

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.20179 of 2011

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M/S S.S. Construction, Balbhadrapur, Laheriasarai, Darbhanga through its
Proprietor Shyam Kishore Rai S/O Late Jagdev Rai, resident of S.S.Villa
Balbhadrapur, Laheriasarai, P.S- Laheriasarai, District- Darbhanga.

.... Petitioner

Versus

1. The State Of Bihar
2. Secretary, Department of Road Construction, Government of Bihar, Patna.
3. Engineer In Chief, Road Construction Department, Government of Bihar, Patna.
4. Chief Engineer, North Bihar Wing, Road Construction Department, Darbhanga.
5. Superintending Engineer, Road Construction Department, Road Division,
Darbhanga.
6. Executive Engineer, Road Construction Department, Road Division, Madhubani.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dudhnath Singh, Adv.
Mr. Imtiyaz Ahmad, Adv.

For the Respondent/s : Mr. Lalan Kumar, AC to GP-23

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN
ORAL JUDGMENT

Date: 01-04-2016

Heard learned counsel for the petitioner and the
respondents.

2. The present writ petition has been filed for setting
aside the order as contained in memo no. 11706(S) dated
21.10.2011 passed by learned Secretary, Department of Road
Construction, Government of Bihar by which he has dismissed
the appeal preferred by the petitioner; as well as for setting
aside the order dated 25.05.2011 as contained in memo no.
2524(2) issued under the signature of Engineer-in-Chief, Road
Construction Department, Bihar, Patna vide office order no. 93
dated 25.05.2011 by which he ordered to blacklist the firm of

the petitioner.

3. Learned counsel for the petitioner raises a short issue with regard to the impugned order of blacklisting having been passed without serving any show cause to the petitioner and so also the appellate order has been passed without serving a notice of hearing. It is therefore submitted that the impugned orders being violative of natural justice, are liable to be set aside.

4. Learned counsel for the respondents, on the other hand, invites attention to letter no. 74 dated 24.01.2011 (Annexure-9) enclosing a copy of an earlier show cause notice dated 03.01.2011, calling for a show cause reply from the petitioner. The petitioner responded to the aforesaid notice expressing inability to give a proper reply on the ground that he had approached this Court for redressal of his grievance. It is further submitted that the appellate order has been passed only after dispatch of notice by registered post (Annexure- F and G to the supplementary counter affidavit).

5. Having heard the parties and on consideration of the materials on record, this Court is of the view that the petitioner was duly given opportunity to file his show cause in terms of letter dated 24.01.2011 enclosing a copy of the earlier show cause notice dated 03.01.2011 but he chose not to avail of the same by filing a detailed show cause reply. As regards the notice sent by the Appellate Authority however the petitioner has

taken the specific and categorical stand in para-37 of the writ petition that no notice was received prior to dismissal of the appeal. The respondents have not established that the notice dispatched by the Appellate Authority was in fact served on the petitioner.

6. In the above view of the matter and in the interest of justice, the impugned appellate order as contained in memo no. 11706(S) dated 21.10.2011 (Annexure-1) is hereby set aside with a direction to pass orders afresh after grant of reasonable opportunity of hearing to the petitioner. It shall be the obligation of the petitioner to appear before the Appellate Authority with a copy of this judgment within a period of two weeks from today to avoid the necessity of issuance of fresh notice by the Appellate Authority. It is made clear that in case of failure on the part of the petitioner to appear before the Appellate Authority within the period stipulated, the order of the Appellate Authority shall stand and no fresh orders would be required to be passed.

7. The writ petition stands disposed.

(Vikash Jain, J)

Md. Ibrarul/-

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