

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21293 of 2021

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M/s Ekta Enterprises Through its Proprietor Om Prakash Narayan, age 57 Yrs, Male, S/o Late Yaduvir Narayan, resident of Basant Vihar, Sarishwa Road, Harivatika, Bettiah, West Chaparan.

... .. Petitioner/s

Versus

1. The State of Bihar Through the Principal Secretary, Public Health Engineering Department, Government of Bihar, Patna.
2. Principal Secretary, Public Health Engineering Department, Government of Bihar, Patna.
3. Engineer in chief cum Special Secretary P.H.E.D., Bihar, Patna.
4. Project Director Rural Water Supply Project, Bihar, Patna.
5. Joint Director State Project Management Unit, Bihar, Patna.
6. Chief Engineer North Bihar.
7. Chief Engineer Muzaffarpur Zone, Muzaffarpur.
8. Chief Engineer, P.H.E.D. Muzaffarpur Zone, Muzaffarpur.
9. Superintending Engineer P.H.E.D., Motihari Circle, Motihari.
10. Executive Engineer-cum- District Project Manager District Project Management Unit, Public Health Division, Bettiha, West Champaran.
11. Assistant Engineer P.H. Sub- Division, Narkatiyaganj, West Champaran.
12. Junior Engineer Public Health Sub Division, Narkatiaganj, P.H. Section- Gaunaha, West Champaran.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. P. N. Shahi, Sr. Adv.
For the Respondent/s : Mr. Upendra Pratap Singh, AC to SC4

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE NAWNEET KUMAR

PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 01-12-2022

Heard Mr. P.N. Shahi, learned senior Advocate for

the petitioner and Mr. Upendra Pratap Singh for the State.



The petitioner, a proprietorship firm, through its proprietor, has approached this Court against the order dated 06.04.2021 passed by the Executive Engineer, PHED, Bettiah whereby the petitioner has been debarred for an indeterminate period from entering into any agreement with any department of the Government.

Mr. Shahi, while assailing the order, lays primary emphasis on the debarment for limitless period which is not in tune with the law relating to blacklisting and debarment.

The petitioner was selected as a concessionaire by the PHED, West Champaran, for carrying out the 13 projects of Single Gram Panchayat/Habitation Piped Water Supply Schemes (SGS/SHS) in West Champaran in the district of Bihar at a contract price of Rs. 441.90 lacs.

It has been urged on behalf of the petitioner that though the Joint Director, State Project Management Unit, gave green signal to the petitioner to proceed with the work at one place for it to be finished within a period of 11



months but, the selected site was found to be completely water-logged and in a low-lying area where tube-well/ boring work could not have been carried out.

This was promptly reported to the department.

Though a survey and search for a new site was undertaken but, the site was changed only after a delay of four months, which was one of the major reasons for non-completion of the project in time. Shortly thereafter, national lock-down was imposed in view of the outbreak of Covid-19 Pandemic which continued from 25.03.2020 to 17.05.2020. This necessitated an extension of time for the petitioner to complete the work which was, though, sought by the petitioner but the department, for no good reason, delayed the grant of execution. The work therefore could not be started before the extension of time. Only on 17.02.2021, an extension of time was given to the petitioner but that was only for 33 days, which reflected complete non-application of mind. When the work of the project had not even effectively begun, extending the time



period by 33 days, Mr. Shahi argues, was very unreasonable and perhaps, activated by malicious intent to any how prevent the petitioner from completing the project for the department to terminate the contract.

On notice to the petitioner for not having completed the contract of time for future action of debarment, the petitioner replied to the same, detailing the above noted circumstances, but by order dated 06.04.2021, the petitioner was debarred, as noted above, for a indeterminate period from entering into any contract with any department of the Government.

Surprisingly, the order reflects that the extension till 17.02.2021 was given without any liquidated damages but, after the order of debarment was passed, there was a further conditional extension of one year, subject to payment of liquidated damages of 44.19 lacs.

The petitioner seeks to assail the aforementioned decision viz. indeterminate debarment with all government departments and extension of time which also appears to



have been consumed by now but, only with liquidated damages of Rs. 44.19 lacs.

The grounds of assail are primarily the limitless debarment and not adverting to the reasonable and plausible explanation offered by the petitioner for delayed execution of project.

The learned counsel for the petitioner therefore submits that the order of debarment ought to be quashed, an opportunity be given to the petitioner to explain his cause afresh and a direction be issued to the department to refer to the reply and then take a fresh decision with respect to further extension with or without liquidated damages and making available new sites for carrying out the rest of the project.

It has also been pointed out by the learned counsel for the petitioner that almost 90% of the work, despite such handicaps, has been done for which payments have also been made by the department.



After having heard the learned counsel for the parties, we find that the order of debarment is without any time period. The reasons assigned by the petitioner in defence of the charge of delaying the execution of a public project has not at all be adverted to, specially the reasons which are in the know of all and sundry that because of the outbreak of pandemic, there was a lock down with a very strict government regulation, prohibiting such works where there would be congregation of people.

An order of debarment is akin to blacklisting, which operates to the prejudice of a commercial person not only in presenting but also in future and it casts a taint, a slur which is very difficult for such commercial entity to overcome. For all practical purposes, it causes civil death of such commercial person. There is a water-fall repercussion which need not be adumbrated. The sole purpose for insisting for a show-cause notice with the proposed action and appraising/evaluating the response is



that the decision could be tested with the lens of objectivity.

From the order of debarment which has been impugned in the present application, we find that no good reason has been assigned for discarding the explanation of the petitioner and that the order is disproportionate, as it debars the petitioner from entering into any commercial venture with any department of the Government.

The Hon'ble Supreme Court in ***M/s Kulja Industries Ltd. Vs. Chief General Manager W. T. Proj. BSNL & Ors.; (2014) 14 SCC 731 and Vetindia Pharmaceuticals Limited Vs. State of Uttar Pradesh & Anr.; (2021) 1 SCC 804*** has held that an order of permanent debarment is absolutely unjustified.

What has struck us instantly is that the performance of the petitioner was so bad as to incur an order of permanent debarment with all government departments, how was it that a decision was taken to



extend the time period further, though of-course with payment of liquidated damages.

Debarment and blacklisting are the harshest of all decisions against a commercial person which is an incidence of last resort. If a conditional extension of time was given by the department, it presupposes that the lapse on the part of the petitioner was not of such kind which warranted a decision of limitless debarment.

For the reasons so noticed, we do not find the order of debarment to be justified in the eyes of law and perforce, we set it aside.

Since the decision of extension of time is conditional, we are not passing any order with respect to that, as it would be open for the petitioner to accept or not accept such extension offered.

However, we direct that a decision, keeping in mind the aforementioned aspects, be passed by the department afresh within a period of thirty days, to be counted from



the date of receipt/production of a copy of this order before the department.

It would be more appropriate if the petitioner would be allowed to submit his cause for a further extension without liquidated damages, as the delay was on account of conditions which cannot be saddled on the petitioner, part of which was because by the national lock-down for major period of the tenure of agreement.

With the aforementioned observation/direction, the writ petition stands disposed of.

(Ashutosh Kumar, J)

(Nawneet Kumar Pandey, J)

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AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	07.12.2022
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