

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15447 of 2015

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Shamsher Alam son of Shah Alam, resident of village- Narayanpur, P.O. Mirganj,
P.S. Uchkagaon, District- Gopalganj

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Public Health Engineering Department, Government of Bihar, Patna
2. The Principal Secretary, Public Health Engineering Department, Government of Bihar, Patna
3. The Executive Engineer, Public Health Division, Gopalganj
4. The Superintending Engineer, Public Health Engineering Circle, Chapra

.... Respondents

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Appearance :

For the Petitioner : Mr. Ashish Giri, Advocate.

For the Respondents: Mr. Ritesh Kumar, SC-33

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 17-12-2015

Heard learned counsel for the petitioner and
learned counsel for the respondents.

2. The present writ petition has been filed for
quashing the order bearing no. 800 dated 25.08.2015 by which
the petitioner has been debarred for participating him in any
future tender till the completion of earlier tender, and for
connected reliefs.

3. Learned counsel for the petitioner submits that
the impugned order of debarment dated 25.08.2015 is wholly
illegal and unsustainable in law. It is submitted that such
debarment order has been issued without any show cause notice
to the petitioner, thus violating the fundamental principles of
natural justice.



4. It is stated that moreover on the very same date the same authority also issued a show cause notice to the petitioner for treating his technical bid relating to NIT No. 01/2014-15 as ineligible by reason of delay in execution of the agreement and belated supply in connection with NIT No. 01/2014-15 as well as failure to execute the agreement in connection with NIT No. 08/2014-15.

5. Learned counsel for the petitioner submits that the reasons given in the show cause notice are completely arbitrary, extraneous and irrelevant inasmuch as primarily, no action had been taken against the petitioner for alleged default in connection with NIT No. 01/2014-15 and NIT No. 08/2014-15 aforesaid; and secondly that any default under those two NITs could not have any bearing on the technical bid submitted by the petitioner in NIT No. 01/2015-16. It is pointed out that the show cause notice is earlier in point of time having been issued under Memo No. 794 dated 25.08.2015 than the order of debarment issued by Memo No. 800 dated 25.08.2015. It is therefore submitted that even at the time of issuance of show cause notice, the order of debarment was not in existence. Learned counsel for the petitioner relies upon an order of this Court dated 14.05.2014 passed in CWJC No. 5691 of 2014 (*M/s Singh Construction Private Limited Vs. The State of Bihar & others*), wherein the writ petition was allowed with a direction to the

respondents to open the financial bid of the petitioner

6. Learned counsel for the respondent, on the other hand, opposes the writ petition stating that notices dated 2.7.2015 and 3.8.2015 were issued to the petitioner for entering into an agreement in relation to the contract work of the year 2014-15 but the petitioner never turned up. It is therefore submitted that the petitioner has not been executing the contracts undertaken by him in the past and the order of debarment has rightly been passed.

7. Having heard the parties and upon consideration of the materials on record, this Court finds merit in the submission of the petitioner. There is nothing on record to suggest that any prior show cause notice calling upon the petitioner to submit his explanation against the proposed debarment was ever served upon the petitioner, nor has the specific assertion of the petitioner in this regard been denied by the respondents. The two notices dated 02.07.2015 and 03.08.2015 referred to on behalf of the respondents do not constitute show cause notices for debarment of the petitioner, apart from the fact that these have been issued by the Executive Engineer whereas the final order of debarment has been passed by the Superintendent Engineer.

8. In the above view of the matter, the impugned order of debarment dated 25.08.2015 cannot be sustained and

is hereby quashed as such. Needless to say, this would not preclude the authorities from issuing a show cause notice to the petitioner in accordance with law if the authorities propose to proceed further in the matter.

9. As far as the further decision of the respondents not to consider the petitioner's technical bid relating to NIT No. 01/2015-16 is concerned, the same also cannot be sustained, more so considering that the impugned order of debarment dated 25.08.2015 for the alleged defaults in connection with NIT No. 01/2014-15 and NIT No. 08/2014-15, which forms the very foundation for such decision, has itself been set aside hereinabove. The respondents are accordingly directed to open the financial bid of the petitioner and proceed in the matter in accordance with law.

10. The writ petition stands allowed in the manner indicated above.

(Vikash Jain, J)

Md. Ibrarul/-

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