

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1662 of 2017

IN

Civil Writ Jurisdiction Case No. 14477 of 2017

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Paramatma Tiwari, S/o Late Ram Naresh Tiwari, Resident of Village- Urda, P.S. Chenari, District Rohtas, Sasaram

.... Appellant/s

Versus

1. The State of Bihar, through the Secretary, Rural Works Department, Vishvasaraiya Bhavan, Bailey Road, Patna.
2. The Principal Chief Engineer, Rural Works Department, Government of Bihar, Patna.
3. The Chief Engineer, Rural Works Department, Government of Bihar, Patna.
4. The Superintending Engineer, Rural Works Department, Bhabua.
5. The Executive Engineer, Rural Works Department, Works Division, Bhabua.
6. The Engineer-in-Chief, Rural Works Department, Government of Bihar, Patna.

.... Respondent/s

With

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Letters Patent Appeal No. 1663 of 2017

IN

Civil Writ Jurisdiction Case No. 10293 of 2017

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Paramatma Tiwari, S/o late Ram Naresh Tiwari, Resident of Village- Urda, P.S. Chenari, District - Rohtas, Sasaram.

.... Appellant/s

Versus

1. The State of Bihar through the Secretary Rural Works Department, Vishvasaraiya Bhavan, Bailey Road, Patna.
2. The Principal Chief Engineer, Rural Works Department, Government of Bihar, Patna.
3. The Chief Engineer, Rural Works Department, Government of Bihar, Patna.
4. The Executive Engineer, Rural Works Department, Work Division, Mohania (Kaimur).
5. The Assistant Engineer, Rural Works Department, Kundra (Kaimur).

.... Respondent/s

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Appearance:

(In LPA No.1662 of 2017)

For the Appellant/s : Mr. Abhishek Kumar, Advocate.

For the Respondent/s : Mr. Pushkar Narayan Sahi, AAG 6.

(In LPA No.1663 of 2017)

For the Appellant/s : Mr. Abhishek Kumar, Advocate.

For the Respondent/s : Mr. Pushkar Narayan Sahi, AAG 6.

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)



Date: 20-03-2018

Challenge in the two intra-court appeals is to a common judgment dated 01.11.2017 passed by the learned Writ Court in CWJC No. 10293/2017 and CWJC No. 14477/2017 preferred by the petitioner - appellant by which the learned Writ Court has been pleased to dispose of the Writ Applications with certain observations and directions.

2. It appears that the petitioner is a contractor registered with the Rural Works Department, Govt. of Bihar. He was awarded the works for construction and maintenance of Kudra - Parsathua Road and Shailas - Ekauni Road for which agreement was entered into between the petitioner and the Rural Works Department. The work was to be completed till 30.03.2013. The agreement also contained maintenance clause which provided that the petitioner shall maintain the road for a period of five years and the bills will be paid accordingly.

3. It appears that the petitioner was served with a letter issued by the Executive Engineer, Rural Works Department, Mohania (Kaimur) vide Annexure-4 to the Writ Application (CWJC No. 10293/2017) stating that the petitioner was not maintaining the road in terms of the agreement. Later, the Engineer-in-chief, Rural Works Department, Govt. of Bihar issued a letter dated 28.06.2017 as



contained in Annexure-5 to the Writ Application whereunder the petitioner along with a large number of other contractors has been debarred from participating in the future tenders because he had not completed the work / maintenance work.

4. The petitioner moved this Court in its writ jurisdiction for quashing of letter no. 7647 dated 28.06.2017 issued by the Engineer-in-chief, Rural Works Department, Govt. of Bihar. He also prayed for a direction upon the respondents to issue the final measurement book for the work of construction of the Kudra Parsathua Road and further to make payment of the outstanding bill for the work done pursuant to the agreement. The grievance of the petitioner is that while he has started maintenance work of the road, the respondents are not paying the amount of maintenance. By filing a supplementary affidavit the petitioner made a statement that he is still ready to start the maintenance work and gives his undertaking before this Court that the petitioner will complete the maintenance work of the said road within three months from the date of the order, subject to the condition that upon completion of maintenance work the bill will be paid immediately as provided in the agreement.

5. A counter affidavit was filed on behalf of the respondents no. 2 to 5 in which a stand was taken that as per the agreement the petitioner was also required to maintain the road for a



period of five years and the bill for the said work shall be paid accordingly. The petitioner has already been given payment for the works completed by him as per the measurement book but the petitioner has failed to complete the work as per specifications and agreement within time. It is also alleged that the petitioner did not pay attention towards the maintenance work of the said road which led to the present position. The petitioner has been debarred from participating in future tender only because he has not complied with the contractual work and agreement in its entirety including the maintenance work.

6. The learned Writ Court took note of the stand of the parties, particularly the undertaking of the petitioner in his supplementary affidavit, and directed the petitioner to carry out the work and as soon as he completes the repairing work the same will be verified by the State authority and on finding the same having been completed, his name would be deleted from the debar list.

7. Learned counsel representing the appellant has assailed the impugned judgment of the learned Writ Court. The learned counsel submits that the order of debarment has been passed without giving any notice. He would submit that the debarment from participating in future tender is a serious consequence and amounts to a civil death. Learned counsel further submits that the judgment



impugned is bad in law and the same is liable to be set aside.

8. On the other hand, learned counsel representing the State submits that the petitioner has given an undertaking to complete the maintenance work within a period of three months but instead of abiding by his own undertaking he has moved this Court by filing these appeals without there being any legal and valid ground. It is also submitted that the impugned order debaring the petitioner has been passed in terms of the agreement whereunder in case of failure of the petitioner to complete the work which includes the maintenance work the authorities have been conferred with the power to debar the petitioner from participating in the future tender.

9. Having heard learned counsel for the appellant and learned counsel representing the State, keeping in view that the petitioner has himself filed a supplementary affidavit in which he gave an undertaking before this Court that the maintenance work would be completed within three months, we find no reason to interfere with the impugned judgment of the learned Writ Court. The impugned judgment has been passed taking note of the undertaking of the petitioner and with a clear direction that on completion of the work his name would be deleted from the debar list. If the petitioner has entered into an agreement to complete the work including the work of maintenance of the roads in question and in case of failure to



do so, the agreement provides for his debarment, the petitioner is himself aware of the consequences and, at this stage when he has already furnished an undertaking before the learned Writ Court and assured completion of work within a period of three months, the contention of the writ petitioner – appellant that the order of debarment was passed without giving any notice to the petitioner – appellant is of no avail. The learned Writ Court has rightly given leeway to the petitioner whereunder on completion of the work if the authorities will find that the petitioner has done the work in terms of the agreement, his name shall be deleted from the debar list. As regards the grievance of the petitioner that the respondent State is not providing the measurement book and has not paid the whole amount, in view of the disputes raised by the respondents, we are of the view that such issues may be agitated by the petitioner – appellant in terms of the agreement before an appropriate forum only.

10. We do not find any merit in the appeals. Both the appeals are accordingly dismissed.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

Dilip, AR

AFR/NAFR	NAFR
CAV DATE	N/A
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