

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3597 of 2010

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Jitendra Kumar Singh S/O Sri Alakhdeo Singh, R/O Vill Ratanpur, P.S. Piprahi,
Distt- Sheohar

.... Petitioner/s

Versus

1. The State Of Bihar Through The Principal Secretary, Water Resources Department Government Of Bihar, Patna
2. The Engineer -In-Chief, Water Resources Department Government Of Bihar, Patna
3. The Chief Engineer, Water Resources Department Government Of Bihar, Patna
4. The Superintending Engineer, Major Work Circle (Shirsh Karya Anchal), Water Resources Division Sitamarhi
5. The Executive Engineer Bagmati Division, Sheohar
6. Sri Yugal Kishore Singh S/O not known, R/O Vill +P.O. Belwa, P.S. Piprahi, Distt- Sheohar

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Jagannath Singh

For the Respondent No.1 to 5: Mr. Satish Narain Singh, AC to GA-2

For the Respondent No. 6 : None.

CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA

ORAL JUDGMENT

Date: 13-02-2015

Heard Learned counsel appearing on behalf of the petitioner and the learned A.C. to GA-2 appearing on behalf of the respondent no. 1 to 5. However, despite valid service of notice, none is appearing on behalf of the respondent no.6.

2. The petitioner is aggrieved by the order/communication dated 15.02.2010 (Annexure-3) issued under the signature of respondent No.4 -the Superintending Engineer, Major Work Circle (Shirsh Karya Anchal) Water Resources Division, Sitamarhi, whereby contract work for construction of boundary wall in the campus of Bagmati Division, Sheohar has been allotted in favour of the respondent no.6 by way of lottery.

3. In this case notice was earlier issued to the respondent no. 6 by a Bench of this Court by an order dated 03.03.2010 and in the meantime, learned State counsel was directed to seek

instructions and file a counter-affidavit. By the aforesaid order dated 03.03.2010 itself, execution of agreement pursuant to the impugned communication (Annexure-3) was stayed till the appearance of the respondent no. 6 and filing of the counter-affidavit by him.

4. As noticed above, despite valid service of notice, respondent no.6 has chosen not to appear in the present matter and has not filed his counter-affidavit controverting the claims raised on behalf of the petitioner. Even on behalf of the respondent no. 1 to 5, a counter-affidavit has been filed today itself when the matter has been taken up for consideration on merits with a view to its final decision.

5. It is, now, admitted case of the petitioner as also the respondent no. 1 to 5 that on the basis of N.I.T., as contained in Annexure-1 and pursuant to the impugned communication/ order, as contained in Annexure-3, the agreement has not been signed between the respondent no.6 and the official respondents for execution of the contract work in question.

6. Learned counsel appearing on behalf of the petitioner submits that contrary to the stipulation in the NIT as contained in Annexure-1 the work in question was allotted in favour of the respondent no. 6 by way of lottery. It is further submitted that for opening the financial bid, 15.02.2010 was the date fixed and notice to that effect was issued on 13.02.2010. According to him, the petitioner was not served upon the aforesaid notice, therefore, he was not present on the date fixed for opening the financial bid.

7. Learned State counsel submits that on the date of opening of financial bid, the petitioner was not present, therefore, he is not entitle to raise the question of validity of the impugned

communication. According to him, only four bidders were present and finally it was decided that the allotment of work should be made by way of lottery in favour of the bidders, who were present there. However, to a query made by this Court he has not been able to show from Annexure-B that the respondent no. 6 was present on the date for opening of the financial bid, yet the contract work had been allotted in favour of the respondent no.6. Learned State counsel has also not been able to show that the quotation of two other bidders, were exactly same and, therefore, the process of lottery was adopted in terms of Rule-163 of the Bihar P.W.D. Code.

8. After having heard learned counsel for the petitioner and the learned State counsel, this Court is of the opinion that the impugned order/communication (Annexure-3) cannot be sustained for the apparent infirmities/ irregularities in the procedure followed by the respondents for allotment of work and entire exercise has to be undertaken afresh in accordance with law.

9. For the reasons recorded above, the impugned order/communication dated 15.02.2010 (Annexure-3) is hereby set aside and quashed with a direction to the respondents to issue a fresh N.I.T. for allotment of the works. If such a fresh N.I.T. is issued by the competent authority of the State, the petitioner and the respondent no. 6, besides others, if otherwise eligible, shall be allowed to participate in the bid and the same shall be considered in accordance with law.

10. The writ petition stands allowed to the extent indicated above. However, there shall be no order as to costs.

(Birendra Prasad Verma, J)

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