

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4519 of 2016

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M/s Raghubar Singh Son of Late Sunder Singh Resident of village - Kamta Chak, P.O. Mittan Chak, P.S. Gopalpur, District - Patna, At Present Resids at Mohalla - Laljee Tola, 'Rajendra Bhawan', P.O. GPO, P.S. Gandhi Maidan, District - Patna

... .. Petitioner

Versus

1. The State Of Bihar and Ors
2. The Engineer - in - Chief Cum Additional Commissioner Cum Special Secretary, Rural Works Department
3. The Chief Engineer - 1, Rural Works Department, 'Vishweshwaraiya Bhawan,' Bailey Road, Patna - 15
4. The Superintending Engineer, Rural Works Department, Works Circle, Patna
5. The Executive Engineer, Rural Works Department, Work Division, Masaurhi, District - Patna

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr.Manish Sahay, Advocate Mr. Anil Kumar Sinha, Advocate
For the Respondent/s	:	Mr.Ravish Chandra, AC to SC-16

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

3 25-02-2019 Heard learned counsel for the petitioner and

learned counsel representing the State.

Petitioner is aggrieved by the order as contained in letter no. 09 Anu dated 04.01.2016 as contained in Annexure-‘4’ to the Writ Application by which the petitioner has been declared defaulter and has been debarred from participating in future tender. Name of the petitioner



figures at serial no. 17 in the said debarred list.

Learned counsel for the petitioner submits that Annexure-4 in so far as it relates to the petitioner is fit to be quashed on the solitary ground that before passing the impugned order of debarment the petitioner was not served with any show cause notice and no opportunity of hearing was given to the petitioner. It is further submitted that the agreement relating to the works in question have been terminated and the security money of the petitioner has already been forfeited which are under challenge before the Bihar Public Works Contract Arbitration Tribunal.

It is further submitted that since the matter is still pending before the Tribunal as the petitioner has challenged the action of termination of the rescindment of the contract and forfeiture of security deposit, on the same set of allegations, the respondents could not have debarred the petitioner that too without hearing him.

On the other hand, learned counsel representing the State submits that from Annexure-‘A’ to the counter affidavit it will appear that vide letter no. 1288 dated 27.09.2013 the Executive Engineer, Rural Works



Department, Work Division, Masaurhi had called upon the petitioner to submit the explanation within three days as to why the agreement in question be not cancelled, and further action be not taken against him

learned counsel submits that it is pursuant to this notice as contained in Annexure-‘A’, further action has been taken.

Having heard learned counsel for the petitioner and learned counsel representing the State this court finds that the order of debarment as contained in Annexure-4 series has been communicated to the concerned authorities of the Rural Works Department vide letter dated 04.01.2016. The said letter dated 04.01.2016 is not providing any reason, however the reasons are provided in the chart enclosed with Annexure-‘4’. According to this the petitioner was not carrying on the maintenance work of the roads in question.

It is not in dispute that the petitioner was served with show cause notice as contained in Annexure-‘A’ which is not talking of any proposed action of debarment and as such in the opinion of this court there was no reason for the



petitioner to submit his stand on any proposed debarment. The petitioner was called upon to show cause as to why the agreement be not cancelled, the petitioner had submitted his show cause and thereupon action for cancellation of agreement was taken which is under challenge.

In the opinion of this court, the impugned order of debarment suffers from violation of principles of natural justice. Petition was required to be heard before passing the said order.

In the aforesaid view of the matter, the impugned order as contained in Annexure-‘4’ series with regard to the petitioner is hereby quashed.

The matter is remitted to the competent authority for a fresh consideration of the entire matter which will be brought to the notice of the competent authority. It will include a consideration as to why following the principles of fair play in action and keeping in mind the judicial pronouncements of this court in several cases the debarment action cannot wait for sometime when the matter relating to termination of agreement and forfeiture of security is pending consideration before the Arbitration Tribunal. It



will be open for the petitioner to make all such submissions which will be available to him before the competent authority and support his submissions with the judgments of this court on the subject.

This Writ Application is allowed to the extent indicated hereinabove.

(Rajeev Ranjan Prasad, J)

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