

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17965 of 2016

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M/s Star Construction at Balua Tal, Motihari, through Parvej Ahmad Khan, Son of Haseen Ahmad Khan, Resident of Balua Tal, P.O. + P.S. + District- Motihari.

.... Petitioner

Versus

1. The State of Bihar through The Principal Secretary, Rural Works Department, Government of Bihar, Patna.
2. The Engineer-in Chief, RWD, Bihar, Patna.
3. The Chief Engineer-3, RWD, Bihar, Patna.
4. The Superintending Engineer, Rural Works Department, Works Circle, Motihari.
5. The Executive Engineer, Rural Works Department, Works Division Pakaridayal, District East Champaran, Motihari.
6. The Assistant Engineer, Rural Works Department, Works Sub Division, Tetariya, under Works Division Pakridayal, District East Champaran.
7. The Junior Engineer, Rural Works Department, Work Sub Division Tetariya, District East Champaran.
8. The Executive Engineer, PWD, Works Division Motihari, District East Champaran.
9. The Assistant Engineer, Quality Control Unit, Road Division (P.W.D.), Motihari.

.... Respondent

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Appearance :

For the Petitioner : Mr. Ranjeet Kumar, Advocate.
For the Respondents : Mr. Kumar Alok, SC-7

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 18-05-2018

The present writ petition has been filed for setting aside the letter no. 093 dated 04.01.2016 issued by the Engineer-in-Chief, Rural Works Department, Government of Bihar, Patna to the extent it relates to the petitioner, whereby the petitioner has been declared defaulter and has been debarred from participating in any future tender.

2. The short facts of the case according to the petitioner, a



registered contractor of Rural Works Department, are that pursuant to an NIT for construction of a High Level Bridge namely Kadma across Bagmati Nala in Narha Panapur to Sheohar Road via Kadma under Tetariya Block, District-East Champaran, the petitioner successfully participated in the tender and was granted the work order vide letter no. 401 dated 18.04.2013. The work was commenced and was being monitored by various authorities from time to time. The Executive Engineer, Quality Control Unit submitted a report that the petitioner's work was satisfactory. However in the test report of National Institute of Technology, Patna dated 18.02.2015, it was opined that the concrete used had a compressive strength much below that stipulated for M30 concrete, with a probable accuracy of $\pm 25\%$.

3. Learned counsel for the petitioner submits that the dispute between the parties was carried before the Bihar Public Works Contract Disputes arbitration Tribunal in Reference Case No. 126 of 2015 at the instance of the petitioner, and was disposed of in terms of the award dated 25.07.2016, *inter alia*, observing as follows –

“Tribunal is of the view that the respondent has committed breach by not following the provision laid down in SBD Clause 3(a). Since the rescinment of the agreement is not as per SBD Clause 3(a). Hence rescinment order passed by Executive Engineer vide letter no. 389 dated 21.03.2016 is arbitrary and bad in law and not being upon the petitioner.

Tribunal comes to conclusion that in facts and circumstances as discussed above there is no doubt that respondent have



committed their breach of contract and in this situation the petitioner is entitled for reliefs as prayed for.”

4. Learned counsel for the petitioner therefore submits that the award of the Arbitration Tribunal has categorically found fault with the respondents who had committed breach of contract and hence debarring the petitioner amounts to the respondents taking advantage of their own fault.

5. Learned counsel for the respondents refers to the counter affidavit to point out that Civil Revision No. 308 of 2016 has been filed against the order dated 25.07.2016 passed by the Arbitration Tribunal in Reference Case No. 126 of 2015.

6. In reply, learned counsel for the petitioner states that the said Civil Revision No. 308 of 2016 has since been dismissed for default over a year ago on 13.02.2017.

7. Having heard the parties and on consideration of the materials on record, this Court finds merit in the writ petition. It is not in dispute that in Reference Case No. 126 of 2015, the Arbitration Tribunal found that the breach had been committed not by the petitioner but by the respondents. The respondents moved this Court in Civil Revision No. 308 of 2016 which stood dismissed for default. In this view of the matter, the petitioner cannot be made to suffer for no fault on its part and it cannot be said that the petitioner fell short in discharging its duty under the contract in order to invite the harsh



action of its debarment.

8. The impugned order dated 04.01.2016 (Annexure-19) must therefore be held to be arbitrary and unsustainable. The same is accordingly quashed and the writ petition stands allowed.

Md. Ibrarul/-

(Vikash Jain, J)

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	25.05.2018
Transmission Date	N.A.

