

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1545 of 2016

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Shree Tirupati Balaji Enterprises through its Proprietor Yogendra Sharma S/o late-
Thakur Sharma R/o Village- Newari, P.O. Newari, P.S Makhdumpur, District
Jehanabad.

.... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Rural Works Department, Patna
2. The Engineer-in-Chief, Rural works Department , Bihar Patna.
3. The Chief Engineer, North Bihar, Rural works Department Patna
4. The Superintending Engineer, Rural Works Circle, Gaya.
5. The Executive Engineer, Rural Works Department, works Division ,Jehanabad.

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Sanjay Kumar, Advocate

For the Respondent/s : Mr. VINAY KIRTI SINGH, GA-3

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 10-05-2016

Heard Mr. Sanjay Kumar, learned counsel appearing on
behalf of the petitioner and counsel for the State.

The petitioner is aggrieved by the order dated 04.1.2016 of
the Engineer-in-Chief bearing Memo No. 09 whereby the Chief
Engineer while enclosing a list of defaulters inclusive of the petitioner
whose name appears at serial no. 1 of the list has proceeded to debar
them from future contest. The order was questioned by Mr. Sanjay
Kumar learned counsel for the petitioner *inter alia* on merits as well
as on grounds of absence of reasonable opportunity to the petitioner
before visiting him with such a penalty.

A counter affidavit has been filed enclosing a list of notices
to defend the action.

I have heard learned counsel for the parties and I have
perused the records.

Facts of the case briefly stated is that the respondent Rural Works Department through the Executive Engineer entered into an agreement with the petitioner for the following works:

- (a) Construction of High Level Bridge over river Jamune near village Salempur to Kishunpur vide Annexure-1 at page 19;
- (b) Construction of High Level Bridge over river Jamune near village Auladya Bigha of Kalanaur vide Annexure-1/1 at page 22; and
- (c) Construction of High Level Bridge over river Jamune near village Katrasin vide Annexure-1/2 at page 25;

All these three agreements were entered on 18.10.2013 with the schedule of work to commence on 24.6.2013 and for its completion on 23.6.2014 as is manifest from the agreement(s) on record. The petitioner defaulted in completion of work and for which notices were issued on 23.7.2014, 17.1.2015 and 24.2.2015 enclosed at Annexure-1 series of the counter affidavit. The notices were responded to by the petitioner vide his explanation present at Annexure-4 on 13.3.2015. The explanation given by the petitioner was accepted and was acted upon by the Department when supplementary agreement was entered for the three works on 14.11.2015 present at Annexure-6 series. It is rather strange that even while the Department through its Executive Engineer has taken note of the difficulty expressed by the petitioner resulting in supplementary agreement on 14.11.2015 for completion of the work, on the other

hand, the Engineer-in-Chief proceeds to hold the petitioner a defaulter on 04.1.2016 with reference to notice bearing no. 1706 dated 24.9.2015 of the Executive Engineer, notice bearing No. 942 dated 24.9.2015 of the Superintending Engineer and notice bearing Memo No. 4090 dated 07.10.2015 of the Chief Engineer.

It is the specific stand of the petitioner that these letters were not handed over to the petitioner and Mr. Sanjay Kumar, learned counsel submits that besides the issue that these notices were never served on the petitioner even otherwise, the Department themselves having entered into a supplementary agreement they should have afforded an opportunity to the petitioner to complete the work before proceeding to hold him defaulter and to debar him from future contest.

In the circumstances so discussed, the action taken is defenceless and cannot be sustained and for the same reasons the order dated 04.1.2016 of the Engineer in Chief impugned at Annexure-7 insofar as it proceeds to hold the petitioner a defaulter and debars him from future participation, cannot be upheld and is accordingly set aside.

The writ petition is allowed.

(Jyoti Saran, J)

S.Sb/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	