

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6682 of 2014

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M/S Raghubar Singh through its Partner Mr. Raghubar Singh, son of Late Sunder Singh Resident Of Village:- Kamta Chak, P.O.:- Mittan Chak, P.S.:- Gopalpur, District:- Patna, at present:- Resides At Mohalla:- Laljee Tola, 'Rajendra Bhawan', P.O.:- GPO. P.S.:- Gandhi Maidan, 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, Masaurhi (Patna)

.... Respondent/s

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Appearance :

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

For the Respondent/s : Mr. Kuber Pathak, Ac to SC-14.

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN
ORAL JUDGMENT

Date: 22-02-2016

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-5 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 No. 94 of 2011 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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