

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8645 of 2021

M/s Realty Advance Structure Enterprises Pvt. Ltd. Regd. office Shanti Kunj,
Brahm Asthan, Kurthoul, Patna, Head Office- House No. 955, Maurya Path,
Khajpura, Near Pillar No. 15, Bailey Road, Patna-14, through Director,
Mukesh Kumar, aged about 46 years, Male, Son of Basant Singh, resident of
village- Jethiyara, Police Station- Parasbigha, District- Jehanabad

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Building Construction Department, Government of Bihar, Patna
2. The Engineer in Chief Building Construction Department, Government of Bihar, Patna
3. The Chief Engineer (North) Building Construction Department, Government of Bihar, Patna
4. The Superintending Engineer, Muzaffarpur, Building Construction Department, Government of Bihar, Patna
5. The Executive Engineer, Vaishali Building Division, Hajipur
6. The Assistant Engineer, Vaishali Building Division, Hajipur
7. The Junior Engineer, Vaishali Building Division, Hajipur

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Dhananjay Kumar

For the Respondent/s : Mr. Narendra Kumar Singh, AC to GP 22

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

ORAL JUDGMENT

Date : 25-10-2021

Heard learned Counsel for the parties concerned.



2. The petitioner is aggrieved by letter no. 1798, dated 16.09.2020, issued by respondent no. 5, the Executive Engineer, Building Division, Vaishali, Hajipur (Annexure 5), whereby the petitioner company has been debarred.

3. Learned Counsel for the petitioner submits that the petitioner is a registered contractor of the Building Construction Department under Class-I category. The petitioner company has been awarded the work of construction of Engineering College building, at Bidupur, in the district of Vaishali. He further submits that the petitioner company has completed about 90 per cent of the awarded work, but without issuing any show cause, the petitioner company has been debarred/blacklisted by the respondent no. 5. He further submits that as per Rule 11 (c) of the Bihar Contractor Registration Rules, 2007 (in short, the '2007 Rules'), the blacklisting/suspension order can be passed by the Engineer-in-Chief and in the present case, the impugned order of debarment, which is equivalent to blacklisting, has been passed by the Executive Engineer, who has got no jurisdiction under the statutory Regulation/Rules. He further submits that he has specifically stated in paragraph 15 of this writ application that the order of debarment entails the petitioner with civil consequences, but before passing the impugned order, no opportunity and/or



show cause was served upon the petitioner. As such, the impugned order has been passed in utter violation of the principle of natural justice. He also submits that the statement of the petitioner made in paragraph 15 of this writ application has not been controverted by the State in its counter affidavit.

4. Learned Counsel for the State, referring to Annexure A series, submits that as per the letter of the Engineer-in-Chief -cum- Special Secretary, Road Construction Department, Bihar, Patna, dated 13.03.2013, the power to pass order of debarment has been conferred upon the Executive Engineer also. Further, on the question of service of show cause upon the petitioner before passing the impugned order, learned Counsel for the State submits that no show cause has been served upon the petitioner prior to passing of the impugned order.

5. In reply to the submission made by learned Counsel for the State, learned Counsel for the petitioner submits that the letter of the Engineer-in-Chief -cum- Special Secretary, Road Construction Department, Bihar, Patna, dated 13.03.2013, is in teeth of 2007 Rules and the executive instruction and/or circular cannot override the statutory regulation.

6. Having heard learned Counsel for the parties and upon perusal of the materials available on record, it appears that



the order of debarment has been passed without giving any opportunity or show cause to the petitioner, as such, the same is not sustainable in the eyes of law on this ground alone.

7. It is settled principle of law that before passing the order of blacklisting, which entails severe civil consequences, the person concerned against whom the action is proposed is required to be given the reasonable opportunity to defend himself and as held in **UMC Technologies Private Limited v. Food Corporation of India and Another**, reported in **(2021) 2 SCC 551**, the notice/show cause must contain the penalty/action, which is proposed to be taken should be mentioned specifically and unambiguously.

8. The impugned order is also in the nature of a permanent debarment order which is in the teeth of the judgment of the Supreme Court, in the case of **Daffodils Pharmaceuticals Limited and Another v. State of U.P. and Another**, reported in **2019 (12) JT 283** and **Vetindia Pharmaceuticals Limited v. State of Uttar Pradesh and Another**, reported in **2021 (1) SCC 804**, the Supreme Court has observed that an order of blacklisting beyond three years or maximum of five years is disproportionate and such blacklisting/debarment should not be for indefinite period.



9. From perusal of the 2007 Rules, it appears that the order of blacklisting/suspension has to be passed by the officer who is competent to register the contractor or by the officer under whom registering officer works, which in the present case is the Engineer-in-chief and not the Executive Engineer.

10. In terms of Rule 4 (b) of the 2007 Rules, the Engineer-in-Chief or an officer not below the rank of Chief Engineer has been designated as the Registering Officer.

11. A co-ordinate bench of this Court, in CWJC No. 3683 of 2019, on the identical facts has considered the 2007 Rules and has decided that the Executive Engineer, Building Construction Department, Construction Division, Darbhanga is not competent authority to pass the order of debarment.

12. In view of the aforesaid discussion, on the point of law as well as on facts, I am of the considered view that the impugned order of debarment (Annexure 5) has been passed in violation of the principle of natural justice and further the Executive Engineer has got no jurisdiction to pass the impugned order and the same is in the nature of permanent debarment.

13. Accordingly, this writ application is allowed and the letter no. 1798, dated 16.09.2020, issued by respondent no. 5, the



Executive Engineer, Building Division, Vaishali, Hajipur
(Annexure 5), is hereby set aside.

14. There shall be no order as to costs.

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	27-10-2021
Transmission Date	N/A

