

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13069 of 2017

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M/s Ajay Engicon Pvt. Ltd., Harihar Singh, Road, Morabadi, Ranchi (Jharkhand)
through its Director Ajay Kumar Singh, Son of Late Mathura Prasad Singh,
Resident of Harihar Singh Road, Morabadi, P.S. Bariyatu, Ranchi.

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Road Construction Department of Govt. of Bihar, Patna.
2. The Principal Secretary, Road Construction Department of Govt. of Bihar, Patna.
3. The Engineer-in-Chief-Additional Secretary-cum-Special Secretary, Road Construction Department, Vishvesraiya Bhawan, Patna.
4. The Executive Engineer, National Highway Division, Aurangabad, Govt. of Bihar.
5. The Executive Engineer, Flying Square Division No. IV, Road Construction Department, Patna.

.... Respondents

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Appearance :

For the Petitioner : Mr. Sanjay Kumar, Advocate
For the State : Mr. Amit Prakash-GA13
Mr. Rajeev Shekhar, Advocate

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 10-05-2018

The present writ petition has been filed for the
following reliefs :-

” (i) Issuance of a writ in the nature of writ of
certiorari to set aside the order of the Respondent



No. 3 vide its Memo No. 7639 (E) dated 23.11.2016 vide Annexure-7, whereby and whereunder the respondent no. 3 has suspended the registration of the petitioner for two years.

(ii) Issuance of a writ in the nature of writ of certiorari to quash/set aside the order contained in memo no. 1403 (E) dated 15.03.2017 as contained in Annexure-9 of this writ application, whereby and whereunder the respondent no. 2 has affirmed the order of the Respondent No. 3 by which the registration of the petitioner has been suspended for 2 years in terms of Clause -11(Ka)(II) under Bihar Contractor Registration Rules, 2007.

(iii) Issuance of any other writ/writs, order/orders, direction/directions to grant relief/reliefs to which the petitioner may be entitled to in the facts and circumstances of the case.”

2. Learned counsel for the petitioner makes a short submission to assail the impugned order of debarment to the effect that the authority has relied on a letter dated 02.01.2016 according to which the approach slab in question once again had sunk, in order to debar the petitioner for a period of two years. It is submitted that such letter dated 02.01.2016 was issued subsequent to the defect liability period of the petitioner in terms of SBD which had already ended on 29.06.2015 and the impugned action is thus not sustainable. On the earlier occasion, by the two defects pointed out by the authorities were



duly rectified by the petitioner within the defect liability period as is evident from the show cause reply dated 04.06.2015 (Annexure-6A) and the petitioner could not be held liable for any subsequent defect beyond the defect liability period. The appellate authority has similarly erred in affirming the order of debarment, placing reliance on the same letter dated 02.01.2016 aforesaid.

3. Learned counsel for the respondent on the other hand invites reference to the appellate order wherein it has been clearly noticed that the petitioner had not removed the defects on the date of inspection namely 07.12.2012 as evident from the fact that further defects once again developed in the bridge within six months and that the petitioner had not done the work properly according to the terms of the agreement. Learned counsel for the respondents further invites attention to the impugned order dated 23.11.2016 (Annexure-7) wherein the petitioner's show cause reply has been taken note of by which the petitioner has accepted his fault and apology tendered. It is further pointed out that the petitioner had been debarred for a period of two years by the impugned order dated 23.11.2016 and a substantial part of the debarment period having already expired, no interference at this stage is called for.

4. Having heard learned counsel for the parties and on careful consideration of the materials available on record, this Court



finds the writ petition to be devoid of merit. It is not in dispute that the initial show cause notice was issued on 28.02.2013 well within the defect liability period of the petitioner. So also, the second occurrence of the approach slab having sunk occurred within six months of the date of inspection namely 07.12.2012, which was also within the defect liability period itself.

5. In these circumstances, this Court is not inclined to interfere in the matter. The writ petition stands dismissed.

(Vikash Jain, J)

N.H./-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	13-05-2018
Transmission Date	

