

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11913 of 2016

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M/s. A. K. Construction having its registered office at village - Deopur, Post Office - Kewal Fariyatta, Police Station - Khaira, District - Jamui through its partner namely Sri Amrendra Kumar son of Sri Muneshwar Yadav resident of village - Deopur, Post Office - Kewal Fariyatta, Police Station - Khaira, District - Jamui.

.... Petitioner

Versus

1. The State of Bihar through Principal Secretary, Rural Works Department, Patna, Bihar.
2. The Rural Works Department through Principal Secretary, Government of Bihar, Patna.
3. The Secretary, Rural Works Department through Principal Secretary, Government of Bihar, Patna.
4. The Engineer in Chief, Rural Works Department, Government of Bihar, Patna.
5. The Chief Engineer, Rural Works Department, Government of Bihar, Patna.
6. The Superintending Engineer, Work Division, Rural Works Department, Government of Bihar, Patna.
7. The Executive Engineer, Work Division - Jamui, Rural Works Department, Government of Bihar, Patna.
8. Bihar Rural Roads Development Agency through its Secretary, Government of Bihar, Patna.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Sanjeev Kumar with Mr. Alok Kumar, Advocates

For the Respondent/s : Mr. Arvind Ujjwal, S.C. 4 with Mr. Maruth Nath Roy, AC to S.C. 4

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA
ORAL ORDER

2 29-08-2016 Heard learned counsel for the petitioner and learned counsel for the State.

The petitioner seeks quashing of the order dated 2.6.2016 by which the petitioner has been declared defaulter and debarred from participating in future tenders on the ground of non-completion of the work within the stipulated period of time as per the agreement.

Learned counsel for the petitioner relies upon the letters dated 12.3.2015 and 6.8.2015 written by the petitioner stating the reasons for delay, which was essentially non-payment/delayed payment of the bills of the petitioner from the very beginning. He

further refers to the recommendation for extension of time made by the Assistant Engineer and the Executive Engineer on 30.6.2016 and 20.5.2016, which has been made on the ground of delayed payment and land dispute by the local people in the naxalite area. He also refers to the letter dated 1.6.2016 issued by the Executive Engineer, Rural Works Department, Work Division, Jamui in which a request has been made for extension of time to the Superintending Engineer stating that due to various obstructions the work could not be completed in time for which the contractor is not at fault. It is thus submitted by learned counsel for the petitioner that the declaration of the defaulter and debarring from participating in future tenders is contrary to law laid down by this Court in the case of M/s. NCC Ltd. vs. The State of Bihar & Ors. : 2013(1) PLJR 952.

Learned counsel for the State is unable to show how in view of the different documents filed by the petitioner the present matter can be said to be not similar footing as that of NCC Ltd. (supra).

In the aforesaid circumstances, the writ application is allowed. The impugned order dated 2.6.2016 issued by the Engineer-in-Chief, Rural Works Department is quashed so far as it concerns the petitioner.

It shall be open to the respondents to take action against the petitioner in the matter but only on the basis of the facts duly adjudicated by a court or an Arbitral Tribunal and not otherwise.

(Ramesh Kumar Datta, J)

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