

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3499 of 2017

=====

Mahesh Kumar Singh Son of late Bharat Singh, Resident of Village- Kalpa, P.S.-
Karpa O.P. Jehanabad, District- Jehanabad.

.... Petitioner

Versus

1. The State of Bihar through Principal Secretary, Road Construction Department, Government of Bihar, Patna.
2. The Principal Secretary, Road Construction Department, Government of Bihar, Patna.
3. The Engineer-in-Chief, Road Construction Department, Government of Bihar, Patna.
4. The Superintendent Engineer, Magadh Road Circle, Gaya.
5. The Executive Engineer, Road Division No. 1, Jehanabad.

.... Respondents

=====

Appearance :

For the Petitioner : Mr. P.K. Shahi, Sr. Advocate
Mr. Vikas Kumar, Advocate.

For the Respondents : Mr. Uday Shankar Sharan Singh, GP-19

=====

CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 03-07-2018

I.A. No. 1974 of 2017

This interlocutory application has been filed with the prayer for amendment of the prayer in the writ petition by adding the following prayer –

“1(A) For quashing of NIT No. RCD/Jehanabad/05/2016-17

by which fresh tender for FDR work of Manikpur-Bithra-

Senari Road, under road Division No. 1, Jehanabd, Magadh

Road Circle, Gaya has been issued.”

2. Having regard to the nature of the prayer, the



interlocutory application is allowed and the petitioner is permitted to make appropriate amendment in the writ petition and the same shall be treated as forming part of the writ petition.

I.A. No. 3173 of 2017

3. This interlocutory application has been filed with the prayer for amendment of the prayer in the writ petition by adding the following prayer –

“1(B) For quashing of NIT No. RCD/Jehanabad/06/2016-17 by which fresh tender for FDR work of Ghosi-Sukiyama-Hulasganj-Khudaganj Road and Wazipur-Terra-Karpi Road, under Road Division No. 1, Jehanabad, Magadh Road Circle, Gaya has been issued.”

4. Having regard to the nature of the prayer, the interlocutory application is allowed and the petitioner is permitted to make appropriate amendment in the writ petition and the same shall be treated as forming part of the writ petition.

I.A. No. 1219 of 2018

5. This interlocutory application has been filed for stay of the impugned order of debarment which relief has already been granted by order dated 17.05.2018. The said interlocutory application therefore already stands disposed of.

C.W.J.C. No. 3499 of 2017



6. The main writ petition has been filed for a direction to allocate FDR work of Manikpur-Bithra-Senari Road, under Road Division No. 1 Jehanabad, Magadh Road Circle, Gaya to the petitioner under OPRMC Scheme instead of going for fresh tender for the aforesaid work. The respondent authorities may be restrained from allocating the “FDR work of Manikpur-Bithra-Senari Road” to any other contractor by making fresh advertisement.

7. Mr. P.K. Shahi, learned Senior counsel appearing on behalf of the petitioner submits that the respondents have acted arbitrarily in issuing a fresh tender notice (Annexure-10) for the subject work instead of allocating the same to the petitioner under OPRMC Scheme in terms of Section V-G2 (page-22). It is submitted that the petitioner had duly complied with the terms in this regard and the Executive Engineer by his letter dated 24.05.2017 (Annexure-14/A) had duly recommended with the work be allocated to the petitioner. Despite the same however fresh tender had been issued in this regard contrary to the terms of the agreement.

8. Learned counsel for the petitioner further submits that the impugned order of debarment as contained in Memo No. 79 dated 23.01.2018 (Annexure-26) is wholly arbitrary and illegal as the same has been passed without any prior show cause notice or opportunity of hearing.



9. Learned counsel for the respondents, on the other hand, appears and opposes the writ petition. It is pointed out from paragraphs- 7 and 8 of the counter affidavit filed on behalf of the respondent nos. 1 to 5 that the petitioner did not submit his written request along with the documents relating to the circumstances of the Force Majeure and damages caused through photographs mentioning the exact damage location along with the estimated quantities and cost of the construction. It is further been submitted that the procedure prescribed in Section V-G2 of the agreement were not followed by the petitioner and hence the petitioner was not entitled to get the subject work. As regards the order of debarment, learned counsel for the respondents is unable to point out from the counter affidavit that any opportunity was granted prior to passing of the impugned debarment order.

10. Having heard the parties and on consideration of the materials on record, this Court is of the view that as far as the claim of the petitioner for being allocated the work in terms of Section V-G2 of the agreement, the same is a matter which arises from the terms of contract between the parties. Moreover, the claim of the petitioner has been disputed in the counter affidavit. In such circumstances, it will be appropriate to direct the petitioner to seek remedy in accordance with Section VI-6 of the agreement relating to general conditions, which



provides for resolving of dispute or difference by mutual consultation and upon its failure by reference in writing by either party to the Disputes Review Expert.

11. In this view of the matter and with consent of parties, the petitioner is granted liberty to approach the Disputes Review Expert within a period of one week from today, for resolving the dispute between the parties. It is expected that the Disputes Review Expert would take up and dispose of the matter expeditiously and in any event within a further period of two weeks thereafter. If the petitioner approaches the Disputes Review Expert within the stipulated period of one week as aforesaid, the tender notice issued for the subject work (Annexure-10) shall remain in abeyance until the decision of the Disputes Review Expert, considering the provisions of Section VI-6.1.4 and 6.4 of the agreement.

12. As concerns the issue relating to the debarment of the petitioner, there is no material on record to suggest that the same has been passed after grant of opportunity of hearing to the petitioner and the same is therefore in clear violation of the fundamental principles of natural justice. It is well settled that any order which visits a person with civil consequences may be passed only after an opportunity of hearing has been granted to the affected person.

13. In the above circumstances, the impugned order of



debarment as contained in Memo No. 79 dated 23.01.2018 (Annexure-26) is hereby quashed. No fruitful purpose will be served in remanding the matter of debarment to the concerned authority at this stage, considering that the issue relating to the allocation of work is required to be decided by the Disputes Review Expert. Any decision for debarment of the petitioner may be initiated at the appropriate time, if so advised, and only after grant of a reasonable opportunity of hearing to the petitioner.

14. The writ petition stands disposed of with the aforesaid observations and directions.

(Vikash Jain, J)

Md. Ibrarul/Chandran

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	03.07.2018
Transmission Date	N.A.

