

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22350 of 2018

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Shree Mahavira Buildwell Private Limited, Exhibition Road, Patna, Through its Director, Vishal Agarwal, Son of Shri Mahavir Prasad Agarwal, Resident of Flat No.- B/3, Gupteshwar Mension, East Boring Canal Road, Police Station-North S.K. Puri, Patna- 800001 Bihar.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Road Construction Department, Government of Bihar, Vishwesharaiya Bhawan, Patna.
2. The Principal Secretary, Road Construction Department, Government of Bihar, Vishweshwaraiya Bhawan, Patna.
3. The Engineer-in-Chief, Road Construction Department, Government of Bihar, Vishweshwaraiya Bhawan, Patna.
4. The Chief Engineer, Road Construction Department, Government of Bihar, Vishweshwaraiya Bhawan, Patna.
5. The Executive Engineer, Road Construction Department, Road Division, Chapra.
6. The Assistant Engineer, Road Junior Division No.-1, Road Construction Department, Chapra.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. N.K. Agrawal, Sr. Adv. Mr.Sanjeet Kumar, Adv.
For the Respondent/s	:	Mr.Shailendra Kumar, AC to PAAG 2

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

3 11-03-2019 Heard learned Senior Counsel for the petitioner and learned counsel representing the State.

This writ application has been preferred for setting-aside the order as contained in Memo No.585 dated 21.03.2018 as contained in Annexure 'P/1' to the writ application by which the petitioner has been held guilty for not completing the work under the agreement in question within the prescribed period of



four months and for that reason the petitioner was debarred from participating in the future bids.

Learned Senior Counsel for the petitioner informs this Court that after completion of work the petitioner has been discharged from debarment but because of the fact that the petitioner had been earlier debarred vide Annexure 'P/1', it will remain stigma against the petitioner for all the times to come, therefore, the petitioner has challenged Annexure 'P/1'. The ground taken for challenge to Annexure 'P/1' is that while the petitioner was called upon to show cause vide Annexure 'P/5' dated 05.12.2017 issued under the signature of the Executive Engineer, Road Division, Chapra, the reply submitted by the petitioner vide his letter dated 12.12.2017 as contained in Annexure 'P/6' was not considered and without considering the reply of the petitioner the order as contained in Annexure 'P/1' was passed. Learned Senior Counsel, thus, submits that Annexure 'P/1' is fit to be quashed and cancelled on the ground of violation of principles of natural justice, inasmuch as, no consideration has been given to the reply of the petitioner and the show cause notice vide Annexure 'P/5' was issued by way of empty formality. It is pointed out that in his reply the petitioner had submitted that the entire work except the work of Garkha



Bajar was completed which was well within the knowledge of the Executive Engineer. The reason for non-completion of the work in the Garkha Bajar was that the road alignment in Garkha Bajar was not completed. It is submitted that this fact has got a bearing upon the whole decision because in case the employer himself had not fulfilled his part of the obligations, there was no reason as to why the petitioner could have been debarred on this ground.

On the other hand, learned counsel for the State submits that the petitioner has no reason to be aggrieved by the order as contained in Annexure 'P/1' at this stage when he has already been discharged from the debarment and the order as contained in Annexure 'P/1' has lost its effect.

Having heard learned Senior Counsel for the petitioner, learned counsel for the State and on perusal of the records, this Court finds substance in the submission of learned Senior Counsel for the petitioner. It is true that the effect of the debarment is no longer in existence because vide Annexure 'P/8' now the petitioner has been discharged from debarment, still in the opinion of this Court the petitioner has a cause of action surviving inasmuch as, Annexure 'P/1' has a tendency to speak against the petitioner in future tenders and the petitioner is likely



to be affected because of Annexure 'P/1'. This Court also finds that before passing Annexure 'P/1', the Executive Engineer, Road Division, Chapra had issued a show cause notice dated 05.12.2017 as contained in Annexure 'P/5' which was duly replied by the petitioner vide his letter dated 12.12.2017 as contained in Annexure 'P/6'. While passing the impugned order as contained in Annexure 'P/1' no consideration at all has been given to the reply of the petitioner. If this is the position apparent from the records available before this Court, the office order as contained in Annexure 'P/1' is required to be set-aside.

Annexure 'P/1' is, thus, set-aside on the ground of non-consideration of the reply of the petitioner. As the petitioner has already completed the work and has been discharged from the debarment order, this Court only clarifies that the order as contained in Annexure 'P/1' shall not be treated in existence for any future tenders.

The writ application is allowed.

(Rajeev Ranjan Prasad, J)

R.R.Ojha/-

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