

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14291 of 2019

Saj Infracon Project India Limited through its Chief Operating Officer, Mr. Akhilesh Kumar Jaiswal, Son of late Ram Narayan Lal, Ward No. 04, Hakikatpur, Bakhtiyarpur, Patna, At Present Resides at Udaygiri Apartment, Flat No. 401, P.O. G.P.O. Police Station- Kotwali, Budh Marg, Patna- 800 001.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Road Construction Department, Vishweshwariya Bhawan, Bailey Road, Patna.
2. The Principal Secretary, Road Construction Department, Vishweshwaraiya Bhawan, Bailey Road, Patna.-15
3. The Engineer-in-Chief-Cum-Additional Commissioner-Cum- Special Secretary, Road Construction Department, Vishweshwaraiya Bhawan, Bailey Road, Patna.-15
4. The Chief Engineer, (North Bihar Wing), Road Construction Department, Vishweshwaraiya Bhawan, Bailey Road, Patna.-15
5. The Superintending Engineer, Road Construction Department, Road Circle, Hajipur.
6. The Executive Engineer, Road Construction Department, Road Division, Gopalganj.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Manish Sahay, Advocate Mr. Anil Kumar Sinha, Advocate Mr. Siddharth Aditya, Advocate
For the Respondent/s	:	Mr.Amit Prakash, GA-13 Sanjay Kumar, AC to GA-13

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

7 04-05-2023 In the instant writ petition, petitioner has prayed for
the following relief(s):-

*“(I) For quashing of debarment order,
issued vide Office Order No. 04 of 2019
read with letter No. 279 Gopalganj dated*



11.02.2019 under signature of the Executive Engineer, as contained in Annexure-P-8, by which the petitioner has been declared defaulter and debarred from participating in future tenders for indefinite period in most arbitrary manner, violation of principal of natural justice as well as having without jurisdiction.

(II) For commanding and directing the concerned respondent to pay 8th Running Account bill amount to the petitioner as submitted by him in the office of the Executive Engineer.

(III) For Commanding and directing the concerned respondent to provide GST in the said contract as well as refund the excess amount of royalty as paid by the petitioner against the said work.

(IV) For declaring that the action of the Executive Engineer is arbitrariness, malafide, malicious, colourable exercise of power as well as having without Jurisdiction.

(V) For further passing such an Order or Orders for which the petitioner is entitled under the law in the facts and circumstances of this case.”

2. The petitioner was successful bidder for execution of work, namely, ‘Widening and Strengthening with Maintenance work of Bhagipatti-Samaur Bankata via Kateya Bazar 0.00 km to 7.705 km for the year 2017-18’. In not executing the said work timely, the respondents have resorted to debar the petitioner for an indefinite period from participating in



future tender vide Order No. 04 of 2019 read with letter No. 279, Gopalganj dated 11.02.2019 passed by the Executive Engineer. Further, he has prayed for certain directions relating to payment of running account bill etc. to the petitioner. Annexure P-8 dated 11.02.2019 reads as under:-

ANNEXURE - P-8

कार्यपालक अभियंता का कार्यालय
पथ निर्माण विभाग, पथ प्रमंडल, गोपालगंज

कार्यादेश संख्या- 279 / 2019

कार्यालय आदेश

Saj Infra Con. Project India Limited, S-401 Udaygiri Apartment, Near Kotwali Thana, Budh Marg, Patna-800001 को पथ प्रमंडल गोपालगंज के अन्तर्गत भागीपट्टी-समस्तर-बनकटा भाया कटेया बाजार कि०मी० 0.50 से कि०मी० 7.705 तक में चौड़ीकरण एवं मजबूतीकरण कार्य आवंटित किया गया है जिसका एकतरामा सड़क-1 CMBO/2018-19 कार्य की प्रारंभ तिथि 12.04.2018 एवं कार्य की समाप्ति की तिथि 11.04.2019 निर्धारित है। सर्वेदक को इस कार्यालय के पत्रांक 1823 दिनांक 03.11.2018, पत्रांक 1863 दिनांक 19.11.2018, 114 दिनांक 18.01.2019 एवं पत्रांक 243 दिनांक 05.02.2019 द्वारा कार्य में समानुपातिक प्रगति लाने हेतु निर्देशित किया गया है परन्तु आदेशांक तक कार्य की प्रगति संतोषप्रद नहीं है।

Saj Infra Con. Project India Limited, S-401 Udaygiri Apartment, Near Kotwali Thana, Budh Marg, Patna-800001 द्वारा पथ प्रमंडल गोपालगंज के अन्तर्गत भागीपट्टी-समस्तर-बनकटा भाया कटेया बाजार कि०मी० 0.50 से कि०मी० 7.705 तक के चौड़ीकरण एवं मजबूतीकरण कार्य की प्रगति अनुबंधित अर्थ को समानुपातिक नहीं होने एवं दिनांक 04.02.2019 को विभागीय समीक्षात्मक बैठक में दिए गए निर्देश के आशोक में भविष्य की निविदाओं में भाग लेने से वंचित (Debar) किया जाता है।

E-3/
कार्यपालक अभियंता
पथ प्रमंडल, गोपालगंज

ज्ञापक 279 / गोपालगंज ✓ दिनांक 11/02/2019

प्रतिलिपि: Saj Infra Con. Project India Limited, S-401 Udaygiri Apartment, Near Kotwali Thana, Budh Marg, Patna-800001 को सूचनार्थ एवं आवश्यक कार्रवाई हेतु प्रेषित।

11/02/19
कार्यपालक अभियंता
पथ प्रमंडल, गोपालगंज

3. Perusal of the aforementioned debarment order, it is



evident that the Executive Engineer has not followed the due process of law like issuance of show-cause notice and obtaining reply from the petitioner. Further, the debarment of petitioner from participating in any future tender is for an indefinite period. On both the count, the Apex Court time and again held that show-cause notice must be specific in respect of debarment or blacklisting. Further, period is required to be mentioned in the show-cause notice. All these formalities have not been completed before debarring the petitioner from participating in future tender for an indefinite period. Therefore, we find *prima-facie* that impugned order of debarment dated 11.02.2019 is without application of mind.

4. Accordingly, Annexure P-8 dated 11.02.2019 is set aside. Reserving liberty to the competent authority take afresh steps while taking note of judicial pronouncements like ***UMC Technologies Pvt. Ltd. vs. Food Corporation of India and Anr.***, reported in ***(2021) 2 SCC 551*** and later decision in the case of ***Isolators and Isolators Through Its Proprietor Mrs. Sandhya Mishra vs. Madhya Pradesh Madhya Khestra Vidyut Vitran Co. Ltd. and Anr.***, reported in 2023 ***LiveLaw (SC)330***. Such steps be taken within a period of 4 months from the date of receipt of this order. Insofar as prayer No. 2 and 3 the petitioner



is at liberty to invoke appropriate remedy before the jurisdictional forum.

5. The writ petition stands allowed in-part.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

Himanshu/-
Ashish/-

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