

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12439 of 2019

M/s Vijay Kumar Singh A registered proprietorship firm having its place of business at North Mandiri, Chhakkan Tola, P.O.- G.P.O., P.S.- Buddha Colony, District- Patna-800001 through its proprietor namely Sri Vijay Kumar Singh, male aged about 53 Son of Late Sri Ram Balak Singh, Resident of North Mandiri, Chhakkan Tola, P.O.- G.P.O., P.S.- Buddha Colony, District- Patna- 800001.

... .. Petitioner/s

Versus

1. The State of Bihar Through the Principal Secretary, Department of Road Construction, Vishveshwariaya Bhawan, Bailey Road, Patna.
2. The Principal Secretary Department of Road Construction, Vishveshwariaya Bhawan, Bailey Road, Patna.
3. The Engineer in Chief cum Additional Commissioner cum Special Secretary Department of Road Construction, Vishveshwariaya Bhawan, Bailey Road, Patna.
4. The Chief Engineer (South) Department of Road Construction, Vishveshwariaya Bhawan, Bailey Road, Patna.
5. The Superintending Engineer Department of Road Construction, Magadh Road Circle, Gaya.
6. The Executive Engineer Department of Road Construction, Road Division No.1, Aurangabad.
7. The Assistant Engineer Department of Road Construction, Road Division No.1, Aurangabad.
8. The Junior Engineer Department of Road Construction, Road Division No.1, Aurangabad.
9. The Executive Engineer Flying Squad Road Division No. 3, Department of Road Construction, Vishveshwariaya Bhawan, Bailey Road, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Gautam Kumar Kejriwal, Advocate Mr. Alok Kumar Jha, Advocate Mr. Mukund Kumar, Advocate
For the Respondent/s	:	Mr. Manoj Kumar Ambastha (SC-26) Mr. Subodh Kumar, AC to SC-26

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

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

7 17-04-2023

In the instant writ petition, petitioner has prayed for



the following relief(s):-

“a) For issuance of a writ in the nature of certiorari for quashing of order issued vide memo no. 4120 (E) Patna dt. 28.05.2019 by the respondent no. 3 whereby the order of rejection of appeal preferred by the petitioner against the order dated 25.02.2019 issued vide memo number 1637 (E) Patna by the same very respondent number 3 has been communicated to the petitioner;

b) For issuance of a writ in the nature of certiorari for quashing of the order issued vide memo number 1637 (E) Patna dated 25.2.2019 whereby the petitioner has been suspended for a period of 2 years and an order for recovery of the valuation of deficit quantity of bitumen from the petitioner has been made by way of a nonspeaking order by the respondent number 3;

c) For issuance of a writ in the nature of mandamus directing the respondents to allow the petitioner to participate in all the ongoing tenders which may consist of the tenders already participated by the petitioner and also those which the petitioner may participate presently and in near future of the same respondent Road Construction Department as well as other government departments, corporations and agencies regardless of the aforesaid impugned orders dated 25.02.2019 and 28.05.2019;

d) For holding and a declaration that the appeal preferred by the petitioner was before the respondent number 2 being the head of the Road Construction Department



in the state of Bihar and therefore the appeal to have been decided and disposed off by the said respondent and the order so passed ought to have been communicated to the petitioner by the respondent number 2 and not the respondent number 3:

e) For further holding and a declaration that the impugned order dated 28.05.2019 and 25.02.2019 is nonspeaking and silent and any or all of the issues raised by the petitioner in his reply filed before the respondent number 3 as well as the appeal filed before the respondent number 2 and as such the impugned orders suffer from violation of principles of natural justice as well as the rule against arbitrariness and unreasonableness in terms of Article 14 of the Constitution of India;

f) For further holding and a declaration that the whole process of collection of sample/specimen and investigation thereof behind back of the petitioner is unilateral exercise lacking transparency, reliability and procedural propriety and therefore the impugned orders dated 28.05.2019 as well as 25.02.2019 are both based on gross illegality in the procedural part and as such unsustainable in the eye of law;

g) For grant of any other relief or reliefs to which the petitioner is found entitled in the facts and circumstances of this case.”

02. Petitioner's registration was suspended for two years on 25.02.2019. Thereafter, he has exhausted the remedy of



appeal before the Appellate Authority and suffered order on 28.05.2019.

03. Perusal of the suspension of registration for a period of two years order dated 25.02.2019, it is a non-speaking order with reference to show-cause notice dated 25.05.2018 read with reply of the petitioner dated 22.06.2018. Even though petitioner has taken number of contentions in support of his defence against show-cause notice, however, order of suspension dated 25.02.2019 does not reveal the application of mind in considering the petitioner's plea. So also in the memorandum of appeal dated 01.03.2019, the petitioner has taken several contentions and it has not been dealt with by the Appellate Authority while rejecting the petitioner's appeal on 28.05.2019.

04. We have also noticed that Engineer-in-Chief has acted both Competent Authority and Appellate Authority. Page 64 to 65 (Annexure-14) is an order of the Engineer-in-Chief as if he is an Appellate Authority. It is not that the Appellate Authority has taken a decision and asking the Engineer-in-Chief to communicate the decision of the Appellate Authority. In fact, Engineer-in-Chief should have recused in deciding the petitioner's memorandum of appeal in the light of the original



order passed by him on 25.02.2019.

05. No doubt it is a case for remand. However, it is to be noted that impugned order is relating to suspension of registration for a period of two years and it is confirmation by the Appellate Authority. Such a suspension need not be revisited after these many years. Therefore, order of suspension dated 25.02.2019 and Appellate Authority's order dated 28.05.2019 would not come in the way from today onwards. If there is no dispute by either of the parties insofar as settling the matter they have jurisdiction of arbitration, the same shall be invoked by the respective parties.

06. With the above observation, the writ petition stands disposed of.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

Ashish/-
Himanshu/-

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