

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18050 of 2016

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M/s K. S Construction and Company through its partner Smt. Sulekha Kumari, wife of Sri Kumar Saroj, Resident of Village P.O.- Barakhurd, P.S.- Noorsarai, District- Nalanda, at present Mohalla- Quamruddinganj, At and P.O.- Biharsharif, P.S.- Laheri, District- Nalanda, State- Bihar.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Secretary, Rural Works Department, "Vishweshwaraiya Bhawan", Bailey Road, Patna-15.
2. The Engineer-in-Chief, Rural Works Department, Vishweshwaraiya Bhawan, Bailey Road, Patna-15.
3. The Chief Engineer-1, Rural Works Department, Vishweshwaraiya Bhawan, Bailey Road, Patna-15.
4. The Superintending Engineer, Rural Works Department, Works Circle, Nalanda at Biharsharif.
5. The Executive Engineer, Rural Works Department, Works Division, Harnaut Nalanda.
6. The Executive Engineer, Rural Works Department, Works Division, Hilsa Nalanda.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Manish Sahay, Adv. Mr. Anil Kumar Sinha, Adv.
For the Respondent/s	:	Mr.Kumar Alok-SC-7

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

3 04-04-2019 Heard learned counsel for the petitioner and learned counsel representing the State.

Petitioner in the present case is seeking quashing of the letter no.7567 dated 22.06.2016 issued under the signature of the Engineer-in-Chief, Rural Works Department, Government of Bihar, Patna as contained in Annexure-5 series to the writ application whereby the petitioner has been placed in the debar



list of the contractors. The name of the petitioner appears at serial no.687 and 712.

It is the contention of learned counsel for the petitioner that prior to issuance of Annexure-‘5’ series in which the name of the petitioner was also placed, no opportunity to show cause was given to the petitioner. It is submitted with reference to the information provided in the writ application in paragraph 4 in a tabular form that all the three works which are mentioned there have been completed and this fact finds support from the letter bearing no.1147 dated 29.08.2016 issued under the signature of the Executive Engineer, Rural Works Department, Works Division, Hilsa addressed to the Superintending Engineer, Works Circle, Nalanda as contained in Annexure-‘6’ to the writ application. Reference has also been made to another letter no.912 dated 18.08.2016 issued by the same authority as contained in Annexure-‘7’ to the writ application. Learned counsel submits that despite these letters written by the Executive Engineer, for last three years almost no action has been taken by the competent authority to remove the name of the petitioner from the debar list.

Learned counsel relies upon a judgment of this Court in the case of **M/s Kumar Construction Vs. The State of**



Bihar & Ors. in CWJC No.11923 of 2016 disposed of on 19.09.2016 wherein the same order which is impugned in the present writ application was challenged by other petitioner whose name was also placed in the debar list and was appearing at a different serial number. Learned counsel submits that the learned Writ Court in the said case has taken note of the fact that in the said case also the Executive Engineer had reported that the petitioner of the case had completed 85% of the work and the remaining work was in progress. It is submitted that in the present case now the entire work has been completed. Learned counsel also relies upon a judgment of the learned coordinate Bench of this Court in the case of **M/s N.C.C. Ltd. Vs. The State of Bihar and others** reported in **2013(1) PLJR 952** which has also been referred in the case of **M/s Kumar Construction** (supra). It is submitted that in the given facts and circumstance the impugned order is fit to be quashed.

On the other hand, Mr. Kumar Alok, learned counsel representing the respondents submits that during the pendency of this writ application certain developments have taken place. It is submitted that there is certain discrepancy in the work done by the petitioner for which the Executive Engineer of the Department has issued letter as contained in memo no.1281



dated 28.11.2016 and letter no.86 dated 19.01.2017 as also letter no.146 dated 04.02.2017 calling upon the petitioner to show cause as to why an appropriate action be not taken under the relevant clause of the SBD and other action including the placement of the name of the petitioner in the blacklist.

Responding to the aforesaid submissions of Mr. Kumar Alok, Mr. Manish Sahay, learned counsel representing the petitioner submits that those letters as contained in Annexure-D series were issued more than 2-3 years back but the fact remains that the petitioner has already removed the discrepancies and no action has been taken by the respondent authorities pursuant to Annexure-D series. It is thus submitted that in any view of the matter Annexure-D series which are the subsequent show cause notices cannot be cited in support of the action which were taken by the respondent authorities way back on 22.06.2016 which is under challenge in the present writ application.

Having heard learned counsel for the parties and on perusal of the records, this Court finds force in the submission of the learned counsel for the petitioner. The impugned order is dated 22.06.2016. It is in the nature of a general order enclosing a list of several contractors who are placed in the debar list. The



name of the petitioner is also there. It is not in dispute that the same order containing the name of **M/s Kumar Construction** (supra) came to be challenged before this Court in CWJC No.11923 of 2016 and in similar circumstance where the Executive Engineer of the Department had recommended to the competent authority saying that the petitioner of the said case had completed work to the extent of 85%, this Court had quashed the impugned order with regard to the said petitioner giving liberty to the competent authority to proceed if any fresh cause of action arises.

In the present case, this Court finds that the Executive Engineer had written letters as contained in Annexure-‘6’ and ‘7’ to the Superintending Engineer for removing the name of the petitioner from the debar list. It is stated in those letters that the petitioner had completed the work of a road in one case and in another he had completed 85% of the work. Now even those works have been completed according to the petitioner which has not been controverted in the counter affidavit.

In the aforesaid view of the matter, this case is in fact identical to the case of **M/s Kumar Construction** (supra). In result, the impugned order as contained in Annexure- ‘5’ with regard to the present petitioner is hereby quashed. So far as the



letters as contained in Annexure-D series to the counter affidavit are concerned, it is the submission of the petitioner that he is continuing with the maintenance work and no action pursuant to those letters have been taken because the petitioner has been found working. This contention of the petitioner and the respondents with regard to Annexure-D series are left open. In case the respondents have any reason to proceed by virtue of Annexure-D series, it will be an independent exercise and observations of this Court hereinabove shall not come in their way. This will, however, be not to be taken as a direction of this Court to initiate any proceeding against the petitioner.

The writ application is allowed to the extent indicated hereinabove.

(Rajeev Ranjan Prasad, J)

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