

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9409 of 2023

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Md. Kaisar @ Mohammad Kaiser Son of Mohammad Imran, Resident of
Village- Matahari, Basaitha, P.O.- Basaitha, P.S.- Basaitha, District-
Madhubani.

... .. Petitioner/s

Versus

1. The State of Bihar Through the Principal Secretary Rural Work Development, Government of Bihar, Patna.
2. The Secretary, Bihar Rural Work Department, Government of Bihar, Patna.
3. The Engineer-in-Chief, Rural Work Department, Bihar, Patna.
4. The Chief Engineer, Rural Work Department Bihar, Patna.
5. The Superintendent Engineer, Darbhanga Circle, Darbhanga.
6. The Executive Engineer, Rural Work Department Work Division Jhanjharpur, Madhubani.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Baidya Nath Prasad
For the Respondent/s : Mr. Ajay (GA5)

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL ORDER

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

2 19-07-2023 In the instant petition, the petitioner has prayed for the
following relief:-

“(i) A Certiorari of setting aside the order dated 3.1.2023 passed by the Executive Engineer R.W.D. Work Division, Jhanjharpur (Respondent No.6), vied Letter No.11 dated 3.1.2023, by which the Executive Engineer Respondent No.6) Passed an order to debarred the petitioner from the work P.W.D. Road to Tilay Yadav Tol by Canceling, The agreement No.34SBD/2017-18 and also passed an order to



blacklist the petitioner and seized all security deposits of the petitioner.

(ii) A Certiorari of salting aside the orders dated 3.5.2023 passed by the Executive Engineer (Respondent No.6) vied Latter No.851, dated 3.5.2023, by which the Executive Engineer passed an orders and directed the petitioner to deposit Rs:- 17,07276/00 (Seventy Lacks, Seven thousand, two hundred and seventy Six) by Compensating the security deposits of the petitioner of Rs; -8,99, 537/00 (Eight Lacks, Ninty thousand Five hundred thirty Seven) and petitioner has directed to deposit Rs:- 26, 06,813/00 (Twenty Six Lacks, thousand, eight hundred, thirteen) complication of the rest work whereas the petitioner is ready to complete the rest work within three months.

(iii) A mandamus direction may be given to the respondents authority to provide three months time to the petitioner to complete the rest work of the road as per agreement.

iv) Any other writ/ writs, direction/directions for granting any other relief/reliefs for which the petitioner is found entitled to in the fact/ facts and circumstances of the present case.”

2. Order dated 03.01.2023 (Annexure-6), passed by Respondent no.6, Executive Engineer, Rural Work Department, Work Division, Jhanjharpur, Madhubani reads as under:-

“ ग्रामीण कार्य विभाग, कार्य प्रमण्डल, झंझारपुर के



अधीन M/S Md. Kaiser, Vill-Matahari, Basaitha, Po-Basaitha Dist- Madhubani, Pin Code-847102 द्वारा मुख्यमंत्री ग्राम सम्पर्क (समान्य) योजना अन्तर्गत PWD Road to Tilay Yadav Tol पथ निर्माण हेतु एकरारनामा किया गया जिसका एकरारनामा संख्या- 34SBD/2017-18 है। उक्त पथ का निर्माण कार्य. दिनांक 24.11.2018 तक पूर्ण करना था। कार्यपालक अभियंता के पत्रांक: - 1229 दिनांक - 10.09.2020 द्वारा आपके एकरारनामा को विखंडित कर काली सूची में डालने हेतु अनुशंसा की गई थी। आपके अनुरोध पर अधिक्षण अभियंता के पत्रांक:- 839 दिनांक:- 31.05.2022 के द्वारा आपको दिनांक :- 30.06.2022 तक कार्य पूर्ण करने के लिए अवधि विस्तार दिया गया था मगर अनेको निर्देश के बावजूद आपके द्वारा कार्य पूर्ण नहीं किया गया।

अंततः इस कार्यालय के पत्रांक 2151 दिनांक 09.12.2022 के द्वारा आपसे स्पष्टीकरण पुछा गया था , जो अबतक अप्राप्त है।

अतः इस आलोक में SBD के कंडिका 3 (iv) के तहत आज दिनांक: 03.01.2023 के अपराहन में आपके एकरारनामा संख्या 34SBD/2017-18 को विखंडित किया जाता है एवं आपके जमानत - अमानत की राशि को जब्त करते हुए आपके निर्बंधन को काली सूची में डालने हेतु अनुशंसा की जाती है"

3. Perusal of the impugned order dated 03.01.2023, it is evident that the petitioner has been given notice on 09.12.2022, for which he has failed to submit his reply. Therefore, question of providing opportunity of hearing has been waived of by the petitioner. In such circumstances, the Court cannot examine whether the principle of Natural Justice has been violated or not? At this stage it is necessary to take



note of Apex Court decision in the case of **N.K. Prasada vs. Govt. of India & Ors.** reported in **(2004) 6 SCC 299**. The principle is in a given case notice issued to the concerned person and if fails to submit his reply in that event he cannot agitate that impugned action is without notice.

4. Accordingly, the present writ petition stands disposed of reserving liberty to the petitioner to invoke appropriate remedy of arbitration, if any.

(P. B. Bajanthri, J)

(Jitendra Kumar, J)

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