

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.5416 of 2014**

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M/S S. K. Enterprises through its Partner Smt. Snehlata, wife of Sri Sanjay Kumar,  
resident of Mohalla:- Bighrapur, New Bas Stand, P.S.- Jakkanpur, District:- Patna

.... .... Petitioner/s

Versus

1. The State Of Bihar Through The Secretary, Rural Works Department,  
'Vishweshwaraiya Bhawan', Bailey Road, Patna- 15
2. The Engineer-In-Chief Cum Additional Commissioner Cum Special Secretary,  
Rural Works Department, 'Vishweshwaraiya Bhawan', Bailey Road, Patna- 15
3. The Executive Engineer, Rural Works Department, Work Division, Nawada

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Manish Sahay, Advocate.

For the Respondent/s : Mr. Anshul, Advocate.

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**CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN**

ORAL JUDGMENT

**Date: 27-01-2016**

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

2. The present writ petition has been filed for  
quashing of letter no. 11369 Anu dated 04.10.2013, so far as  
petitioner is concerned, issued under signature of the Engineer-  
in-Chief-cum-Additional Commissioner-cum Special Secretary,  
Rural Works Department, Government of Bihar, Patna, as  
contained in Annexure-3 Series, by which the petitioner and  
others have been declared defaulter and debarred from  
participating their bids in future tenders.

3. Mr. Rajendra Narayan, learned Senior counsel  
appearing for the petitioner submits that the action of the



respondents in declaring the petitioner a defaulter and debarring it from participating in future tenders until completion of the works is contrary to the settled principles laid down by this Court in M/s. NCC Ltd. v. The State of Bihar & Ors [2013 (1) PLJR 952] to the effect that the finding regarding default by the petitioner cannot be made by the State authorities being a party to the contract and the same must come from a proper adjudicatory forum, whether a Court or Arbitral Tribunal. The principle has been reiterated in several subsequent orders such as in C.W.J.C. No. 1146 of 2014, C.W.J.C. No. 9917 of 2014 and C.W.J.C. No. 9009 of 2014.

4. Learned counsel for the respondents, on the other hand, submits that the petitioner has approached the Bihar Public Works Contract Disputes Arbitration Tribunal in Reference Case Nos. 141 and 142 of 2013 as stated in para-8 of the writ petition and hence this writ petition ought not to be entertained.

5. Having heard the parties and on consideration of the materials on record, this Court finds considerable merit in the writ petition. The reference cases filed before the Arbitration Tribunal relate to the breach of contract whereas the instant writ petition questions the legality of the order of debarment and declaration of the petitioner as defaulter. The case of the petitioner is squarely covered by the decision rendered in NCC's case (supra) and learned counsel for the State

has also not been able to make submissions to the contrary.

6. The writ petition accordingly stands allowed and the impugned letter no. 11369 Anu dated 04.10.2013 in so far as concerns the petitioner stands quashed.

**(Vikash Jain, J)**

Md. Ibrarul/-

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