

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10597 of 2021

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M/s Deo Construction Office at Station Road, P.S.-Fathua, District-Patna through its Partner Rajesh Kumar, aged about 40 Years, Son of Sri Krishna Prasad Resident of Krishna Kutir Krishna Chandra Colony, Bhagwat Nagar, P.S.-Bahadurpur Housing Colony, District-Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Road Construction Department, Government of Bihar, Patna.
2. The Engineer-in-Chief (Head Quarter), Road Construction Department, Government of Bihar, Patna.
3. The Chief Engineer, South Bihar Wing, Road Construction Department, Government of Bihar, Patna.
4. The Superintending Engineer, Central Road Circle, South Bihar Wing, Road Construction Department, Patna.
5. The Executive Engineer, New Capital Road Division, Road Construction Department, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Akshansh Ankit, Advocate
For the Respondent/s : Mr. P.K. Shahi, AG

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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 : 23-03-2023

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

"(a) To quash Letter No. 1243 dated 07. 04. 2021 (Annexure P7) issued by Respondent No. 5 whereby and whereunder the petitioner has been debarred from participating in future tenders, without following the principles of natural justice, in utter violation of the Bihar Contractor Registration Rules, 2007 as well as judicial pronouncements in this regard.



(b) To quash Memo No. 1095 (E) dated 12.02.2021 (Annexure-P5) issued by the Respondent Department, to the extent it denies benefit of price index/rate escalation in the extended time period, for the work for construction of Road from Ashiyana More at Jawahar Lal Nehru Marg (Fly over Pillar No.-35) to BMP-5 and Aranya Bhawan at Shaheed Pir Ali Khan Path Part-II via Bihar Police Building Construction Office for the year 2017-18 (Agreement No. 01/C.M.B.D of 2018/19) as the same is unreasonable, arbitrary and cannot be sustained in the eyes of law in view of the fact the the petitioner was unable to complete the work due to fault solely attributable to the respondents themselves.

(c) For a direction upon the Respondents to make payment of GST Claim amount (differential tax liability) to the petitioner for works executed under Agreement No. 01/C.M.B.D. of 2018/19 in light of order dated 07.07.2019 passed in C.W.J.C. No. 1452 of 2019 by this Hon'ble Court, in a similar matter, as well as decision of the Respondent Department as contained in Letter No. 19 dated 27.05.2020.

(d) For a further direction upon the respondents to not to give effect to impugned order as contained in Letter No. 1243 dated 07.04.2021 (Annexure-P7) issued by Respondent No. 5 during the pendency of the instant writ application.

(e) For a further direction upon the respondents to abstain from cancelling the Agreement No. 01/C.M.B.D. of 2018/10 during the pendency of the instant writ application.

(f) To pass any other order/orders in shape of a consequential relief to which the petitioner may be found to be legally entitled to in the facts and circumstances of the instant case at



hand."

Learned counsel for the petitioner on instruction restricted this matter insofar as the Prayer No. (a) is concerned.

Learned counsel for the petitioner submitted that impugned action is by an incompetent authority. The Engineer-in-Chief is the competent authority in the light of Rule 11 (c) of Bihar Contractor Registration Rules, 2007 read with Rule 4 (b). identical matter was subject matter of litigation in C.W.J.C. No.3683 of 2019 and it was decided on 19.11.2019, while holding that Executive Engineer is not the competent authority and the Engineer-in-chief or an officer not below the rank of Chief Engineer was the competent authority. It is a case for remand to the competent authority. However, during pendency of the present litigation on 28.02.2023 the petitioner has already completed the work.

In the light of these facts and circumstances, competent authority is hereby directed to take note of new development in the matter to the extent that the petitioner has completed the work on 28.02.2023 and to proceed to pass an order, in accordance with law. Accordingly, petitioner has made out a *prima facie* case. Therefore, the impugned order dated 07.04.2021 (Annexure-7) is set aside so far as it concerned with



Prayer No. (a) of the present writ petition.

With the aforesaid observations, the present writ petition stands disposed of.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

Vikash/-

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

