

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11923 of 2016

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M/s Kumar Construction through its Proprietor Mr. Suresh Kumar Son of
Sri Ram Prasad Singh Resident of Mohalla - Station Road Hilsa, P.O. +
P.S. Hilsa, District - Nalanda, State Bihar

.... 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, Rural Work Department, 'Vishweshwaraiya
Bhawan', Bailey Road, Patna 15
3. The Chief Engineer - 1, Rural Work Department, 'Vishweshwaraiya
Bhawan', Bailey Road, Patna 15
4. The Superintending Engineer, Rural Works Department, Works Circle,
Biharsharif (Nalanda) 803101
5. The Executive Engineer, Rural Works Department, Works Division,
Hilsa, (Nalanda)

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajendra Narayan, Senior Advocate
Mr. Manish Sahay
Mr. Anil Kumar Sinha

For the Respondent/s : Mr. Santosh Chandra Bhaskar, A.C. to G.P.11

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**CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR
DATTA**
ORAL ORDER

2 19-09-2016 Heard learned counsel for the petitioner and learned
counsel for the State.

The petitioner seeks quashing of the order dated
22.06.2016, so far as it concerns the petitioner, passed by the
Engineer-in-Chief, Rural Works Department, Government of
Bihar, by which the petitioner along with others has been declared
defaulter and debarred from participating in future tender.

The petitioner was awarded the contract for the
Construction and 5 Years Routine Maintenance of Rescinded
Road from Islampur Rajgir Road to Bara under PMGSY Package

No. BR-24 R-016 (Tender Id-33821) for the year 2015-16 in which the work order dated 24.04.2015 was issued. The work was to be completed by 25.03.2016.

It is the stand of the petitioner, which is supported by the letter dated 27.6.2016 of the Executive Engineer, R.W.D., that the work of the petitioner was hampered on account of the disturbance caused by the M.C.C. for a period of approximately six months.

However, by the impugned order dated 22.06.2016, the petitioner was declared defaulter and debarred from participating in future tender on account of only 35% physical progress.

It is submitted by learned counsel for the petitioner that by letter dated 30.06.2016, the Executive Engineer has reported that 85% of the contract work has been completed and the remaining work is in progress. It is asserted that the petitioner has completed the entire work.

Learned counsel for the petitioner further submits that the case of the petitioner is squarely covered by a decision of this Court in the case of M/s. N.C.C. Ltd. vs. The State of Bihar and others: 2013 (1) PLJR 952, in which it has been held that where sufficient grounds exist and there is a dispute with regard to the allegations made against the petitioner, then it is not open to

the authorities of the respondent-State to pass an order of debarment unless the issues themselves are adjudicated by an impartial adjudicatory body.

In the present matter also, if the work of the petitioner was hampered for a period of about six months on account of the activity of the Naxals, then it is the default on the part of the State, and not of the petitioner, who failed to provide the petitioner necessary security and environment to continue the work.

In the said circumstances, the case of the petitioner is definitely covered by the decision in the case of M/s. N.C.C. Ltd. (supra). Moreover, it appears that the petitioner has since completed at least 85% contract work and it is asserted that the entire work has been completed. In any view of the matter, the impugned order dated 22.6.2016 cannot stand and it is accordingly quashed. However, in case the respondents intend to proceed again in the matter against the petitioner, it shall be open for them to do so only after the factual issues in question are decided by a judicial forum, i.e. a Court or an Arbitral Tribunal.

The writ application is, accordingly, allowed.

(Ramesh Kumar Datta, J)

V.P.Sinha/-

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