

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14068 of 2016

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M/s. Sanjay Constructions through its partner Sanjay Kumar, son of
Basudeo Prasad Yadav, resident of Mohalla Lohar Gali, Musallahpur Hat,
P.S. Sultanganj, District Patna, Bihar

.... Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar,
Patna
2. The Principal Secretary, Water Resources Department, Government of
Bihar, Patna
3. The Engineer-in-Chief (Irrigation Creation) cum Adjudicating
Authority, Water Resources Department, Government of Bihar, Patna
4. The Superintending Engineer, Flying Squad Circle, Water Resources
Department, Government of Bihar, Patna
5. The Executive Engineer, Research and Training, Division No.II,
Khagaul, Patna, Bihar

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Prabhat Ranjan, Advocate

For the Respondent/s : Mr. Vikash Kumar, S.C. 11

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA
ORAL ORDER

3 24-08-2016 Heard learned counsel for the petitioner and learned
counsel for the State.

The petitioner has come up to this Court for quashing the
show cause notice dated 5.8.2016 issued by the Engineer-in-Chief
under the Bihar Contractors Registration Rules, 2007 as to why
the petitioner be not blacklisted and further for quashing the ex
parte enquiry report dated 27.6.2016 submitted by the Executive
Committee, Flying Squad, Circle-1, Patna, on the basis of which
the entire penal action has been proposed to be initiated.

Pursuant to the notice inviting tender the petitioner was
given an agreement for the work of Anti Erosion of Bagaha town
protection phase III at Poor House, Ratnmala in the length of 1550



meter (Group No.I). The petitioner was carrying out the said work and the work was examined by the Executive Engineer, Research and Training, Division No.II, Khagaul, Patna, which is the competent Laboratory, who had furnished two test reports dated 3.3.2016 and 22.4.2016 with regard to quality of boulders used in the scheme by the petitioner and the same were found to be in accordance with the terms of the agreement and thus the Quality Control Laboratory had approved the quality of the materials being used. Thereafter the Flying Squad of the Water Resources Department had also submitted its inspection report dated 16.5.2016 under the signature of the Superintending Engineer certifying the satisfaction of the work as per the quality and specification. Further a Joint Inspection Team headed by the Chairman, Special Squad, the Chief Engineer, Water Resources Department, Motihari, the Superintending Engineer, Water Disbursement Research Circle, Motihari and the Executive Engineer, Champaran Pramandal, Motihari had submitted their Inspection Report dated 17.4.2016, which does not point out any anomaly in the work of the petitioner.

Subsequently a Special Squad having a retired Engineer-in-Chief as a Chairman, was constituted by the Water Resources Department, in addition to three inspection reports dated 17.3.2016, 18.5.2016 and 6.6.2016, certifying the satisfactory completion of the work as per quality and specifications.

Thereafter the same Flying Squad has given a report on 27.6.2016 about certain defects, including void in the boulder being used as more than 20%, the tolerance limit of over size and under size boulders exceeding 10%, and G.I. Binding wire not having been used in accordance with the sanctioned estimate/agreement and also few other matters were reported.

In view of the said ex parte enquiry report dated 27.6.2016 the show cause notice dated 5.8.2016 was issued to the petitioner under the provisions of the Bihar Contractors Registration Rules, 2007 as to why it should not be blacklisted.

Learned counsel for the petitioner submits that filing of the reply to the show cause would be without any purpose as the ex parte enquiry report dated 27.6.2016 is not fit to be relied upon since the same is based upon the report of the same Agency just submitted one month before in the matter, and the samples having been drawn in the absence of the petitioner, no credence can be given to the same for taking action against the petitioner. It is submitted that the said enquiry can at best be called an internal inquiry upon which no reliance can be placed for taking action against the petitioner. It is further submitted that for the purpose of taking action against the petitioner the samples should have been fairly drawn and testing should also have been carried out in presence of the petitioner.

Learned Standing Counsel No.11 fairly submits that the

respondents are ready to draw fresh samples in the matter in the presence of the petitioner or its representative on any date that may be fixed by this Court.

In view of the aforesaid stand of the respondents and the fact that the action is said to be taken on the basis of the enquiry report which is based on the samples drawn in the absence of the petitioner, the writ application is allowed and the impugned show cause notice dated 5.8.2016 is quashed.

The respondents are directed to take fresh samples and to make fresh enquiry, including drawing of samples, etc. in the presence of the petitioner. The drawing of samples, etc. shall be carried out in the presence of the petitioner and/or its representative on 31st August, 2016 for which the petitioner must also ensure that it is present on the spot. Any further action in the matter shall only be taken on the basis of such fairly drawn samples and their testing in the presence of the petitioner.

(Ramesh Kumar Datta, J)

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