

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 2850 of 2018**

1. M/s Sai Construction (Partnership Firm) Head Office At Green Park Colony, Jarhabhata, Bilaspur, Through Its Partner Atul Shukla S/o Shri Sudama Prasad Shukla, Aged About 46 Years, R/o Green Park Colony, Jarhabhata, Police Station Civil Line, Tehsil And District Bilaspur Chhattisgarh.

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Secretary, Public Works Department, Mahanadi Bhawan, Mantralaya, New Raipur, District Raipur Chhattisgarh.
2. The Engineer-In-Chief Public Works Department, Nirman Bhawan, North Block, Sector - 19, Atal Nagar District Raipur Chhattisgarh.
3. The Chief Engineer (Planning), Public Works Department, Nirman Bhawan, North Block, Sector - 19, Atal Nagar District Raipur Chhattisgarh.
4. The Chief Engineer Public Works Department, Bilaspur Zone, District Bilaspur Chhattisgarh.

---- Respondents

For Petitioner :-

Shri Sunil Otwani, Advocate.

For Respondent/State :-

Shri Rajesh Singh, Dy. Govt. Adv.

Order On Board**By****Prashant Kumar Mishra, J.****18/02/2019**

1. Petitioner would assail the legality and validity of the order dated 29/09/2018 (Annexure P1), passed by respondent No.3

suspending the petitioner's A-5 Class contractors' registration on commission of some irregularities/deficiencies in the construction work of which contract was assigned to the petitioner.

2. Admittedly, the procedure for suspension or demotion of the registration of a contractor in the Department of Public Works is governed under the Centralized Procedures of the Government of Chhattisgarh, for Suspension, Demotion, Non-Renewal, and De-Registration of Contractors/Firms, 2014 (for brevity 'the Procedures').
3. Clause 2 of the Procedures speaks about the scope of Procedures whereas Clause 4 is about Satisfaction of Designated Authority. Similarly, Clause 7 provides for grounds for Demotion, Non-Renewal and De-Registration and Clause 8 makes provision in respect of grounds for suspension.
4. Clause 8.2 in particular provides that in all such cases of suspension it shall be incumbent upon the Designated Authority to put the suspended entity on notice and to grant an early opportunity of post-decisional hearing.
5. Clause 10.2 of the Procedures would further state as to the procedure for passing an order of suspension and providing

post-decisional hearing to the suspended contractor/firm.

Clause 10.2 is reproduced hereunder for ready reference:

“10.2 An order for suspension or non-renewal by the Designated Authority shall afford an opportunity for a post-decisional hearing to the suspended contractor/firm, including therein:

- i) The fact that suspension has been ordered forthwith;
- ii) Of the reasons for suspension or non-renewal relied upon under paragraph 7 read with paragraph 8 of these procedures;
- iii) Stating the period of suspension or non-renewal with proposed effective end dates;
- iv) Advising that suspension or non-renewal is effective only in respect of state agencies;
- v) That, within fifteen days of receipt of the notice, the entity may submit in writing, either in person or through a representative, information and arguments in connection contesting the suspension or non-renewal”.

6. Admittedly, the petitioner has not been provided an opportunity of hearing either before or after passing of the impugned order. Even if the Procedure does not provide for prior opportunity of hearing, it does provide for a post-decisional hearing with further stipulation that the period of suspension or non-renewal with proposed effective end dates shall be categorically stated in the order. In the case at

hand, the dates or periods are also not mentioned in the impugned order.

7. Admittedly, the State Government has not issued any notice to the petitioner for issuance of the impugned order as to why his A-5 contractor registration shall not be demoted. Thus, despite lapse of about five months period neither the effective end dates of suspension is known to the petitioner or the department nor any further proceeding has been drawn against him.
8. The impugned order cannot be effective for an indefinite period without any further action either for withdrawing the same or for demoting the petitioner. There is clear violation of the provisions contained in Clause 10.2 of the Procedures.
9. Learned state counsel would defend the impugned action, however, since this Court has made observation *supra* only in respect of procedure and not on merits of the default committed by the petitioner, therefore, I am not inclined to enter into that aspect of the matter. Since the Procedure (Annexure P/5) has been laid down by the Government itself it is bound to follow the Procedure and in the absence of such adherence of the Procedure the impugned action cannot sustain. Therefore, the matter deserves to be remitted back to

the State Government for passing fresh orders in terms of the Procedures 2014 (Annexure-P/5) within a period of three months from today. Till the fresh order is passed the impugned order (Annexure – P/1) shall not be given effect.

10. In the result, the writ petition is allowed to the extent indicated *supra*. No order as to cost(s).

Sd/-

Judge
Prashant Kumar Mishra

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