

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11226 of 2023

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Sushil Kumar S/o Mahendra Ray, Resident of Village-Bindraban, Police Station-Tariyani, District-Sheohar, Bihar, PIN-843128.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Rural Works Department, Vishweshwaraiya Bhawan, Bailey Road, Patna.
2. The Secretary Rural Works Department, Vishweshwaraiya Bhawan, Bailey Road, Patna.
3. The Engineer-in Chief, Rural Works Department, Vishweshwaraiya Bhawan, Bailey Road, Patna.
4. The Chief Engineer-3, Rural Works Department, Vishweshwaraiya Bhawan, Bailey Road, Patna.
5. The Superintending Engineer, Rural Works Department, Works Circle, Sitamarhi.
6. The Executive Engineer, Rural Works Department, Works Division, Sheohar.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Mukesh Kumar, Advocate
For the Respondent/s : Mrs. Binita Singh, S.C.-28

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJIV ROY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJIV ROY)

Date : 05-12-2023

The writ petitioner is aggrieved by the :

(i) order/letter no. 1121 dated

17.02.2023 passed by the respondent no. 3, the Engineer-in Chief, Rural Works Department, Government of Bihar, Patna (henceforth for short 'the Department') by which he has been blacklisted/debarred for ten years;

(ii) the notice dated 28.03.2023

passed by the respondent no. 7, the Sub-Divisional



Officer cum Certificate Officer, Sheohar by which a demand of Rs. 63,31,125/- has been made vide Certificate Case No. 66 of 2022-23.

2. The facts leading to the case is/are as follows:-

3. The petitioner is registered as Class I Contractor with the Rural Works Department, Government of Bihar, Patna (henceforth for short 'the Department') having Registration No. 1180248.

4. The respondent no. 6 (The Executive Engineer, of 'the Department', Works Division, Sheohar) entered into an agreement dated 09.06.2021 with the petitioner bearing agreement no. SBD/PMGSY/02 of 2021-2022 to execute the work under PMGSY Construction and CD work from 'Param Basant Tola to Narha Tola' vide Package No.-BR-32R-033.

5. As per the said agreement dated 09.06.2021, the total cost of construction and maintenance was Rs.2,45,23,752/- (Rupees Two Crore Forty Five Lacs Twenty Three Thousand Seven Hundred Fifty Two Only) and the security amount was Rs. 10,26,000/- (Rupees Ten Lacs Twenty Six Thousand Only).



6. It is the case of the petitioner that on 09.06.2021, he deposited the security money of Rs. 10,26,000/- (Rupees Ten Lacs Twenty Six Thousand Only) and started the aforesaid work. Apart from the security deposit of Rs. 10,26,000/- (Rupees Ten Lacs Twenty Six Thousand Only), he also spent Rs. 9,82,000/- (Rupees Nine Lacs Eighty Two Thousand Only) for earth work, Rs. 18,55,660/- (Rupees Eighteen Lacs Fifty Five Thousand Six Hundred Sixty Only) for GSB II and Rs. 5,30,296/- (Rupees Five Lacs Thirty Thousand Two Hundred Ninety Six Only) for WBM totalling Rs. 43,93,956/- (Rupees Forty Three Lacs Ninety Three Thousand Nine Hundred Fifty Six Only). The work done by the petitioner was inspected on 28.09.2022 by the Junior Engineer, Tariyani as well as the Assistant Engineer, Tariyani and they found it to be in accordance with the agreement dated 09.06.2021.

7. However, when the petitioner approached the respondent no.6 for clearance of his bills, he was asked verbally by the respondent no. 6 to resolve the ATR for the years 2012, 2013 and 2014 relating to the same road, else his bill will not be cleared.

8. The petitioner thereafter requested the Executive Engineer, Rural Works Department, Works Division,



Sheohar (respondent no. 6) vide letter dated 21.09.2021 for clearance of his pending bills stating therein that he has no connection for the ATR for the years 2012, 2013 and 2014.

9. His contention is that instead of resolving the issue raised by the petitioner, the respondent no 6 issued notice vide no. 137 dated 14.02.2022 by making recommendation for forfeiting of the security deposit and further to blacklist his registration.

10. Aggrieved, the petitioner approached highest authorities from the Secretary of 'the Department' to the Engineer-in Chief, the Chief Engineer-3 as also the Superintending Engineer, Rural Works Department, Works Circle, Sitamarhi vide letters dated 12.03.2022 narrating his grievances with request to his pending bills informing them that he has no connection with the ATR for the years 2012, 2013 and 2014.

11. However, the Executive Engineer, Rural Works Department, Works Division, Sheohar) vide order dated 31.12.2022 cancelled the agreement no. SBD/PMGSY/02/2021-2022 dated 09.06.2021 with penalty to the tune of Rs. 73,57,125/-(Rupees Seventy Three Lacs Fifty Seven Thousand One hundred Twenty Five Only). Furthermore, the security



deposit of Rs. 10,26,000/- (Rupees Ten Lacs Twenty Six Thousand Only) of the petitioner was forfeited with direction to file certificate case against him for recovery of rest of the amount.

12. Thereafter vide order no. 1121 dated 17.02.2023 passed by the Engineer- in-Chief of 'the Department', the petitioner was blacklisted/debarred for 10 years. The categorical submission of the petitioner is that he never received any show cause notice from the respondents before the order in question.

13. This followed the notice dated 28.03.2023 issued under section 7 of the Bihar and Orissa Demands Recovery Act, 1914 by the Sub Divisional Officer, Sheohar vide Certificate Case No. 66/22-23 for the recovery of Rs.63,31.125/-.

14. Learned Counsel for the petitioner reiterated that prior to the passing of the order, he was never put on notice/show cause and as such, the orders in question need to be quashed.

15. A counter affidavit on behalf of the respondent nos. 2 to 6 is on record duly put on affidavit by the respondent no. 6, the Executive Engineer, Rural Works



Department, Works Division, Sheohar. As per it, the petitioner was allotted work for the construction and CD work “from Param Basant Tola to Narha Tola” vide Agreement No. SBD/PMGSY/02/2021-2022 under the Works Division, Sheohar. The work was to commence on 09.06.2021 which was to be completed within a year by 08.06.2022.

16. However, the case of the respondent is that the petitioner never started the work despite the letters dated 05.08.2021 and 30.12.2021 issued to him by the respondent no. 6. It was in the aforesaid circumstance that the agreement was rescinded with the recommendation for blacklisting his registration.

17. Thereafter, the respondent Chief Engineer-03 of ‘the Department’, vide office letter no. 3981 dated 15.12.2022 sent proposal with recommendation to the respondent Engineer-In-Chief to put the registration of the petitioner in blacklist. Pursuant to the aforesaid proposal and recommendation, the Engineer-In-Chief of ‘the Department’, vide office letter no. 3010 dated 22.12.2022 sought reply.

18. As per the respondents, the petitioner did not reply to the aforesaid show-cause despite the service of notices via e-mail as well as registered post which is evident



from the Gmail receipt and acknowledgment of the registered post. The respondents claim that in the aforesaid circumstance, the memo no. 1121 dated 20.02.2023 was issued by the respondent no. 2, the Engineer-in-Chief of 'the Department' by which the registration of the petitioner was blacklisted for the next ten years.

19. The petitioner has filed rejoinder to the said counter affidavit and in paragraph 9, a categorical statement has been made that he never received any show cause from office of the Engineer-in-Chief of 'the Department'. To be fair to the respondents, following the rebuttal by the petitioner, a supplementary counter affidavit was filed by them again harping on the e-mail and the speed-post receipt sent by them.

20. However, a) upon query:

- (i) whether the email was sent on the proper e-mail address of the petitioner;
- (ii) whether there is any acknowledgment that the speed-post letter sent to the petitioner was delivered to him;

b) the answer of the learned State Counsel is that:



(i) the e-mail was actually sent on a wrong e-mail address which did not belong to the petitioner;

(ii) though the speed-post receipt is there, the tracking status of the speed-post was not saved/no print out was taken out nor is there any acknowledgment showing delivery to the petitioner.

21. The annexures on which the State has heavily relied upon nowhere shows the delivery of notice to the petitioner. Further, in view of the fact that the e-mail was sent on a wrong e-mail address which did not belong to the petitioner, we have no hesitation in accepting his claim that before passing the order in question, he was not allowed to submit his reply.

22. In the aforesaid circumstances, we are inclined to set aside the order/letter no. 1121 dated 17.02.2023 passed by the respondent no. 3, the Engineer-in-Chief of 'the Department'.

23. The respondent no. 3 shall re-hear the petitioner and thereafter will pass a reasoned order. The petitioner shall be appearing before the respondent no. 3, the



Engineer-in-Chief, Rural Works Department, Bihar, Patna on 16th January, 2024 at 12 P.M. alongwith the order as also fresh representation and thereafter, the respondent no. 3 shall be free to fix the next date of hearing.

24. Till a decision is taken by the respondent no. 3 on the fresh representation of the petitioner, the Certificate Case No. 66 of 2022-23 pending before the Sub-Divisional Officer cum Certificate Officer, Sheohar shall remain stayed.

25. The writ petition stands disposed of with the aforesaid observations.

(K. Vinod Chandran, CJ)

(Rajiv Roy, J)

Neha/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	11.12.2023
Transmission Date	

