

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2988 of 2015

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M/s Alectra Construction Ltd. Through Its Director Dhananjay Kumar Son
of Sri Anil Kumar Singh Resident of Adarsh Nagar, New Colony,
Dharampur, Samastipur, District Samastipur

.... Petitioner

Versus

1. The State of Bihar through the Secretary, Road Construction Department,
Government of Bihar, Patna.
2. The Engineer in Chief cum Additional Commissioner cum Special
Director, Road Construction Department, Government of Bihar, Patna.
3. The Chief Engineer, North Bihar, Road Construction Department,
Darbhanga.
4. The Superintending Engineer, Road Circle, Muzaffarpur.
5. The Executive Engineer, R.C.D. Road Division No. 1, Muzaffarpur

.... Respondents

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Appearance :

For the Petitioner : M/s Jitendra Kumar Roy, Sumit Kumar and
Rajesh Kumar, Advocates
For the State : Ms. Nivedita Nirvikar, GA 10
Manoj Kumar, AC to GA 10

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN
ORAL JUDGMENT
Date: 27-02-2015

I have heard learned counsel for the petitioner and the State.

Petitioner is aggrieved by the order dated 19.06.2014
contained in Annexure 1 passed by the Executive Engineer, Road
Construction Department, Division No. 1, Muzaffarpur(respondent
no. 5), by which the petitioner has been declared as defaulter and a bar
has been imposed upon him for participation in any future tender till
the work concerned is completed.

Learned counsel for the petitioner raises a short question for
determination of this case.



It is submitted that for such debarment from future tender there are already Government Order contained in memo no. 03-03/2004 2131(S) dated 13.03.2009 (Annexure 7) and Circular of the Road Construction Department, contained in letter no. 03-02/2004 818(E) dated 17.03.2009(Annexure 8). Annexure 8 clearly lays down that, before passing such order of debarment, show-cause notice should be given and after service of such notice if no reply to such show-cause notice is furnished by the contractor within 15 days then within subsequent three days an order is to be passed by the Department concerned.

It is submitted that in the present case, the show-cause notice was issued on 06.06.2014 vide Annexure 6 which was sent to the petitioner under registered cover booked on 16.06.2014 and was received by the petitioner on 18.06.2014, however, on the very next day, i.e., 19.06.2014, the impugned Annexure 1 has been passed and communicated by the authority concerned in clear violation of the Government order and its own Circular as contained in Annexures 7 and 8. Learned counsel has produced the original envelope received by him at the time of hearing of this case which establishes that letter no. 943 dated 06.06.2014 was sent to him through recovered cover booked on 16.06.2014 and was received by him at Samastipur on 18.06.2014. If it is assumed that the petitioner had received the



aforesaid letter on 18.06.2014 then the opportunity should have been given to file a reply to the notice within 15 days from the date of issuance of show-cause notice and in case nothing was filed then within subsequent three days the order should have been passed but in the present case on the very next day , i.e., on 19.06.2014, after receipt of the show-cause notice by the petitioner, the impugned order contained in Annexure 1 has been passed which appears to be in violation of the Annexures 7 and 8 and as such, the same cannot be sustained in law. Even if calculation is made from the date of issuance of notice then 15 days would be completed on 23.06.2014. In such a situation also, the impugned order could not have been passed on 19.06.2014.

Accordingly, this writ application succeeds and the impugned letter containing the order of debarment dated 19.06.2014 is quashed and set aside.

However, the respondent concerned would be at liberty to proceed afresh in the matter in accordance with law.

(Dr. Ravi Ranjan, J)

SC/-

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