

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10053 of 2018

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M/S S. K. Construction & Company, through its Partner Kushesh Prasad,
Son of Rajendra Prasad Sharma, Resident of Mohalla- Belwaganj, PS-
Laheriasarai, District- Darbhanga.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Road Construction Department, Government of Bihar, Visheshwaraiya Bhawan, Patna.
2. The Bihar Urban Infrastructure Development Corporation Limited, through its Managing Director, 2nd Floor, Khadya Bhawan, Road No2, Daroga Rai Path, Patna.
3. Engineer-in-Chief-cum-Special Secretary, Road Construction Department, Visheshwaraiya Bhawan, Patna
4. The Chief General Manager, Bihar Urban Infrastructure Development Corporation Limited, 2nd Floor, Khadya Bhawan, Road No.2, Daroga Rai Path, Patna.
5. The Executive Engineer, Road Construction Division, Darbhanga.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Nand Kishore Singh, Adv.
For the State	:	Mr. Manoj Kumar Ambastha, SC-26 Mr. Subodh Kumar, AC to SC-26
For the BUIDCO	:	Mr. Lalit Kishore, Sr. Adv. Mr. R.K. Priyadarshi, Adv.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

11 01-02-2019 This writ application has been preferred for setting aside the letter no. 06/Miscellaneous (Work)-66/09-3280 dated 14.05.2018, as contained in Annexure-P/4 to the writ application, by which the petitioner has been informed that his tender bid is liable to be rejected as the petitioner has been debarred from participating in any tender by respondent no.5. A further prayer has been made to direct the respondent authorities to produce the alleged order contained in the letter no.6000(E)



dated 24.10.2017 and to set aside the same.

Learned counsel for the petitioner submits that the petitioner firm having found itself eligible to participate in the E-Tender No. BUIDCO/Yo-667/14-18 for the work of Storm Water Drainage Project from Donar Gumati to Tinhi Pul at Darbhanga at estimated cost of Rs.24,62,080,00/- submitted his tender. The technical bid was opened on 05.12.2017. On 13.02.2018, the petitioner was informed through e-mail that tender of the petitioner firm was disqualified for the reason “Technically Disqualified”. The petitioner thereafter filed a writ petition bearing CWJC No.3456 of 2018 on 15.02.2018. At this stage, the Court was informed that the respondents had cancelled the tender itself and a fresh tender has been floated.

The aforesaid writ application was disposed of with liberty and observation that in case the petitioner participates in the fresh tender, the respondents shall accept the earnest money already deposited by the petitioner in the NIT dated 07.09.2017 to that extent.

It is the case of the petitioner that when the petitioner participated in the fresh tender on the basis of experience certificate issued by the Executive Engineer, Road Construction Division, Darbhanga vide letter no.683 dated 06.02.2017 in



connection with Agreement No.11 SBD/2015-16 for the financial year 2015-16 the same was sent for verification of experience certificate before the issuing authority i.e. the Executive Engineer, Road Construction Division, Darbhanga (respondent no.5). This time the respondent no.5 informed the respondent no.2 that the petitioner firm was debarred from participating in any tender by letter no.6000(E) dated 24.10.2017. Learned counsel for the petitioner submits that the letter dated 24.10.2017 was enclosed with the letter dated 14.05.2018 written by the respondent no.5 to respondent no.2, but the petitioner was not supplied a copy of the letter dated 24.10.2017 which was enclosure to the letter dated 14.05.2018.

The petitioner took a specific plea that the petitioner had no knowledge at any point of time with regard to letter no.6000 (E) dated 24.10.2017. It is further submitted that the work under Agreement No.11 SBD/2015-16 for the financial year 2015-16 was already completed to the satisfaction of the department in all respect and the petitioner had received the entire amount with respect to the said work. He has further submitted that on perusal of the measurement book of the said agreement it would appear that the work was completed and full payment was made in the year 2016 itself, therefore, the work



and performance of the petitioner in the agreement cannot be made basis for debarment. Further, the petitioner is not defaulter of any kind in any other agreement which constitute ground for debarment.

By filing I.A. No.4307 of 2018, the petitioner has prayed for quashing of the tender notice dated 05.06.2018 (Annexure-P/7) issued by the respondent no.4. Again a supplementary affidavit has been filed on behalf of the petitioner in which it is stated that the tender submitted by the petitioner has been found to be the lowest/valid and competitive in all respect and thereby a right has accrued to the petitioner and the petitioner has become entitled for award of contract. It is further submitted that the respondent no.2 i.e. the Managing Director and respondent no.4, the Chief General Manager, BUIDCO due to certain personal reasons made it clear to the petitioner that despite validity of the petitioner's tender they would ensure that the work is not allotted to the petitioner. There are allegations of collusion between respondent nos.2 and 4 with respondent no.3.

In the counter affidavit filed on behalf of the respondent nos.3 and 5 it is stated that the petitioner was debarred on valid ground as he had not completed the



construction work of drain in balance 60 M length that is why the discharge of drain water is not being done as reported by Engineer-in-charge letter dated 03.10.2017 which resulted in water logging on the road and this was not fulfilling the purpose of construction of drain. In this regard by order of the District Magistrate, Darbhanga vide his letter no.395 dated 21.07.2017 an enquiry committee was set up. The enquiry committee found the petitioner guilty, therefore, in public interest and due to violation of terms of the contract and not responding various letters of the department regarding completion of balance drain work, the petitioner was debarred. A copy of the enquiry report dated 08.09.2017 has been brought on record vide Annexure-R3/D.

Along with their counter affidavit, respondent nos.3 and 5 have also enclosed Annexure-R3/F which is a copy of the letter no.1470 dated 03.10.2017 written by the Executive Engineer, Road Construction Department, Road Division, Darbhanga to this petitioner wherein he passed an order of debarment against the petitioner. It is this order of debarment which has come in the way of the petitioner while participating in the present tender.

A counter affidavit has also been filed on behalf of the



respondent nos.2 and 4. They have taken a plea that only because the petitioner is the lowest tenderer, he does not derive any legal right to claim the contract. Reliance has been placed on the judgment of the Hon'ble Supreme Court in the case of **Himachal Pradesh Housing and Urban Development Authority Vs. Universal Estate** reported in **(2010) 14 SCC 253** and **Air India Ltd. Vs. Cochin International Airport Ltd.** Reported in **(2000) 2 SCC 617** and other judgments of the Hon'ble Supreme Court. With regard to the statements made in paragraph 12 of the writ application, this affidavit says that the same pertains to respondent nos.3 and 5 and the answering respondent has nothing to say.

Mr. Lalit Kishore, learned senior counsel representing the respondent nos.2 and 4 submits that the petitioner was debarred vide letter dated 03.10.2017 by the Executive Engineer, Road Construction Division, Darbhanga who was the competent authority to take such a decision. The petitioner was aware of his debarment which will be evident from the letter dated 09.10.2017 written by the petitioner as contained in Annexure-R5/L attached with the counter affidavit of respondent no.5. It is pointed out that so far as letter dated 24.10.2017 is concerned, the same is not the debarment letter



but it contains a reference to the letter of the Executive Engineer, National Highway Division, Khagaria and the letter of Executive Engineer, Road Division, Darbhanga as contained in Memo No.1470 dated 03.10.2017. It is pointed out that the petitioner was debarred by the Executive Engineer, National Highway Division, Khagaria in respect of the work of National Highway No.107. At the same time, he was debarred vide letter dated 03.10.2017. These two debarment orders are not under challenge in the present writ application.

Mr. Lalit Kishore has taken a specific plea that the order of debarment may be good or bad and the same may be subject to an independent consideration but so far as the present case is concerned, it is now apparent that while submitting his tender, the petitioner was required to submit an affidavit showing that his firm has not been blacklisted nor has abandoned any work in any government department. Attention of this Court has been drawn towards Annexure-A to the counter affidavit filed on behalf of the respondent nos. 2 and 4 to show that the petitioner submitted an affidavit certifying that neither the firm has been blacklisted nor has abandoned any work in any government department nor any contract awarded to the firm for such works have been rescinded during last five years



prior to the date of this bid.

Having heard learned counsel for the parties and on perusal of the records, this Court finds that at least this much is evident from the record that vide letter dated 03.10.2017 the petitioner was debarred from participating in tender by Executive Engineer, Road Construction Division, Darbhanga and this was well known to the petitioner. Annexure-R5/L dated 09.10.2017 is a letter written by the petitioner to the Executive Engineer, Road Construction Division, Darbhanga which in fact is a reply and response to the letter dated 03.10.2017. To that extent, the petitioner has made a wrong statement in the writ application that he was not aware of the debarment. It appears from the reading of the counter affidavit of respondent nos.3 and 5 that the statements made in the writ application in paragraph 12 of the writ application wherein the petitioner has claimed to have completed the work and received the entire payments of the work in question has not been denied. So far as Annexure-R3/D which is said to be the enquiry report, apparently, it does not appear from the report that the same was ever sent to the petitioner. At this stage this Court would not comment on the enquiry report as the same may be open for consideration in an appropriate proceeding.



The order of debarment may be good or bad. This Court is not going into the merits of the debarment order because those are not under challenge in the present writ application. The prayer of the petitioner was to direct production of letter no.6000(E) dated 24.10.2017 and the quashing of the same has been prayed for, but this Court finds that the letter dated 24.10.2017 is not an order of debarment rather it talks of two orders of debarment. which have been passed by the Executive Engineer, National Highway Division, Khagaria and the letter dated 03.10.2017 of the Executive Engineer, Road Division, Darbhanga. Despite knowledge of the two specific letters of debarment which have been brought on record by the respondents, the petitioner has not challenged them by amending the writ application. This Court, would, however, leave it open for the petitioner to challenge those debarment orders, if so advised, in accordance with law.

So far as the prayer for setting aside the order dated 14.05.2018, as contained in Annexure-P/4 is concerned, this Court does not find any reason to interfere with the same. Annexure-P/4 though mentions that the petitioner has been debarred vide letter no.6000(E) dated 24.10.2017, but in fact debarment are the two enclosures to the said letter. Pleadings



available on the record would lead this Court to take a view that on the face of the Annexure-R5/L dated 09.10.2017, the petitioner cannot be said to be oblivious and not aware of the order of debarment, hence, an affidavit submitted by him to get the present tender was not correctly stating the position with regard to the information required to be declared in the affidavit. In the circumstances, no arbitrariness or discrimination could be noticed by this Court in the matter of rejection of tender of the petitioner vide order dated 14.05.2018. Similarly, this Court does not find any ground to interfere with the decision of the respondent authorities in floating a fresh tender on 05.06.2018 which has been sought to be challenged by filing Interlocutory Application.

This writ application as well as I.A. are thus devoid of merit. Both are dismissed accordingly.

(Rajeev Ranjan Prasad, J)

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