

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.595 of 2016

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1. M/s Ganesh Ram Dokania, a Partnership Firm having it's Head Office at Banka, P.S. Banka, District Banka and a Branch Office at 203, Basudeo Vihar Apartment, Nageshwar Colony, P.S. - Budha Colony town & District - Patna, Son of Late Shyam Sunder Kejriwal, Residing At 4A/8, Jagdamba, Path, Boring Road, North S.K. Puri, P.S. S.K. Puri, Town & District - Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. Principal Secretary, Water Resources Department, Government of Bihar, Sinchai Bhawan, Patna.
3. Engineer-in-Chief (North), Water Resources Department, Government of Bihar, Patna.
4. Chief Engineer, Water Resources Department, Muzaffarpur.
5. Superintending Engineer, Water Wage Division, Muzaffarpur.
6. Executive Engineer, Water Road Division, Muzaffarpur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Umesh Prasad Singh, Sr. Advocate
M/S. Rajendra Kumar & Surabhi.

For the Respondent/s : Mr. Nadim Seraj, G.P. 5.

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA
ORAL JUDGMENT

Date: 19-09-2016

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

2. The petitioner seeks quashing of the order dated 08.12.2015 issued by the Executive Engineer, Water Road Division, Muzaffarpur by which the petitioner was directed to show cause within seven days as to why its security amount be not forfeited and action not taken under the Bihar Contractors Registration Rules, 2007 and also to quash and cancel letter no. 1451 dated 31.12.2015 issued



by the Executive Engineer, Muzaffarpur by which the agreement of the petitioner had been terminated and the security amount as also the amount deducted from the various running account bills have been forfeited.

3. Learned counsel for the petitioner submits that from a perusal of the show cause notice dated 08.12.2015 it is evident that no particulars are found in the said show cause notice except referring to different letters issued from time to time by the different departmental officials and, thus, the show cause notice itself is vague and defective and not really fit for reply. However, despite the same, the petitioner filed a detailed reply to the show cause on 12.12.2015 with regard to whatever point the petitioner could make out for the reasons of the proposed action. However, even the said show cause reply has not been considered by respondent no. 6 and he passed the impugned order dated 31.12.2015 rejecting the reply in a single line that the same is not satisfactory.

4. Learned counsel for the State has sought to justify the aforesaid cryptic and non speaking order by referring to letter dated 18.12.2015 sent by the Executive Engineer, Water Road Division, Muzaffarpur (respondent no. 6) to the Superintending Engineer, in which he has dealt in detail the different issues.

5. He also seeks to rely upon the State level meeting of



the Chief Engineers held on 12.12.2015 under the Chairmanship of the departmental Minister in which referring specifically to the contract which was given to the petitioner, it was directed to terminate the agreement of the petitioner and forfeit the security amount and also send proposal for black listing of the petitioner.

6. The aforesaid proceeding dated 12.12.2015 of the State level meeting of the Chief Engineers for supporting the case of the State, in fact, is against them as the decision was already taken to terminate the agreement of the petitioner without consideration of the show cause reply of the petitioner on that very date itself i.e. 12.12.2015.

7. In view of the aforesaid circumstance, the action of the Executive Engineer was a mere formality and taken on the direction of the superior authority without even considering the reply to the show cause notice filed by the petitioner.

8. It is evident that the show cause notice dated 08.12.2015 itself is vague and defective as no proper reply can be given on such a show cause notice and because of the fact that the show cause notice led to the final order dated 31.12.2015 passed by the Executive Engineer, rejecting the reply to the show cause filed by the petitioner, the same is also vitiated on account of non consideration of the points raised by the petitioner in his reply dated



12.12.2015, both the impugned show cause notice dated 08.12.2015 and the letter dated 31.12.2015 terminating the agreement of the petitioner are quashed. The writ application is, accordingly, allowed.

9. It is, however, made clear that it shall be open to the respondents to issue a fresh show cause notice to the petitioner indicating the points which the petitioner has to answer and upon the petitioner filing the reply and thereafter upon considering the reply if any filed by the petitioner, the competent authority shall finally decide the matter by passing a speaking order showing consideration of reply of the petitioner without being influenced by any direction of any superior authority.

(Ramesh Kumar Datta, J)

Amin/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

