

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.15549 of 2017**

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E D M A C Engineering Consultant (India) Private Limited, G-1/LGF, South Extension-II, New Delhi- 110049 through Mr Faiz Ahmad, Son of Prof. Shahid Ahmad, Director, EDMAC Engineering Consultant (India) Private Limited, G-1/LGF, South Extension-II, New Delhi- 110049.

.... .... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Health Department, Bihar, Patna.
2. Bihar Medical Services & Infrastructure Corporation Ltd, Biscomaun Bhawan, Gandhi Maidan, Patna through its Managing Director.
3. Development Commissioner-cum-Chairperson, Bihar Medical Services & Infrastructure Corporation Ltd, Biscomaun Bhawan, Gandhi Maidan, Patna.
4. Managing Director, Bihar Medical Services & Infrastructure Corporation Ltd, Biscomaun Bhawan, Gandhi Maidan, Patna.
5. Deputy General Manager, Projects, Bihar Medical Services & Infrastructure Corporation Ltd, Biscomaun Bhawan, Gandhi Maidan, Patna.
6. Managing Director, Bihar Rajya Pul Nirman Nigam Ltd, Bihar, Patna.

.... .... Respondents

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**Appearance:**

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|---------------------|--------------------------------------------------------|
| For the Petitioner  | : Mr. Abhinav Srivastava, Advocate                     |
| For the Corporation | : Mr. Lalit Kishore, AG<br>Mr. Prabhat Singh, Advocate |
| For the State       | : Mr. Anujit Sinha, Advocate                           |

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**CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN**

**ORAL JUDGMENT**

**Date: 20-03-2018**

The present writ petition has been filed for the following reliefs \_\_\_\_

- (i) *Issuance of a direction, order or writ, including the writ in the nature of certiorari quashing the office order dated 09.02.2017 issued by the Deputy General Manager (Projects), Bihar Medical Services & Infrastructure Corporation Ltd., Patna (hereinafter referred to as 'the Corporation') by which the petitioner company has been debarred from participating in any process pursuant to a notice inviting tenders/expression of interest/request for proposal issued by the Corporation till further orders and further more, it has been directed that no*



*consultation fees would be admissible to the petitioner company for increase in the cost of project on account of alleged deviations;*

- (ii) Issuance of a direction, order or writ, including writ in the nature of mandamus commanding the concerned respondent authorities under the Corporation to allow the petitioner company to participate in the tender process or to make expression of interest or request for proposal pursuant to notices issued by the Corporation in the said respect;*
- (iii) Issuance of an ad interim direction upon the concerned respondent authorities under the Corporation to allow the petitioner to participate in the process of tender, request for proposal or expression of interest in furtherance of the notices issued or are to be issued by the Corporation and other departments during the pendency of the present writ application subject to the outcome of this case;*
- (iv) Any other relief/reliefs that the petitioner may be found be entitled in the facts and circumstances of the present case.*

2. Mr. Abhinav Shrivastava, learned counsel appearing on behalf of the petitioner submits that even though a show cause notice dated 24.11.2016 (Annexure-15) has been issued alleging negligence on account of considerable increase in the bill of quantity, the impugned order of debarment traveled beyond the same and has been passed based on various parameters, the show cause reply of the petitioner has been rejected by letter dated 09.02.2017 (Annexure-18) and on the same day the impugned



order of debarment (Annexure-19) has been passed. It will be evident from a perusal of the rejection letter that the concerned authority has traveled far beyond the terms of the show cause notice and the decision has been arrived at for extraneous reasons not forming part of the show cause notice. The petitioner has thus been denied a fair opportunity of hearing in the matter. Moreover, it is submitted that the order of debarment is for a indefinite period which is also not permissible in law.

3. Learned counsel for the respondent-Corporation relies on the counter affidavit to oppose the writ petition and to justify the impugned order as valid. It is submitted that a show cause notice was duly issued and there has been no failure of natural justice.

4. Having heard the parties and on consideration of the materials on record, this Court finds merit in the writ petition. A perusal of the show cause notice discloses that the petitioner was confronted only on one ground with regard to alleged increase in the bill of quantity whereas the rejection of his show cause reply enumerates various other factors in para 2 thereof, which has weighed with the concerned authority for passing the order of debarment. The impugned order thus travels beyond the show cause notice and has resulted in violation of the natural justice for not confronting the petitioner on the various parameters on which debarment order has been passed. The impugned order of



debarment has also been passed for indefinite period which is impermissible in view of the observations of the Hon’ble Supreme Court in Kulja Industries Limited vs. Chief General Manager, Western Telecom Project, Bharat Sanchar Nigam Limited and others, (2014) 14 SCC 731.

5. In the above view of the matter, the impugned order dated 09.02.2017 (Annexure-19) is hereby quashed and the matter remanded to the Deputy General Manager, Projects, Bihar Medical Services & Infrastructure Corporation Ltd., Biscomaun Bhawan, Gandhi Maidan, Patna (respondent no. 5) for passing fresh orders after issuance of fresh show cause notice and after grant of reasonable opportunity to the petitioner for being heard in the matter, in accordance with law.

6. The writ petition stands allowed, as above.

(Vikash Jain, J)

Chandran/BT

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