

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9941 of 2022

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Bihar Samvedak Sangh Registered Society under Society Registration Act, 1860, Registered Office 138, Vidhayak Colony, Kautilya Nagar, Patna, through its Chairman namely Suyash Kumar, Male, aged about 47 years, son of Rajendra Prasad Singh, Resident of Flat No. 103, Mahendra Lok Apartment, Sampatchak, Kankarbagh.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. Chief Secretary, Government of Bihar, Patna.
3. Principal Secretary, Chief Minister Secretariat, Bihar, Patna.
4. Principal Secretary, Road Construction Department, Government of Bihar, Patna.
5. Principal Secretary, Rural Work Department, Government of Bihar, Patna.
6. Principal Secretary, Water Resources Department, Government of Bihar, Patna.
7. Principal Secretary, Building Construction Department, Government of Bihar, Patna.
8. Principal Secretary, Minor Water Resources Department, Government of Bihar, Patna.
9. Principal Secretary, Public Health Engineering Department, Government of Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ashish Giri, Advocate Mr. Sumit Kumar Jha, Advocate Ms. Riya Giri, Advocate
For the Union of India	:	Dr. Krishna Nandan Singh, Sr. Advocate Mr. Radhika Raman, CGC Mr. Ram Tujabha Singh, Advocate Mr. Devansh Shankar Singh, Advocate Mr. Amaresh Kkumar, Advocate Mr. Sriram Krishna, Advocate

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 06-07-2023

Instant petition has been filed for following reliefs:



i. To issue writ/order or direction in the nature of Certiotari for setting aside the decision as contained in memo no. 449(S), dated 16.01.2020 issued under the signature of Principal Secretary, Road Construction Department, Government of Bihar, Patna by which a decision have been taken by the Department to remove the minimum rate limit in the percentage rate tender with effect from 16.01.2020.

ii. To hold and declare that the decision as contained in memo no. 449(S) dated 16.01.2020 is arbitrary, unreasonable and violative of Article 14 of the Constitution of India.

iii. To issue writ / direction / orders in the nature of mandamus commanding the respondents to apply the earlier decision taken by the Road Construction Department, Government of Bihar, Patna as contained in Memo No. 2046(S) dated 06.03.2013.

iv. To issue writ / direction / orders in the nature of mandamus commanding the respondents not to impose condition of earnest money deposit only limited to Bank Guarantee and online payment contrary to the terms of Rule 161 of Bihar Public Works Department Code.

v. To hold and declare that the tender condition relating to providing earnest money has to be in terms of Rule 161 of the Bihar Public Works Department Code and there cannot be any departure thereto in the Advertisements.

vi. To any other relief or reliefs for which the petitioners are found to be entitled in the facts and circumstances of the case.”



2. The petitioner has failed to produce copy of the Memo No. 447(S), dated 16.01.2020 in so far as removal of words “the minimum rate limit in the percentage rate tender with effect from 16.01.2020”. In the absence of production of such document and relying on internal communication among the Principal Secretary, Road Construction Department, Bihar, Patna and all Chief Engineers, Road Construction Department, all Superintending Engineers, Road Construction Department and all Executive Engineers, Road Construction Department. In other words without producing the relevant government notification dated 16.01.2020, the present petition is presented, it should have been dismissed at threshold as not maintainable.

3. At this stage, learned counsel for the petitioner submitted that 16.01.2020 government notification is placed on record by the concerned respondent in their counter affidavit as Annexure-C and it could be taken note of and interfered.

4. Such practice is deprecated for the reasons that petitioner has approached this Court in seeking certain relief with reference to a particular document or documents in the absence of production of such document writ is not maintainable. Moreover, there is amendment in producing additional document. Therefore, the present writ petition stands dismissed.

5. In so far as challenge to the government notification dated 16.01.2020 petitioner is only relying on internal communication dated



16.01.2020 among the Principal Secretary, Road Construction Department and his subordinates and it is not permissible in the absence of production of document and challenging it. Further it is to be noted that there is no prayer to summon records.

6. Accordingly, the present writ petition stands dismissed.

7. Dismissal of the present writ petition would not come in the way of challenging the government notification dated 16.01.2020 in so far as replacing earlier policy decision dated 06.03.2014 for the reasons that petitioner–contractor could avail fresh cause of action as and when any fresh tender is floated on behalf of the official respondents.

8. With that liberty, the present petition stands dismissed.

(P. B. Bajanthri, J)

(Jitendra Kumar, J)

skm/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	12.07.2023
Transmission Date	

