

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.318 of 2019

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Kashish Developers Limited, Registered Office at-87 Old AG Colony,Kadru,Ranchi Jharkhand-834002,Local address at-201,Kamla Sadan Apartment,Punai Chak,Distt.-Patna,through Chandan Kumar DGM Administration Son of Sri Indradev Singh Resident of Village-Barauni,P.O. and P.S. Teghra,Distt.-Begusarai

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary cum Commissioner,Building Construction Department,Govt. of Bihar,Patna
2. The Engineer-in-Chief-cum-Additional Commissioner-cum-Special Secretary, Building Construction Department, Government of Bihar, Patna
3. The Chief Engineer,Building Construction Department,Govt. of Bihar,Patna
4. The Superintendent Enginner,Building Circle,Gaya,Building Construction Department,Patna
5. The Executive Engineer,Building Division,Gaya,Building Construction Department,Bihar
6. The Assistant Engineer,Building Sub-Division-1,Gaya,Building Construction Department,Bihar
7. The Junior Engineer,Building Sub-Division-1,Gaya,Building Construction Department,Bihar

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Sandip Kumar, Adv. Mr. Ranjeet Kumar, Adv.
For the Respondent/s	:	Mr.Krishna Kumar Singh, AC to GP 22.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

3 11-01-2019 Heard learned counsel for the petitioner and learned counsel representing the State.

Petitioner in the present case is praying for setting aside the order as contained in Memo No. 3822 Gaya/Dated 17.12.2018 issued by Executive Engineer, Building Division, Gaya, Building Construction Department, Bihar by which the petitioner has been debarred from participating in future tender due to slow progress of work under Agreement No. 13 SBD/15-



16. A copy of the debarment order is present at Annexure-1 to the writ application.

Learned counsel for the petitioner submits that even though the prayer has also been made in the writ application for a direction to the respondent authority to clear the payment of the petitioner's company amounting to Rs. Eighteen Crores, but recently on 27.12.2018 the official respondents have paid a sum of Rs. Ten Crores and for the rest of the outstanding amount the petitioner is still pursuing.

Learned counsel submits that the impugned order dated 17.12.2018 (Annexure-1) is liable to be set aside on the solitary ground that the Executive Engineer, Building Division, Gaya has passed the order of the debarment without looking into the reply of the petitioner submitted on 30.11.2018 in the office of the Executive Engineer wherein he has explained the circumstances which were mainly responsible for slow progress in the work. Learned counsel submits that all reasons for delay in completion of the work are attributable to none else than the respondent authorities. It is submitted that the fact that the respondent authorities have paid a sum of Rs. Ten Crores to the petitioner after passing of the debarment order is enough indication that because of the non-payment of the dues of the



petitioner against his running bills, the respondents had created a situation whereunder the petitioner was unable to expedite the progress in the ongoing work. Several other reasons have been mentioned in the reply dated 29.11.2018, a copy of which has been brought on record as Annexure-28 of the supplementary affidavit filed on behalf of the petitioner. Learned counsel submits that a bare perusal of the debarment order (Annexure-1) would show that it is an order without consideration of the stand of the petitioner, thus the respondent authorities have committed a jurisdictional error and the debarment order is liable to be set aside on this ground alone.

Learned counsel for the State is present.

It is not in dispute that the reply dated 29.11.2018 (Annexure-28) was submitted by the petitioner with the respondent authorities on 30.11.2018 but the same has not been considered as is apparent from the debarment order (Annexure-1). In the opinion of this Court, non-consideration of the reply of the petitioner alone is a sufficient ground to hold and declare that Annexure-‘1’ suffers from an inherent defect and is in violation of principles of natural justice. Annexure-‘1’ is, therefore, liable to be set aside and is being set aside accordingly. The authority concerned shall look into the reply of



the petitioner, consider the same with the materials available on the record and take an appropriate decision afresh thereon. This Court has been informed that the petitioner has already completed 70% of the work and is ready to complete the entire work by 31.05.2019 subject to the respondents making available the drawings which are yet not made available to the petitioner and consideration of the running bills and payment thereof which are still pending.

The Court thinks it just and proper to observe that the offer made by the petitioner is required to be considered by the authority concerned in the light of materials available and a decision in that respect be also taken at the earliest so that in case the petitioner company is given an opportunity by extending the time they can complete the ongoing work.

The application stands disposed off, accordingly.

(Rajeev Ranjan Prasad, J)

R.R.Ojha/Ved/-

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