

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2391 of 2019

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M/s Kabbu Khirhar a Partnership Firm through one of its Partners namely Pankaj Kumar Agrawal male aged about 32 years Son of Shiv Kumar Prasad Resident of Ward No.1 Shanker Chowk, Dumra, Sitamarhi

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary Department of Building Construction, Govt. of Bihar Patna
2. The Secretary, Building Construction Department, Govt. of Bihar, Patna Bihar
3. The Engineer in Chief Cum Additional Commissioner Cum Special Secretary Department of Building Construction, Govt. of Bihar Patna
4. The Chief Engineer (North) Department of Building Construction, Vishveshwariya Bhawan, Bailey Road Bihar
5. The Superintending Engineer Department of Building Construction, Darbhanga
6. The Executive Engineer, Department of Building Construction, Building Division Madhubani Bihar

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Gautam Kejriwal, Advocate Mr. Atal Bihari Pandey, Advocate Mr. Alok Kumar Jha, Advocate
For the Respondent/s	:	Mr. Swapnil Kumar Singh, AC to GP 19

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

3 05-03-2019 Heard learned counsel for the petitioner and learned counsel representing the State.

This writ application has been preferred seeking a writ of Certiorari to quash and cancel the communication as contained in Letter bearing Memo No. 1017 (bha) dated 28.01.2019 issued by respondent Engineer in Chief-cum-Additional Commissioner-cum-Special Secretary, Department of Building Construction, Govt. of Bihar, Patna and the



consequential prayers are also made in paragraph 1 of the writ application.

Mr. Kejriwal, learned counsel representing the petitioner submits that from a bare reading of the order (Annexure-4) impugned in the writ application it would appear that there is no judicious consideration of the reply submitted by the petitioner. The whole order seems to have been passed in haste only because the Departmental Minister had recommended for taking stern action against the concerned contractor. It is submitted that while passing the impugned order none of the pleas of the petitioner as contained in Annexure-3 to the writ application has been looked into. It is, according to Mr. Kejriwal, a case of non-consideration of the materials available on the record which has prejudiced the petitioner inasmuch as the registration of the petitioner has been suspended for a period of one year which has got a civil consequence.

Learned counsel for the petitioner submits that in fact Letter No. 1956 dated 12.11.2018 by which the petitioner was called upon to show cause was not the show cause with regard to any proposed action for suspension of the registration.

Learned counsel for the State has filed a counter affidavit. He has taken a stand that the petitioner was given an



opportunity to show cause and on receipt of the reply to the show cause from the petitioner the same has been considered. When this Court called upon learned counsel for the State to show the relevant part of the impugned order where any consideration is said to have been given to the reply of the petitioner, it could not be pointed out.

This Court has perused the impugned order and the materials enclosed with the writ application. It is evident from the records that the petitioner had submitted a reply as contained in his letter dated 30.11.2018 (Annexure-3). In his reply he had given certain explanations. This Court would not go into the merit of the explanations at this stage because the Court is of the opinion that the respondent authority who has passed the order of suspension of the petitioner has not looked into those explanations and in case the matter is remitted to him for a fresh consideration he would be required to look into the same and come to a judicious view, therefore, any observation of this Court, at this stage would not be just and proper. It is at least evident to this Court that there are explanations present in Annexure-3 which have not been considered by the respondent authorities while passing the impugned order. He seems to have gone swayed away by the fact that the Departmental



Minister had recommended for stern action.

Impugned order as contained in Annexure-4 is, thus, set aside. The matter is remitted to the respondent no. 3 for a fresh consideration of the entire materials available on the record. Respondent No. 3 shall proceed to consider the whole matter after giving an appropriate opportunity to show cause to the petitioner against the proposed action, if any, and shall consider the reply of the petitioner without being prejudiced by any recommendation of the Departmental Minister.

This writ application stands disposed off with the aforesaid directions and observations.

(Rajeev Ranjan Prasad, J)

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