

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6834 of 2023

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Baba Debraha Enterprises 62G, Khesra No. 2469, Gandhi Nagar, Ashiyana, Patna, Bihar 800025 through its Authorized Signatory Rakesh Ranjan, aged about 44 years, Male, Son of Sri Bhupendra Prasad Yadav, at present residing at 62G, Khesra No. 2469, Gandhi Nagar, Ashiyana, District- Patna, Bihar 800025, Permanent Resident of Jagjeevan Path, P.S. Madhepura, District- Madhepura, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Industry, Government of Bihar, Patna.
2. The Infrastructure Development Authority, (A Govt. of Bihar Undertaking) 1st Floor, Udyog Bhawan, East Gandhi Maidan, Patna through its Managing Director.
3. The Managing Director, Infrastructure Development Authority, (A Govt. of Bihar Undertaking) 1st Floor, Udyog Bhawan, East Gandhi Maidan, Patna.
4. The Director (Programme Implementation), Infrastructure Development Authority, (A Govt. of Bihar Undertaking) 1st Floor, Udyog Bhawan, East Gandhi Maidan, Patna.
5. The Executive Engineer (Technical), Infrastructure Development Authority, (A Govt. of Bihar Undertaking) 1st Floor, Udyog Bhawan, East Gandhi Maidan, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Prabhat Ranjan, Advocate Mr. Chandra Kumar, Advocate
For the Respondent/s	:	Mr. P.K. Shahi (AG)
For IDA	:	Mr. Yashraj Bardhan, Advocate

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE A. ABHISHEK REDDY
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

3 15-05-2023 In the instant petition, petitioner has prayed for the following relief(s):-

“(i) Quashing of the ex-parte Order dated 16.02.2023 contained in Letter No. 1304/Tech by which without issuing a Show Cause Notice, a penalty of Rs. 10,63,208/- (being 1% of the Agreement



Value) has been imposed as liquidated damages in terms of Clause 2 of the General Conditions of Contract under the Standard Bidding Document and directed to be adjusted from the future bill;

(ii) Quashing of the Notice to Show Cause contained in Letter No. 2251 dated 15.04.2023 issued by the Executive Engineer (Technical) the contemplating an action under Clause 14 of the Standard Bidding Document;

(iii) Direction upon the Respondent Managing Director to consider and dispose off by a reason and speaking order representation contained in Letter No. BDE/22-23/146 dated 17.03.2023 on an early basis; and

(iv) Restraining the Respondents from taking any coercive action in connection with Agreement No. 18/SBD/2022-23 during the pendency of the present writ application and/or without the leave of this Hon'ble Court."

2. On 05.05.2023, the following order was passed.

“3rd respondent – The Managing Director, Infrastructure Development Authority (A Govt. of Bihar Undertaking) 1st Floor, Udyog Bhawan, East Gandhi Maidan, Patna is hereby directed to file counter affidavit as to whether Executive Engineer is empowered to pass impugned order at Annexure-4 insofar as liquidated damages under Clause II of the Standard Bidding Document to a sum of Rs. 10,63,208/- and further notice under Clause 14 of SBD for cancellation of contract.

2. Learned counsel for the petitioner submitted that the present matter is covered by earlier decision of this Court passed in C.W.J.C. No. 3241 of 2020 dated 21.04.2023. While filing Counter affidavit, 3rd respondent is hereby directed to take note of our earlier decision.

3. Re-list this matter on 19.05.2023. In the meanwhile, concerned respondent are hereby forbidden from taking any coercive steps against the petitioner insofar as present matter is concerned.”



3. In the meanwhile, the Executive Engineer has taken further action like a proposal to take coercive steps of forfeiting and other issues are concerned.

4. On the other hand, learned counsel for the respondent on instruction submitted that the Executive Engineer is not empowered to take action in terms of the impugned order read with show cause notice dated 06.05.2023.

5. In the light of these facts and circumstances, the petitioner has made out a case on the sole ground that the respondent Executive Engineer is not a competent authority to take action.

6. Accordingly, the impugned action stands set aside, writ Petition stands allowed.

7. The concerned authority is hereby directed to take note that the Executive Engineer is not the competent authority, in such an event, concerned authority is hereby directed to withdraw the show cause notice dated 06.05.2023 and proceed to take an appropriate action by the competent authority.

(P. B. Bajanthri, J)

(A. Abhishek Reddy , J)

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