

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12685 of 2018

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M/s Prince Construction having its place of business at 26, Baraudhiya, Villaga-Budibari, Circle- Jhajha, District- Jamui through it's authorized signatory namely Onkar Yadav son of Bhagu Yadav, resident of Karda, Ward No. 08, P.O. Inaravaran, P.S. katoriya, District-Banka.

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Department of Building Construction, Govt. of Bihar, Patna.
2. The Principal Secretary, Department of Building Construction, Govt. of Bihar, Patna.
3. The Engineer in Chief cum Additional Commissioner cum Special Secretary Department of Building Construction, Govt. of Bihar, Patna.
4. The Additional Secretary cum Commissioner Financial Advisor, Department of Building Construction, Govt. of Bihar, Patna.
5. The Chief Engineer (South) Department of Building Construction, Vishveshwariya Bhawan, Bailey Road, Patna.
6. The Executive Engineer, Department of Building Construction, Building Division, Banka.

.... Respondents

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Appearance :

For the Petitioner : Mr. Gautam Kumar Kejriwal, Advocate.

For the Respondents : Mr. Manoj Kr. Ambastha, SC-26

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 10-07-2018

Heard learned counsel for the petitioner and learned
counsel for the respondents.

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

“(a) For issuance of a writ in the nature of certiorari for quashing of the office order communicated vide letter bearing memo no. 5122 (bha) dated 29.05.2018 issued by the respondent Engineer in Chief cum Additional Commissioner cum Special Secretary, Building Construction Department, Govt. of Bihar, Patna with copies circulated to all the



departments of the State of Bihar;

(b) For restraining the respondents from executing the aforesaid impugned order as contained in the impugned letter bearing memo no. 5122 (bha) dated 29.05.2018 with respect to other ongoing contracts of the petitioner;

(c) For further restraining the respondents from depriving the petitioner or in any manner affecting the participation of the petitioner in any of the tenders invited by any Government Department of the State of Bihar and any of the corporation or company etc in light of the impugned office order as the same is illegal, arbitrary and violative of principles of natural justice;

(d) For holding and a declaration that the impugned office order inflicting punishment of suspension of the petitioner's registration for a period of one year from the date of issuance of the aforesaid office order ought to have dealt with the reply submitted by the petitioner through letter dated 27.02.2018 as well as the provisions of Clause 5.1 of the Standard Bidding Document and a speaking order should have been passed dealing with all the relevant aspects in absence of which the impugned office order suffers from the error of violation of principles of natural justice for being non-speaking and unreasoned;

(e) For grant of any other relief or reliefs to which the petitioner is found entitled to in the facts and circumstances of the case."

3. Learned counsel for the petitioner submits that in terms of Clause 4.3 of the Standard Bidding Document, the petitioner submitted an affidavit to perform the work of sub-contractor in the work to be awarded to another contractor namely M/s Ganesh Ram



Dokania. By the impugned order, the petitioner has been treated as having formed a cartel with the said M/s Ganesh Ram Dokania and for which the petitioner's registration has been suspended for a period of one year. It is stated that in an almost identical order, renewal of registration of M/s Ganesh Ram Dokania had also been suspended for a period of one year which was made the subject matter of C.W.J.C. No. 10768 of 2018 which has since been disposed of on 22.06.2018.

4. Learned counsel for the respondents appears and has been heard.

5. Having heard the parties and considered the materials on record. In an almost identical situation wherein a non-speaking order had been passed, this Court by judgment dated 22.06.2018 passed in C.W.J.C. No. 10768 of 2018 (*M/s Ganesh Ram Dokania Vs. The State of Bihar and others*) disposed of the matter with the following observations and directions -

"5. From a perusal of the impugned order itself, it is clear that the petitioner had filed his show cause reply, which has been enclosed as Annexure-6 to the writ petition. The impugned order has been passed rejecting the show cause reply of the petitioner without however assigning a single reason whatsoever why such show cause reply was not acceptable. There is no discussion in the order with regard to the plea raised by the petitioner in his show cause reply and why the same did not find favour with the authority. In such circumstances, therefore, it must be held that the impugned order does not amount to a speaking order and is thus violative



of the principles of natural justice which cannot be sustained in law.

6. In the above view of the matter, the impugned order dated 29.05.2018 (Annexure-9) is hereby set aside and the matter remanded to the Engineer in Chief cum Additional Commissioner cum Special Secretary, Department of Building Construction, Govt. of Bihar, Patna (respondent no. 3) for passing a speaking order after grant of opportunity of hearing to the petitioner and upon consideration of show cause reply dated 05.03.2018 (Annexure-6) in accordance with law.”

6. The nature of the order passed in the present case makes it clear that no reasons whatsoever have been communicated to the petitioner for the impugned action taken, which vitiates the decision making process.

7. The writ petition is therefore allowed in line with and on the same terms as the aforesaid judgment dated 22.06.2018 passed in C.W.J.C. No. 10768 of 2018.

(Vikash Jain, J)

Md. Ibrarul/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	19.07.2018
Transmission Date	N.A.

