing of the impugned order itself, namely 04.10.2013, considering that the petitioner had admittedly completed 87.5 % of works by 19.04.2011 itself, apart from the impugned order being unsustainable in law having been passed without granting any opportunity of hearing to the petitioner.

5. The writ petition stands allowed.

(Vikash Jain, J)

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