

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20510 of 2013

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M/S Gaurav Construction Through Its Partner Vinay Kumar Son Of Late Kailash Singh Resident Of Village - Panchbhairwa, P.O. Madhaul, P.S. Saraiya, District - Muzaffarpur

... .. Petitioner/s

Versus

1. The State Of Bihar Through The Principal Secretary, Building Construction Department, Govt. Of Bihar, Patna
2. The Engineer In Chief, Building Construction Dept. Govt. Of Bihar, Patna
3. The Chief Engineer (North), Building Construction Dept. Govt. Of Bihar, Patna
4. The Superintending Engineer, Building Construction Circle Muzaffarpur
5. The Executive Engineer, Building Construction Division, Muzaffarpur

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dr. Mayanand Jha, Advocate
For the Respondent/s : Mr. Nishant Kumar Jha, A.C. to S.C.-28.

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date : 30-11-2018

The present writ petition has been filed for setting aside the decision of the Executive Engineer, Building Construction Division, Muzaffarpur as contained in letter No.2027 dt. 23.11.2012 whereby the petitioner had been debarred from future contracts, holding the same as void ab initio, or in the alternative, to direct the authorities to modify the letter No.1517 dated 12.09.2013 by revoking the debar order with retrospective effect from the date of issuance of letter No.2027 dt.23.11.2012 and further hold that the debarment order of the Executive Engineer dt.23.11.2012 will have no bearing on any tender filed by the petitioner.

2. Learned counsel for the petitioner submits that the order of debarment dated 23.11.2012 was passed without prior show cause notice nor such order was even served or communicated to the



petitioner. It is further stated that such order of debarment ought not to have been passed considering that the petitioner had already completed about 92 per cent of the work by then. In this backdrop, therefore, the impugned order dated 12.09.2013 recalling the order of debarment dated 23.11.2012 only with perspective effect is not justified and the petitioner is left with stigma of debarment for the period in between.

3. Learned counsel for the respondents appears and relies on the counter affidavit to oppose the writ petition. However, the specific stand of the petitioner has not been controverted with respect to non-service of show cause notice, non-communication of the debarment order, nor the claim of completion of 92 per cent of the work on the date of passing of the debarment order.

4. Having heard the parties and on a careful consideration of the materials on record, this Court finds merit in the writ petition. The categorical stand of the petitioner that it had already completed about 92 per cent of the work as reflected from the measurement book on the date of debarment has not been controverted, and as such the impugned order ought not to have been passed if the petitioner had already completed in excess of 80 per cent of the work. The impugned order of debarment also



appears to have been passed without service of show cause notice nor communication of the order to the petitioner upon being passed. The petitioner has relied on a few instances of similar nature where orders of debarment have been revoked retrospectively as enumerated in para 15 of the writ petition, which fact has also not been controverted in the counter affidavit. No reason has thus been assigned by the respondents for the indiscriminate manner in which the petitioner's debarment has been revoked only prospectively, and that too in the absence of any prior show cause notice resulting in violation of natural justice.

5. The impugned order of debarment dated 23.11.2012, as also the consequential order dated 12.09.2013, are hereby quashed. The matter is remanded to the Executive Engineer, Building Construction Division, Muzaffarpur (respondent No.5) to pass a fresh order after affording adequate opportunity to the petitioner.

6. This writ petition is disposed of with the aforesaid observations and directions.

sanjeev/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	05/12/2018
Transmission Date	NA

(Vikash Jain, J)

