

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Jurisdiction Case No.3111 of 2016

IN

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

.... Opp.Parties.

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Appearance :

For the Petitioner/s : Mr. Prabhat Ranjan

For the State : Mr. Vikas Kumar SC11

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA

ORAL JUDGMENT

Date: 22-09-2016

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

The modification petition has been filed for modification of the order dated 24.8.2016 passed by this Court in CWJC No. 14068 of 2016 by which the writ application was allowed and the impugned show cause notice dated 5.8.2016 for blacklisting the petitioner was quashed and further the respondents were directed to take fresh samples and to make fresh enquiry including drawing of samples, etc. in the presence of the petitioner which was to be carried



out on 31st August, 2016.

Thereafter the present modification petition has been filed seeking partial modification of the order dated 24.8.2016 to the effect that the respondents are at liberty to take any action in terms of the Agreement and actual site condition instead of issuing any direction to the respondents to conduct further enquiry.

Upon hearing learned counsels for the parties, this Court can see no reason for issuance of any such direction in a modification petition when the writ application itself has been disposed of and which are wholly contrary to the substance of the order and the directions with which the writ application has been disposed of. However, on the prayer of learned counsel for the petitioner, by order dated 31.8.2016 since the petitioner could not be present for the drawing of samples, this Court modified the order dated 24.8.2016 so that the drawing of samples could be made on 1.9.2016. The samples were drawn and the petitioner was also present but various allegations and counter allegations have been made by both the sides with regard to the manner in which the samples have been taken as also with regard to the conduct of the parties. Such mutual allegations made it clear that inspection and sampling done on 1.9.2016 would not lead to any final conclusion as the very fairness of the same had again been put into question by the



petitioner on account of the fact that the same was being carried out by an agency of the respondent-State. This Court therefore directed counsels for the parties to come up with the suggestions with regard to an independent agency to conduct the inspection and drawing of samples.

Suggestions in this regard have come from both the sides. Today, learned counsel for the State refers to Clause 9.2 of the agreement itself in which the Department had been authorized to conduct various quality test in laboratory of the State Government at CSMRS, New Delhi. It is submitted that CSMRS is an independent agency under the establishment of the Central Government for such matters.

In the above circumstances, since the said agency has been provided in the agreement itself and it would be an independent agency to carry out the inspection and sampling, the order dated 24.8.2016 passed in CWJC No. 1468 of 2016 is modified to the extent that inspection, sampling and testing upon the same shall now be conducted by CSMRS, New Delhi on a date and time as may be mutually agreed by the parties in consultation with CSMRS, New Delhi.

The cost of such inspection, etc., by CSMRS, New Delhi shall be charged on the basis of each party paying half of the



cost.

The modification petition is, accordingly, disposed of.

(Ramesh Kumar Datta, J)

S.Pandey/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	23.12.2016
Transmission Date	

