

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7159 of 2015

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Devendra Kumar Son of Late Ramanand Kumar Resident of Village - Kodar Katta,
P.S. Motipur, District - Muzaffarpur.

.... Petitioner

Versus

1. The State of Bihar.
2. The Principal Secretary, Department of Rural Works, Govt. of Bihar, Patna.
3. The Engineer-in-Chief cum Additional Commissioner cum Special Secretary,
Rural Works Department, Govt. of Bihar, Patna.
4. The Chief Engineer-3, Rural Works Department, Govt. of Bihar, Patna.
5. The Superintendent Engineer, Rural Works Circle, Muzaffarpur.
6. The Executive Engineer, Rural Works Department, Works Division,
Muzaffarpur, East - 1.
7. The Executive Engineer, Rural Works Department, Works Division, Muzaffarpur
West.
8. The Bihar State Building Construction Corporation Limited, Patna through its
Managing Director

.... Respondents

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Appearance:

For the Petitioner	:	Mr. Bishnu Kant Dubey, Advocate Mr. Ranjit Kumar, Advocate
For the State	:	Mr. Prabhat Ranjan, AC to GP 12
For the Respondent No. 8 :		Mr. Tej Bahadur Singh, Sr. Advocate Mrs. Shashi Priya Pathak, Advocate

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN
ORAL JUDGMENT
Date: 04.12.2015

Heard learned counsel for the petitioner and learned Senior
Counsel appearing on behalf of Respondent No. 8.

2. The present writ petition has been filed for a direction to
the respondents to open the technical bid and financial bid submitted
by the petitioner for execution of works under two notices inviting
tenders bearing No. RWD/MMGSY/HQ/ET/18-2014-15 and No. RWD/
MR3054/HQ/ET/01-2014-15, respectively whereby tenders were
invited for execution of certain works for the construction and repair

of the Roads including maintenance for five years, and to proceed accordingly for consideration of petitioner's case for allotment of works in his favour.

3. That pursuant to notice inviting tender No. RWD/MMGSY/HQ/ET/18-2014-15, the petitioner submitted his tender for various works at serial Nos. 72, 201, 211, 222, 223, 224 and 228. Similarly, for another notice inviting tender No. RWD/MR 3054/HQ/ET/01/2014-2015, the petitioner submitted his tender for various works at Sl. Nos. 22, 24 and 25. The bids were submitted in respect of two notices inviting tenders on 09.01.2015 and 12.01.2015 respectively. The tenders of the other applicant contractors were opened some time in late March, 2015, but on enquiry by the petitioner it has been informed that his technical bid was not opened purportedly on the ground that he had been debarred by the Bihar State Building Construction Corporation Limited. On his request, the petitioner was supplied the list of debarred contractors which however, does not contain any memo number or signature of the issuing authority.

4. It is submitted on behalf of the petitioner that he has wrongly been kept out of the tender process inasmuch as there was no operative order of debarment against him at the relevant time as evident even from the counter affidavit filed on behalf of the respondents. The order of debarment as contained in letter No. 226 dated 18.08.2014 passed against the petitioner had been made effective until completion of the work of construction of godown at Jhale. It is a matter of record that the said work was completed before the date of submission of tender as evident from letter No. 353



dated 26.12.2014 issued by the Bihar State Building Construction Corporation Limited (Respondent No. 8). As regards the other work of upgradation of primary health centre into community health centre at Sahebganj, District Muzaffarpur, there was merely a recommendation for debarment as contained in letter No. 362 dated 20.08.2014 issued by the Respondent No. 8, but there is nothing on record to show that in fact the same was given effect to or that the petitioner was in fact ever debarred in respect of such work. It is therefore, submitted that in absence of any order of debarment being in operation at the time of submission of the tenders, the petitioner was entitled to have his technical bid and financial bid opened along with other contractors.

5. Learned counsel on behalf of the Respondent nos. 1 to 7 has been heard. Their counter affidavit is on record which merely reiterates the fact of petitioner's debarment.

6. Learned Senior Counsel Mr. Tej Bahadur Singh appears on behalf of Respondent No. 8 and refers to his counter affidavit, but, however, is unable to refute the facts stated by the petitioner. In fact it is submitted that a formal order of release from debarment in relation to the Jhale work has been issued by the Respondent No. 8 in terms of Office Order No. 72/2015 dated 24.09.2015.

7. Having heard learned counsel for the parties and taking into consideration the materials on record, this Court is of the view that the writ petition must succeed. The foundational facts stated by the petitioner do not appear to be in dispute. The debarment of the petitioner in terms of letter No. 226 dated 19.08.2014 was operative only until completion of the relevant work and it is evident from the respondent Corporation's letter No. 353 dated 26.12.2014 that such

work stood completed prior to filing of the tender. With regard to the work at Sahebganj, the letter No. 362 dated 20.08.2014 was in the nature of a mere recommendation for the petitioner's debarment, but no final order debarring the petitioner appears to have been passed. In other words, on the date of submission of the two tenders by the petitioner within the extended time on 09.01.2015 and 12.01.2015 respectively, clearly no order of debarment was operating against the petitioner, much less in respect of the two works in question.

8. In the above view of the matter, the respondents are directed to open the technical bid and the financial bid of the petitioner and to proceed in the matter in accordance with law.

9. The writ petition stands disposed of.

(Vikash Jain, J)

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