

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2288 of 2015

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Satyendra Kumar Yadav S/o Sri Sukhlal Yadav resident of Mohalla - Shastri
Nagar, Road No. 4, P.S. Rampur, District - Gaya

.... Petitioner

Versus

1. The State of Bihar through the Engineer in Chief Cum Additional Commissioner
- Cum - Special Secretary, Rural Works Department, Bisheshwaraiya Bhawan,
Bailey Road, Patna
2. The Superintending Engineer, Rural Works Department, Works Division
Sherghati, District - Gaya
3. The Executive Engineer, Rural Works Department, Works Division Sherghati,
District - Gaya
4. The Executive Engineer, Rural Works Department, Works Division Gaya,
District - Gaya

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Ravindra Kumar Sinha, Advocate

For the Respondent/s : SMT. GEETA KUMARI, GP28

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 14-08-2015

Heard learned counsel for the petitioner and learned counsel for the
State.

2. Present writ petition has been filed with a prayer for quashing the
order dated 04.10. 2013 passed by the Engineer-in-Chief-cum-Additional
Commissioner-cum-Special Secretary of Rural Works Department,
Government of Bihar vide Memo No. 14/11369 whereunder the petitioner
and others have become defaulter and restrained from participating in future
tenders.

3. Learned counsel for the petitioner submits that even without
entering into the detailed facts and merits of the impugned order dated
04.10.2013 the same is illegal and unsustainable on the face of it having been

passed without any prior show cause notice, without assigning a single reason for the decision to declare him defaulter and also on the ground that the petitioner has been debarred from participating in future contracts for an indefinite period, which is impermissible.

4. Learned counsel for the respondents on the other hand submits that show cause notices have been issued on different dates by the Executive Engineer, Rural Works Department, Works Division, Sherghati as published in the daily newspaper calling upon the petitioner to complete the work, but the petitioner did not take interest in completion of the work and owing to which the agreement with the petitioner ultimately came to be rescinded. It has further been submitted that the petitioner has not approached this Court with cleans hands as the statement made in paragraph 24 of the writ petition to the effect that he has not approached this Court for the present relief earlier is incorrect as one other writ petition has been filed by the petitioner in the year 2014.

5. Having heard the parties and on perusal of the materials on record this Court finds considerable force in the submission of the learned counsel for the petitioner. An adverse order passed against the petitioner having civil consequences was required to be passed after due notice to the petitioner. Even according to the respondents the notices published in the newspaper only required the petitioner to complete the work, but did not afford any opportunity to the petitioner for being heard against the proposed action of debarment and participation in future contracts. Moreover, the validity of the impugned order must be tested on the reasons contained in the order itself and cannot be sustained on the basis of reasons subsequently

supplemented by the respondents upon the validity of the order being challenged by the petitioner. Admittedly, the impugned order contains no reason whatsoever for the petitioner' debarment. It also appears that even according to the respondents, the earlier writ petition filed in the year 2014 was against the order dated 19.06.2014 but no details of the case are stated. The record discloses that by the said order the petitioner's contract was terminated. It was thus clearly in this context that the writ petitioner earlier filed the writ petition and it cannot be said that the petitioner has made any misstatement in the writ petition in that regard.

6. For the above reasons, the impugned order dated 04.10.2013 is hereby set aside in so far it concerns the petitioner only with liberty to the respondents that if so advised the respondents may proceed against the petitioner for debarment after issuing proper show cause notice and taking a decision in the matter in accordance with law.

7. The writ petitions stands allowed.

(Vikash Jain, J)

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