

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

**Letters Patent Appeal No. 438 of 2014**

**Arising out of**

**Civil Writ Jurisdiction Case No. 16035 of 2012**

=====

Chunchun Kumar, S/O Mahanand Yadav, R/o Village + P.O.- Haripur, P.S.-  
Sonbarsa Katchari, District- Saharsa.

.... ....Petitioner/s / Appellant/s

Versus

1. The State of Bihar, through the Chief Secretary, Govt. of Bihar, Patna.
2. The District Magistrate, Khagaria, District Khagaria.
3. The Deputy Development Commissioner, Khagaria, District Khagaria.
4. The Block Development Officer, Beldour, District Khagaria.
5. The Programme Officer, Beldour, District Khagaria.

.... ...Respondents/s / Respondent/s

=====

**Appearance :**

For the Appellant/s : Mr. Sharda Nand Mishra,  
Mr. Harish Chandra Patel &  
Mr. Dhananjay Kumar Gupta, Advocates

For the Respondent/s : Mr.

=====

**CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA**  
**and**  
**HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH**  
**ORAL JUDGMENT**  
**(Per: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH)**  
**Date: 02-08-2016**

Heard learned counsel for the parties.

2. The challenge in the present Appeal under Clause-  
X of the Letters Patent of Patna High Court is to the order dated 2<sup>nd</sup>  
January, 2014 passed by the learned Single Bench by which  
C.W.J.C. No. 16035 of 2012 filed by the appellant has been

dismissed.

3. The appellant was appointed in September, 2007 as Panchayat Rozgar Sevak-cum-Agent in Itmadi Panchayat under Beldour Block of Khagaria on contract basis for two years and the period was extended for another two years. A road was being constructed in Chodhli village by the Panchayat Samiti under the MGNREGA Scheme in the year 2010. In 2011, it was noticed that a J.C.B. Machine was being used for such road construction and the Programme Officer made spot inspection finding that the J.C.B. Machine had been used, which was against the provisions of the Mahatma Gandhi National Rural Employment Guarantee Act (hereinafter referred to as the 'MGNREGA Act') and, thus, he wrote letter bearing No. 32 dated 26.06.2011 to the SHO, Beldour P.S. for taking legal action against the guilty persons. The Programme Officer also wrote to the Deputy Development Commissioner, Khagaria (hereinafter referred to as the 'DDC') under Letter No. 33 dated 26.06.2011 that the road in question was built illegally using J.C.B. Machine though no money was paid by him for the said purpose. Thereafter, the DDC under Memo No. 1326 dated 07.07.2011 issued show cause to the appellant asking him as to why, for the purpose of building the road in question under the MGNREGA Scheme, J.C.B. Machine was being used for



completing the work and attempt was made to withdraw money and further, that from the situation which has arisen, it was clear that he did not remain in the Panchayat and also did not inspect the various projects and the J.C.B. Machine was deliberately being used which was against the MGNREGA Act. The Director, Account Administration and Self Employment, District Rural Development Agency, Khagaria in communication dated 11.07.2011 to the DDC, has informed that though no payment has been made but Bill has been prepared for Rs. 8,50,220/- for the road in question, of which the appellant was the agent.

4. Taking into consideration the report of the Programme Officer dated 26.06.2011, the reply of the show cause by the appellant dated 13.07.2011, the contract of the appellant was terminated under order contained in Memo No. 1556 dated 08.08.2011. The appellant filed appeal before the District Magistrate, Khagaria. The District Magistrate, Khagaria by order contained in Memo No. 1350 dated 11.08.2012 upheld the order of termination of the contract of the appellant. The appellant, thus, approached this Court in C.W.J.C. No. 16035 of 2012 which was dismissed by the learned Single Bench by order dated 02.01.2014, which is the subject matter of the present Letters Patent Appeal.

5. Learned counsel for the appellant submits that the



order terminating the contract of the appellant was stigmatic in nature as the same was based on a charge against him and, thus, a full-fledged enquiry was required before such action. It is further submitted that the appellant had not raised any Bill for the work done and, thus, there was no loss of any public money. Learned counsel submits that the appellant himself was not aware of the work of the road being done by the J.C.B. Machine and it was by unknown persons to implicate him.

6. Learned counsel for the State submits that there is bar of use of J.C.B. Machine for any MGNREGA Scheme as the work is to be done by physical labour for the purposes of generating employment and thus clearly the appellant had failed in the discharge of his duty for which the termination of the contract is justified.

7. Having considered the rival contentions, we do not find any merit in the present appeal. The appellant was entrusted with the work of getting the road in question repaired under the MGNREGA Scheme, which clearly was to generate employment for the local people. The appellant cannot shirk of his duty by simply saying that he was unaware that how the work was being done by the J.C.B. Machine, which is prohibited, and further, his conduct cannot be appreciated inasmuch as he had already submitted Bill for



over Rs. 8 ½ lakhs and even though the same was not paid, still, his claim remained on record. Moreover, the explanation given by the appellant was self contradictory and has been taken note of in the order of the District Magistrate, when on the one hand the appellant had stated that due to there being potholes the local people had got the work done through their own funds whereas on the other hand he has stated that some unknown persons had used the J.C.B. Machine for such work to implicate him. It is also clear that there was dereliction of duty on the part of the appellant since, though he was supposed to be physically present and vigilant with regard to the project entrusted to him, even if the local villagers or some unknown persons had utilized the J.C.B. Machine for doing the work, it was his duty not only to prevent such work but also to inform the higher authorities and take appropriate and necessary action to prevent such violation of the provisions of the MGNREGA Act.

8. In any view of the matter, the engagement being purely contractual and for a specific purpose, and in the present case the authorities coming to a conclusion that the appellant has failed in the discharge of his duties, it cannot be said that the termination of the contract is arbitrary. Moreover, the nature of engagement being purely contractual and show cause being issued to the appellant and the reason given by him being considered by the authorities, the

requirement of law has been fulfilled.

9. In view of the aforesaid, we do not find any ground to interfere in the orders passed by the authorities and the learned Single Bench has rightly dismissed the writ petition.

10. Accordingly, the Letters Patent Appeal stands dismissed.

**(Hemant Gupta, J.)**

**(Ahsanuddin Amanullah, J.)**

Anand Kr.

|          |  |
|----------|--|
| AFR/NAFR |  |
| U        |  |