

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2849 of 2017

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M/s Azad Construction, through its Managing Director, Azad Anwar, son of Md. Suleman, resident of Village- Sundar Kumhari, PS- Barachatti, District- Gaya.

.... Petitioner

Versus

1. The State of Bihar.
2. The Principal Secretary, Rural Works Department, Government of Bihar, Patna.
3. The Chief Engineer No.1, Rural Works Department, Government of Bihar, Patna.
4. The Executive Engineer, Rural Works Department, Government of Bihar, Patna.
5. The Superintending Engineer, Rural Works Department, Government of Bihar, Patna.

.... Respondents

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Appearance:

For the Petitioner : Mr. Arvind Kumar Sharma. Advocate

For the Respondents : Mr. Kameshwar Pd. Gupta-GP10

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 30-01-2018

The present writ petition has been filed for the following reliefs :-

- (i) For quashing the order vide memo no. 1665 dated 24.11.2016 issued under the signature of the Executive Engineer, Rural Works Department, Works Division, Gaya contained in Annexure-1, by which allotment of tender work in favour of the petitioner regarding road repair work from Fatehpur Police Station to Dumri Chatty High Level Bridge under head 3050 under 'marammati yojna' has been cancelled pursuant to office order vide memo no. 4063 dated 04.11.2016 issued by the



Chief Engineer-1, Rural Works Department.

- (ii) Also for quashing respondents Chief Engineer-1, Rural Works Department, Bihar, Patna to produce memo no. 4063 dated 04.11.2016 and also for quashing the same.
- (iii) Also for directing the respondents not to give effect to office order vide memo no. 4063 dated 04.11.2016 issued by the Chief Engineer-1, Rural Works Department, Bihar and its consequential office order vide memo no. 1665 dated 24.11.2016 as contained in Annexure-1.
- (iv) Also directing the respondents to not allot work allotted to the petitioner regarding road repair work from Fatehpur Police Station to Dumri Chatty High Level Bridge and the work be allotted.

2. Learned counsel for the petitioner submits that the impugned order dated 24.11.2016 (Annexure-1) is wholly arbitrary and the petitioner was never served with a copy of the earlier memo no. 4063 dated 04.11.2016 referred to thereunder. It is stated that no prior show cause notice was given to the petitioner and as such the order as contained in memo no. 4063 dated 04.11.2016 is liable to be quashed as being in violation of natural justice.

3. Learned counsel for the respondents appears and relies on the counter affidavit to submit that the impugned order dated 24.11.2016 has rightly been passed against the petitioner and does not suffer from



any infirmity. It is reiterated that the petitioner had concealed the fact that Agreement No. 21F/2011-12 was rescinded by the Executive Engineer, Rural Works Department, Works Division, Gaya as he failed to complete the work which he was allotted thereunder. Accordingly memo no. 1665 dated 24.11.2016 was served on the petitioner informing that the work of road repairing from Fatehpur Police Station to Dumri Chatty High Level Bridge could not be given to the petitioner in view of the aforesaid concealment of facts and the petitioner has accordingly been debarred from further participating in the lottery process for the allotment of the said work. It is further submitted that the referred letter under memo no. 4063 dated 04.11.2016 (Annexure-B) issued by the Chief Engineer-1, Rural Works Department, Patna is in the nature of guidelines/instructions which requires to be strictly followed and complied with before issuing the work order in respect of the said work. Accordingly, letter no. 6665 dated 18.06.2014 was issued, which itself is in the nature of a show cause notice and hence sufficient opportunity has been granted to the petitioner.

4. Having heard the parties and on consideration of the materials on record, this Court finds the writ petition to be devoid of any merit. The respondents have taken categorical stand that the petitioner had suppressed the fact that the earlier Agreement No. 21F/2011-12 dated 07.12.2011 has been rescinded and this fact has been suppressed in the tender papers relating to the instant work. This Court also takes note of the judgment dated 11.02.2016 passed in CWJC No. 9787 of 2014 in which the petitioner, having approached this Court for quashing the



order contained in memo no. 216 dated 29.03.2014 against rescinding of Agreement No. 21F/2011-12, confined the prayer merely for payment of admitted dues of the work done under the said Agreement. The rescinding of the contract thus stood accepted by the petitioner. The respondents have also taken the stand that letter No. 6665 dated 18.06.2014 was issued to the petitioner which was in the nature of a show cause prior to passing of the order rescinding the agreement referred to above. The petitioner has not controverted the stand of the respondents as no rejoinder has been filed by it. The writ petition accordingly stands dismissed.

(Vikash Jain, J)

Chandran/BT

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	01.02.2018
Transmission Date	NA

