

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16287 of 2018

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Shri Tirupati Balaji Enterprises Through Its Proprietor Yogendra Sharma, Son of late Thakur Sharma, Resident of Village P.O.-Newari, P.S. Makhdumpur, District-Jehanabad.

... .. Petitioner.

Versus

1. The Food Corporation Of India, through its General Manager (Engg) FCI, Head Quarter 16-20, Barakhambha Lane, New Delhi.
2. The Dy. General Manager (Engg) FCI, Zo (E) Kolkata-71.
3. Asst. General Manager, (C.E.), Food Corporation of India, Regional Office, Exhibition Road, Patna.
4. Area Manager, FCI, Dist. Office, Darbhanga.
5. Engineer In-Charge, Engineering Wing, F.C.I., Regional Office, Patna-1.
6. Punjab National Bank, Gandhi Nagar, Kanti Factory Road, P.S.-Kankarbagh Dist.-Patna, 800026.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Sanjay Kumar, Adv.
For the Respondent No.6 : Mr. Suresh Pd. Singh, No.1, Adv.
For the Respondent Nos.1to5: Mr.P.K.Verma, Sr. Adv.
Mr. Sarjoj Kr. Sharma, Adv.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

5 05-04-2019 Heard learned counsel for the petitioner, learned Senior Counsel representing the Food Corporation of India and learned counsel representing the Bank.

Although, in this writ application, the petitioner has made a prayer in terms of Paragraph 1 (A), (B) and (C) but in course of hearing Mr. Sanjay Kumar, learned counsel representing the petitioner has at the outset submitted that he is not pressing the reliefs prayed in Paragraph 1 (A) and (B) in this writ proceeding. Learned counsel, however, submits that he would press his prayer as contained in Paragraph 1 (C) whereby he has challenged the



order of debarment of the petitioner from participating in any future tender process in the Food Corporation of India (hereinafter referred to as the F.C.I).

In course of hearing, learned counsel submits that on perusal of the impugned order as contained in Annexure '7' dated 27.07.2018, it would appear that the petitioner has been debarred from participating in the tender process for the work in the F.C.I which could not have been done in terms of Clause 3 (b) of the contract signed between the parties. It is submitted that in terms of Clause 3 (b), the debarment could have been only for the balance work in case of re-tendering. It is further submitted that the debarment is also in the nature of permanent debarment which has got a civil consequence and such debarment could not have been done by the employer in view of the Judgment of the Hon'ble Apex Court in the case of **M/S Kulja Industries Limited v. Chief Gen. Manager, W.T. Proj., BSNL and others** reported in **AIR 2014 SC 9**.

It is further contention of learned counsel for the petitioner that pursuant to the show cause notice dated 21.06.2018 (Annexure '3'), the petitioner had replied vide his letter dated 25.06.2018 with reference to Letter No.4129 (Annexure '4') but while passing the impugned order, the same has not been considered and has been rejected saying in one line that the reply



of the petitioner was not satisfactory. It is submitted that the impugned order is, thus, not only in violation of the principles of natural justice but is also contrary to the provision as contained in Clause 3 (b) of the contract document.

On the other hand, Mr.P.K.Verma, learned Senior Counsel submits that so far as the submission of the learned counsel for the petitioner based on Clause 3 (b) of the contract document is concerned, taking note of that, this Court may in exercise of its power under extraordinary writ jurisdiction declare that the impugned order will be read as an order of debarment in respect of the balance of work and to that extent, the Court can mould the relief, however, Mr.Verma has opposed the submission of learned counsel for the petitioner that it is a case of permanent debarment and without considering the reply of the petitioner. It is submitted that from the various notices which have been brought on the record with the counter affidavit on behalf of the F.C.I, it would appear that the petitioner was not starting the work in question, no tools and plants were brought by the petitioner at the site, no excavation work was going on and no construction materials were mobilized at the site as a result of which the impugned action was taken.

Learned counsel for the Bank is present and submits that so far as the Bank is concerned, it would act in terms of its



guarantee and shall honour the same.

Having heard learned counsel for the parties and on perusal of the record this Court finds that now the writ application has been confined to the prayer of the petitioner with respect to the order of debarment as contained in Annexure '7' to the writ application. By Annexure '7', one of the decisions communicated to the petitioner is that they will not be allowed to participate in the tendering process for the work in the F.C.I. In this connection Clause iii of impugned letter is quoted as under:-

“You shall not be allowed to participate in the tendering process for the work in FCI”.

From the various notices which have been brought on the record, particularly, the last one dated 21.06.2018 as contained in Annexure 'D' to the counter affidavit, it would appear that the petitioner was called upon to show cause as to why an action under Clause 3 (i) to (xii), 3 (a) and 3 (b) of the agreement be not taken against him. Apparently, if the show cause was called upon, inter-alia referring to Clause 3 (b) of the agreement, the impugned order could have been passed only in tune with the aforesaid clauses. That has not been done in the present case as the impugned order shows that the debarment has been done from participating in the tendering process in the organization itself. This is also in the nature of a permanent debarment which has got



a civil consequence. There was no show cause to that effect, nor a permanent debarment could have been done in view of the Judgment of the Hon'ble Apex Court in the case of **M/S Kulja Industries Limited** (supra).

In view of the aforesaid discussions, this Court finds that so far as the decision of debarment as contained in Annexure '7' is concerned, the same cannot sustain the test of law. Thus, Annexure '7' with regard to debarment of the petitioner from participating in tendering process in the F.C.I is hereby quashed and canceled. The respondent-Corporation is, however, at liberty to pass a fresh order in tune with the conditions of contract as stated above.

This writ application is allowed to the extent indicated hereinabove.

(Rajeev Ranjan Prasad, J)

R.R.Ojha/-

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