

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.2203 of 2016

In

Civil Writ Jurisdiction Case No.9740 of 2014

-
-
1. The Bihar State Building Construction Corporation Ltd., Hospital Road, Shastrinagar, Patna – 800023 through its Managing Director.
 2. The Managing Director, Bihar State Building Construction Corporation Ltd., Hospital Road, Shastrinagar, Patna – 800023.
 3. The Chief General Manager (North), Bihar State Building Construction Corporation Ltd. Hospital Road, Shastrinagar, Patna – 800023.
 4. The General Manager North, Bihar State Building Construction Corporation Ltd., Hospital Road, Shastrinagar, Patna – 800023.
 5. The Dy. General Manager (Saharsa), Bihar State Building Construction Corporation Ltd., Bihar, Patna.

... .. Appellant/s

Versus

1. Jitendra Kumar Pathak S/o - Late Kameshwar Pathak resident of Mohalla Saguna, Gandhi Murti, Danapur Cantt., P.S. - Danapur, District - Patna, Proprietor M/s Jitendra Kumar Pathak, Danapur Cantt., Patna.
2. The State of Bihar through the Secretary, Building Construction Department, Government of Bihar, Patna.
3. The Engineer-in-chief-cum-Additional Commissioner-Cum-Special Secretary, Building Construction Department, Government of Bihar, Patna.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Tej Bahadur Singh, Sr. Advocate Mr. Brisketu Sharan Pandey, Advocate
For the Respondent/s	:	Mr. Amarnath Singh, Advocate Mr. Binod Kumar Mishra, Advocate

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE ARUN KUMAR JHA

ORAL JUDGMENT

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

Date : 22-03-2023

In the instant L.P.A., appellant has assailed the order of the learned Single Judge dated 11.02.2016 passed in C.W.J.C. No. 9740 of 2014.



In Writ Petition, petitioner has sought for the following relief(s):-

“1. (i) To issue a writ in the nature of writ of certiorari to quash and cancel the memo No. 617 dated 28.02.2014 (as contained in Annexure-11) issued under the authority of General Manager (North) of the respondent Corporation, the respondent No. 6 hereof, by which the respondent has recommended to blacklist the contractorship Registration No. 36 (Bh.)/11 of the petitioner which has been communicated to this petitioner through the letter No. 4350/Bh-dated 24.04.2014 (as contained in Annexure -10) ; as also to quash this communication dated 24.04.2014 (Annexure 10).

It is further prayed to issue a writ in the nature of writ of certiorari to quash the communication contained in letter No. 848 dated 05.08.2013 issued by the respondent Chief General Manager of the respondent Corporation, respondent No. 5, (as contained in Annexure-7) whereby and whereunder the petitioner has been debarred from participation in future tenders/contracts.

(ii) To issue a writ in the nature of writ of certiorari to quash and cancel the fresh E-tender Invitation Notification No.-05/2014-15 (as contained in Annexure-12) notified under the authority of General Manager, respondent No. 5 hereof, by which fresh tender has been invited for the same work which has been allotted to this petitioner and which is pending for completion and is not getting completed due to non cooperation of the respondent authorities and due to other causes of the same nature.

iii) To issue a writ in the nature of writ of mandamus to direct the respondent to let the work arising out of Tender No. 05/12-13 allotted to this petitioner be continued and be finished as per the terms of tenders/contracts held between the parties.

(iv) To hold and declare that work arising out of tender No.-05/12-13 assigned and allotted to this petitioner has been not completed within the time frame due to non-cooperation and due to causing unwanted



disturbances on the part of the respondent authorities.

(v) To hold and declare that the impugned actions of respondents are illegal, bad and violative of law emanating from clause -11 of the Bihar Contractor Registration Rule -2007, Articles 14 and 299 of Constitution of India, Secs.-37,51,52,53,54,56 and 74 of the Indian Contract Act, 1872.

(vi) To hold and declare that the impugned actions of the respondents are breach of contract and in terms of such breach of contract they are entitled to compensate the loss of petitioner as stands in terms of Sec. 73 and 74 of the Contract Act, 1872.

(vii) To grant any other relief which the petitioner is entitled to have.”

Perusal of the relief, it is evident that petitioner has approached this Court in the absence of finality insofar as blacklisting him is concerned. On the other hand, it is only a proposal given by the General Manager North, Bihar State Building Construction Corporation Ltd., Hospital Road, Patna to the State Government. Thereafter, State Government issued a show cause notice on 20.03.2014 seeking respondent's explanation with reference to communication dated 28.02.2014 and seeking parawise reply. In stead of submitting or responding to such notice by the State Government, he has approached this Court. Learned Single Judge has committed error in not noticing that the writ petition is premature.

Accordingly, appellant has made out a *prima facie* case so as to interfere with the order of the learned Single Judge dated 11.02.2016 passed in C.W.J.C. No. 9740 of 2014 and it is



set aside.

Allowing of L.P.A. would not be hurdle for the State to take further action. In the meanwhile, if the respondent has not filed his reply in terms of notice dated 20.03.2014 read with letter dated 28.02.2014 (Annexure-8 to the writ petition). The respondent is hereby directed to furnish his reply within a period of 8 weeks from the date of receipt of this order. On receipt of respondent's response to the show cause notice dated 20.03.2014 read with letter dated 28.02.2014, the concerned authority is hereby directed to pass a detailed speaking order after due consideration of each of the contentions to be raised by the respondent to the show cause notice dated 20.03.2014 read with letter dated 28.02.2014, within a period of 3 months from the date of receipt of respondent's reply to the show cause notice.

With the above observations, present L.P.A. stands allowed.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

shoaib/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	27.03.2023.
Transmission Date	NA

