

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.441 of 2019

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M/s Shubhangi through its Proprietor, Sukumar Mukherjee, son of Dharma Kumar Mukherjee, Resident of P.S.- Amba, District- Aurangabad-253, Sector-21, Noida, Gautam Buddha Nagar, Uttar Pradesh- 201301, having its registered office at F-41, Sector-51, Noida- 201301.

... .. Petitioner/s

Versus

1. The State Of Bihar through Principal Secretary, Building Construction Department, Government of Bihar, Patna Vishveshwariya Bhawan, Bailey Road, Patna.
2. The Managing Director, Bihar State Building Construction Corporation Ltd., Government of Bihar, Patna.
3. The Chief General Manager, Bihar State Building Construction Corporation Ltd., Government of Bihar, Patna.
4. The Deputy General Manager, Bihar State Building Construction Corporation Ltd., Government of Bihar, Patna.
5. M/s Amrapali Banquet Private Limited having its registered office at SCADA Buisness Centre, Sone Bhawan, R- Block, Patna- 800001.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Siddhartha Prasad, Advocate Mr. Sumit Kumar, Advocate Mr. Om Prakash Kumar, Advocate
For the Respondent No. 4:		Mr. Tej Bahadur Singh, Sr. Advocate Mr. Brikesu Sharan Pandey, Advocate
For Respondent No. 5	:	Mr. Sanket, Advocate
For State	:	Mr. Jitendra Kumar, AC to AAG 9

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

Date : 20-03-2023

Heard learned counsels for the respective parties.



2. In the instant petition, petitioner has prayed for the following reliefs:

“i) To issue a writ/order/ direction in the nature of certiorari for quashing of the memo no. 1156 dated 03.11.2018 whereunder the Deputy General Manager, of the Corporation has quashed the agreement no. 06AH dated 03.11.2014 from the immediate effect and further directed to close the activities of the canteen and vacate the premises within a period of 3 days (Annexure – 5).

ii) To issue a writ/ order/ direction in the nature of mandamus commanding the respondents to allow the petitioner to run the canteen after quashing the memo no. 1156 dated 03.11.2018 and further hand over the possession of the said premises to the petitioner.

iii) To issue a writ/ order/ direction in the nature of mandamus commanding the respondents not to proceed with E-Tender no.1 112/18-19 dated 13.12.2018 for operating canteen at Adhiveshan Bhawan, Sichai Bhawan Campus, Harding Road, Patna.

iv) To issue a writ/ order/ direction in the nature of madamus commanding the respondents not to create any third party right in favour of any person during the pendency of the present writ application.

v) To any other relief or reliefs for which the petitioner is found to be entitled in the facts and circumstances of the case.

vi) Further to issue appropriate writ(s)/direction/order(s) for declaring the fresh work order issued in favour of Ms. Amrapali Banquet Pvt. Ltd on 30.11.2019 as bad as illegal.



vii) To issue appropriate writ(s)/direction(s)/order(s) for quashing the agreement issued in favour of Ms. Amrapali Banquet Pvt. Ltd on 30.11.2019 and declaring it as null and void.

viii) To issue a writ(s)/direction/order in the nature of mandamus commanding the respondents to allow the petitioner to run the Canteen and further hand over the possession of the said premises to the petitioner during the pendency of the writ petition.”

3. Petitioner was a contractor in providing catering services to the 4th respondent – Corporation. His contract tenure was for a period of ten years from 03.11.2014 to 02.11.2024. In the year 2018, 4th respondent – Corporation stated to have information like negative feedback. Based on such negative feedback, it proceeded to issue show cause notice relating to termination of contract and blacklisting/debarring. The petitioner had submitted his reply to show cause notice on 04.09.2018. Thereafter, on 15.09.2018, he was debarred by the 4th respondent - Corporation. The reason assigned for debar is with reference to negative feedback stated to have been received by the 4th respondent – Corporation. The petitioner had approached this Court on 21.12.2018 and this Court granted *status quo* on 04.12.2019. Meanwhile, fresh tendering process was started and work order was issued on 30.11.2019 in favour of 5th respondent - M/s Amrapali Banquet Private Limited and it would be in vogue for a period of two years i.e. up to



29.11.2021. Even that period has lapsed, however, 5th respondent has been continuing as a work contractor for the purpose of providing catering services to 4th respondent – Corporation in the light of the *status quo* order dated 04.12.2019 even to this day.

4. Learned counsel for the petitioner submitted that impugned action are in violation of Article 14 and Article 21 of the Constitution. It is submitted that behind the back of the petitioner, 4th respondent – Corporation has secured negative feedback against the petitioner. Such materials have not been placed before him in order to meet such negative feedback. On the other hand, only show cause notice has been issued and the respondent proceeded to debar the petitioner from the execution of the contract which was to be in vogue till 02.11.2024. It is further submitted that the petitioner is entitled to continue to provide catering services till 02.11.2024 and direction be issued for the same to the concerned 4th respondent – Corporation.

5. *Per contra*, learned counsel for the respondents resisted the aforesaid contentions and submitted that 4th respondent - Corporation was in receipt of negative feedback against the petitioner insofar as execution of catering services with reference to work order issued to him. The same has been analyzed and examined by the 4th respondent – Corporation before issuing show



cause notice and thereafter, on receipt of petitioner's reply of show cause notice proceeded to pass impugned action. It is further submitted that 4th respondent – Corporation proceeded to issue fresh tender while awarding contract to 5th respondent for a period of two years. Nodoubt new contract was for a period of two years i.e. from 30.11.2019 to 29.11.2021, however, it is continued due to pendency of the present writ petition read with the *status quo* order dated 04.12.2019. The same argument was reiterated by the learned counsel for the 5th respondent.

6. Heard learned counsels for the respective parties.

7. From perusal of the records, it is evident that impugned action has been taken behind the back of the petitioner. In other words, certain material information like negative feedback had been obtained by the 4th respondent – Corporation. Even thereafter, such material information have not been provided along with show cause notice to the petitioner, therefore, impugned action is in violation of principle of natural justice like violation of Article 14 read with Article 21 of the Constitution.

8. It is a case for setting aside and remanding the matter and continuing the petitioner's services till 02.11.2024, however, the same is not warranted for the simple reason that during pendency of the writ petition with effect from 15.09.2018, the petitioner had



stopped to provide catering services. Further 5th respondent who was a successful bidder pursuant to the later tender and he started executing the work from 30.11.2019 and even to this day. Even though work order is in favour of the 5th respondent and it has lapsed on 29.11.2021, by virtue of interim order on *status quo* dated 04.12.2019, he is continuing as a contractor even to this day. While setting aside the impugned action and remanding the matter to the concerned authority and again the concerned authority in providing negative feedback and other materials to the petitioner and thereafter once again submission of reply by the petitioner and further in proceeding final order whether petitioner shall be continued or not is a cumbersome procedure, therefore, we are of the view that the concerned 4th respondent - Corporation is hereby directed to proceed for afresh tender within a period of three months and entertain the petitioner's tender application for the fresh tender if it is not otherwise debarred in any other contract and if it otherwise fulfilled all the criteria in participating in the fresh tender.

9. Accordingly, impugned action dated 03.11.2018 is set aside, reserving liberty to the petitioner to invoke appropriate remedy insofar as claiming any disputed amount with 4th respondent - Corporation or any other official respondent in terms



of the agreement and relevant clauses. Even for the intervening period from 15.09.2018 till 30.11.2019, the date on which fresh tender process was completed and work order was issued in favour of the 5th respondent, he is permitted to claim damages and other things, in accordance with law.

10. At this stage, learned counsel for the petitioner submitted that petitioner is satisfied only to the extent of setting aside the impugned actions and remanding the matter to the concerned 4th respondent – Corporation.

11. Accordingly, the present petition stands allowed only to the extent that impugned actions are set aside and the matter is remanded to the 4th respondent – Corporation. 4th respondent – Corporation is hereby directed to provide adverse materials which was received by the 4th respondent as on 15.09.2018 along with the fresh show cause notice in seeking explanation of the petitioner, within one month. On receipt of such show cause notice and material information, petitioner shall file his reply within a period of two months from the date of receipt of such notice. Thereafter, the 4th respondent is hereby directed to consider each and every material before passing afresh order insofar as proposed debarring of the petitioner's contract, such proceedings shall be drawn within a period of two months from



the date of receipt of the petitioner’s reply to afresh show cause notice.

12. With the above observation, writ petition stands allowed.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

GAURAV S./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24.03.2023
Transmission Date	NA

