

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4726 of 2023

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Bipin Kumar Patel Son of Late Vijay Kumar Singh Resident of Ward No. 02,
Azad Nagar, P.S. Bhabhua, District- Kaimur, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Minor Irrigation Department, Government of Bihar, Patna.
2. The Engineer in Chief, Minor Irrigation Department, Government of Bihar, Patna.
3. The Chief Engineer, Minor Irrigation Department, Government of Bihar, Patna.
4. The Incharge Chief Engineer (Planning, Monitoring and Geology), Minor Irrigation Department, Government of Bihar, Patna.
5. The Superintending Engineer, (Planning, Monitoring and Geology), Minor Irrigation Department, Government of Bihar, Patna.
6. The Executive Engineer, Minor Irrigation Division, Kaimur, Mohania, Bihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Prabhat Ranjan, Advocate Mr. Chandan Kumar, Advocate
For the State	:	Mr. Kumar Alok (SC 7) Mr. Rakesh Kumar, AC to SC 7

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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 : 20-04-2023

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

"(i) Quashing of the Notice to Show Cause dated 28.02.2023, contained in Letter No. 146 (Annexure 1) issued by the Incharge Chief Engineer (Planning, Monitoring & Geology), Minor Irrigation Department, Government of Bihar, Patna whereby, for the allegation of use of fake experience Certificate in connection with Tender process arising out of NIT No. 13/2021-22 Group No. 15



(Madurna Garland Trench Scheme Work), the petitioner has been asked to Show Cause within one week as to why the Registration may not but put under blacklist in terms of Bihar Contractors Registration Rules, 2007;

(ii) Direction upon the Respondents to stay the operation of the impugned Notice to Show Cause dated 28.02.2023 contained in Letter No. 146 (Annexure 1) during the pendency of the present writ application; and

(iii) A declaration to the effect that the mere issuance of the Notice to Show Cause dated 28.02.2023 contained in Letter No. 146 (Annexure 1) can not be a ground to disqualified and hold the Technical Bid of the petitioner as non responsive."

2. Present writ petition is not maintainable against show cause notice, however, the petitioner has contended that In-charge Chief Engineer is not the competent authority under Bihar Contractors Registration Rules, 2007. In terms of the aforementioned Rules, 2007 the competent authority is Engineer-in-Chief. On this count, counter affidavit filed by the respondent no. 4 is silent. Therefore, one has to draw inference that In-charge Chief Engineer cannot issue show cause notice. Hon'ble Apex Court in the case of **Dharani Sugars & Chemicals Ltd. vs. Union of India** reported in **(2019) 15 SCC 480** and also in the case of **Avtar Singh & Anr. vs. State of Punjab (Civil Appeal No. 1711 of 2011)** dated 23.03.2023 held that any order passed by an incompetent authority must be struck down.



3. In the light of these facts and circumstances, the petitioner has made out a *prima facie* case so as to interfere with the show cause notice dated 28.02.2023 (Annexure-1) and it is set aside reserving liberty to the concerned respondent to proceed in accordance with law after giving due notice to the petitioner and following other formalities within a period of three months from the date of receipt of this order.

4. With the aforesaid observations, writ petition stands allowed.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

Vikash/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	
Transmission Date	N/A

