

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.13454 of 2022**

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Shaurya Premier Infrastructure Pvt. Ltd through its Managing Director Mr. Kanhaiya Kumar, Aged about 41 Years, (Male), Son of Late Shivji Singh, Resident of Mohalla - North S K Puri, Devasthali Apartment, Flat No. 2D, Behind H.P Gas Godown, Block - C, P.O. - Patliputra, P.S. - S K Puri, District - Patna - 800013.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Building Construction Department, Vishweshwaraiya Bhawan, Bailey Road, Patna - 15.
2. The Secretary, Building Construction Department, Vishweshwaraiya Bhawan, Bailey Road, Patna - 15.
3. The Engineer-in-Chief-Additional Commissioner-Special Secretary, Building Construction Department, Vishweshwaraiya Bhawan, Bailey Road, Patna - 15.
4. The Internal Financial Advisor, Building Construction Department, Vishweshwaraiya Bhawan, Bailey Road, Patna - 15.
5. The Chief Engineer (Patna), Building Construction Department, Vishweshwaraiya Bhawan, Bailey Road, Patna - 15.
6. South Bihar Power Distribution Company Limited through its Managing Director, 2nd Floor, Vidyut Bhawan, Bailey Road, Patna - 800001.
7. The Managing Director, South Bihar Power Distribution Company Limited, 2nd Floor, Vidyut Bhawan, Bailey Road, Patna - 800001.
8. The Chief Engineer (Civil), (Mr. Arun Kumar), South Bihar Power Distribution Company Limited 2nd Floor, Vidyut Bhawan, Bailey Road, Patna - 800001.
9. The Executive Engineer (Civil), (Md. Irfan Ansari), South Bihar Power Distribution Company Limited, Civil Division, Patna Urban, Patna.
10. Mr. Shashi Kant Singh, Resident of Bir Basawan Singh Nagar, P.O. B.V.C. Campus, P.S. Rupaspur, District Patna - 14.

... .. Respondent/s

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**Appearance :**

|                           |   |                                                                                                           |
|---------------------------|---|-----------------------------------------------------------------------------------------------------------|
| For the Petitioner/s      | : | Mr. Rajendra Narain- Sr. Advocate<br>Mr. Manish Sahay- Advocate<br>Mr. Anil Kumar Sinha- Advocate         |
| For the Respondent/State: |   | Mr. Subodh Kumar ( SC 26 )                                                                                |
| For the S.B.P.D.C.L.      | : | Mr. Vinay Kirti Singh- Sr. Advocate<br>Mr. Vijay Kumar Verma- Advocate<br>Mr. Akhileshwar Singh- Advocate |
| For Respondent No.10      | : | Mr. Kumaresh Singh- Advocate                                                                              |

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**CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR**  
**and**  
**HONOURABLE MR. JUSTICE SATYAVRAT VERMA**



**ORAL JUDGMENT**  
**(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)**  
**Date : 25-01-2023**

Heard, Mr. Rajendra Narain, the learned Senior Advocate for the petitioner, Mr. Subodh Kumar for the State. Mr. Kumaresh Singh, the learned Advocate appears for the newly added respondent no.10.

The grievance of the petitioner is that he has wrongly been treated to be technically unresponsive and has been thrown out of the bid process, which has been concluded in favour of respondent no.10.

Mr. Narain has explained to us that in the first instance, the Technical Bid Evaluation Committee found the bank guarantee offered by the petitioner to be conditional; but when this was explained while raising objections against the decision of the Technical Bid Evaluation Committee, another ground was conceived of by the Committee that the Work-certificate, which was offered twice, were different in contents.

This, the petitioner laments, was the reason



for holding him technically unresponsive and alongside proceeding against him under the Bihar Contractor Enlistment Rules, 2007 for blacklisting the firm of the petitioner has also been initiated.

On the asking of the petitioner, we had issued notice to newly added respondent no.10, pursuant to which, Mr. Kumaresh Singh, the learned Advocate has appeared on his behalf.

Mr. Narain, at the outset, very fairly submitted that now, after the agreement has been entered into between the State Department and the Respondent No.10, work has already begun and therefore he shall not press this petition for upsetting the apple-cart all over again.

However, he submits that his ouster from the bid process *prima facie* appears to be an instance of favouritism shown by the State Department in selecting respondent No.10.

In order to support this contention, he



submits that the work certificate, which was offered by him in his bid papers, was inquired by the Evaluation Committee, pursuant to which a certificate, in continuation of the earlier certificate, was furnished, which *prima facie* appeared to be different content-wise but not in actuality. If the two certificates would have been compared with an objective mind, no difference would have been found as the second certificate was only on the asking of the Department for verifying the experience of the petitioner and the second certificate, as noted above, is only in continuation of the earlier certificate.

This is apparent from the rubric of the second certificate, which according to the respondent/State, was filed only to bag the contract in a malicious way.

We are absolutely unhappy in the manner in which the whole process has been conducted. It cannot be gainsaid that it is the choice and discretion of the State Department to choose their agency, but the law



mandates that such discretion is not be taken as absolute and the Department, even though has framed the NIT and is the best authority to choose between the agencies, has to take a decision with transparency as the Department represents the State, which only works for the commonweal of people.

It is too late in the day to repeat that every commercial enterprise wishes to work with the Government and in that case, no discrimination could be made amongst bidders inter se.

However, since the decision has been taken; agreement executed with respondent no.10 and the work has progressed, we also do not wish to upset the whole process.

However, the grounds raised in the show-cause notice to the petitioner for explaining as to why a proceeding be not initiated against him under the Bihar Contractor Enlistment Rules, 2007 for having furnished two different kinds of certificates in the same transaction



is absolutely unwarranted and a wrong use of power.

This is highly deprecated.

The premise on which such notice has been issued, in our estimation, is non-existent, to say the least. We have noted that there is no difference in the content of the two certificates furnished by the petitioner; the second certificate having been called for, for clarification by the Department. Thus, no such proceeding for black-listing ought to have been initiated.

Earlier, vide order dated 04.01.2023, this court had stayed the operation of notice dated 30.11.2022 and had exempted the petitioner from replying to the said notice even though the proceeding under the Bihar Contractor Enlistment Rules, 2007 was still at the contemplation stage.

For the afore-noted reason, we set aside the notice dated 30.11.2022 contained in Letter No.8677 issued by the Chief Engineer-cum-Additional Commissioner-cum-Special Secretary, Building



Construction Department, Government of Bihar.

The petition stands disposed off accordingly.

**(Ashutosh Kumar, J)**

**( Satyavrat Verma, J)**

vikash/sunil

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| AFR/NAFR          |            |
| CAV DATE          | N.A.       |
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