

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1245 of 2017

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M/s R. K. Construction Begusarai through its Proprietor Hari Shankar Prasad,
Son of Sri Ram Naresh Prasad Singh, Resident of Village- Ratanpur, P.O.+P.S.-
Begusarai, District- Begusarai.

.... Petitioner

Versus

1. The State of Bihar, through the Principal Secretary, Building Construction Department, Government of Bihar, Patna.
2. The Principal Secretary, Building Construction Department, Government of Bihar, Patna.
3. The Chief Engineer (North), Building Construction Department, Government of Bihar, Patna.
4. The Principal Secretary, Water Resources Department, Government of Bihar, Patna.
5. The Engineer-in-Chief (Middle) Water Resources Department, Government of Bihar, Patna.
6. The Executive Engineer, Flood Control Division, Begusarai.

.... Respondents

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Appearance :

For the Petitioner : Mr. Deepak Kumar, Advocate.

For the Respondents : Mr. Subodh Kumar, Ac to SC-26

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 27-11-2017

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

2. The present writ petition has been filed for quashing
the letter as contained in Memo No. 1703 dated 14.10.2006 issued
under the signature of Chief Engineer (North), Building Construction
Department, Bihar, Patna, by which it has been informed to the
petitioner that in spite of petitioner being the lowest bidder (tenderer)
for the work relating to supply of Submersible pump with all fitting
motor of approved brand along with water tank in Sub-Divisional



Hospital, Banmankhi and in Sub-Divisional Office Banmakhi, the quotation has been returned assigning the reason that at the time of Tender the petitioner was debarred by Water Resources Department through letter no. 2543 dated 27.10.2009 and the petitioner is still debarred; and for connected reliefs.

3. Learned counsel for the petitioner raises a short point to assail the impugned letter dated 14.10.2016 by which its quotation has been returned on the ground of debarment order, to the effect that the dispute relating to the work of construction of *pucca* road on top of Munger embankment (14.3 Km to 20 Km) Kasba-Ram Nagar embankment and Gupta embankment including Junior Engineer and Chaukidar's Quarters in respect of an Agreement No. SBD/PWD/FE/3-2/2007 dated 22.08.2007, in respect of which the debarment order was passed, was raised before the Bihar Public Works Contracts Disputes Arbitration Tribunal in Reference Case No. 82/2010 which came to be decided in terms of award dated 11.03.2014 (Annexure-2), *inter alia*, finding that the petitioner was not liable for non-completion of work and that the petitioner was not liable for breach of contract. Learned counsel for the petitioner therefore submits that the debarment order could not stand in the way of being awarded the work under the instant tender.

4. Learned counsel for the respondent, on the other hand, opposes the writ petition relying on paragraph-11 of the counter affidavit, stating that C.W.JC. No. 11503 of 2014 had been filed again



challenging the decision dated 27.10.2009 (Annexure-6) being the order of debarment which had earlier not been interfered with in C.W.J.C. No. 17257 of 2009 (Annexure-3).

5. Having heard learned counsel for the parties and on a consideration of the materials on record, this Court does not find any merit in the writ petition. The stand of the respondents that C.W.J.C. No. 11503 of 2014 was filed for the same cause of action, namely bringing a challenge to the decision dated 27.10.2009 which was in the nature of an order of debarment, as in the earlier C.W.J.C. No. 17257 of 2009, has not been controverted in the rejoinder filed by the petitioner. It has been stated in paragraph-12 thereof that the debarment order has not been made the subject matter of challenge in the present writ petition which is directed against the letter dated 14.10.2016 rejecting the petitioner's tender on the sole ground of debarment.

6. It is relevant to take note of the order dated 10.07.2014 passed by this Court in C.W.J.C. No. 11503 of 2014 (Annexure-4) in the following terms:

"After some arguments, learned counsel for the petitioner seeks permission to withdraw this application.

That being so, this application is dismissed as withdrawn.

It is also made clear that now the petitioner will have no liberty to move this Court again for the same cause of action."

7. From the above, it is apparent that the petitioner withdrew the writ application laying challenge to the order of



debarment, and liberty to challenge the same before this Court again was specifically denied. Such order was passed on 10.07.2014 which was subsequent to the award dated 11.03.2014 passed by the Arbitration Tribunal, yet the writ petition was withdrawn. It is the petitioner’s own stand in the rejoinder that the order of debarment dated 27.10.2009 is not the subject matter of challenge in the instant writ petition and hence this Court would not go into the legality of continuance of the debarment order. As long as the debarment order remains in force, rightly or wrongly, it is difficult to hold that the respondents have erred or acted arbitrarily in rejecting the petitioner’s tender.

8. The writ petition accordingly stands dismissed.

Md. Ibrarul/BT

(Vikash Jain, J)

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	30.11.2017
Transmission Date	N.A.

