

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6436 of 2016

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1. Amit Kumar Son of Sri Binay Kumar Sinha Resident of MOhalla- Vijay Nagar, P.O. Lohia Nagar, PS Patrakar Nagar, District Patna 26 State; Bihar.

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Rural Works Development " Visheshwaraiya Bhawa", Bailey Road, Patna -15.
2. The Engineer-in-Chief, Rural Works Development " Visheshwaraiya Bhawa", Bailey Road, Patna -15.
3. The Chief Engineer-1, Rural Works Development " Visheshwaraiya Bhawa", Bailey Road, Patna -15.
4. The Superintending Engineer , Rural Works Development " Visheshwaraiya Bhawa", Bailey Road, Patna -15.
5. The Executive Engineer, Rural Works Department, Works Division, Masaurhi (Patna)

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rajendra Narayan, Senior Advocate Mr. Manish Sahay Mr. Anil Kumar Sinha
For the Respondent/s	:	Mr. Anirban Kundu, S.C.24 Mrs. Shally Kumari, A.C. to S.C.24 Mr.Pritish Kumar Lal, A.C. to S.C.24

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA
ORAL ORDER

4 23-08-2016 Heard learned counsel for the petitioner and learned counsel for the State.

The petitioner seeks quashing of the letter dated 04.01.2016 so far as it concerns the petitioner, by which the Engineer-in-Chief, Rural Works Department, Government of Bihar has declared the petitioner as defaulter and debarred him from participating in future tender.

The stand of learned counsel for the petitioner is that the petitioner is a registered contractor under category of Class-1 and pursuant to a notice inviting tender, he was declared successful

and an agreement dated 26.02.2014 was entered into for executing the work of construction of Road & CD Works from Morhar Pul Milki PMGSY Path to Jhammanchak via Kewadha under Mukhya Mantri Gram Sadak Yojana for the year 2013-14.

It is submitted by learned counsel for the petitioner that the D.P.R. of the work was defective and, therefore, the revised estimate of the work was required to be sanctioned at the appropriate level, for which the Superintending Engineer by his letter dated 20.03.2015 made a request for early sanction of revised estimate of the work in question to the Chief Engineer. It is further submitted that on the basis of the DPR, no further work can be carried out because in the said DPR very lesser quantity of earthwork was given.

In the said circumstances, it is urged by learned counsel for the petitioner that it was not open to the departmental officials to have debarred the petitioner from further work when it is the respondents, who were themselves responsible for the delay that has been caused.

It is contended by learned counsel for the petitioner that the case of the petitioner is squarely covered by the decision of this Court in the case of M/s. NCC Ltd. vs. The State of Bihar and others: 2013 (1) PLJR 952, in which it has been held that where there are allegations of delay against the officials of the State then it is not open to the State authorities to sit in judgment over the

said matter and such issue can only be decided by an independent adjudicatory body, i.e, the Court, or Arbitral Tribunal.

In the present matter, the petitioner has already approached the Bihar State Public Works Arbitration Tribunal for the closure of the contract and payment of the work done as also for subsidiary consequential reliefs.

Learned counsel for the State on the basis of the counter affidavit filed submits that the debarment of the petitioner is justified as the petitioner has not completed the work within the timeframe. However, she is unable to justify as to how the case of the petitioner is not covered by the decision in M/s. N.C.C.'s case (supra).

In the above circumstances, the writ application is allowed. The impugned letter dated 04.01.2016 of the Engineer-in-Chief declaring the petitioner defaulter and debarring him from further tenders is quashed to the extent it relates to the petitioner. It is, however, made clear that it shall be open to the respondents to take action against the petitioner in case the findings on the issue arrived at by the Bihar State Public Works Arbitration Tribunal so warrant.

(Ramesh Kumar Datta, J)

V.P.Sinha/-

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