

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16766 of 2019

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Arun Kumar son of Late Siya Ram Singh, resident of Village and P.O.-
Bandeya, P.S.- Bandeya Rukandi, Distt.- Aurangabad, at present residing at
Sharma Bhawan, Rajiv Nagar, Road No. 8, P.S.- Rajiv Nagar, Town and
Distt.- Patna

... .. Petitioner/s

Versus

1. Bihar State Building Construction Corporation Ltd.. a Govt. of Bihar Undertaking having its Registered Office at Patna-800001 (Bihar) through its Managing Director
2. Managing Director, Bihar State Building Construction Corporation Ltd., a Government of Bihar Undertaking, Patna-800001 (Bihar)
3. Chief General Manager, Bihar State Building Construction Corporation Ltd., a Government of Bihar Undertaking, Patna-800001 (Bihar)
4. General Manager, Bihar State Building Construction Corporation Ltd., a Government of Bihar Undertaking, Patna-800001 (Bihar)
5. Engineer-in-Chief-cum-Additional Commissioner-cum-Special Secretary, Building Construction Department, Govt. of Bihar, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Umesh Prasad Singh, Sr. Adv. Mr. Neeraj Kumar, Adv.
For respondent nos.1 to 4:		Mr. Tej Bahadur Singh, Sr. Adv.
For Respondent no.5	:	Mr. Uday Shankar Sharan Singh (GP19)

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL JUDGMENT

13 10-03-2021 Heard Mr. Umesh Prasad Singh, learned senior counsel

for the petitioner, Mr. Tej Bahadur Singh, learned senior counsel

for respondent nos.1 to 4 and Mr. Uday Shankar Sharan Singh,

learned G.P.19 for respondent no.5.

2. The petitioner by filing this writ petition seeks
following reliefs:-

- (i) To issue a rule NISI in the nature of a writ of certiorari to quash and cancel the Communication dated 12.1.2019 issued by respondent no.2 to



respondent no.5 as also the letter dated 3rd April, 2019 issued under the signature of the Engineer-in-Chief-cum-Additional Commissioner-cum-Special Secretary, Building Construction Department, Government of Bihar, Patna (respondent no.5) by which he called upon the petitioner to file a show cause in regard to the allegations made in the aforesaid letter being without authority of law;

- (ii) To issue a writ in the nature of writ of certiorari to quash and cancel the order as contained in Memo no. Building/Blacklisting/05/2019/6851/Bhawan dated 26.7.2019 by which the registration no.BCD First (Personnel)-29 (Building)/2014 of the petitioner as contractor with the Building Construction Department, Government of Bihar, has been suspended and the petitioner has been blacklisted for 5 years;
- (iii) To issue a writ of mandamus commanding the respondents to refrain from giving effect of the order as contained in letter dated 24/26th July, 2019 issued under the signature of the Engineer-in-Chief-cum-Additional Commissioner-cum-Special Secretary, Building Construction Department, Government of Bihar, Patna.
- (iv) To issue other appropriate writ/writs, order or orders, direction or directions as this Hon'ble Court may deem fit and proper in the facts and circumstances of this case.

3. The facts, in brief, for disposal of the case are that the petitioner though not a registered contractor with the Bihar State Building Construction Corporation Limited (hereinafter referred to as the Corporation) participated in pursuance of e-Tender being e-Tender No.96/2018-19 for construction of Civil Court Building at Paliganj as detailed in Item No.19 of the said



e-Tender of which the bill of quantity was valued at Rs.21,14,51,242/-. The petitioner was required to deposit earnest money of Rs.31,20,000/- and the petitioner deposited vide Fixed Deposit Receipt dated 20th November, 2018 issued by the Bank of India, Patel Nagar Branch, Patna. The petitioner had also submitted e-Tender for construction of Gymnasium near the registered office of respondent no.1 fully described in Item No.16 of the e-Tender of which the bill of quantity was valued at Rs.8,25,06,457/-. The petitioner deposited the earnest money of Rs.16,50,000/- by Fixed Deposit Receipt dated 20.11.2018 issued by the Bank of India, Patel Nagar Branch, Patna. As per the terms and conditions of the e-Tender, the petitioner had to comply with the requirements as mentioned.

4. The case of the petitioner is that by mistake, the representative of the petitioner uploaded experience certificate with the documents filed in pursuance of e-Tender but when the petitioner came to know the mistake, withdrew both the tenders much before opening of the bid and the petitioner did not participate in bidding process. The petitioner had already withdrawn himself as a bidder. Nevertheless, the Tender Committee of respondent no.1 by order dated 4th January, 2019 forfeited the security amount in respect of tenders on the same



ground that the petitioner had enclosed the certificate of experience, which was forged and fabricated and thus the petitioner had concealed the material facts and applied for two works detailed in aforesaid e-Tenders.

5. Further case of the petitioner is that the earnest money deposited by the petitioner was forfeited as per the order of the Tender Committee of respondent no.1 although there was no concluded contract between the parties. The petitioner filed CWJC No.1543 of 2019 and CWJC No.2237 of 2019 against the order forfeiting the earnest deposit money i.e. Rs.31,30,000/- and Rs.16,50,000/- for the two tenders. Both the writ petitions are pending in this High Court for disposal.

6. The General Manager (South), vide letter no.28.12.2018 called upon the petitioner to show-cause. The petitioner in pursuance thereof filed his show-cause but the same was not accepted. Vide letter dated 12.01.2019 the Managing Director of the Corporation wrote a letter to the Engineer-in-Chief-cum-Additional Commissioner-cum-Special Secretary, Building Construction Department, Government of Bihar, Patna to pass an order for blacklisting of the petitioner in accordance with Bihar Contractors Registration Rules, 2007. Respondent no.5 thereafter called upon the petitioner as to why



the registration of the petitioner not be suspended and petitioner be not blacklisted. In response thereto, the petitioner filed a detailed show-cause. The petitioner challenged and raised objections to the very authority of respondent no.5 to issue such notice and exercise power under the so-called Bihar Contractors Registration Rules, 2007.

7. The Engineer- in- Chief -cum - Additional Commissioner - cum - Special Secretary, Building Construction Department, Government of Bihar (respondent no.5) communicated the order as contained in letter no.6851 dated 24th/26th July, 2019 by which the registration of the petitioner with the Building Construction Department has been suspended and the petitioner has been blacklisted for five years (Annexure P/4). Being aggrieved with the aforesaid order, the petitioner filed this writ petition.

8. Respondent nos.1 to 4 (Bihar State Building Construction Corporation Limited) and Respondent no.5 (Engineer – in – Chief – cum - Additional Commissioner – cum - Special Secretary, Building Construction Department) filed their counter affidavits justifying the actions of the respondents stating therein that the first requirement of e-Tender is that the contractor should be registered with the Building Construction



Department/Road Construction Department and only such contractor, who is registered under the Bihar Contractors Registration Rules, 2007, is eligible to participate in e-Tender. The Bihar Contractors Registration Rules, 2007 prescribe the procedure for suspension of registration and blacklisting of such erring contractor from participating or doing any business or contract work.

9. Mr. Umesh Prasad Singh, learned senior counsel for the petitioner, submits that it is a matter of record that the petitioner is not a contractor registered with the Corporation (respondent no.1) nor respondent no.1 has adopted the so-called Rules i.e. Bihar Contractors Registration Rules, 2007 and as such the Corporation (respondent no.1) is only a Government of Bihar undertaking Company registered under Section 617 of the Companies Act, 1956. The respondent no.1 is neither an agency of the Government of Bihar nor the superior or subordinate office of the Government of Bihar. It is apparent that respondent no.1 or its Managing Director or any other authority of the Corporation had/have no authority of law and thereby they were ineligible because they are not authorised by law to pass any order of punishment much less an order of suspension of registration of the petitioner with Building Construction



Department and/or to blacklist the petitioner. It is apparent that respondent no.1 or its Managing Director cannot pass any order of punishment much less to blacklist the petitioner and if they were ineligible and have no authority of law to pass order against the petitioner, which in fact and in law, respondent nos.1 to 4 could not have suspended the registration of the petitioner which is with the Building Construction Department, Government of Bihar. It is further submitted that the law in this regard is settled that if an authority cannot take any action directly, in other words, he is ineligible. Such authority cannot take any action indirectly and as such the letter dated 12.01.2019 sent by the Managing Director (respondent no.2) is not only illegal, without authority of law, rather malafide and without jurisdiction. It has been further submitted that the Bihar Contractors Registration Rules, 2007 is not a statutory rule framed by the legislatures authorised under the provisions of the Constitution and it is a mere executive instruction.

10. Learned senior counsel for the petitioner further submits that similarly Engineer-in-Chief-cum-Additional Commissioner-cum-Special Secretary (respondent no.5) has acted illegally, arbitrarily and without authority of law. The authority concerned failed to understand that the Corporation is



not a department of Government of Bihar nor respondent no.5 is an officer with delegated authority to act under the so-called Bihar Contractors Registration Rules, 2007 that too under the control of respondent no.5 nor the Corporation is an agency of the State Government, as such respondent no.5 cannot exercise the power under the so-called Bihar Contractors Registration Rules, 2007.

11. It is further submitted that respondent no.5 simply narrated the facts what transpired in relation to submissions of the tender by the petitioner in the Corporation and the fact incorporated and the documents sent by the office of respondent no.5 but has not considered the facts and submissions detailed in the show-cause submitted by the petitioner. It need not be mentioned that every order, that too, such order which affects the right of a person, a right under Part III of the Constitution debarring a person from his source of livelihood, is bad unless such an order is passed on relevance and reason, the twin principles of the Constitution of India. The order per-se is illegal and is fit to be quashed and cancelled.

12. Learned senior counsel for the petitioner placed reliance on the judgement of the Supreme Court in the case of Pratapchand Nopaji Vs. Kotrike Venkata Setty & Sons reported



in (1975) 2 Supreme Court Cases 208, para 9, which reads as follows:-

“Para-9 the principle which would apply, if the objects are struck by Section 23 of the Contract Act, is embodied in the maxim : *qui facit per alium facit per se*” (what one does through another is done by oneself). To put it in another form, that which cannot be done directly may not be done indirectly by engaging another outside the prohibited area to do the illegal act within the prohibited area. It is immaterial whether, for the doing of such an illegal act, the agent employed is given the wider powers or authority of the “pucca adtia”, or, as the High Court had held, he is clothed with the powers of an ordinary commission agent only”.

13. Learned senior counsel for the petitioner further placed reliance on the judgement of the Supreme Court in the case of Hukam Chand Shyam Lal Vs. Union of India and others, reported in A.I.R. 1976 (SC) 789, para 18, which reads as follows:-

18. “It is well settled that where a power is required to be exercised by a certain authority in a certain way, it should be exercised in that manner or not at all, and all other modes of performances are necessarily forbidden. It is all the more necessary to observe this rule where power is of a drastic nature and its exercise in a mode other than the one provided, will be violative of the fundamental principles of natural justice. Now, in the present case, if the telephones of the appellants were to be disconnected on the ground of misuse, then they had to give, in consonance with the principles of natural justice, opportunity to the appellants to explain their conduct before taking action under Rule 427 read with Rules 416 and 421. Resort to the wrong and more drastic course provided in Rule



422, on a ground which was not germane to an action under that Rule, vitiates the impugned order, particularly when it is manifest that in making the impugned order, the General Manager was influenced more by this ground and less, if at all, by the existence of 'public emergency' certified by the Delhi Administration.”

14. Mr. Tej Bahadur Singh, learned senior counsel for respondent nos.1 to 4 (Corporation) and Mr. Uday Shankar Sharan Singh, learned G.P.19 for respondent no.5, submit that the pre-requisite to participate in the tender issued by the Corporation is that only such contractor/contractors is/are eligible to participate and fill up e-Tender, who is/are registered with the Bihar Building Construction Department/Road Construction Department. The Bihar Building Construction Department/Road Construction Department framed rules and issued notification on 07.05.2007 vide letter no.Rule-03-01/2002-5737(s). The rules prescribe the procedure for registration of different categories of contractors. Clause 11 of the Rules prescribes the procedure for blacklisting the contractor, if a contractor is found to have committed any of the irregularities and acts described therein. It is further submitted that the Rule itself provides efficacious and alternative remedy to file appeal before the Commissioner and, therefore, the order suspending the registration of the petitioner and blacklisting him



for five years does not suffer from any illegality and jurisdictional error.

15. Having heard both sides and on consideration of the submissions put forward before this Court, this Court finds that the learned counsel for the petitioner assailed the order dated 24th/26th July, 2019 passed by respondent no.5 as contained in Annexure P/4 suspending the registration of the petitioner and blacklisting him for five years mainly on the ground that the petitioner is registered with the Building Construction Department and, therefore, respondent nos.1 to 4 cannot take any punitive action with regard to suspension of registration and blacklisting the petitioner from doing any contractual work on the basis of registration with the Building Construction Department/Road Construction Department. Once the authority is found incompetent and ineligible to take action against the petitioner under the Bihar Contractors Registration Rules, 2007, on the basis of recommendation made by the Corporation, the Building Construction Department with whom the petitioner is registered cannot take action on such recommendation because the petitioner has done no wrong with the Building Construction Department. If the law does not permit a person to pass any order, the law also does not permit any other such person or entity to pass any punitive action on the recommendation of such person, who is not at all legally entitled or permissible to take any action against the petitioner.

16. For consideration of submissions of both sides in order to decide the question raised on behalf of the petitioner whether the Corporation is legally entitled to recommend for taking appropriate action to the Building Construction



Department under the Bihar Contractors Registration Rules, 2007 and the action on such recommendation is within the purview and four corners of law or the same is without jurisdiction.

17. It will be worthwhile to look into the relevant Rules and the terms and conditions of the e-Tender issued by respondent nos.1 to 4, which are as follows:-



बिहार सरकार
पथ निर्माण विभाग
अधिसूचना

पत्र सं-प्र-8/नियम-03-01/2002-5737 (S) पटना, दिनांक-07.05.07

पूर्व निर्गत अधिसूचना संख्या-प2/नियम 3-01/97-4009 (एस) दिनांक- 28 जून 1997 को अवकाशित करती हुए राज्य सरकार को पथ निर्माण विभाग द्वारा पंजीकृत बिहार ठेकेदारी निबंधन विनियमवली 2007 को जन साधारण हेतु एलएड द्वारा प्रकाशित की जाती है।

नियम

- (i) यह बिहार ठेकेदारी निबंधन विनियमवली, 2007 कबलायेगी।
(ii) यह नियमवली प्रकाशन की तिथि से प्रभावी होगी।
- रीकौटारों को पथ एवं पुलों के निर्माणार्थ निम्नलिखित श्रेणी में विभाजित किया जायेगा:-
श्रेणी 1: 3.50 करोड़ रुपये से ऊपर के निर्माण कार्य हेतु निविदा देने के लिए सक्षम।
श्रेणी 2: 70 लाख रुपये से 3.5 करोड़ रुपये तक के निर्माण कार्य हेतु निविदा देने के लिए सक्षम।
श्रेणी 3: 70 लाख रुपये से कम तक के निर्माण कार्य हेतु निविदा देने के लिए सक्षम।
- उपर्युक्त श्रेणियों के लिए निर्बंधन शुल्क निम्न प्रकार होगा:-
श्रेणी 1: 2.00 लाख रुपये।
श्रेणी 2: 1.00 लाख रुपये।
श्रेणी 3: 25 हजार रुपये।
- (क) निर्बंधन 5 वर्षों के लिए अनुमान्य होगा। इस अवधि के दौरान श्रेणी दो एवं तीन में पंजीकृत संवेदक यदि चाहें तो श्रेणी एक में अतिरिक्त शुल्क जमा कर निर्बंधन हो सकते हैं। ऐसा करने पर उनकी विचली श्रेणी का पंजीकरण स्वतः रद्द समझा जाएगा।
(ख) अधिर्यता प्रमुख अथवा मुख्य अधिर्यता से अन्य किसी पदाधिकारी, जो राज्य सरकार को द्वारा प्रधिकृत किये गये हों, निर्बंधन पदाधिकारी होंगे।
(ग) उपरोक्त तीनों श्रेणियों के पंजीकृत संवेदक सम्पूर्ण बिहार में कहीं भी निविदा डालने के लिये सक्षम होंगे।
- पंजीकरण के लिए निम्नलिखित कामकाज संवेदक को जमा करने होंगे:-
(क) प्रपत्र 'क' में आवेदन पत्र
(ख) PAN रजिस्ट्रेशन की छापाप्रति
(ग) आवेदन पत्र में अंकित पता का साक्ष्य (Address Proof)
(घ) निर्धारित शुल्क का बैंक ड्राफ्ट "अवर सचिव (लेखा), पथ निर्माण विभाग, बिहार, पटना" को पक्ष में देय तथा पटना में भुगतान हो।
(च) यदि पार्टनरशिप या लोक समिति कंपनी हो तो उसका निर्बंधन प्रमाण-पत्र, अंशधारियों के नाम तथा पार्टनरशिप डीड/कम्पनी चाई शॉ की प्रति।
- सरकारी सेवा से हटायें गये व्यक्ति, संवेदकों की स्वीकृत सूची से हटायें गये व्यक्ति, पदावत किये गये संवेदक, निर्रिक्त सरकारी सेवक एवं व्यापार से दोगी पाये गये व्यक्ति को किसी कार्य के सदस्य एवं व्यक्तिगत आवेदक होने की स्थिति में उनका निर्बंधन/नवीकरण नहीं किया जायेगा।
- नवीकरण:- पाँच वर्ष की अवधि के बाद पुनः कौडका 3 में दिये गये शुल्क को जमा कर नवीकरण करवा जा सकेगा। नवीकरण के लिये आवेदन पत्र निर्बंधन समाप्त होने के एक माह पूर्व दिया जाना होगा।
- नवीकरण:- हेतु आवेदन देने के लिए अनुग्रह अवधि निर्बंधन समाप्ति हो जाने की तिथि से एक माह तक होगी।
- पथ निर्माण विभाग के विभिन्न श्रेणी में वर्तमान निर्बंधन का नवीकरण करना होगा जिसके लिए उन्हें नवीकरण का निर्बंधन शुल्क जमा करना होगा और ऐसा नहीं करने पर उनके निर्बंधनों की विधि मान्यता स्वतः समाप्त हो जायेगी। उनसे यह भी अपेक्षा की जायेगी कि वे संशोधित नियमवली में अपेक्षित कामकाजों को जमा करें और संशोधित नियमवली की शर्तों को पूरा करें।



जिन संवेदकों के पुराने निबंधन नियमावली के अन्तर्गत निबंधन/नवीकरण हेतु आवेदन लंबित है, उनके द्वारा संशोधित नियमावली की जिस श्रेणी में निबंधन/नवीकरण करना चाहते हैं उस श्रेणी को राशि तथा पूर्व में जमा की गई चालान को राशि का अंतर जमा करना होगा।

10. आवेदन पत्र: इच्छुक संवेदक/गण परिशिष्ट-'क' में उल्लिखित प्रश्न को भरकर आवेदन देंगे। विभाग द्वारा परिशिष्ट - 'ख' में उल्लिखित निबंधन प्रमाण पत्र जारी किया जायेगा।

11. काली सूची तथा निबंधन:

(क) व्यक्तिगत रूप से ठीकदार या निर्बंधित फर्म के किसी साझेदार या निजी लोक सौमित्र कम्पनी के किसी निदेशक या उनके तकनीकी-कर्मचारी या उनके किसी प्राधिकृत प्रतिनिधि द्वारा निम्नलिखित में से किसी कदाचार के कारण पथ निर्माण विभाग की किसी श्रेणी में निर्बंधित ठीकदार का नाम काली सूची में डाल दिया जा सकेगा अथवा निश्चित अवधि के लिये निलंबित किया जा सकेगा अथवा श्रेणी से नीचे की श्रेणी में पदावतल Demote किया जा सकेगा।

(i) सम्बद्ध विभाग के किसी पदाधिकारी या कर्मचारी के साथ अनुरासमहीनता का व्यवहार।

(ii) एकराजनामा एवं विहित निर्देश के अनुसार कार्य निष्पादन में चूक।

(iii) निविदा कागजातों को प्राथित्य, निविदा कागजातों के प्रस्तुतीकरण या उससे संबंध कोई कार्य करते समय सरकारी कार्यालय में विधि व्यवस्था की समस्या पैदा करने के लिये।

(iv) ठीकदार द्वारा अपना कार्य किसी दूसरे ठीकदार अथवा किसी व्यक्ति को बिना विभागोंय आदेश के सौंपने पर (सबलेटिंग)।

(v) संबद्ध पदाधिकारी या कर्मचारी को अभिवांशित करने या उनपर हमला करने के लिये।

(vi) ठीकदार द्वारा सरकारी सम्मान जैसे सिमेंट, स्टोल एवं अलकतरा इत्यादि बेचते हुए पाये जाने पर।

(vii) ठीकदार द्वारा निविदा प्राप्त करने के लिये गलत अग्रथन या प्रतिभूति राशि एवं गलत कागजात समर्पित करने पर।

(viii) एक से अधिक बार कार्य आवंटित होने पर निश्चित अवधि तक एकराजनामा नहीं करना।

(ix) किसी आपराधिक गतिविधि में सजायापन्न होने पर।

(x) खोचो-समझौता साजिश के तहत संघ/संगूह (Cartel) बनाकर निविदा में भग लेना/बहिष्कार करना।

(ख) किसी विशिष्ट श्रेणी के ठीकदार को काली सूची में दर्ज करने अथवा पदावतल (Demote) करने अथवा निलंबित करने के पूर्व कारण बताओ नोटिस दिया जाना आवश्यक होगा।

(ग) काली सूची में डालने/पदावतल (Demote) करने का आदेश/निलम्बन का आदेश संबंधित कोटि का निबंधन पदाधिकारी अथवा जिस पदाधिकारी के अधीन/पर्यवेक्षण में निबंधन पदाधिकारी कार्यरत हो, के द्वारा पारित किया जा सकेगा।

(घ) दिये गये दण्ड के विरुद्ध, संवेदक द्वारा, तीस दिनों के अन्दर आयुक्त एवं सचिव के समक्ष अपील दायर किया जा सकेगा।

12. एक बार किसी व्यक्ति फर्म/कम्पनी का निबंधन हो जाने के बाद इसके मूलभूत संरचना में परिवर्तन के लिये नया निबंधन करना अनिवार्य होगा।

13. निबंधन में अंकित 'पावर ऑफ एटोर्नी' में परिवर्तन की स्थिति में विभाग से आदेश प्राप्त होने पर ही निविदा में इसकी मान्यता दी जायेगी।

14. निबंधन में अंकित फता परिवर्तन होने पर इसकी सूचना निबंधन कार्यालय को देना आवश्यक होगा।

विश्वासभाजन,

हस्ता-

(मोईनुल रहमान)

सरकार के संयुक्त सचिव,

पथ निर्माण विभाग, बिहार, पटना।



बिहार सरकार
पथ निर्माण विभाग

पत्र सं-प्र-6/नियम-03-04/02 13211 (S)

पटना, दिनांक-16.10.08

प्रेमक,

आर० के० सिंह

प्रधान सचिव,

पथ निर्माण विभाग, बिहार पटना।

सेवा में,

प्रधान सचिव/सचिव,

भवन निर्माण विभाग, बिहार पटना।

ग्रामीण कार्य विभाग, बिहार पटना।

जल संसाधन विभाग, बिहार पटना।

विषय: पथ निर्माण विभाग द्वारा अंगीकृत संशोधित बिहार ठीकेदारी निबंधन नियमावली, 2007 को राज्य के अन्य सभी कार्य विभागों में लागू किये जाने के संबंध में।

महाराज,

उपरोक्त विषय पर आपका ध्यान आकृष्ट करते हुए कहना है कि राज्य सरकार द्वारा पथ निर्माण विभाग, बिहार में अधिसूचना संख्या-5737 (एस) दिनांक-07.05.2007 लागू संशोधित बिहार ठीकेदारी निबंधन नियमावली, 2007 (प्रति संलग्न) को राज्य के अन्य सभी कार्य विभागों में लागू किये जाने का निर्णय लिया गया है।

सरकार ने निर्णय लिया है कि राज्य के सभी कार्य विभाग पथ निर्माण विभाग के उक्त नियमावली के अनुरूप अपने विभाग के अधीन-संवेदकों का निबंधन करेंगे। राज्य के किसी एक विभाग के द्वारा कालीकृत/दण्डित किये जाने पर संवेदक अन्य विभागों में भी कार्य प्राप्त नहीं कर सकेंगे/संबंधित दण्ड के अधीन कार्य प्राप्त करने की अहंता रखेंगे।

अनु:- यथोक्त।

विश्वासभाजन,

ह/-

(आर०के०सिंह)

प्रधान सचिव,

पथ निर्माण विभाग, बिहार, पटना।



- बिहार सरकार**
बिहार राज्य मवन निर्माण निगम, लि० पटना
(बिहार सरकार का उपक्रम)
राष्ट्रीय स्पर्धा ई०-निविदा/ई० पुनर्निविदा आगंत्रण सूचना सं०-०६/२०१८-१०
- विज्ञापनदाता का पदनाम एवं पता :- मुख्य महासचिवक, बिहार राज्य मवन निर्माण निगम लि०, अस्पताल रोड, सारनीनगर, पटना-८०००२३
 - निविदा आगंत्रण की तिथि :- दिनांक: २२.१०.२०१८.
 - निविदा दस्तावेजात प्रारंभ (आगतनीति) करने की अंतिम तिथि एवं समय :- दिनांक: ०६.११.२०१८ से २७.११.२०१८ के १५:०० बजे तक।
 - निविदा प्रमा (अंतिम) करने की अंतिम तिथि एवं समय :- दिनांक: २८.११.२०१८ के १५:०० बजे तक।
 - निविदा रिडी का स्थान :- ई-टेंडर वेबसाईट www.eproc.bihar.gov.in पर
 - डी-बीड भीटिंग की तिथि, समय एवं स्थान :- दिनांक: १९.११.२०१८ को ११:०० बजे पूर्वार्द्ध मुख्य महासचिवक, बिहार राज्य मवन निर्माण निगम लि०, अस्पताल रोड, सारनीनगर, पटना-२३
 - निविदा खोलने की तिथि एवं समय (टेक्नीकल बीड) :- दिनांक: ३०.११.२०१८ को १५:०० बजे।
 - निविदा खोलने की तिथि एवं समय (फिनील बीड) :- दिनांक: ०७.१२.२०१८ को १५:०० बजे के बाद।
 - निविदा रीटल की तिथि:- :- १२० दिन
 - छाई का विवरण :-

क्र. सं.	जिला का नाम	छाई का नाम	आवृत्ति प्रति (रु. व.)	अवकाश की राशि (रु. व.)	लीडिंग बिडिंग का शुल्क (रु. व.)	Bid Processing Fee	छाई सम्पत्ति की अवधि (घंटा व.)	रूप सम्पत्ति का नाम
१	२	३	४	५	६	७	८	९
१	रोहतास	रोहतास (सांसातन) जिलानागत जिला मुख्यालय अन्तर्गत सखारवाँ मौजा में खेल भवन-सह-व्यायामशाला का निर्माण कार्य।	₹६,७१,३६,९५१.००	₹१३,४५,०००.००	₹१०,०००/-	₹१७,७००/-	१२ (माह)	पटना
२	भोजपुर	भोजपुर जिला मुख्यालय अंतर्गत अंघर आरा, मौजा पकड़ी, खाना नं०-२३०, खाल-३७७, खेसरा-७६७, रकबा-४०६० वर्गफीट एवं मौजा पकड़ी, खाना-२३६, खाला-३१२, खेसरा-७४३, रकबा-१७६६० वर्गफीट कुल रकबा २१६०० वर्गफीट खासमहल, बिहार सरकार की भूमि पर खेल भवन-सह-व्यायामशाला का निर्माण कार्य।	₹६,७७,१५,०१३.००	₹१३,५५,०००.००	₹१०,०००/-	₹१७,७००/-	१२ (माह)	पटना
३	मुंगेर	मुंगेर जिला मुख्यालय अंतर्गत गिर्द किला मुंगेर से सटे खास महल की विहिन् खासी जमीन पर खेल भवन-सह-व्यायामशाला का निर्माण कार्य।	₹६,८९,९३,२५०.००	₹१३,८०,०००.००	₹१०,०००/-	₹१७,७००/-	१२ (माह)	मुंगेर



1.	मधेपुरा	लखीसराय जिला मुख्यालय के आगत मौजा जयनगर भाग-124, खता-498, खसरा-429, खता-22400 जमीन अनुमंडल लखीसराय की अतिरिक्त भूमि खासमहाल, बिहार सरकार की भूमि पर खेल भवन-सह-व्यायामशाला का निर्माण कार्य।	₹6,82,75,095.00	₹13,70,000.00	₹10,000/-	₹17,700/-	12 (बार)	मुंगेर
5	मधुबनी	जमुई जिला मुख्यालय आगत मौजा में खेल भवन-सह-व्यायामशाला का निर्माण कार्य।	₹6,89,49,774.00	₹13,60,000.00	₹10,000/-	₹17,700/-	12 (बार)	मुंगेर
6	अररई	रंगबिरा जिलानगर खेल भवन-सह-व्यायामशाला का निर्माण कार्य।	₹6,89,53,381.00	₹13,60,000.00	₹10,000/-	₹17,700/-	12 (बार)	मुंगेर
7	बलिया	बलिया जिला मुख्यालय के आगत मौजा बलिया, खता नं०-967, खता-752, खता-1279, खता- 1151/2 एकड़ हरिनाथ बाग, गैरअनुमंडल आन (खानाघर एवं लोडिंग) बिहार सरकार की भूमि पर खेल भवन-सह-व्यायामशाला का निर्माण कार्य।	₹6,83,35,543.00	₹13,30,000.00	₹10,000/-	₹17,700/-	12 (बार)	गया
8	मुजफ्फरपुर	मुजफ्फरपुर जिला-अगत इण्डोर स्पोर्ट्स कम्प्लेक्स, सिफेवरपुर, मुजफ्फरपुर के बंगला में पत्थरी जमीन पर खेल भवन-सह-व्यायामशाला का निर्माण कार्य।	₹7,25,23,207.00	₹14,55,000.00	₹10,000/-	₹17,700/-	12 (बार)	मुजफ्फरपुर
9	मधुबनी	मधुबनी जिला में राज नारायण सिंह देवनायक गुडमीत कला विकास-सह-वाटसन इंटर महाविद्यालय के परिसर में अवस्थित क्रेडिटोरियम के ऊपर-पुर्ब खाली भूखंड पर खेल भवन-सह-व्यायामशाला का निर्माण कार्य।	₹7,19,47,095.00	₹14,40,000.00	₹10,000/-	₹17,700/-	12 (बार)	दरभंगा
10	सहरसा	सहरसा जिला में आउटडोर स्टेडियम के परिसर में शतरंज के निम्नरे स्थान खाली भूखंड पर खेल भवन-सह-व्यायामशाला का निर्माण कार्य।	₹7,06,15,304.00	₹14,20,000.00	₹10,000/-	₹17,700/-	12 (बार)	सहरसा
11	पूर्णांचल	पूर्णांचल जिला के जिला मुख्यालय आगत मधुबनी काई नं०-12/7, खता नं०-130/2, खता नं०-1433 आसगाह की भूमि पर खेल भवन-सह-व्यायामशाला का निर्माण कार्य।	₹6,75,24,763.00	₹13,55,000.00	₹10,000/-	₹17,700/-	12 (बार)	पूर्णांचल



12	कटिहार	जिला मुख्यालय के आसपास मौला-निरवाड़ी का नं०-128, खंसा-345 विहार सरकार की भूमि पर खेल भवन-सह-क्यामशाला का निर्माण कार्य।	6,69,32,417.00	₹13,40,000.00	₹10,000/-	₹17,700/-	12 (सह)	पूर्विका
13	बक्सर	200 आसन वाले राजकीय अमेरिकन कलेज का बाबासाहब आसपास का निर्माण कार्य, कर्मीवर की जमीन एवं अधिष्ठापन एवं 05 साल के रख-रखाव के साथ।	7,00,27,161.00	₹14,00,000.00	₹10,000/-	₹17,700/-	13 (सह)	बक्सर
14	सहायवादा	राजकीय अमेरिकन कलेज का बाबासाहब आसपास का निर्माण कार्य, कर्मीवर की जमीन एवं अधिष्ठापन एवं 05 साल के रख-रखाव के साथ।	6,08,40,237.00	₹13,80,000.00	₹10,000/-	₹17,700/-	14 (सह)	सहायवादा
15	गोपालगंज	राजकीय पॉलिटेक्निक सरस्वती शिवारा प्रखंड-मुसामबाद, जिला-गोपालगंज के मौला-सिधवार, नं०-74, खंसा-345, खंसा नं०-1325 में 200 आसन के राजकीय अमेरिकन कलेज का बाबासाहब आसपास का निर्माण कार्य, कर्मीवर की जमीन एवं अधिष्ठापन एवं 05 साल के रख-रखाव के साथ।	6,26,35,483.00	₹12,55,000.00	₹10,000/-	₹17,700/-	15 (सह)	सारंग
16	पटना	विहार राज्य के अमेरिकन गिमनासियम (Gymnasiums) का निर्माण कार्य।	₹8,25,08,437.00	₹16,50,000.00	₹10,000/-	₹17,700/-	16 (सह)	पटना
17	भागलपुर	भागलपुर जिला मुख्यालय के आसपास नं० 12 इकाई (G+3) का निर्माण कार्य।	₹6,69,24,671.00	₹13,40,000.00	₹10,000/-	₹17,700/-	17 (सह)	भागलपुर
18	भागलपुर	भागलपुर जिला मुख्यालय के आसपास नं० 18 इकाई (G+3) का निर्माण कार्य।	₹27,12,66,261.00	₹37,15,000.00	₹10,000/-	₹17,700/-	18 (सह)	भागलपुर
19	पटना	पटना जिला मुख्यालय के आसपास नं० 15 इकाई (G+3) का निर्माण कार्य।	₹21,14,51,242.00	₹31,20,000.00	₹10,000/-	₹17,700/-	19 (सह)	पटना
20	पटना	पटना जिला मुख्यालय के आसपास नं० 12 इकाई (G+3) का निर्माण कार्य।	₹7,07,29,350.00	₹14,15,000.00	₹10,000/-	₹17,700/-	20 (सह)	पटना



- मुख्य महाप्रबंधक,
बिहार राज्य भवन निर्माण निगम लि., पटना

दिनांक 22.10.18

प्रतिनिधि:- निदेशक, सूचना एवं जन-सम्पर्क विभाग, बिहार, पटना को e-advertisement के माध्यम से दैनिक सप्ताहार परों में प्रकाशित करवाया।

मुख्य महानिरीक्षक, बिहार राज्य गठन निर्माण विभाग लि. दरभंगा।



18. The plain and simple reading of the Bihar Contractors Registration Rules, 2007 is that a person, who wishes to do the contract work under the different work departments of the Government of Bihar, its company is required to get registered with the Building Construction Department. Clause 4(kh) says that the Engineer-in-Chief or the Chief Engineer or the Junior Officer to the Chief Engineer, who is duly authorised by the State Government, shall be the registration authority. Clause 4(g) says that all the three classes of registered contractors are eligible to submit tenders throughout the Bihar on the basis of such registration. Clause 11 prescribes the procedure for blacklisting such registered contractor on his breach of any conditions enumerated therein. The another amended letter dated 16.10.2008 vide letter no.Rule-03-04/2002-13211(S) was issued under the signature of the Principal Secretary, Road Construction Department, Bihar and the notification dated 07.05.2007 vide letter no.Rule-03-01/2002-5737(S) is made effective in all the work departments of the Government of Bihar. The government resolved that all the work departments shall also adopt the rules for registration of the contractors. If any of the department blacklists or



punishes any such registered contractor, such contractor shall not be eligible for getting any work in any of the departments on such disqualification.

19. From perusal of Clause 11 of the e-Tender issued under the signature of the Chief General Manager, Bihar State Building Construction Corporation Ltd., vide Notice Inviting Tender No.96/2018-19, it appears that only such contractor/contractors is/are eligible to take part in the bid, who is/are registered contractor/contractors under the Bihar Contractors Registration Rules, 2007 with the Building Construction Department or the Road Construction Department of Government of Bihar.

20. From the plain and simple reading of different clauses of the Bihar Contractors Registration Rules, 2007 and the e-Tender, it is crystal clear that the contractor, who is participating in any Notice Inviting Tender and fills up the paper for bid, such contractor must be registered with the Building Construction Department/Road Construction Department with his class of contracts as classified therein. Rule 11(k) says that any such contractor, who commits any misconduct as enumerated therein, the Road Construction Department or the Building Construction Department may suspend the registration



and blacklist such contractor.

21. The petitioner also got himself registered with the Building Construction Department/Road Construction Department and on the basis of such registration filled up Notice Inviting Tender issued by the Corporation (respondent nos.1 to 4). The first criteria to participate in the bid is to get registration with the Building Construction Department or the Road Construction Department and only then the petitioner becomes eligible to participate in the Notice Inviting Tender issued by any department, company or corporation within the territory of the State of Bihar. Once the petitioner becomes eligible to participate in the bid on the basis of such registration with the Building Construction Department/Road Construction Department, the petitioner cannot absolve from the liability of being prosecuted by the Building Construction Department/Road Construction Department, if the petitioner commits any misconduct as enumerated in the Bihar Contractors Registration Rules, 2007. The Building Construction Department/Road Construction Department with whom the petitioner is registered as a contractor, cannot be precluded or restrained from taking any actions for such misconduct of the petitioner. Therefore, I find that the Building Construction



Department with whom the petitioner is registered as a contractor under the Rules, 2007 has got power and jurisdiction to take actions against any contractor registered with it to participate in any work departments within the territory of the State of Bihar and the department with whom the contractor is registered may take actions and blacklist such contractor, who commits misconduct. Thus, I find that the submission of learned senior counsel for the petitioner that the Building Construction Department with whom the petitioner is registered as a contractor has got no power and jurisdiction to take any actions cannot be acceptable.

22. The Building Construction Department, after having received such recommendation of the Building Construction Corporation that the petitioner being registered with the Building Construction Department as a contractor participated in the bid and submitted forged documents of experience, issued notice to the petitioner to show-cause and explain the reasons for submitting forged and fabricated experience certificate said to have been issued by the National Buildings Construction Corporation. The Building Construction Corporation held preliminary enquiry and found that the petitioner participated in the bid and in order to get the works



submitted forged experience certificate to show that the petitioner had also worked with the National Buildings Construction Corporation but when that experience certificate was sent to the National Buildings Construction Corporation, the petitioner came to know about the step taken by the Building Construction Corporation and withdrew the bid papers but the Building Construction Corporation took actions for submitting such forged papers in order to get the works and forfeited the security money deposited by the petitioner and also made recommendation to the Building Construction Department to take actions against such contractor, who committed misdeeds. The Building Construction Department after having considered the show-cause and the explanation submitted by the petitioner took actions under the Bihar Contractors Registration Rules, 2007 with whom the petitioner was registered. Therefore, I find that the Building Construction Department (respondent no.5) has rightly taken actions against the petitioner.

23. At last, I also do not find any force in the submissions of learned senior counsel for the petitioner that the Bihar Contractors Registration Rules, 2007 has got no statutory power. Even if the provision of Bihar Contractors Rules, 2007 is an executive instruction, it has to be followed and the petitioner,



who has been registered as a registered contractor under the Rules, is bound to follow the provisions and he is also liable to be punished thereunder, if the petitioner or contractor commits any misconduct. The violation of which entails punishment of suspension of registration and blacklisting the contractor.

24. Having considered the submissions of both sides and on perusal of the records, I do not find any merit in this writ petition. Accordingly, the writ petition is dismissed.

(Prabhat Kumar Jha, J)

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