

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 2426 of 2015

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I V R C L Infrastructure & Project Limited, having its regional office at H.No. 14,,
Flat No.-A1 Kamta Sadan Apartment, Kamta Singh Kam Lane, East Boring Canal
Road, Patna-800001 through its Deputy General Managar, Sri Rajesh Lal Singh
Son of Sri Bachchu Lal Singh, Residing at Flat No.-1, Lal Bhawan, Bhoot Nath
Road, Kankarbagh, P.S.-Agamkuan, District-Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Public Health & Engineering Department, Government of Bihar, Patna.
2. The Chief Engineer, Public Health & Engineering Department, Government of Bihar, Patna.
3. The Executive Engineer, Public Health & Engineering Department, Hajipur, Vaishali.
4. The Executive Engineer, Public Health, Division, Buxar.
5. The Superintending Engineer, PH Circle, Muzaffarpur.
6. The Superintending Engineer, PH Circle, Ara..

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr.
For the Respondent/ : Mr.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 22-01-2016

Heard learned counsel for the parties.

The petitioner has challenged the order dated 20.08.2013 issued under Memo No. 1491 by respondent no. 2 debarring it from participating in any tender of the Public Health and Engineering Department until further orders.

Learned counsel for the petitioner submits that though the order cannot be sustained both on facts as well as on law but for the present, he is restricting the challenge on a very short legal issue i.e., the order which has been passed is at the behest of the Principal Secretary of the Department, who is the Appellate Authority against an order of debarment under



Regulation 11(Gha) of the Bihar Thekadary Nibandhan Niyamawaly, 2007. Learned counsel submits that though the order impugned, copy of which is at Annexure-10, does not disclose such fact but from the original records which the Court had called and is available with learned State counsel, it would transpire that in the file the matter went till the level of the Principal Secretary of the Department and he had directed for taking such punitive action. Learned counsel submits that the law having been settled by a catena of decisions by the Hon'ble Supreme Court, the latest being in the case of **Brij Bihari Singh vs. Bihar State Financial Corporation** reported in **2011(1) PLJR(SC) 27**, the relevant being at Paragraphs-11, 12, 13 and 14, the exercise of power and imposing punishment by the Appellate Authority deprives the person from moving against such order before the said Appellate Authority which is wholly arbitrary and discriminatory.

Learned counsel for the State submits that though the facts of the case would indicate that the penal action against the petitioner is justified, but he is not in a position to counter the fact that the Principal Secretary of the Department did direct for such penal action against the petitioner and that as per the law settled, the same is impermissible.

Having considered the rival contentions, without going into the facts or other merits of the case, on the short legal point that the Appellate Authority under the statutory regulation

has in the file directed for penal action leading to issuance of the impugned order, which is impermissible in law, as has been held by the Supreme Court also in the decision of **Brij Bihari Singh** (supra), the order impugned is set aside. The same shall however not preclude the authorities from taking any action in accordance with law.

The writ petition stands disposed off in the aforementioned terms.

(Ahsanuddin Amanullah, J.)

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