

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7248 of 2023

M/S Maa Bindhyavasini Construction through Santosh Kumar (M) aged about 46 years, son of Late Srikant Choudhary, resident of Patel Chowk, Gachhi Tola, Station Road, Ballia, P.O. Lakhminiya P.S. Ballia, District Begusarai.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Public Health Engineering Department, Govt. of Bihar, Patna.
2. The Engineer in Chief Cum Special Secretary, Public Health Engineering Department, Bihar, Patna.
3. The Chief Engineer, Public Health Engineering Department, Muzaffarpur Region, Muzaffarpur.
4. The Regional Chief Engineer, PHED, Muzaffarpur.
5. The Superintending Engineer, Public Health Engineering Department Darbhanga Circle, Darbhanga.
6. The Executive Engineer, Public Health Division, Darbhanga.
7. The Assistant Engineer, Public Health Sub-Division, Benipur District Darbhanga.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Harsh Anuj, Advocate
For the Respondent/s : Mr. S. Raza Ahmad (AAG-5)

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

8 04-09-2023 In the instant petition, petitioner has prayed for the following relief(s):-

“1. (i) For quashing of the order dated 03.04.2023 issued vide Memo no. 187 by which the Respondent no. 3 has rejected the appeal filed by the petitioner without following the mandate of Clause-25 of Agreement No. SBD-02/2018-19 since the Respondent no.3 failed to give any notice or opportunity of the hearing of the petitioner and illegally reviewed the order of the order dated 14.05.2022 of Respondent No. 5 on facts and laws.

(ii) For quashing of the order dated



14.05.2022 of the Respondent no.5 by which the Respondent no.5 has confirmed the order dated 21.01.2022 of Respondent no.6.

(iii) For quashing of the order dated 21.01.2022 of the Respondent no.6 by which the petitioner was debarred indefinitely for taking part in future BID. And

(iv) Further direct the respondents to pay Rs. 60 Lacs with interest @ 10% per annum to the petitioner as earnest money and legitimate expected profit.”

2. The petitioner was allotted certain works which were not executed in full and some of the works were not satisfactory. Taking note of these facts and circumstances, the concerned respondent proceeded to issue number of notices to carry out the complete work and ultimate notice was issued on 21.12.2021 as to why the petitioner shall not be debarred till completion of work insofar as future tender. Thereafter, the petitioner has not responded to the notice dated 21.12.2021, whereas the impugned order is dated 21.01.2022.

3. Learned counsel for the petitioner submitted that the petitioner was allotted certain work and it has been executed. Insofar as other works, the respondents have not identified the places so as to execute the works allotted to him. Therefore, the respondents cannot take undue advantage of their own fault in execution of the allotted work. These are all disputed issues which are required to be adjudicated before the Arbitrator in terms of Clause 25 of Annexure-2. Time and again Courts have



held that in respect of tender matters where disputed facts are involved and the concerned contractors or party has statutory remedy, he is required to invoke such remedy. In other words, disputed facts cannot be adjudicated under Article 226 of the Constitution in a writ petition as held in the case of ***Shalini Shyam Shetty & Anr. vs. Rajendra Shankar Patil*** reported in ***(2010) 8 SCC 329*** and in the case of ***Rajasthan State Industrial Development & Investment Corporation & Anr. vs. Diamond & Gem Development Corpn. Ltd. & Anr.*** reported in ***(2013) 5 SCC 470***. Hence, the petitioner has not made out a case.

4. Accordingly, the present writ petition stands disposed of as not maintainable, reserving liberty to the petitioner to invoke remedy in terms of Annexure-2.

5. At this stage, learned counsel for the petitioner submitted that the petitioner is stated to have invoked the remedy of appeal and appellate authority – Chief Engineer has passed certain orders, in such an event, he has further remedy and it is required to be adjudicated.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

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