

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21061 of 2018

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M/s Veena Singh, Kapsia, P.O-Barauni Refinery Township, Veena Palace, P.S-Nagar, District-Begusarai through its partner namely Balram Kumar S/o Bisundeo Singh, residing at Kapsia, P.O-Barauni Refinery Township Veena Palace, P.S.-Nagar, District-Begusarai.

... .. Petitioner/s

Versus

- 1.The State of Bihar through the Principal Secretary, Water Resources Department, Government of Bihar, Patna.
- 2.Principal Secretary, Water Resources Department, Government of Bihar, Patna.
- 3.The Engineer-in-Chief, Head Quarter, Water Resources Department, Government of Bihar, Patna.
- 4.Chief Engineer, Flood Control and Drainage, Water Resources Department, Government of Bihar, Patna.
- 5.Superintending Engineer, Flood Control Circle, Samastipur.
- 6.Executive Engineer, Flood Control Division, Samastipur.
- 7.S.D.O, Flood Control Sub-Division-1, Samastipur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ramakant Sharma, Sr.Adv. Mr.Rajni Kant Jha, Adv.
For the State	:	AC to Mr.Harish Kumar -GP8

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

4 25-02-2019 Heard learned Senior Counsel representing the
petitioner and learned counsel representing the State.

Petitioner in the present case is aggrieved by order as contained in Memo No.3372 dated 04.09.2018 as contained in Annexure '1' to the writ application by which the petitioner's firm has been debarred from participating in next tender until the work in question is completed.

Learned Senior Counsel submits that the agreement with respect to the work in question was executed on or about 04.03.2018. The petitioner's firm had also started the work but for



the intervening circumstances attributable to non-else than the respondents, the work could not be completed. In this connection, attention of this Court has been drawn toward Annexure '3' to the writ application which is a letter dated 11.05.2018 written by the Executive Engineer, Flood Control Division, Samastipur to the Superintending Engineer, Flood Control Circle, Samastipur recommending him to extend the contract period of the petitioner till 31.12.2018. The reason for recommendation has been disclosed by the Executive Engineer in the form for extension of time. It discloses three reasons. The first reason is that as per agreement work time allotted of two months is very less with respect to work value and items of work. The second reason is non-availability of Railway Rack from Sheikhpura to Karpurigram and the third reason is that more time taken and less progress due to carriage of material by road from Sheikhpura to Karpurigram. The recommendation of Executive Engineer, Flood Control Division, Samastipur is based on the recommendation of the Junior Engineer and the Sub-Divisional Officer who have also recorded their Railway Rack in Sheikhpura is not available since, November, 2017 and by road no entry of heavy vehicle is permissible in Lakhisarai between 05:00 AM to 09:00 PM hence time extension may be granted.

Learned Senior Counsel submits that when this



recommendation was sent to the competent authority, the Engineer-in-Chief, Headquarter, Water Resources Department, Government of Bihar, asked for a show cause from the petitioner as to why he should not be declared a defaulter and debarred from participating from future tender. The petitioner submitted his reply but without giving the same a proper consideration, the impugned order as contained in Annexure '1' debarring the petitioner from participation in future tender has been passed. Learned Senior Counsel, therefore, submits that it is a case of non-consideration of the reply of the petitioner as well as a case of debarment without considering the fact that the departmental authorities had themselves recommended for extension of time taking into consideration the reasons thereof which were genuine reasons. It is submitted that in such circumstance, no debarment could have taken place. It is further submitted that by now 97% of the work has already been completed which would be evident from Letter dated 18.02.2019 issued by the Executive Engineer, Flood Control Division, Samastipur addressed to the Superintending Engineer, Flood Control Circle, Samastipur. He has also stated in his letter that as against the total work of 97%, the petitioner has been paid only Rs.497.50/- Lakhs.

Learned counsel for the State has opposed the prayer of the petitioner as according to him, the debarment order has been



rightly passed taking into consideration the fact that the progress of work was very slow and the petitioner was not taking any steps despite persuasions at the end of the authority. It is also pointed out from the counter affidavit sworn by the Executive Engineer on behalf of respondent nos.4 to 7 that they have taken a stand that if the petitioner will complete the entire work, department shall consider the annulment of the order of debarment from participating in future tender. Learned counsel, therefore, submits that if the petitioner has completed 97% of work, the concerned respondents may consider taking away the effect of the debarment order.

Having heard learned Senior Counsel for the petitioner and learned counsel representing the State, this Court finds that there is no denial of fact in the counter affidavit of the respondent that the Executive Engineer had recommended for extension of time for the reasons duly mentioned in his form of extension of time. There is no averment, as to why and under what circumstances, instead of considering the recommendation of the Executive Engineer, the Engineer-in-Chief decided to call upon the petitioner to show cause as to why he should not be debarred. This Court also finds from perusal of the impugned order that although the order mentions about the receipt of the reply of the petitioner but, thereafter, in one line the conclusion has been arrived by saying that on an analysis, it has been found that the petitioner has not taken



interest in completion of work on time. The Engineer-in-Chief has not at all looked into the reasons placed by the petitioner in his reply which was in-consonance with the reasons disclosed in the form of extension of time by the Executive Engineer.

In the opinion of this Court, the impugned order as contained in Annexure '1' is bad in law. It is liable to be set-aside and is, accordingly, hereby set-aside.

In the rejoinder, the petitioner has also stated that he has completed 97% of work which is evident from the letter of the Executive Engineer which has been discussed hereinabove. In that view of the matter also the debarment order has lost its significance.

In result, the writ application is allowed to the extent indicated hereinabove.

(Rajeev Ranjan Prasad, J)

R.R.Ojha/-

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