

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7361 of 2022

M/s Jai Maa Sherawali Constructions, Partnership Firm, through its Partner namely Kamlesh Kumar Singh, aged about 50 Years, Male, Son of Mundrika Prasad Singh, Resident of Village- Pema, PIS.-Madanpur, District- Aurangabad.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Secretary, Rural Works Department, Government of Bihar.
3. The Engineer-in-Chief, Rural Works Department, Bihar.
4. The Superintendent Engineer, Rural Works Department, Work Circle, Aurangabad.
5. The Executive Engineer, Rural Works Department, Aurangabad.
6. The Executive Engineer, Rural Works Department, Daudnagar.
7. The Nodal Officer, PMGSY, BRRDA Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Bindhyachal Singh, Sr. Advocate Mr. Vipin Kumar Singh, Advocate Mr. Janmejaya Giridhar, Advocate Ms. Smriti Singh, Advocate
For the Respondent/s	:	Mrs. Archana Meenakshee, GP 6

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 27-07-2022

Petitioner has prayed for the following relief(s):-

- i. For issuance of an appropriate writ/order/direction in nature of *Certiorari* quashing the letter no. 251 dated 27.01.2022 issued by Rural Works Department, State of Bihar whereby it is clarified that the contractor having a record of poor



performance would be declared technically disqualified and ineligible in view of clause 4.7 of PMGSY SBD/MBD (ITB) and clause 4.8 of State SBD. It is further directed therein that the contractor who kept the ATR pending to resolve the defaults indicated in the construction/maintenance works or non-compliance/performance of five years routine maintenance would be deemed to be under the category of "record of poor performance" and would be declared ineligible in evaluation of the technical bid.

- ii. For issuance of an appropriate writ/order/direction in nature of *Certiorari* quashing letter no. 543 dated 05.05.2022 issued from the office of Superintendent Engineer, Rural Works Department, Work Circle, Aurangabad whereby the petitioner has been declared to be ineligible in the technical bid for pendency of ATR in maintenance of Rafiganj Road to Dhabaul (BR-02R-052) under PMGSY Road scheme since 28.08.2014 and 19.09.2015 in view of letter no. 251 dated 27.01.2022 and clause 4.7 (ii) SBD.
- iii. For issuance of an appropriate writ/order/direction for holding that the petitioner having already completed the

aforesaid work of PMGSY from Rafiganj Road to Dhabaul (BR-02R-052) and payment for the same having made, security deposit remitted back to him by the respondents and in absence of any communication to him for pendency of ATR maintenance work, cannot be said to be ineligible and technically disqualified and as such the present tender process should commence afresh after considering the petitioner eligible and technically qualified.

- iv. For issuance of any other appropriate writ, order or direction which your Lordships may deem fit and proper in the facts and circumstances of the case.



Shri Bindhyachal Singh, learned senior counsel for the petitioner, clarifies that he does not lay challenge to the decision with regard to bidding process in question. What really the petitioner is aggrieved of, is the outcome of the decision dated 05.05.2022 (Annexure-3, Page 36), which may have a bearing on the other contracts/tenders for which the petitioner may bid.

We find that while passing the order rejecting the petitioner's technical bid, no notice to show cause was ever issued to the petitioner in terms of communication dated 27.01.2022 (Annexure-2, Page 34). As such, we direct the findings recorded by the authority *qua* the petitioner in decision dated 05.05.2022 (Annexure-3 Page-36) to be *non est*. Further clarifying that our order shall have no bearing on the instant bid, for which the petitioner had submitted the bid led to such a decision. However, for future works, petitioner shall be afforded opportunity of hearing, as mandated by law, whereafter only decision shall be taken on the issue of eligibility.

All other issues are left open to be raised by the petitioner before the appropriate authority or any other



subsequent proceedings.

Petition disposed of in the aforesaid terms.

Interlocutory application, if any, shall also stand disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

Sujit/Ashwini

AFR/NAFR	
CAV DATE	
Uploading Date	30.07.2022
Transmission Date	

