

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17712 of 2016

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M/s. Sona Construction, at village Chapkahi, P.O. Basbatti, P.S. Supaul,
District Supaul, Bihar, through its partner Ashok Kumar Singh, son of Late
Upendra Narain Singh, resident of village Chapkahi, P.O. Basbatti, P.S.
Supaul, District Supaul, Bihar

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Rural Works
Department, Government of Bihar, Patna
2. The Engineer-in-Chief, Rural Works Department, Government of Bihar,
Patna
3. The Chief Engineer-2, Rural Works Department, Government of Bihar,
Patna
4. The Superintending Engineer, Rural Works Department, Works Circle,
District Madhepura, Bihar
5. The Executive Engineer, Rural Works Department, Works Division,
Udakishunganj, District Madhepura, Bihar

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Prabhat Ranjan, Advocate

For the Respondent/s : Mr. Raj Kumar Singh, AC to S.C. 7

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA
ORAL ORDER

2 25-10-2016 Learned counsel for the petitioner is permitted to remove
the defects as pointed out by the stamp reporter in the course of
the day.

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

The petitioner seeks quashing of the order dated
22.6.2016, in so far as it concerns the petitioner, by which it has
been declared defaulter and debarred from participating in future
tenders on the ground of non-completion of the works awarded to
it.

It is submitted by learned counsel for the petitioner that
no show cause notice was ever issued to the petitioner before the
order of debarment was passed because of non-completion of two



of the works. It is submitted that as a matter of fact for those very works show cause notice dated 24.9.2016 was issued by the Executive Engineer, Rural Works Department, Works Division, Udakishunganj, Madhepura as to why the name of the petitioner should not be placed in the list of debarred contractors. Learned counsel also submits that after the petitioner filed its reply to the said show cause indicating the fact that the land in question on which the construction of work under PMGSY was to be done was private land and the owner of the land had got the works stopped, whereas for the remaining part of the stretch the work has already been completed. The Executive Engineer, Rural Works Department was satisfied with the same on the basis of enquiry done by the Assistant Engineer and Junior Engineer and by his letter dated 15.10.2016 addressed to the Superintending Engineer has recommended that the name of the petitioner should be removed from the debarred list.

Learned counsel for the State submits that the petitioner having not completed the work has been placed in the list of debarment. Learned counsel for the State, however, is unable to show how the debarment order could have been issued three months prior to the show cause notice of debarment.

Moreover, it is a case where the Executive Engineer has admitted that the work could not be completed because of the fact that part of the stretch of the road was of a private land owner.

Learned counsel for the petitioner also seeks to rely upon the decision of this Court in the case of M/s. NCC Ltd. vs. The State of Bihar & Ors. : 2013(1) PLJR 952 in which this Court has held that no such debarment order can be issued after the petitioner's counter allegation with regard to the default on the



part of the respondent authorities which has led to the non-completion of the work and under the situation such issue cannot be decided by the authorities themselves but the same has to be decided by an independent adjudicatory body, whether a court or an Arbitral Tribunal.

This Court is in agreement with the submission of learned counsel for the petitioner. First of all, the debarment order could not have been issued even before the issuance of the show cause notice in that regard; secondly, even the show cause notice appears to have been based on complete misconception which has been accepted by the Executive Engineer by his letter dated 15.10.2016 after getting the local enquiry done by the Assistant Engineer and Junior Engineer and, lastly, when the petitioner has taken a stand that the work could not be completed because of existence of the private land, then the default is on the part of the respondents and not of the petitioner. In such circumstances, it is not open to the respondent authorities to debar the petitioner unless the issue raised by the petitioner is decided by an independent adjudicatory body.

For the aforesaid reasons, the writ application is allowed. The impugned order dated 22.6.2016, in so far as it concerns the petitioner, is quashed.

(Ramesh Kumar Datta, J)

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