

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16299 of 2024

Kislay Enterprises, Flat No. 201, Block-F, Kashyap Green City, Kothwan,
Rupaspur Nahar, Bailey Road, Patna-801105, through one of its partner
Ashutosh Ranjan, Male, aged about 32 years, Son of Umesh Kumar Singh.

... .. Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary, Building Construction Department, Bihar, Patna.
2. Secretary, Building Construction Department, Visveswaraya Bhawan, Bailey Road, Patna, Bihar.
3. Engineer-In-Chief, Building Construction Department, Visveswaraya Bhawan, Bailey Road, Patna, Bihar.
4. Chief Engineer (North), Building Construction Department, Visveswaraya Bhawan, Bailey Road, Patna, Bihar.
5. Internal Financial Advisor, Building Construction Department, Visveswaraya Bhawan, Bailey Road, Patna, Bihar.
6. Superintending Engineer, Building Construction Department, Muzaffarpur Circle, Muzaffarpur, (Bihar).
7. Executive Engineer, Vaishali, Building Division, Hajipur (Bihar).
8. Executive Engineer, Building Division, Chapra, District- Saran, Bihar.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 17492 of 2024

Kislay Enterprises, Flat No. 201, Block-F, Kashyap Green City, Kothwan,
Rupaspur Nahar, Bailey Road, P.S.- Rupaspur, Patna-801105, District- Patna,
through one of its partner Ashutosh Ranjan, Male, aged about 32 years, Son
of Umesh Kumar Singh, Resident of Flat No. 201, Block-F, Kashyap Green
City, Kothwan, Rupaspur Nahar, Bailey Road, P.O- Khagaul, P.S- Rupaspur,
District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary, Building Construction Department, Bihar, Patna.
2. Secretary, Building Construction Department, Visveswaraya Bhawan, Bailey



Road, Patna, Bihar.

- 3. Chief Engineer (Patna), Building Construction Department, Visveswaraya Bhawan, Bailey Road, Patna, Bihar.
- 4. Superintending Engineer, Building Construction Department, Patna Circle, Patna, (Bihar).
- 5. Executive Engineer, Patna West, Building Division, Danapur, District- Patna (Bihar).

... .. Respondent/s

with
Civil Writ Jurisdiction Case No. 17789 of 2024

Kislay Enterprises Flat No. 201, Block-F, Kashyap Green City, Kothwan, Rupaspur Nahar, Bailey Road, P.S.- Rupaspur, Patna- 801105, District - Patna, through one of its partner Ashutosh Ranjan, Male, aged about 32 years, Son of Umesh Kumar Singh, Resident of Flat No. 201, Block - F, Kashyap Green City, Kothwan, Ruspapur Nahar, Bailey Road, P.O. - Khagaul, P.S. - Rupaspur, District - Patna.

... .. Petitioner/s

Versus

- 1. The State of Bihar through the Principal Secretary, Building Construction Department, Bihar, Patna.
- 2. Secretary, Building Construction Department, Visveswaraya Bhawan, Bailey Road, Patna, Bihar.
- 3. Engineer In-Chief, Building Construction Department, Visveswaraya Bhawan, Bailey Road, Patna, Bihar.
- 4. Chief Engineer (North), Building Construction Department, Visveswaraya Bhawan, Bailey Road, Patna, Bihar.
- 5. Internal Financial Advisor, Building Construction Department, Visveswaraya Bhawan, Bailey Road, Patna, Bihar.
- 6. Superintending Engineer, Building Construction Department, Muzaffarpur Circle, Muzaffarpur, (Bihar).
- 7. Executive Engineer, Vaishali, Building Division, Hajipur (Bihar).
- 8. M/s Lotus Infraconstruction Private Limited Kedar House, Sri Nagar Colony, Home Pipe Factory Campus, Sandalpur, P.O. - Mahendru, District - Patna - 800006, Bihar.

... .. Respondent/s



with
Civil Writ Jurisdiction Case No. 17948 of 2024

Kislay Enterprises Flat No. 201, Block-F, Kashyap Green City, Kothwan, Rupaspur Nahar, Bailey Road, P.S.- Rupaspur, Patna- 801105, District - Patna, through one of its partner Ashutosh Ranjan, Male, aged about 32 years, Son of Umesh Kumar Singh, Resident of Flat No. 201, Block - F, Kashyap Green City, Kothwan, Rupaspur Nahar, Bailey Road, P.O. - Khagaul, P.S. - Rupaspur, District - Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Building Construction Department, Bihar, Patna.
2. Secretary, Building Construction Department, Visveswaraya Bhawan, Bailey Road, Patna, Bihar.
3. Engineer In-Chief, Building Construction Department, Visveswaraya Bhawan, Bailey Road, Patna, Bihar.
4. Chief Engineer (North), Building Construction Department, Visveswaraya Bhawan, Bailey Road, Patna, Bihar.
5. Internal Financial Advisor, Building Construction Department, Visveswaraya Bhawan, Bailey Road, Patna, Bihar.
6. Superintending Engineer, Building Construction Department, Muzaffarpur Circle, Muzaffarpur, (Bihar).
7. Executive Engineer, Vaishali, Building Division, Hajipur (Bihar).
8. Executive Engineer, Building Division, Chapra, District - Saran, Bihar.
9. Bhushan Kumar Singh, Ishmela, P.O. - Dariyapur, P.S.- Dariyapur, District - Saran (Bihar)- 841221.

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 16299 of 2024)

For the Petitioner/s : Mr. Raju Giri, Advocate
Mr. Harsh Vardhan, Advocate
For the Respondent/s : Mr. P. K. Shahi, AG
Mr. Raghwanand, GA-11
Mr. Pratik Kumar, AC to GA-11

(In Civil Writ Jurisdiction Case No. 17492 of 2024)

For the Petitioner/s : Mr. Raju Giri, Advocate
For the Respondent/s : Mr. Government Advocate (05)



(In Civil Writ Jurisdiction Case No. 17789 of 2024)

For the Petitioner/s : Mr. Raju Giri, Advocate

For the Respondent/s : Mr. P. K. Shahi, Advocate General

(In Civil Writ Jurisdiction Case No. 17948 of 2024)

For the Petitioner/s : Mr. Raju Giri, Advocate

For the Respondent/s : Mr. P. K. Shahi, Advocate General

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE NANI TAGIA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 03-12-2024

C.W.J.C. Nos. 17789 of 2024, 17948 of 2024 and 17492 of 2024 are an off-shoot of the debarment, which was challenged in C.W.J.C. No.16299 of 2024; which last referred case will be considered first.

2. The petitioner's contention is that the debarment was never communicated to the petitioner and hence the petitioner could not have known about it; for disclosure in the tender proceedings. The learned Counsel for the petitioner also submits that debarment was challenged in C.W.J.C. No.16499 of 2024 and there was an interim order passed on 25.10.2024 staying the debarment.

3. We have already stayed the debarment order produced at Annexure-P/13 in C.W.J.C. No. 16299 of 2024, as per order dated 25.10.2024.

4. The petitioner is aggrieved with the debarment issued at Annexure-P/13 wherein, the petitioner has been



debarred from participating in any tender till the completion of the work awarded; on two grounds. One, that there is no power to debar a contractor while the work is going on, without termination or cancellation of the work awarded. The further ground is that there is no show cause notice issued. It is also submitted by the learned Counsel for the petitioner that though the estimate of the work was around Rs 14 Crores 19 lacs the petitioner has now completed work as per the revised estimate, coming to an amount of more than Rs 16 crores. Again a revision was necessitated by the passage of time, which is pending consideration.

5. The learned Government Advocate however, submits that the petitioner was debarred only to ensure that the work is carried out without any hindrance, specially considering the delay which has occurred. As far as the work having been done, in addition to the estimated cost, it is submitted that, by the passage of time, it is normal that revision of estimate occurs and even in the debarment order the revised work order was specifically mentioned. The supplementary counter affidavit has also been referred to.

6. We have to find that there is no power conferred on the authority to debar the contractor from applying for other



tenders, if the tender awarded is not cancelled. There can be no restriction on applying for other tenders, till the completion of a work awarded, especially since there is absence of such power and specification, in the notice inviting tender in which the contractor had successfully bid and obtained the letter of acceptance.

7. We also see from the supplementary counter affidavit filed that, to take a final decision on the revised estimate and deviation chart, submitted by the contractor, four weeks time would be required. Hence the delay is not by reason of the petitioner's default alone.

8. On a consideration of the entire facts, we are of the opinion that the debarment cannot be sustained especially since the respondents submit that the revised estimate is still pending with them and they need four weeks time to consider and approve the same, if possible. We find the impugned order to be not supported by any legal provision.

9. We also notice that no show cause notice was issued prior to the debarment, which does not stand controverted in the affidavits filed by the State. The learned Government Advocate, on a reference to the counter affidavit only speaks of a show cause notice having been issued on 27.11.2023, as



produced as Annexure-R/D which the petitioner submits was never served on him. Even the averment in the counter affidavit, producing Annexure-R/D, is that the show cause notice was served to the petitioner, by hand; the acknowledgment of which, is not seen in the copy of the notice produced. The order of debarment impugned in C.W.J.C. No.16299 of 2024 is set aside and the writ petition stands allowed.

10. Now we come to the other writ petitions, where the petitioner was disqualified for reason of the debarment; which debarment has been set aside by us. The learned Advocate General specifically took us to the further notice issued by the Tendering Authority available in Annexure-P/13, the translation of which has been produced before us. Therein, while deprecating the delay in execution of the work, it has been specifically stated so *“It is known that due to your indifferent and careless attitude towards your work, you were earlier debarred from participating in the next tender till the competition of the said work, even after that there has been no positive change in your working style.”* Hence, the debarment was brought to the notice of the petitioner and the petitioner had not challenged the same or stated that he was ignorant of such debarment, in Annexure-P/18 dated 23.07.2024, which was in



response to Annexure-P/17, which read Annexure-P/17 in its reference.

11. Having gone through Annexure-P/17 and Annexure-P/18, we cannot but notice that the petitioner was informed of the debarment, at least on 23.07.2024, when he received Annexure-P/17 dated 22.07.2024 and replied to the same, as per Annexure-P/18. Annexure-P/18 as argued by the learned Advocate General does not contain any reference to the debarment, nor does it speak of the petitioner being ignorant of such debarment.

12. In the above circumstances, we have to consider the claim of non-disclosure, on which the petitioner was disqualified, in the other tenders, based on the dates. The debarment order was issued on 30.12.2023 and since there was no acknowledgment of receipt of the order or even an indication of the same having being duly transmitted by registered post acknowledgment due, the petitioner cannot be said to have known of the said order immediately, after the said order was issued. In any event, on 23.07.2024 when the petitioner issued Annexure-P/18 communication, which is produced in C.W.J.C. No.16299 of 2024, the petitioner came to know of the debarment, which he should have disclosed or if he had not been



served with the order, he should have made attempts to get the order served on him.

13. On the above reasoning, we find that if the bid was made by the petitioner between 30.12.2023 and 23.07.2024, the petitioner cannot be accused of having not disclosed the debarment. However, after 23.07.2024, the petitioner cannot be said to be ignorant of the debarment order.

14. We find in C.W.J.C. No. 17789 of 2024, the last date for uploading the bid was on 05.07.2024, which is between the period as we noticed above, where the petitioner is said to have been unaware of the debarment order passed. The disqualification made only on the basis of non-disclosure of debarment order if set aside, would prejudice the successful tenderer who has been impleaded. C.W.J.C. No.17789 of 2024 is de-linked. Hence, Registry is directed to de-link the above case, for issuance of notice to the 8th respondent impleaded therein.

15. As far as C.W.J.C. Nos.17948 of 2024 and 17492 of 2024 are concerned, the respective last dates for uploading the bid were 30.07.2024 and 25.08.2024 much after the petitioner came to know of the order of debarment passed; which he should have disclosed in the tender submitted. It is



also pertinent that even the interim stay in C.W.J.C. No.16299 of 2024 was passed only on 25.10.2024. The above writ petitions hence, are liable to be dismissed.

16. C.W.J.C. No.16299 of 2024 is allowed and C.W.J.C. Nos. 17492 of 2024 and 17948 of 2024 are dismissed.

Re : C.W.J.C. No. 17789 of 2024

Based on the findings in C.W.J.C. No.16299 of 2024 and analogous cases, finding that the petitioner was not aware of the debarment on the date of submission of tender, which is 05.07.2024, issue notice to the respondent No.8, under both process, i.e., ordinary as well as registered post with A.D., for which necessary requisites must be filed within a period of two weeks from today.

2. There shall also be an interim stay of issuance of Letter of Acceptance (LOA), if it is already not furnished.

(K. Vinod Chandran, CJ)

(Nani Tagia, J)

sharun/-

AFR/NAFR	
CAV DATE	
Uploading Date	06.12.2024
Transmission Date	

