

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5028 of 2024

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M/s Kundan Kumar (Civil and Electrical Contractor), having its Office at-
Ramdayalu Nagar, P.O.- Ramna, District- Muzaffarpur through its authorized
signatory Kundan Kumar Mishra @ Kundan Kumar.

... .. Petitioner

Versus

1. The State of Bihar through Principal Secretary, Building Construction
Department, New Secretariat, Delhi.
2. Managing Director, Bihar State Building Construction Corporation Ltd.
having head office at Shastri Nagar, P.S.- Shastri Nagar, District- Patna.
3. Chief General Manager, Bihar State Building Construction Corporation Ltd.
having head office at Shastri Nagar, P.S- Shastri Nagar, District- Patna.
4. General Manager, Bihar State Building Construction Corporation Ltd.
having head office at Shastri Nagar, P.S. Shastri Nagar, District- Patna.
5. Deputy General Manager, Bihar State Building Construction Corporation
Ltd., Project Implementation Unit Muzaffarpur having its office at House of
Nand Kishore Singh, Yadavnagar, Bhagwanpur Chowk, P.S.- Bhagwanpur,
District- Muzaffarpur.

... .. Respondents

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with
Civil Writ Jurisdiction Case No. 5127 of 2024

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M/S Kundan Kumar (Civil and Electrical Contractor) having its Office at -
Ramdayalu Nagar, P.O. - Ramna, District-Muzaffarpur through its authorized
signatory Kundan Kumar Mishra @ Kundan Kumar.

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Department, New Secretariat, Delhi.
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having head office at - Shastri Nagar, P.S. - Shastri Nagar, District- Patna.
5. Deputy General Manager, Bihar State Building Construction Corporation
Ltd. Project Implementation Unit Muzaffarpur, having its Office at- House
of Nand Kishore Singh, Yadavnagar, Bhagwanpur Chowk, P.S. -
Bhagwanpur, District- Muzaffarpur.

... .. Respondents

=====



Appearance :

(In Civil Writ Jurisdiction Case No. 5028 of 2024)

For the Petitioner/s : Mr. Anurag Saurav, Advocate
Mr. Abhinav Alok, Advocate
Mr. Abhishek Kumar, Advocate
Ms. Prity Kumari, Advocate
Mr. Sharda Raje Singh, Advocate

For the Respondent/s : Mr. Anirban Kundu, SC-24

For the BSBCCCL : Mr. Abhimanyu Pratap, Advocate

(In Civil Writ Jurisdiction Case No. 5127 of 2024)

For the Petitioner/s : Mr. Anurag Saurav, Advocate
Mr. Abhinav Alok, Advocate
Mr. Abhishek Kumar, Advocate
Ms. Prity Kumari, Advocate
Mr. Sharda Raje Singh, Advocate

For the Respondent/s : Mr. Standing Counsel, 25

For the BSBCCCL : Mr. Abhimanyu Pratap, Advocate

Ms. Rana Neha Kumari, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HARISH KUMAR)

Date : 02-05-2024

Heard Mr. Anurag Saurav, learned counsel representing the petitioner in both the cases; Mr. Kumar Abhimanyu Pratap, learned counsel for the Bihar State Building Construction Corporation Ltd. (for short “the Corporation”) and the learned counsel for the State.

2. Considering the identical issue(s) based on similar facts between the same parties, both the writ petitions have been heard together and being disposed of by a common order.

3. The writ-petitioner is a Class-I Contractor under the Bihar Enlistment of Contractors Rules, 1996 (for short “the Rules, 1996”). On being aggrieved by the order of debarment from participating in the future tender(s) vide letters bearing no.



1108 and 1110 both dated 15.12.2023, the petitioner has preferred the writ petitions seeking quashing of the same.

4. The learned counsel for the petitioner contended that against the Notice Inviting Tender (NIT) issued by the Deputy General Manager of the Corporation, Muzaffarpur for construction of 200 Bedded Virhad Ashraya Griha at Bettiah in District-West Champaran and at Narauli Sen in District-Muzaffarpur, the petitioner submitted his respective bids. Having been qualified in the technical bid and financial bid, the petitioner (firm) was found L-1 and declared successful in the bid process. The respondent-Corporation, accordingly, issued letter of acceptance requesting the petitioner to submit the performance security and additional performance guarantee as per the prescription provided therein. The writ-petitioner entered into agreements bearing no. SBD03 of 2021-22 dated 14.10.2021 and SBD07 of 2021-22 dated 25.02.2022 with the respondent-Corporation. As per the terms of the contract, the entire work was to be completed within eighteen months.

5. Adverting to the afore-noted fundamental facts, the learned counsel for the petitioner, thus, contended that while the works were in progress, in the meantime, respondent no.4 vide different letters, directed respondent no.5 to provide a list of additional work at the construction site of 200 Bedded Virhad



Ashraya Griha at both the sites in West Champaran and Muzaffarpur. The additional work in both the projects contained construction of path/road, increase of height of peripheral boundary wall, wire fencing and vitrified tiles. The additional work estimate was sent for approval by respondent no.5. After three months, respondent no.3 vide his letters dated 27.01.2023 and 28.01.2023 approved the supplementary work.

6. In the afore-noted premise, the petitioner entered into a supplementary agreement to the original agreement for the additional work allotted to him. However, it is contended on behalf of the petitioner that no additional time was granted to complete the work.

7. It is the case of the writ-petitioner that the work was commenced on time and there had never been any complaint with regard to progress of the work, which fact is also fortified from the fact that the petitioner had received all the payments on time. Specific assertion has been made in the writ petitions that the petitioner has completed 90% of the allotted work. However, despite all the best efforts, the work could not be completed on time due to the fault entirely on the part of the respondent-Corporation.

8. The learned counsel for the petitioner further contended that delay in obtaining permission for soil filling in



campus of the project site; not making payment of the project, as the allotment of fund was not available with the Department; delay in providing drawing of pending works; approval for construction of PCC road and due to rain are the reasons of delay disclosed by the writ-petitioner. Despite the additional work by way of supplementary contract agreement, no additional time was granted for supplementary work and there was delay on the part of the respondent-Corporation and its authorities but, all of a sudden, the Deputy General Manager of Corporation, Muzaffarpur issued show-cause notices directing the petitioner to provide complete work plan and show-cause reply within a period of five days as to why action of debarment not be taken against the petitioner.

9. In response to the aforesaid show-cause notices, the petitioner submitted his respective replies pointing out non-payment of outstanding dues against the work done, as also pending drawing and approvals of the additional works. However, the respondent-authorities instead of providing drawing issued further show-cause notices to the petitioner.

10. The petitioner submitted a detailed show-cause reply making it clear that 90% of the work has already been completed and the work left to be completed only due to non-providing of approval and drawing by the respondent-



authorities. The replies of the second show-cause notices have been placed on record by way of different annexures.

11. The learned counsel for the writ-petitioner further urged that after filing of the show-cause reply, the respondent(s) did not take any action nor issued any further notice for a few months, but all of a sudden, vide order dated 15.12.2023 came out with the impugned orders and debarred the petitioner from participating in future tender(s) till the completion of work in both the projects, which order(s) are challenged herein.

12. Mr. Anurag Saurav, learned counsel for the petitioner while challenging the impugned order(s) of debarment, has taken this Court to the general condition of the Contracts, especially Clause 14 thereof and submits that Clause 14(iii) specifically stated that if the contractor fails to complete the work or items of work with individual dates of completion, on or before date of completion and does not complete them within the period specified in a notice given in writing in that behalf by the Engineer in-Charge, the contract may be cancelled. However, in the present case, admittedly, the contract had not been terminated but the petitioner has been debarred from participating in future tender(s).

13. Learned counsel for the petitioner has relied on a decision rendered by the Hon'ble Apex Court in **Gorkha**



Security Services v. Govt. (NCT of Delhi) and Others [(2014)

9 SCC 105], especially para-16 thereof, which is held as under:

“16. It is a common case of the parties that the blacklisting has to be preceded by a show-cause notice. Law in this regard is firmly grounded and does not even demand much amplification. The necessity of compliance with the principles of natural justice by giving the opportunity to the person against whom action of blacklisting is sought to be taken has a valid and solid rationale behind it. With blacklisting, many civil and/or evil consequences follow. It is described as “civil death” of a person who is foisted with the order of blacklisting. Such an order is stigmatic in nature and debars such a person from participating in government tenders which means precluding him from the award of government contracts.”

14. On the other hand, learned counsel for the Corporation, submitted that the petitioner has an efficacious alternative remedy to file an appeal against the impugned order(s) in terms of Sub Clause 4 of Clause 11 of the Bihar Contractor Registration Rules, 2007 (for brevity “the Rules, 2007”). Further, the petitioner raised several grounds and circumstances for not completing the work in issue as per time schedule. These are disputed facts which cannot be agitated or resolved by way of writ petition. The same should be resolved



by way of dispute redressal mechanism as submitted in the agreement under Clause 25. On this score, the writ petitions are fit to be rejected.

15. The learned counsel for the respondent-Corporation, referring to the averments made in the counter affidavit, categorically denied that the petitioner has completed 90% of the work. It is also contended that time and again, the petitioner was requested to expedite the work and furnish complete work plan but to no avail. The petitioner was warned of its lackadaisical approach towards the execution of the work. The respondent(s) reminded the petitioner to increase labour force at the site. Specific show-cause has been given that failure to expedite the work and furnish work schedule for completion of work, may lead to debarment but the writ-petitioner did not ensure compliance of any of such directions.

16. In the aforesaid premise, the order of debarment has been passed. However, that debarment is only for participating in any other tender till completion of the work allotted to the petitioner, was the contention of the learned counsel for the respondent(s).

17. On a query made by this Court with regard to authority and jurisdiction of the concerned respondent in passing the order of debarment, the learned counsel for the



Corporation, drew the attention of this Court to a letter issued by the Engineer-in-Chief-cum-Additional Commissioner-cum-Special Secretary, Building Construction Department, Government of Bihar, contained in Memo No. 1333(ॠ) dated 06.02.2015 (Annexure-R/2) and submitted that the letter empowered the Executive Engineer to take a decision of debarment in case the work is not completed within the stipulated time; if there is lack of quality in the work or after execution of the contract; the respondent(s) come to know that wrong papers have been used by the Contractor at any stage.

18. At this juncture, the learned counsel for the petitioner, submitted at the Bar, that the writ-petitioner has always been ready and willing to complete the work and if he would be provided reasonable period of three months time, he shall be able to complete the additional work also.

19. We have heard the learned counsel for the respective parties and perused the materials available on record.

20. Admittedly, the dispute has arisen after the additional work allotted to the writ-petitioner, through the supplementary agreement entered into between the parties. The materials available on record suggests that the works were completed and substantive payments were made on being satisfied with the work. The contention of the writ-petitioner



that he has completed 90% of the work, though has been refuted by the respondent-Corporation, the Corporation does not disclose as to how much work has been done by the writ-petitioner. Hence, only denial on the part of the respondents would not suffice to prove the facts disputed, which is required to be resolved by the dispute redressal mechanism.

21. Having gone through the Rules, 2007, especially Rule 11 thereof, which deals with the prescription of blacklisting and suspension of a Contractor or its registered firm, we do find any power of debarment of a Contractor or its registered firm from participating in a future tender(s), that too for the period the Contractor completes the work allotted. On the one hand, the petitioner is debarred from participating in any other tender, *per contra* he has been directed to proceed with the subsisting agreement, *prima facie*, dehors the Rules, 2007. There is hence no cancellation of the work awarded.

22. Generally a writ petition should not be entertained when an effective alternate remedy is provided in law but this rule is not an absolute rule of law. There are certain valid exceptions where the writ petitions are maintainable and not to be relegated to alternative remedy. The Hon'ble Supreme Court in the case of **Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and Others [(1998) 8 SCC 1]** held that



“under Article 226 of the Constitution of India, the High Court has discretion in regard to the matter of entertaining a writ petition and the existence of alternative remedy has been consistently held not to operate as a bar.” The order or proceeding is/are wholly without jurisdiction is one of the contingency, which does not bar exercise of writ jurisdiction, is the mandate of the Hon’ble Supreme Court.

23. It is trite law that all executive actions, which operate to the prejudice of any person must have the authority of law to support it. If any order results in infringement of fundamental right, as provided under Article 19(1)(g) of the Constitution of India, it should pass the test of reasonableness, which is the essence of Article 14 of the Constitution of India.

24. The impugned order(s) of debarment based on a letter as contained in Memo No. 1333(५) dated 06.02.2015, does not have the authority of law to support it and, as such, in the opinion of this Court, the order of debarment as contained in letters no. 1108 and 1110 both dated 15.12.2023 are hereby set aside.

25. This Court further takes note of the statement of the petitioner that it undertakes to complete the additional work in terms of the supplementary agreement within a further period of three months. The respondents are, thus, directed to consider



the request of the writ-petitioner and if its request finds favour, it may be allowed adequate time to complete the additional work, in the larger public interest.

26. The writ petitions are allowed with the observations noted hereinabove.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

rohit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	08-05-2024
Transmission Date	

