

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4597 of 2018

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M/s R. K. Construction Begusarai Through Its Proprietor Hari Shankar Prasad
Son of Sri Ram Naresh Prasad Singh Resident of Village- Ratanpur, P.O. +P.S.
Begusarai, District- Begusarai.

.... Petitioner

Versus

1. The State of Bihar through Principal Secretary, Water Resources Department, Government of Bihar, Patna.
2. The Principal Secretary, Water Resources Department, Government of Bihar, Patna.
3. The Engineer-in-Chief(Middle) Water Resources Department Government of Bihar, Patna.
4. The Executive Engineer, Flood Control Division, Begusarai.

.... Respondents

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Appearance :

For the Petitioner : Mr. Deepak Kumar, Advocate.

For the Respondents : Mr. Harish Kumar, GP-8

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 07-05-2018

Heard learned counsel for the petitioner and learned
counsel for the respondents.

2. The present writ petition has been filed for quashing of letter as contained in letter no. 2543 dated 27.10.2009 issued under the signature of Engineer-in-chief (Middle), Water Resources Department, Government of Bihar, Patna for the petitioner is concerned only, by which petitioner and several other agencies have been declared defaulter and debarred from participating in future tender alleging that the agencies have not completed the work allotted to them in time.



3. Learned counsel for the petitioner makes a short submission to challenge the impugned order of debarment and invites reference to the observations of this Bench in its judgment dated 27-11-2017 passed in CWJC No. 1245 of 2017 preferred by the same petitioner. It was duly noted in paragraph 3 of the said judgment that “the dispute relating to the work of construction of *pucca* road on top of Munger embankment (14.3 km to 20 km) Kasba-Ram Nagar embankment and Gupta embankment including Junior Engineer and Chaukidar’s Quarters in respect of an Agreement No. SBD/PWD/FE/3-2/2007 dated 22.08.2017, in respect of which the debarment order was passed, was raised before the Bihar Public Works Contracts Disputes Arbitration Tribunal in Reference Case No. 82/2010 which came to be decided in terms of award dated 11.03.2014 (Annexure-2), *inter alia*, finding that the petitioner was not liable for non-completion of work and that the petitioner was not liable for breach of contract.”

4. It is, therefore, submitted that inasmuch as the said work became incapable of performance and for which the petitioner was not held to be at fault, the impugned order of debarment has assumed the nature of permanent debarment which is not permissible in law. Even though the impugned order of debarment had earlier been challenged in CWJC No. 17257 of 2009 which was not entertained in terms of order dated 27.04.2010 (Annexure-4) and again in CWJC No. 11503 of 2014 which was permitted to be



withdrawn by order dated 10.07.2014 (Annexure-6), the same has once again been questioned pursuant to liberty granted by a Division Bench of this Court in its judgment dated 29.01.2018 passed in LPA No. 1862 of 2017 (Annexure-9).

5. Learned Counsel for the respondents appears and has been heard. The fact that the petitioner has been exonerated in the arbitration proceeding as stated above has not been controverted.

6. In the above view of the matter, this Court is of the view that the impugned order of debarment, if allowed to continue, would have the effect of permanently prohibiting the petitioner from entering into Government contracts for all times in future which would be contrary to the law settled in *Kulja Industries Limited vs. Chief General Manager, Western Telecom Project, Bharat Sanchar Nigam Limited and others*, (2014) 14 SCC 731.

7. In the above circumstances, the impugned order of debarment as contained in letter no. 2543 dated 27.10.2009 is hereby quashed. This Court takes note that the final bill was prepared as far back as on 14.11.2011 and passed by the Executive Engineer on 20.12.2011 and hence no work remains to be completed by the petitioner.

8. Considering that the petitioner has already been found not liable for non-completion of work nor liable for breach of contract as held by the Arbitration Tribunal in Reference Case No.



82/2010 (Annexure-5), no fruitful purpose will be served in remanding the matter to the respondents afresh with regard to debarment.

9. The writ petition stands allowed.

(Vikash Jain, J)

Md. Ibrarul/BT

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	09.05.2018
Transmission Date	N.A.

