

(2016) 05 JH CK 0171

JHARKHAND HIGH COURT

Case No: Writ Petition (C) No. 3303 of 2015

M/s Uday Prasad

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision: May 13, 2016

Citation: (2017) 1 AIRJharR 15 : (2016) 3 JLJR 162

Hon'ble Judges: Mr. Aparesh Kumar Singh, J.

Bench: Single Bench

Advocate: Mr. Rakesh Kumar Sinha, Advocate, for the Petitioner; Mr. Vikash Kumar, J.C. to Ajit Kumar, A.A.G, for the Respondents

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Mr. Aparesh Kumar Singh, J. - Heard learned counsel for the parties.

2. Petitioner is aggrieved by the letter no. 323/10-3121 dated 18.10.2013, Annexure-4 issued by the Principal Secretary, Rural Works Department cum Chief Executive Officer, Jharkhand State Rural Road Development Authority (J.S.R.R.D.A.) addressed to the Engineer-In-Chief cum Additional Commissioner cum Special Secretary, Rural Works Department, Chief Engineers of Rural Works Department and J.S.R.R.D.A., Superintending Engineers of all Work Circle under the Rural Works Department and Executive Engineers of Works Division under the said Department where under he has been debarred along with 24 other contractors from participating in any new tender issued by the Rural Works Department and J.S.R.R.D.A.

The impugned letter indicates that during course of monthly review meeting, it was found that several projects initiated in July 2008 and work allotted in June 2009 have remained pending in respect of these Contractors. It further indicates that only after completion of the remaining pending work by the individual agencies like the petitioner, on the recommendation of the Chief Engineer, J.S.R.R.D.A., the name of

such agencies will be deleted from the list enclosed. Till then any fresh work will not be allotted to any of these agencies.

3. Petitioner was allotted construction and maintenance of road from Mandhania to Village Sehda, 5th Phase (Package Number JH 02 01), in the district of Chatra under the Prime Minister Gram Sadak Yojana (PMGSY), Ministry of Rural Development, Government of India. Agreement was entered on 26.9.2009 for construction of the said road of length 13.700 KM and the work order was issued on the same date. The cost of the construction work was Rs. 416.123 Lacs.

4. Respondents in their first counter affidavit have admitted at para 16 that petitioner completed earth work, GSB work, Grade-II and Grade III work one by one but left the bituminous work deliberately. Work was to be completed within a period of 1 year while the petitioner completed part of the work within a period of 1 year and 8 months but failed to complete rest of the work. Work completed is to the extent of 70% in 1 year 8 months while he had to complete 100% work in 1 year.

5. The contention of the petitioner as made out in the writ petition at Para 2(X) and 17 that the impugned order at Annexure-4 virtually debarring him from participating in any fresh tender floated by Respondents- Rural Works Department and J.S.R.R.D.A, has been made without any notice or show cause is not categorically denied in the statements made by the respondents at para 24 of their first counter-affidavit. In the supplementary counter-affidavit the respondents have taken another ground that despite issuance of the order for undertaking some additional work such as profile correction and moorum topping through letter dated 8.7.2013 issued by the Executive Engineer, Rural Works Division, Chatra, respondent no.6, petitioner did not complete the deviated work also.

6. This contention of the respondents is replied by the petitioner by relying upon letter dated 17.7.2013 of the same respondent no.6, Annexure-11 to the rejoinder, by which additional work sought to be executed was kept in abeyance. Reliance has been placed upon Annexure-6 dated 22.1.2014 and Annexure-12 dated 20.7.2013 to the rejoinder where under correspondences between the Executive Engineer and Chief Engineer, J.S.R.R.D.A as also by the Division Forest Officer, Wild Life Division, Hazaribag with the respondent no.6 disclose that area in question falls within the boundaries of National Park. Execution of any such project require environmental clearance before obtaining which, work has been allotted to the petitioner. The Divisional Forest Officer, Wild Life Division, Hazaribag has also informed respondent no.6 that petitioner along with him would be liable for contravening provisions of Indian Wild Life (Protection) Act, 1972 and face penal action as no approval from the Wild Life Board has been obtained. No work can be initiated without the statutory environmental clearance and permission from Wild Life Board.

7. The aforesaid state of facts therefore do not leave any room of doubt that not only the impugned order has been passed without any notice in compliance of

principles of natural justice to debar the petitioner from participating in any fresh tender under the respondent-department and J.S.R.R.D.A till completion of the pending work in question, but the execution of such works is subject to statutory environmental clearance and permission from National Wild Life Board. The impugned order concerns 25 such agencies. It does not show independent application of mind to the case of individual petitioner. In such circumstances, the order of debarment is vitiated on account of violation of principles of natural justice as also for non application of mind. In fact the order does not indicate any specific reason vis-a-vis the case of the individual person like the petitioner. The consequence, however are adverse as the petitioner has been debarred from undertaking any fresh work in the said Department.

8. In such circumstances, the impugned order at Annexure-4 dated 18.10.2013, so far as it concerns the present petitioner is quashed. Respondents are at liberty to take a fresh decision in accordance with law. The writ petition is allowed in the aforesaid manner and to the extent indicated herein above.