

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13112 of 2018

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Rajesh Kumar son of Sri Narendra Kumar Pandey, resident of Gupta Marked,
Near Alpana Market, Patliputra Colony, P.S. - Patliputra, District - Patna.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Public Health Engineering Department, Govt. of Bihar, Patna.
2. The Engineer in Chief, Public Health Engineering Department, Govt. of Bihar, Patna.
3. The Chief Engineer (Design), Public Health Engineering Department, Govt. of Bihar, Patna.
4. The Regional Chief Engineer, Public Health Engineering Department, Govt. of Bihar, Patna.
5. The Superintending Engineer, Public Health Engineering Circle, Motihari.
6. The Executive Engineer, Public Health Engineering Division, Bettiah.

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr.Shekhar Singh, Advocate Mr.Satyendra Rai, Advocate
For the Respondent/s	:	Mr.Alok Ranjan, AC to AAG-5

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

3 07-11-2019 A counter affidavit on behalf of the State-respondents and a rejoinder to the counter affidavit on behalf of the petitioner have been filed today. Let the affidavits be taken on the record.

Learned counsel for the parties have requested this Court to hear this matter and dispose off it on the basis of materials available on the record.

Heard learned counsel for the parties.

Petitioner in the present case is seeking to challenge



the letter bearing Memo No. 2358 dated 20.09.2017 issued under the signature of Chief Engineer (Design) in which the name of the petitioner appears at serial no. 59 and he has been declared defaulter with reference to the tender/agreement bearing No. SBD-04/2015-16 relating to 'Bettiah Urban Water Supply Scheme Zone-5' and has been debarred from participating in future tender.

Learned counsel for the petitioner submits that by the impugned order altogether 59 contractors have been declared defaulter. Petitioner is one among the 59 contractors.

Learned counsel for the State does not deny the fact that the impugned order as contained in Annexure '7' has been issued by the Chief Engineer (Design) without giving any opportunity to show cause to the petitioner. He has taken a plea that the order of debarment has been passed in view of the recommendation received from the Chief Engineer, Muzaffarpur saying that the petitioner like other defaulters has not completed the work in question within the stipulated period.

Learned counsel for the petitioner has shown from Annexure '4' to the writ application that in fact it is the Superintendent Engineer, PHED Circle, Motihari who had vide his Memo No. 597 dated 10.12.2017 (Annexure '4') written to the



Executive Engineer, PHED, Bettiah calling upon him to explain as to why the contractor has not been made available a copy of the approved design and drawing.

Learned counsel submits that with the counter affidavit the respondents have failed to place on record any document showing that prior to passing the order of debarment the petitioner had been made available a copy of approved drawing and design. It is submitted that in fact in the counter affidavit there is no denial of fact that the petitioner had submitted the design and drawing of the 'जलमीनार' with the Executive Engineer, PHED, Bettiah on 25.04.2016 (Annexure '3') and the approved copy was not made available to him prior to passing of the order of debarment. It is submitted that Annexure '4' to the writ application has not been denied by the respondents-State in their counter affidavit.

Learned counsel for the petitioner has also drawn the attention of this Court towards Annexure '11' attached with his rejoinder in which the Junior Engineer, Assistant Engineer, Executive Engineer and Superintendent Engineer all have recommended for extension of time for completion of work and the reasons shown by the petitioner one of which is that the approved design and drawing was made available to him only in



the month of December, 2017 has been found to be correct.

Having heard learned counsel for the petitioner as well as the State, this Court is of the considered opinion that the impugned order as contained in Annexure '7' to the writ application has been passed in haste and before passing of the said order which has civil consequence of debarment of the petitioner from participating in future tender, the Chief Engineer (Design) did not gather the true and correct facts from his own department. The fact that the petitioner had made available a copy of the design and drawing to the Executive Engineer as back as on 25.04.2016 but the same was made available to him after approval in December, 2017 only has not been denied by the respondents. If such assertion of the petitioner has not been denied by the State-Respondents and the same has been found to be a good ground for granting him extension, this Court is unable to appreciate as to how an officer at the level of Chief Engineer (Design) would have acted in such haste to pass an order of debarment against the petitioner without giving him an opportunity to show cause. The order as contained in Annexure '7' is, thus, liable to be held bad and as such the same is hereby set-aside.

Let the decision with regard to extension of time be



taken as expeditiously as possible in view of the recommendation made in Annexure '11' to the rejoinder.

For passing such order in haste debarring the petitioner leading to filing of this application and the petitioner having been made to spend on litigation, this Court awards a cost of Rs. 15,000/- to the petitioner which will be paid by the department within a period of one month from today. The cost shall be realized from the erring officers.

(Rajeev Ranjan Prasad, J)

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