

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4252 of 2020

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M/s Agastya Engineers Pvt. Ltd. through its Managing Director, Manish Singh, aged about 46 years (Male), Son of Late Ajit Kumar Singh, having its office at L-40, Road No. 20, Sri Krishna Nagar, P.s.- Buddha Colony, District-Patna

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Rural Works Department, Vishweshwaraiya Bhawan, Patna
2. The Secretary, Rural Works Department, Vishweshwaraiya Bhawan, Patna
3. The Engineer-in-Chief Rural Works Department, Vishweshwaraiya Bhawan, Patna
4. The Empowered Standing Committee through its Nodal Officer, PMGSY Project, BRRDA, Rural Works Department, Vishweshwaraiya Bhawan, Patna
5. The Chief Engineer-3 Rural Works Department, Hazipur, Headquarter at Vishweshwaraiya Bhawan, Patna
6. The Superintending Engineer cum Nodal Officer, PMGSY Project, BRRDA, Rural Works Department, Vishweshwaraiya Bhawan, Patna
7. The Superintending Engineer, Rural Works Department, Work Circle Darbhanga
8. The Executive Engineer, Rural Works Department, Works Division, Biroul

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Vikas Kumar
For the Respondent/s : Ms. Archana Meenakshee (Gp6)

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 05-07-2023



Instant petition has been filed for following reliefs:

a. For quashing of office order contained in Memo No. 1034, dated 20.12.2016 issued by Executive Engineer, Rural Works Department, Work Division, Biroul whereby and whereunder agreement PMGSY-08/2009-10 dated 01.07.2009 under Package No. BR-10R-005 under Pradhan Mantri Gram Sarak Yojna (PMGSY) for construction of road from Bhadhar to Nadiami, has been illegally rescinded as per clause 52 of SBD.

b. For setting aside order contained in Memo No. 124, dated 31.07.2019 issued by Engineer-In-Chief, Rural Works Department, Government of Bihar, Patna whereby and whereunder after rescinding the aforesaid agreement petitioner's name has been put in departmental blacklist for ten years.

c. For setting aside order dated 04.11.2019 passed by Standing Empower Committee, Rural Works Department whereby and whereunder the order of termination dated 20.12.2016 has been affirmed.

d. For direction to respondent authorities to make payment of @ 20% of balance work of Rs. 222.73 lacs amounting to Rs. 44.546 lacs (Rupees forty-four lacs fifty-four thousand and six hundred only) with interest thereon at the rate of 18 % per annum from



22.12.2016 till the date of actual receipt of payment by the petitioner.

e. For direction to the respondent authorities to pay the security deposits amounting to Rs. 16,63,710.00 (Rupees sixteen lacs sixty-three thousand, seven hundred and one only) deducted from the bill of the petitioner with interest thereon at the rate of 18% per annum from 22.12.2016 till the date of actual receipt of payment by the applicant.

f. For direction to respondent authorities to release the NSC of Rs. 10,00,000.00 (Rupees Ten lacs only) and fixed deposit furnished, by the petitioner at the time of tendering as Earnest money for the work and / or forfeited amount along with interest 18 % per annum from the date of forfeiture, in case the same has been forfeited.

g. For any other relief / reliefs for which petitioner may found entitled too.”

2. Learned counsel for the petitioner on instruction restricted the present petition in so far as challenge to the order of termination and black-listing dated 20.12.2016 and 31.07.2019, respectively.

3. The overall submission on behalf of the petitioner is that in so far as the show-cause notice for termination of contract was issued on 08.12.2016, however



the same was received by the petitioner on 22.12.2016 as is evident from postal receipt. In the meanwhile on 22nd of December, 2016, contract was terminated.

4. In so far as black-listing is concerned, show-cause notice was issued on 27.03.2018, the petitioner submitted his reply on 04.04.2018 and he has been blacklisted for 10 years on 31.07.2019.

5. It is submitted that show-cause notice for termination, sufficient time has not been granted to submit his explanation as is evident from the date of show-cause notice received by the petitioner and order of termination of contract. It is also submitted that black-listing show-cause notice is not with a specific proposed notice for black-listing the petitioner for 10 years. Further, petitioner's reply dated 04.04.2018 has not been considered while black-listing him for 10 years.

6. These factual aspects have not been disputed by the learned counsel for the respondents.

7. In the light of these facts and circumstances for want of sufficient time to furnish petitioner's explanation to the show-cause notice for termination of contract, the petitioner has made out a case so as to interfere with the



termination of contract order dated 20th of December, 2016 and it is set aside and the matter is remanded to the competent authority to permit the petitioner to submit his detailed explanation to the show-cause notice of termination of contract. Such explanation shall be furnished by the petitioner within a period of eight weeks from the date of receipt of a copy of this order. On receipt of petitioner's explanation to the show-cause notice for termination of contract, the competent authority is hereby directed to take note of material information read with each of the contentions to be raised by the petitioner in his explanation to the show-cause notice dated 08.12.2016 and proceed to pass order within a period of three months from the date of receipt of this order.

8. Perusal of black-listing records like show-cause notice dated 27.03.2018, it does not reveal specific material information that there was a proposal to black-list the petitioner for a period of 10 years. In other words, proposal is required to be given for number of years of black-listing a firm or a person in the light of judicial pronouncements. Further, petitioner's reply/explanation to the show-cause notice dated 04.04.2018 has not been analyzed and discussed



in the black-listing order dated 31.07.2019. On these two counts, the petitioner has made out a case so as to interfere with the black-listing order dated 31.07.2019 and the same is set aside and the matter is remanded to the competent authority to pass a fresh speaking order after due consideration of petitioner's reply/explanation. The speaking order must analyze each of the contention stated in the reply of the petitioner dated 04.04.2018 and proceed to pass speaking order within a period of three months from the date of receipt of a copy of this order.

9. Accordingly, the petitioner has made out a case. Impugned order of termination of contract dated 20.12.2016 and black-listing order dated 31.07.2019 are set aside.

10. Writ petition is allowed in part.

(P. B. Bajanthri, J)

(Jitendra Kumar, J)

skm/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	12.07.2023
Transmission Date	

