

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6224 of 2020

M/s Lal Babu Roy, Proprietorship Firm having its registered Office at Village and P.O.-Bahgwanpur, Colony-Nandpuri, P.S.-Sadar, District-Muzaffarpur, Bihar-842001, through its Proprietor Namely Sri Lal Babu Roy, aged about 54 Years (Male), Son of Hira Roy, resident at Village and P.O.-Bahgwanpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Rural Works Department, Government of Bihar, Patna.
2. The Secretary, Rural Works Department, Government of Bihar, Patna.
3. The Engineer in Chief, Rural Works Department, Government of Bihar, Patna.
4. The Deputy Development Commissioner-Cum-Chief Executive Officer, Sitamarhi.
5. The Chief Engineer-III, Rural Works Department, Work Circle, Sitamarhi.
6. The Superintendent Engineer, Rural Works Department, Work Circle, Sitamarhi.
7. The Executive Engineer, Rural Works Department, Work Division Belsand, Sitamarhi.
8. The Technical Bid Committee, represented through the Superintendent Engineer, Rural Works Department, Work Circle, Sitamarhi.
9. M/s R.S. Construction having its registered Office at Swami Sahjanand Colony, P.O.-Bahgwanpur, District-Muzaffarpur, Bihar-842001, through its Partner namely Sri Sanjay Sharma, Son of Sukhdev Sharma, resident at Swami Sahjanand Colony, P.O.-Bahgwanpur, District-Muzaffarpur, Bihar-842001

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Ashish Giri, Adv.
For the State	:	Mr. Kumar Alok, Adv.
For the Pvt. Resp.	:	Mr. Pushkar Narayan Shahi, Sr. Adv. Mr. Patanjali Rishi, Adv.

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
CAV JUDGMENT

Date : 13-07-2020

The present writ petition has been filed
seeking the following reliefs:-

“(i) To issue a writ/ order/ direction in



the nature of certiorari for quashing the decision of the Technical Bid Committee dated 12.06.2020 in terms of which the tender of the petitioner in relation to Package No. BR33P2R-05 have been held to be unsuccessful on ground of the order of debar dated 27.06.2016 have not yet been withdrawn by the department.

(ii) To hold and declare that once the petitioner having completed the work in relation to which the order of debar was passed in the year 2016 and completion certificate also issued and payment made thereto, the order of debar in relation to the non-completion of the said work becomes redundant and not in existence and hence, cannot be relied for rejecting the technical bid of the petitioner on the basis of the



said order of debar.

(iii) To direct the respondent authorities to proceed to consider the technical bid of the petitioner as the responsive and thereafter, proceed to open the financial bid in relation to the work Package no. BR33P2R-05 pursuant to NIT bearing NIT No. RWD/PMGSY-II/RRP-IIHQ/ET-19-20/05 dated 07.02.2020.

(iv) To alternatively quash the order of debar dated 27.06.2016 issued under the signature of the Engineer-in-Chief, Rural Works Department, Government of Bihar, Patna by which pursuant to recommendation of the Chief Engineer III, the petitioner was debarred on ground of non-completion of work within time and prevented from participating in other tenders."

2. The brief facts of the case according to the



petitioner are that Rural Works Department, Government of Bihar, through the office of the Engineer in Chief, Rural Works Department issued NIT bearing retender no. RWD/PMGSY-II/RRP-II-HQ/ET-19-20/05 dated 07.02.2020 pertaining to various construction works as detailed therein. The last date & time for receipt of bids through e-tendering was fixed as 24.03.2020 upto 15:00 Hrs. The technical bid was to be opened at 15:30 Hrs. on 24.03.2020. Subsequently, a corrigendum was issued and date of opening of the bid was modified to 12.05.2020. The petitioner had participated in the said NIT for construction work as specified at serial no. 45 of the NIT i.e. 'MRL01-Kowahi to Gidhha via Neori, Sirkhiriya' of PMGSY Phase II bearing Package No.-BR33P2R-05 and had submitted the bid online within the prescribed time. Thereafter, the petitioner had authorized one of its representative to submit the hard copy of the bid in terms of the requirement of the NIT and accordingly the said representative had submitted the same in the office of the Executive



Engineer, RWD, Belsand, Sitamarhi on 12.05.2020 itself and the same was received at 14:55 Hrs. i.e. within the time prescribed, as is evident from the receiving provided in the bid submission confirmation itself. Nevertheless, the authorities acted contrary to the terms of the tender and in order to favor an individual bidder namely M/s R.S. Construction, its tender was wrongly accepted, even though the bid documents were submitted after the expiry of the period provided under the tender. The petitioner had objected to such conduct and has also filed a writ petition challenging the acceptance of the bid of the said M/s R.S. Construction, contrary to the terms of the tender.

3. It is the case of the petitioner that the respondent state authorities have been acting in a biased manner in order to favor a particular bidder and have been finding excuses to disqualify the petitioner from the contract in question. Thus, a letter dt. 04.06.2020 was issued by the respondent Executive Engineer, Rural Works



Department, Works Division Belsand stating therein that the petitioner, in relation to another work bearing Package No. PMGSY BR-33R-317, was declared defaulter by the order of the Engineer in Chief bearing No. 7779 dated 27.06.2016 and since, the petitioner has not been released from the Order of debarment, hence, the petitioner should submit his explanation regarding the same. The petitioner vide letter dated 06.06.2020 and 09.06.2020 had submitted its explanation, stating therein that in relation to the said Package bearing No. PMGSY BR-33R-317, the debarment order was passed for non-completion of work in time, however, the said work has stood completed subsequently, for which completion certificate has also been granted, specifying the completion date to be 30.06.2017 and thereafter, the Executive Engineer, Works Division Pupri has also recommended for releasing the petitioner from debarment, as such there was no impediment in accepting the technical bid of the petitioner. Nonetheless, the Technical Bid



Committee in its meeting held on 12.06.2020 has taken a decision to reject the Technical Bid of the petitioner on the ground of the order of debarment dated 27.06.2016 having not been recalled yet.

4. The learned counsel for the petitioner has submitted that the impugned decision of the Technical Bid Committee in rejecting the technical bid of the petitioner is unsustainable in the eyes of law, arbitrary, perverse and violative of Article 14 & 19(1)(g) of the Constitution of India. It is submitted that the order of debarment dated 27.06.2016 cannot be said to be in existence any more as the work, for non-completion of which, the debarment Order was issued, has not only been completed by the petitioner but a completion certificate has also been issued showing the date of completion to be 30.06.2017 and recommendation has been made for removing the petitioner from debarment. Thus, it is the case of the petitioner that the order of debarment has lost its effect and merely because a formal order recalling the Order of debarment has not been



issued by the department, the petitioner cannot be penalized for the same. It is submitted that the order of debarment, if still treated to be in existence, will be violative of Article 14 of the Constitution of India since the same cannot be for an indefinite period hence, on this ground also the order of debarment cannot come in the way of the authorities in considering the technical bid of the petitioner as responsive. Even otherwise, the order of debarment having been passed without issuance of any show cause notice to the petitioner is violative of Article 14 of the Constitution of India.

5. In nutshell, the submission of the Ld. Counsel for the petitioner is that the decision of the Technical Bid Committee taken in its meeting dated 12.6.2020, declaring the petitioner firm to be unsuccessful in the technical bid on the ground that the petitioner firm has been declared a defaulter and has been debarred from participating in further tenders vide order contained in letter no. 7779 dated 27.06.2016,



issued by the Engineer-in-Chief, Rural Works Department, Bihar, Patna, is illegal, arbitrary and perverse inasmuch as the fact is that the debarment order in question was passed on 27.06.2016, where after the completion certificate of the work in question was granted to the petitioner on 30.10.2017 and then, recommendation has also been made for removal of the petitioner firm from the debarment list on 5.12.2018, whereupon the NIT in question has been issued on 7.2.2020, hence, the aforesaid debarment order dated 27.6.2016 cannot be said to be having any force much less being in existence, thus, the Technical Bid Committee ought not to have considered the debarment order to be having any force for the purposes of rejecting the technical bid of the petitioner firm and declaring it unsuccessful. The learned counsel for the petitioner has referred to a judgment dated 21.3.2018 rendered by a coordinate Bench of this Court in the case of **Aditya Kumar Singh vs. The State of Bihar & Ors.**, passed in CWJC No.



14066 of 2017, wherein this Court has held that in case, the work has been completed and a final bill has been submitted relating to the work order in question, there can be no reason for keeping the debarment order in effect indefinitely.

6. Per contra, the learned counsel for the Respondents-State has submitted that a Notice Inviting Tender (N.I.T.) bearing retender no. RWD/PMGSY-D/RRP-D-HQ/ET-19-20/05, dated 7.2.2020 was issued for various construction works under the authority of the Engineer-in-Chief, Rural Works Department through e-tendering, fixing the date for submission of tender as 24.03.2020 up to 15:00 Hrs., which was modified and extended till 12.05.2020 but the time and other terms and conditions remained the same as per the NIT. The petitioner submitted his bid, pursuant to the aforesaid NIT, for construction work as specified at serial no. 45 of the NIT i.e. MRLO1-Kowahi to Gidhha via Neori, Sirkhiriya of PMGSY Phase D bearing Package No. BR33P2R-05, within time. The petitioner also submitted the hard



copy of the bid through his representative. It is further submitted that after submission of the bid, the same was opened for its technical evaluation by the Technical Bid Committee in its meeting held on 12.06.2020 during which it came to the notice of the Committee that the firm of the petitioner has been debarred vide letter no. 7779 dated 27.06.2016 and the same is still in existence, so the Committee, on the ground of the said Order of debarment, disqualified the petitioner in the Technical Bid. The aforesaid decision of the Technical Bid Committee was sent to the Additional Chief Executive Officer-Cum-Secretary, BRRDA, Bihar Patna vide letter No. 545, dated 12.06.2020, issued under the Signature of the Superintending Engineer, Rural Works Department, Work Circle, Sitamarhi.

7. It is further submitted by the Ld. Counsel for the respondent State that the Executive Engineer, Rural Works Department, Works Division, Belsand vide his letter No. 763, dated 04.06.2020 had issued a show cause notice to the petitioner, i.e.



much prior to the meeting of the Technical Bid Committee held on 12.06.2020, with regard to its debarment order contained in letter no. 7779, dated 27.06.2016, issued by the Engineer-in-Chief and since, the petitioner had not been released from debarment, he was asked to explain / produce any document of release from debarment, if available. In reply to the aforesaid show-cause notice, the petitioner did not submit any document which could show that the petitioner has been released from the said debarment. The petitioner only explained that the debarment order was passed in relation to package bearing No. PMGSY BR-33R-317, for non-completion of the work in time and the said work had been completed later on, for which completion certificate has also been issued and the Executive Engineer, Work Division, Pupri has made recommendation for releasing the petitioner from debarment. It is further submitted that the afore-said explanation of the petitioner was not accepted and it was technically disqualified. So far



as the grievance of the petitioner that its technical bid should have been accepted by the Technical Bid Committee since the petitioner had completed the work, on account of non-completion whereof the petitioner had been debarred and a completion certificate has also issued, it is submitted that the said submission of the petitioner has got no legs to stand in law in as much as the fact remains that if some contractor is debarred for non-completion of the work allotted to it and later on it completes the said work after much delay, it does not mean that the debarred contractor will be released/removed from the said debarment automatically.

8. The Ld. Counsel for the respondent State has also submitted that the Engineer-in-Chief is the only competent authority to either put the contractor in the debarment list or remove the name of the contractor from the debarment list. Admittedly, the petitioner was debarred for non-completion of the work of package bearing no. PMGSY BR-33R-317 by an order issued by the



Engineer-in-Chief vide letter no. 7779 dated 27.6.2016, thus it is only the Engineer-in-Chief who is the competent authority to release the petitioner from said debarment order and no such order with respect to petitioner has yet been passed by the Engineer-in-Chief. Hence, it is submitted that considering the aforesaid facts, the Technical Bid Committee in its meeting held on 12.06.2020 has rightly rejected the technical bid of the petitioner, as the petitioner was still under the debarred category and was barred from participating in further tender, as on the date of consideration of the bid of the petitioner by the Technical Bid Committee. It has also been stated that vide the same letter i.e. 7779 dated 27.06.2016 the petitioner was debarred on account of non-completion of three other works under the Works Division, Sitamarhi and the name of the petitioner appears at Sl. No. 1176, 1177 and 1178 of the debarment list. It is relevant to state here that one of the said three works namely LO62-Marpa Bazar to Naya Tola Rahmaniya Tola



(VR69) bearing Package No. BR-33R-587 has been completed by the petitioner on 12.12.2018, after delay of three years since the date of actual completion of the said work had been fixed as 23.12.2015, as per the agreement in question.

9. It has also been stated by the Ld. Counsel for the respondent State that the registration of the petitioner under Rural Works Department was valid from 10.12.2013 to 09.12.2018 and the same has already stood expired. Moreover, the petitioner has submitted a false affidavit with the documents, incorrectly stating therein that he had never been debarred/ blacklisted by the department while the fact is that the petitioner was debarred for non-completion of four works which is evident from the letter no. 7779 dated 27.06.2016.

10. Thus, the submission of the learned counsel for the Respondent-State is that first of all, the order of debarment dated 27.6.2016 has neither been revoked nor set aside by any superior authority or any court of law, hence, the same has



got full force, thus it cannot be deemed that the same has lost force upon completion certificate of the work in question having been granted by the Rural Works Department to the petitioner firm. It is further submitted that the petitioner has not disclosed the afore-said factum of debarment in the affidavit filed by him and on the contrary, in the affidavit required to be filed as per the NIT (Annexure F to the counter affidavit), the petitioner firm has declared that the firm has not been ever blacklisted or debarred by any Bihar Government / Central Government or by any other department, as such, it is submitted that a false statement / declaration has been made by the petitioner herein which itself is enough to reject the technical bid of the petitioner herein. It is also submitted that the aforesaid judgment of the coordinate Bench of this Court, relied upon by the learned counsel for the petitioner, is distinguishable in the facts and circumstances of the present case inasmuch as in the said case, though the work had been completed on



26.5.2017, debarment order was passed on 29.6.2017 whereas in the present case, the work has been completed after a delay of three years i.e. much after the date of passing of the order of debarment dated 27.6.2016. It is further submitted that the petitioner was not registered with the Rural Works Department at the time of submission of the bid in question, hence, he had made an incorrect declaration, thus, on this ground as well, the petitioner firm has rightly been declared unsuccessful.

11. The learned Senior Counsel appearing for the private Respondent No. 9, Sri P. N. Sahi, has, first of all, taken this Court to the various provisions of the NIT, more particularly the instruction to the bidders, relevant clauses whereof are reproduced herein below:-

“12.1 Part I

(viii) An affidavit affirming that information furnished in the bid is correct to the best of knowledge and belief of the bidder.



12.2 (b) Scanned copies of the following documents shall be uploaded on the website www.pmgsytendersbih.gov.in. at the appropriate place.

(iv) Contractor Registration certificate (Clause 3 of ITB).

(d) Submission of Original Documents: The bidders are required to submit (i) original demand draft towards the cost of bid document and (ii) original bid security in approved form and (iii) original affidavit regarding correctness of information furnished with bid document as per provisions of clause 4.4.B (ii) of ITB with the office specified in the Bid Data Sheet, on a date not later than two working days after the opening of technical qualification part of the Bid, either by registered post or by



hand, failing which the bids will be declared non-responsive.

33. Fraud and Corruption:

33.1(a)(ii) "fraudulent practice" is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation.

(b) will reject a proposal for award if it determines that the Bidder recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for the contract in question."

12. The learned senior counsel appearing for the private Respondent No. 9 has submitted that since the petitioner has submitted a false affidavit and has also suppressed material facts as well as



engaged in fraudulent practice of misrepresenting the factum of the petitioner being debarred from participating in future contracts on account of non-completion of certain works, by an order passed by the Engineer-in-Chief vide letter no. 7779 dated 27.6.2016, the technical bid of the petitioner has been rightly rejected in view of the aforesaid terms and conditions of the NIT. It is further submitted that in fact, the petitioner firm has also filed a false affidavit to the effect that it had never been debarred, hence, the same amounts to fraudulent practice resulting in the concerned authority being empowered to reject proposal of such a firm, as is provided for under Clause 33.1(b) of the instruction to bidders, forming part of the NIT. It is thus submitted that there is no infirmity in the decision of the Technical Bid Committee dated 12.6.2020. It is also submitted that in fact, a show cause was also issued by the Executive Engineer, Rural Works Department, Belsand, Sitamarhi to the petitioner, asking the petitioner to furnish any letter or



certificate regarding the debarment order dated 27.06.2016 qua the petitioner herein having been revoked, however, the petitioner could not produce any such order of revocation of debarment order dated 27.06.2016. Thus, it is submitted that the principles of natural justice have also been complied with and there is no illegality in the decision of the Technical Bid Committee dated 12.6.2020 whereby and whereunder the petitioner has been declared unsuccessful in the technical bid.

13. At this juncture, the learned counsel for the petitioner, in reply, has submitted that it is a well-settled law that the reason for passing the impugned order cannot be improved and substantiated by subsequent affidavits filed by the authorities, hence, as far as the allegation of the petitioner being not a registered contractor is concerned, the same cannot be taken into consideration for the purposes of declaring the petitioner unsuccessful in the technical bid especially on account of the fact that



subsequently, the petitioner has already stood registered with effect from 22.5.2020 to 22.5.2025 and on the relevant date of opening of the technical bid, the petitioner was / is a registered contractor. It is further submitted that since the petitioner has already completed the work in question on 30.10.2017 and thereafter, recommendation has been made to remove the petitioner from debarment, the order of debarment dated 27.06.2016 would be deemed to be having no force and it would be deemed as if the order of debarment has been revoked, hence, the impugned order by which the Technical Bid Committee has declared the petitioner unsuccessful i.e. the one dated 12.06.2020 is illegal and fit to be set aside.

14. I have heard the learned counsel for the parties and gone through the materials on record. This Court finds that though the petitioner might have completed the work in question (as far as the earlier contracts are concerned), however, the same has been completed after a huge delay and



the debarment order qua the petitioner herein was passed by the Engineer-in-Chief, Rural Works Department, Government of Bihar, Patna vide letter dated 27.06.2016 i.e. much earlier and moreover, till date, neither the petitioner has approached this Court for quashing of the said debarment order dated 27.06.2016 nor the same has been quashed by any court of law or any authority nor the same has stood revoked by the respondent authorities, hence, in the opinion of this Court, it cannot be said that the said order of debarment dated 27.6.2016 would be having no effect/force and would be deemed to have been revoked. At this juncture itself, it would be pertinent to mention that the order passed by a coordinate Bench of this Court in the case of **Aditya Kumar Singh** (supra), as referred to hereinabove, is distinguishable in the facts and circumstances of the present case inasmuch as in the said case, the Hon'ble Court was considering the veracity and legality of the existence of the debarment order in question i.e. the one dated



29.06.2017 and after considering the facts and circumstances of the case, had quashed the order of debarment, however, despite a prayer being made in the said writ petition to quash the decision of the Technical Tender Committee, by which the technical bid of the petitioner therein, had been rejected on the ground that the petitioner of the said case was under the effect of debarment order, the said decision of the technical bid committee was not interfered with, however, in the present case, there is no prayer for quashing of the debarment order and the present writ petition is merely for the purposes of setting aside the decision of the Technical Bid Committee whereby and whereunder the petitioner has been declared to be unsuccessful in the technical bid on account of him being under the effect of debarment order. Thus, this Court finds that since the order of debarment of the petitioner is still intact and has neither been revoked nor set aside, it cannot be deemed to be having no force and moreover, the petitioner has



definitely suppressed the factum of it being under the effect of debarment, after having suffered the order of debarment dated 27.6.2016 and has also filed a false affidavit wherein a false declaration has been given to the following effect:-

“I have not been blacklisted or debarred from any Bihar Government / Central Government and any department”.

15. Hence, it is absolutely clear that the petitioner has furnished false information and has suppressed the factum of passing of an order of debarment qua the petitioner herein dated 27.06.2016, which amounts to engaging in fraudulent practices and consequently, entails rejection of the proposal of the petitioner firm, as far as the NIT in question is concerned.

16. Considering the aforesaid facts and circumstances of the case, having regard to the submissions made by the learned counsel for the parties and for the grounds mentioned hereinabove, I do not find any infirmity in the decision of the Technical Bid Committee, taken in



its meeting held on 12.06.2020 whereby and whereunder the petitioner has been declared to be unsuccessful on the ground of the order of debarment dated 27.06.2016, being in existence qua the petitioner herein, thus, the present writ petition stands dismissed, being bereft of any merit.

(Mohit Kumar Shah, J)

Ajay/-

AFR/NAFR	AFR
CAV DATE	09.07.2020
Uploading Date	25.07.2020
Transmission Date	NA

