

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10385 of 2018

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M/s Dhanpat Prasad through its one of the partner Mr. Sanjay Kumar,
son of Late Binda Prasad, Resident of Mohalla- Line Par, P.S.- Nawada,
P.O.-Nawada, District, Pin-805110, State – Bihar.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Road Construction Department, “Vishweshwaraiya Bhawan” Bailey Road, Patna-15.
2. The Principal Secretary, Road Construction Department, "Vishweshwaraiya Bhawan Bailey Road, Patna-1
3. The Engineer-in-Chief-cum-Additional Commissioner-cum-Special Secretary, Road Construction Department, "Vishweshwaraiya Bhawan Bailey Road, Patna-1
4. The Chief Engineer (Communication) (South Bihar Wing), Road Construction Department, "Vishweshwaraiya Bhawan” Bailey Road Patna-15.
5. The Superintending Engineer, Road Construction Department Magadh Road Circle, Gaya.
6. The Executive Engineer, Road Construction Department Road Division, Nawada.

... .. Respondents

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Appearance :

For the Petitioner/s : Mr.Manish Sahay, Advocate
For the Respondent/s :

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date : 01-04-2019

This writ application has been preferred for the
following reliefs:-

(I). For quashing of Letter No. Pra-7/vividh-97/2015(Ansh)/7142, read with Office Order-217, dated 15.12.2017, issued under signature of the Engineer-in-Chief - cum- Additional Commissioner- cum- Special Secretary, namely Sri Laxmi Narayan Das, Road Construction



Department, Bihar, Patna (as contained in Annexure-P-9), whereby and whereunder the registration bearing its No. अ० प्र०/ श्रेणी-01 (प्रथम) – 533/2014 of the petitioner has been suspended for two years under Sub-Clause-ii of Clause 11(*ka*) of the Bihar Registration of Contractors Rules, 2007 read with departmental letter no. 4104(E) dated 28.10.2009 in most arbitrary manner as well as against the settled law.

(II). For declaration that the action of the Engineer-in-Chief - cum- Additional Commissioner- cum- Special Secretary, is totally illegal, mala fide, arbitrariness, colourable exercise of powers as well as contrary to the said registration rules, 2007.

(III). For passing such an order or orders for which the petitioner is entitled under the law in the facts and circumstances of the case.”

It is the case of the petitioner that the impugned order as contained in Annexure-‘9’ to the writ application dated 15.12.2017 by which the Engineer-in-Chief - cum- Additional Commissioner- cum- Special Secretary, Road Construction Department, Government of Bihar has suspended the registration of the petitioner for a period of two years is in complete violation of principles of natural justice as also the impugned order suffers from vice of non-consideration of the materials available on the record. To



buttress his point learned counsel has taken this court through the writ application, counter affidavit and the rejoinder of the petitioner.

It is the specific case of the petitioner that due to nonavailability of sand during the period when the mining activities were stopped in the State of Bihar, the work in question was delayed. He had, in terms of the provisions of the agreement made an application for extension of time to the competent authority. A copy of the application seeking extension of time is part of Annexure-P-13 series brought on record with the rejoinder of the petitioner.

Learned counsel has shown from Annexure-P-13 that for the reasons stated therein by the different authorities of the Road Construction Department recommendation was made by them to the Superintending Engineer, Road Construction Department, Magadh Road Circle, Gaya to grant extension of time. The Superintending Engineer in his turn sent his recommendation to the Chief Engineer (Mechanical), South Bihar Sub-Part, Road Construction Department, Bihar, Patna for necessary order.



The recommendation of the Superintending Engineer is contained in Letter No. 1858 dated 28.11.2018.

Learned counsel further submits from the pleadings available on the record that in the meantime the petitioner had completed the work in February, 2018 itself and the respondents had while delay was being done in completion of the work deducted the liquidated damage which was fixed under the agreement and was to a maximum limit of 2% of the contract amount. In this way, respondents have kept pending a sum of Rs. 1 Crore approximately to the petitioner which the petitioner would be entitled to get once the competent authority approves the recommendation of the Superintending Engineer for extension of time.

Learned counsel for the petitioner submits that while the aforesaid issue of extension of time was still pending consideration, the petitioner was served with a show cause notice dated 11.09.2017 as contained in Annexure-P-6 under the signature of Engineer-in-Chief whereby the petitioner was called upon to submit his explanation within a period of seven days as to why for the



delay caused in completion of work action should not be taken against him under the provisions of Bihar Contractors Registration Rules, 2007. Petitioner submits his reply vide letter dated 19.09.2017 and 11.10.2017 are available on record as Annexure-P/7 & P/8 respectively.

Learned counsel submits that unfortunately the Engineer-in-Chief has acted in a routine and mechanical manner without applying a judicious mind to the facts of the case and passed the impugned order without looking into the reply of the petitioner.

It is submitted that in the impugned order a totally wrong and incorrect fact has been mentioned by the Engineer-in-Chief saying that the petitioner had not submitted any explanation to the show cause notice. It is submitted that because the impugned order mentioned that the petitioner had not submitted any explanation whereas the petitioner had submitted explanations, in order to bring this fact to the notice of the Engineer-in-Chief, the petitioner submitted a letter dated 23.01.2018 in the office of the Engineer-in-Chief as contained in Annexure-P-11 but instead of applying himself to the true and correct facts



which were brought to the notice by the petitioner, the Engineer-in-Chief refused to pass any order on Annexure-P-11 by taking a stand in his order dated 27.02.2018 (Annexure-P-12) that the petitioner should have approached the Principal Secretary of the Department against his order.

No one appears on behalf of the State to oppose the writ application however because copy of the counter affidavit is available on the record, this court has gone through the statements made in the counter affidavit.

Learned counsel for the petitioner has pointed out from various paragraphs of the counter affidavit that in fact there is no denial of the respondents that the petitioner had submitted Annexures - P-8 and P-11. It is submitted that in absence of any denial of those facts it may be easily concluded that the impugned order suffers from not only violation of principles of natural justice, and from the vice of non-consideration of the materials available on the record.

After hearing learned counsel for the petitioner and taking into consideration the stand of the respondents as disclosed in the counter affidavit, this court is of the



considered opinion that the impugned order is liable to be quashed on both grounds i.e. violation of principles of natural justice during the period the request of the petitioner was pending consideration and non-consideration of the materials available on the record which in fact is another limb of the principles of natural justice. The Engineer-in-Chief, Road Construction Department has acted in hot haste without realising that the stand of the petitioner as contained in Annexure-P-8 is required to be considered. It seems that he is applying his power under the Bihar Contractors Registration Rules without abiding by the principles of natural justice and the provisions of the Rules which clearly mandate that before passing any such order the contractor has to be heard. In this case, no doubt a show cause notice was issued but when the contractor/petitioner submitted his reply the same has not been considered which amounts to violation of the Rules. Recently in a number of cases which has come before this court and one of them being CWJC No. 2398/2019 which has been decided by this court only on 29.03.2019 this court has noticed that order is being passed by the Engineer-in-Chief, Road Construction



Department suspending the license or debarring the contractor without giving a show cause or considering the reply. This matter has to be taken up seriously as it has a tendency to give rise to litigation. The order passed by the Engineer-in-Chief has got a civil consequence, therefore, while dealing with such matters it is incumbent upon him to abide by the rules of natural justice.

It is for this reason the order is being communicated to the Principal Secretary, Road Construction Department, Government of Bihar, Patna to look into the matter and stop this kind of practice in the department of passing order in haste in violation of the provisions of the Rules and principles of natural justice particularly so when these are in the nature of drastic powers having civil consequences.

This court is for the present restraining itself from imposing cost in this case however remedial measures must be taken by the Principal Secretary to avoid such situation which results in giving rise to litigation only because of non-compliance with the provisions of the Rules.



The impugned order as contained in Annexure-‘9’ is, thus, set aside. This writ application is allowed.

(Rajeev Ranjan Prasad, J)

Rajeev/-

AFR/NAFR	
CAV DATE	
Uploading Date	02.04.2019
Transmission Date	

