

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7064 of 2017

=====

Surya Babu Engineer For Resource Development, 112, Gandhi Nagar, West Boring Canal Road, Patna- 800001 through its consultant I.P. Gupta, Son of Late Saryu Mistri, Resident of 802, Budha Residency, P.S.- Budha Colony, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Urban Development and Housing Department Government of Bihar, Vikash Bhawan, Bailey Road, Patna.
2. The Addl. Secretary-cum-Director Urban Development and Housing Department, Government of Bihar, Patna.
3. The Union of India through Joint Secretary (RAY), Ministry of Housing and Urban Poverty Alleviation, Nirman Bhawan, New Delhi-110108.

... .. Respondent/s

=====

Appearance :

For the Petitioner	:	Mr. Mohit Agrawal with Ms. Priya Gupta and Mr. Lokesh Kumar, Advocates
For the State	:	Mr. Shankar Kumar, AC to AAG 7

=====

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
and
HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH)

Date : 02-01-2023

Heard Mr. Mohit Agrawal, learned counsel for the petitioner and Mr. Shankar Kumar, learned AC to AAG 7 for the State.

2. The petitioner has moved the Court for the following reliefs:

“I. For issuance an appropriate writ in the nature of CERTIORARI for quashing the letter No. 04/RAY- 31/14 890 N. Vi. & Aa. Vi., dated 31.03.2017 issued under signature of Respondent No. 2 Addl. Secretary-cum-



Director, Urban Development and Housing Department, Govt. of Bihar, whereby and where under he has been pleased to debar the company of the Petitioner in participating in tendering process of Urban Development and Housing Department and all offices organization within its superintendence and control.

II. For issuance of an appropriate writ in the nature of MANDAMUS commanding and directing the Respondent Authorities to pay the due amount to the Petitioner and continue the agreement dated 14.01.2015 till its expiration dated 31.03.2022.

III. For any other relief/reliefs to which the Petitioner deemed entitled into the facts and circumstances of the case.”

3. The basic point canvassed before the Court on behalf of the petitioner was that the debarment is in general and open in the terms, i.e., for an indefinite period which is impermissible, both on the ground of reasonableness as also equity. Further, it was submitted that the issue is now settled. In support of such contention, learned counsel relied upon the decisions of the Hon'ble Supreme Court in **Kulja Industries Limited vs. Western Telecom Project Bharat Sanchar Nigam Limited, (2014) 14 Supreme Court Cases 731** and **Gorkha Security Services vs. Government (NCT of Delhi), (2014) 9 Supreme Court Cases 105.**

4. Learned counsel for the petitioner submitted that even the bills raised for payment of the works done by the petitioner has not been paid to him.



5. Learned counsel for the State submits that they have filed counter affidavit in which the stand is that because the bills were not submitted in the required proforma, payment process could not be taken to its logical conclusion. However, it was submitted that if the petitioner submits his bills in the required proforma, the same shall be duly considered.

6. Learned counsel for the petitioner submits that the writ petition be disposed of with liberty to him to present a fresh bill with regard to the works done by him.

7. Learned counsel for the State with regard to the debarment for an indefinite period fairly submits that in view of the law laid down, such course of action is not permissible by the authorities.

8. Having considered the facts and circumstances of the case and submissions of learned counsels for the parties, the writ petition stands disposed of holding that prospectively debarment of the petitioner for any project stands set aside. However, it shall be open to the authorities to take action for any breach of the terms of the contract in accordance with law.

9. Further, if the petitioner presents fresh bill in the required proforma before the competent authority for payment of the works already done by him, the same shall be duly processed



and whatever is found admissible to the petitioner as per the terms of the agreement, shall be paid to him without any undue delay. Needless to say that the parties are at liberty to invoke arbitration, if required.

10. If such fresh bills are submitted by the petitioner within three weeks from today, the Court expects the authority concerned to take a decision on the same, in accordance with law, after full and proper verification, within six weeks from the date of presenting of such bills. Depending on the order passed by the competent authority, it shall be open to the parties to move before the forum prescribed for settling of such dispute, as per the agreement.

(Ahsanuddin Amanullah, J)

(Harish Kumar, J)

Anjani/-

AFR/NAFR	
U	
T	

