

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1198 of 2015

M/s B. D. Construction through its partner Mr. Gajraj Kumar, Son of late Dinkar Sharma, resident of Mohalla Garhper "Harihar Niketan", P.S.+P.O. Biharsharif, Dist. Nalanda, Pin 803101.

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Rural Works Department, "Vishweshwaraiya Bhawan", Bailey Road, Patna-15.
2. The Engineer-in-Chief cum Additional Commissioner cum Special Secretary, Rural Works Department, "Vishweshwaraiya Bhawan", Bailey Road, Patna-15.
3. The Chief Engineer-1, Rural Works Department, "Vishweshwaraiya Bhawan", Bailey Road, Patna-15.
4. The Superintending Engineer, Rural Works Department, Works Circle, Gaya.
5. The Executive Engineer, Rural Works Department, Works Division, Rajauli.

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Manish Sahay, Adv.

For the Respondent/s : Mr. Manikant Mishra, GP-25

CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA

ORAL JUDGMENT

Date: 27-01-2015

Heard learned counsel for the parties as with regard to the following relief:-

"1(I) For commanding and directing the concerned authority to consider and decide the tenders of the petitioner in accordance with law relates to works mentioned at serial nos. 1, 24 & 26 of the Notice Inviting Tender No. RWD/MMGSY/HQ/ET/08-2014-15, taking into account that the pending works which is mentioned at Sl. Nos. 167 & 168 of the departmental debar list dated 04-10-2013, as contained in Annexure-5, has already been completed in the months March-April 2014 and the concerned Executive Engineer had made his recommendation for removing the name of the petitioner from said debar list vide his letter No. 1583 Rajauli dated 29.11.2014.

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- (II) *For further commanding the concerned respondent to remove the name of the petitioner from departmental debar list issued under the signature of Engineer in Chief (i.e. Respondent No.2) vide his letter No. 11369 Anu dated 04-10-2013 as contained in Annexure-5, because in spite of completing the works mentioned at serial nos. 167 & 168 of the said list in March-April, 2014 as well as recommendation made by the Executive Engineer, the name of the petitioner could not be removed as yet from the said list by the said respondent no.2 (i.e. The Engineer-in-Chief) in spite of repeated request made by the petitioner..*
- (III) *For declaring that the actions of the respondents are arbitrariness, malafidy, malicious, colorable exercise of powers as well as against the law."*

Learned counsel for the petitioner having invited attention of this Court to the letter of the Secretary to the Rural Development Department dated 30.7.2013 and the order of the Engineer-in-chief dated 4.10.2013 has submitted that the debarment order of the petitioner from being allowed to participate in any further tender was contrary to the departmental instruction which had required the authorities to take such a decision only after issuance of a show-cause notice to the concerned contractor including petitioner. He has next submitted that as a matter of fact, even if the debarment order dated 4.10.2013 may be justified on the date of its being passed on account of the petitioner not completing two works which were then pending, the petitioner has now already completed those works



way back in the month of March/April, 2013 and the concerned Executive Engineer has already reported with regard to such completion of work by his letter dated 29.11.2014 as contained in Annexure-6 to this writ application. Learned counsel for the petitioner therefore has summed his submission by making out a case of inaction on the part of the respondents in not still taking away the decision for removing the order of debarment on account of which the petitioner has a reason of not being considered in the three currently floated for which he has submitted his tender pursuant to the NIT as contained in Annexure-1.

Learned counsel for the State on the other hand has submitted that once the petitioner accepts that it had not completed the work given as on 4.10.2013 and had accepted the order of debarment whereafter he had also proceeded to complete the work to remove embargo of debarment, he cannot be now allowed to raise challenge to the order dated 4.10.2013. He has further submitted that if the authorities have ultimately issued a letter on 29.11.2014 with regard to completion of the work by the petitioner, the Department will have to be given some time to take a final decision before lifting the debarment.

In the considered opinion of this Court, the issue is very simple. The date on which the impugned order of debarment was



passed against the petitioner, he had admittedly not completed the work. Therefore, such order of debarment was absolutely justified. The question of issuance of show-cause notice could have been a valid aspect if the petitioner had moved at that point of time for assailing the impugned order. The petitioner, however, did not choose to do so and in fact having accepted the debarment order went to complete the work which according to it were completed in the month of March, 2014 as per the letter of the Executive Engineer dated 29.11.2014 (Annexure-6). Therefore, the authorities and particularly the authority who had passed debarment order, namely Engineer-in-Chief has yet not been reported with regard to completion of work, inasmuch as, the said letter of the Executive Engineer dated 23.11.2014 is addressed to the Superintending Engineer. The Superintending Engineer thereafter on verification has to report the matter to the Chief Engineer who in turn will send the same to the Engineer-in-Chief. The letter of the Executive Engineer being itself dated 29.11.2014, this Court would not find the delay to be exorbitant so as to immediately infer the allegation of inaction on the part of the respondents. Nonetheless, if now there are ample proof of the petitioner completing the work, the Engineer-in-Chief will be required to consider this aspect of the matter in order to remove the embargo of debarment against the petitioner and if on verification of the letter of

the Executive Engineer dated 29.11.2014, it is found that the petitioner has now completed its pending work and there is no other reason for continuance of the debarment order, the order of debarment must be recalled/modified as has been done in also many other cases.

That being so, this Court would direct the Engineer-on-Chief, the respondent no.2, to take a final decision in the matter of lifting debarment of the petitioner expeditiously and preferably within a period of three weeks from the date of receipt of this order so that the petitioner in the event of removal of debarment does not get prejudice in the event of its success in obtaining any of the work order covered by the recent NIT dated 10.12.2014 as contained in Annexure-1 to this writ application.

In order to expedite this process, this Court will give liberty to the petitioner to file a self-contained representation to the Engineer-in-Chief, respondent no.2, and the period of three weeks shall commence only from the date of receipt of such representation by the Engineer-in-Chief.

With the aforementioned observation and direction, this application is disposed of.

(Mihir Kumar Jha, J)

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