

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21716 of 2014

=====

M/s Ravindra Kumar Dubey, through its proprietor Ravindra Kumar Dubey,
Son of Sri Vishwanath Dubey, registered office at village- Kanhauli, P.O.-
Bhikpur Bhagwanpur, P.S.- M.H.Nagar, District- Siwan.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Road Construction Department, Government of Bihar, Patna.
2. The Principal Secretary, Road Construction Department, Government of Bihar, Vishweshwaraiya Bhawan, Patna-15.
3. The Engineer-in-Chief-cum-Additional Commissioner-cum-Special Secretary, Road Construction Department, Government of Bihar, Vishweshwaraiya Bhawan, Patna-15.
4. The Chief Engineer, Road Construction Department, North Bihar Wing, Government of Bihar, Darbhanga, presently holding office at Vishweshwaraiya Bhawan, Patna-15.
5. The Superintending Engineer, Saran Road Circle, Road Construction Department, Government of Bihar, Hazipur.
6. The Executive Engineer, Road Construction Department, Government of Bihar, Road Division, Gopalganj.
7. The Executive Engineer, Road Construction Department, Government of Bihar, Road Division, Siwan.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Binod Kumar Singh, Advocate.
For the Respondent/s : Mr. Amar Nath Deo, SC-26

=====

CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

2 05-01-2015 Heard learned counsel for the parties as with regard to
the following relief prayed in this writ application:-

"For quashing letter no. 1349 dated 12.11.2014 of the
Executive Engineer, Road Construction Department,
Road Division, Gopalganj whereby and whereunder
the said Executive Engineer has directed the petitioner
to deposit Rs. 1.83 crores immediately under 'the
Bihar Public Demand Act' through draft and also

prohibit the respondents from issuing any such letter in future." .

2. Having regard to the fact that the impugned order, as contained in Anenxure-1, dated 12.11.2014 is out and out a demand notice sent by the Executive Engineer to the petitioner, a contractor, this Court does not find any reason to interfere with the same only because there is a reference to taking recourse under the Bihar Public Demand Recovery Act (hereinafter referred to as 'the Act').

3. By now, it is well settled that in order to constitute a demand notice under the Act, there has to be a proceeding followed by a notice under Section 7 of the Act whereafter the certificate debtor can raise objection with regard to his liability and its adjudication by the Certificate Officer by way of disposal of the objection under Sections 7, 9 and 10 of the Act.

4. At present, that stage has not reached because the Executive Engineer, who has issued the demand notice to the petitioner, could at best file a requisition in the event of non payment of the amount by the petitioner. As and when, on such requisition of the Executive Engineer, the certificate proceeding is drawn, the petitioner will have the remedy as against such demand notice and/or the action taken by the certificate officer. For the

present, this writ application seems to be premature and misconceived.

5. Learned counsel for the State, at this stage, submits that the petitioner's liability having been fastened as per the Accountant General Report, nothing said in this order should be deemed to obstruct the way of the Executive Engineer in taking appropriate action against the petitioner for realization of the demand.

6. Learned counsel for the petitioner has immediately tried to explain that the amount in question, being sought to be recovered from the petitioner, being itself not a public demand as per Schedule I of the Act, there would be no need in respect of the petitioner becoming liable to be proceeded under the provision of certificate proceedings under the Act.

7. In the considered opinion of this Court, all that can be said in the present case for the time being is that this writ application is wholly premature but at the same time nothing said in this order however will take away the rights of either party in making its recovery of the amount in accordance with law.

8. When such an observation has been made, learned counsel for the petitioner seeks permission to withdraw this writ application in order to enable the petitioner to raise the issue once

again before the appropriate forum/court, if need be.

9. This writ application subject to aforementioned observations is accordingly permitted to be withdrawn with the liberty to the petitioner to move appropriate forum/court if and when a fresh cause of action would arise in future.

(Mihir Kumar Jha, J)

Sujit/-

U			
---	--	--	--