

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15016 of 2016

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M/s Sudhir Kumar Singh, a proprietorship Firm having its place of business at Kusum Kunj, Magadh Colony, Road No. 3 at P.O. and P.S. - Gaya, District - Gaya through its Proprietor Sudhir Kumar Singh Son of Sri Kedar Nath Singh Resident of Kusum Kunj, Magadh Colony, Road No. 3 at P.O. and P.S. - Gaya, District - Gaya.

.... Petitioner/s

Versus

1. The Union of India, Ministry of Defence, through Defence Secretary, having its office at 101 - A, South Block, New Delhi.
2. The Engineer-in-Chief, Military Engineer Services, E-in-Cs Branch, Integrated HQ. of Ministry of Defence (Army), Kashmir House, Rajajji Marg, New Delhi.
3. The Chief Engineer, Central Command, having its office at Head Quarters, Central Command, Lucknow.
4. The Chief Engineer, Jabalpur Zone, Military Engineer Services, Post Box No. 84, Bhagat Marg, Jabalpur.
5. The Commandar, Works Engineer, Military Engineer Services, H.Q. C.W.E. Dipatoli, Ranchi.
6. The Garrison Engineer, Military Engineer Services, Gaya.
7. The Garrison Engineer, Military Engineer Services, Danapur, District - Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Alok Agarwal, Adv.

For the Respondent/s : Mr. Anshay Bahadur Mathur, CGC

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 06-03-2017

Heard learned counsel for the petitioner and counsel
for the Union of India.

The petitioner is a registered contractor as 'E' Class Contractor with Military Engineer Services under the Ministry of Defence, Government of India bearing Registration Index No. E-1568. The petitioner used to receive the work order from different commands and the petitioner was granted the work order from the



Central Command and the office of the Garrison Engineer which includes works at Gaya, Danapur, Bihta, Muzaffarpur, Ramgarh, Ranchi etc. A tender was floated for construction and completion of incomplete construction of Ex-Serviceman Contribution Health Scheme Polyclinic Type-C at Muzaffarpur. The petitioner has participated in the tender, was declared successful as a result the work order was issued vide letter dated 12.01.2009. The work was for a sum of Rs. 24,11,900/-. The petitioner started the work and initially the date of completion of work was on 26.7.2009 but the date of completion was extended till 10.4.2010. As per claim of the petitioner, he executed the work perfectly and has obtained the completion certificate by the Garrison Engineer, Military Engineer Service, Danapur Cantt. vide letter dated 12.4.2010 but during inspection it was found that the petitioner instead of using OPC Cement for construction of the house, he used PCC Cement. As per claim of the petitioner, the OPC Cement was not available in the market but he has informed this fact to the higher authority who has granted permission for using of PCC Cement. The petitioner was served a show-cause notice dated 28.3.2011 to show cause that the PCC Cement has been used in place of OPC Cement and submission of fake document for obtaining the work order. The petitioner has submitted his explanation and state that he along with other



Contractors has been prohibited from participating in the future tender. It has been mentioned in the show-cause that he has purchased the cement from M/s Rai Traders, Chandauti More, Gaya but the name of that firm has changed as M/s Shyam Traders and on that account the receipt for purchase of the cement has been changed. From the certificate dated 12.2.2014, it appears that the petitioner has been banned in MES works with effect from 29th July, 2011 till the date of issuance of the letter. Learned counsel for the petitioner submits that he has wrongly been deprived as no order of blacklisting or debarment has been issued by the authority concerned but, by an order the petitioner has been prevented from participating in the future tender. He has further submitted that in similar circumstances, one Abhay Kumar who was also found wrong with the execution of the work and in a same term he was not allowed to participate in the future tender. He approached this Court in CWJC No. 21223 of 2012 and this Court disposed of the same by order dated 27.6.2013 with a direction to take a decision in the matter of petitioner within a period of two months. It has been claimed that the Contractors cannot be debarred or blacklisted for indefinite period.

A counter affidavit has been filed by the Union of India wherein it has been said that the petitioner has used the substandard material for construction of the building, inasmuch as, he



has produced the fake receipt showing the purchase of cement. It has further been mentioned that he has been deprived to participate in the future tender as the allegation imposed against him has not been lifted.

This Court had directed for personal appearance of the Garrison Engineer, Military Engineer Services, Danapur, Patna to produce the original record. From the records, it appears that no positive order of blacklisting has been passed against the petitioner. From the records, it also appears that certain enquiry with respect to use of substandard material in construction of house was under consideration and has not been concluded and on that account the petitioner has not been allowed to participate in the tender.

Already more than 5.5 years have passed from the date of debarment, the action of debarment or blacklisting cannot be made for ever but only for certain period as has been held by the Hon'ble Apex Court in the case of *M/s Kulja Industries Limited Vs. Chief Gen. Manager, W.T. Proj. BSNL & Ors.* reported in *2013(4) PLJR 447* wherein in the last paragraph it has been mentioned that blacklisting will be only for a definite period and commensurate with the gravity of the charges. As the Garrison Engineer, Military Engineer Service, Danapur Cantt has made a statement that this matter is being enquired by the CBI but no such document has been produced to show that



investigation has been handed over to the C.B.I. Let the Authority concerned should examine the case of the petitioner and take a decision with regard to the status of the petitioner with respect to participation in the future tender within a period of three months from the date of receipt/production of a copy of this order in accordance with law keeping in mind that there cannot be an order of blacklisting or debarment for an indefinite period. The Authority while deciding the case would also take into account the action taken by the authority concerned in pursuance of the direction of this Court in the case of C.W.J.C. No. 21223 of 2012. It is made clear that if the Authority fails to take a decision within the aforesaid period of three months, the petitioner will be allowed to participate in the tender till final order of Authority.

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

(Shivaji Pandey, J)

Rishi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	09.03.2017
Transmission Date	

