

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14260 of 2022

=====

Nand Kishore, Son of Sri Nagendra Sharma, Resident of Mohalla Birla Colony (C/26), P.S. Phulwari Sharif, District Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Minor Irrigation Department, Government of Bihar, Patna.
2. The Engineer in Chief, Minor Irrigation Department, Government of Bihar, Patna.
3. The Chief Engineer, Minor Irrigation Department, Government of Bihar, Patna.
4. The Superintending Engineer, Minor Irrigation Circle, Patna, Bihar.
5. The Executive Engineer, Minor Irrigation Division, Patna, Bihar.

... .. Respondent/s

=====

with
Civil Writ Jurisdiction Case No. 16951 of 2022

=====

Nand Kishore, Son of Sri Nagendra Sharma, resident of Mohalla Birla Colony (C/26), P.S. Phulwari Sharif, District Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Minor Irrigation Department, Government of Bihar, Patna.
2. The Engineer in Chief, Minor Irrigation Department, Government of Bihar, Patna.
3. The Chief Engineer, Minor Irrigation Department, Government of Bihar, Patna.
4. The Superintending Engineer, Minor Irrigation Circle, Patna, Bihar.
5. The Executive Engineer, Minor Irrigation Division, Patna, Bihar.

... .. Respondent/s

=====



Appearance :

(In Civil Writ Jurisdiction Case No. 14260 of 2022)

For the Petitioner/s : Mr. Prabhat Ranjan, Advocate
Mr. Chandan Kumar, Advocate
For the State : Mr. Sita Ram Yadav, GP-16
Mr. Jitendra Kumar, A.C. to G.P-16

(In Civil Writ Jurisdiction Case No. 16951 of 2022)

For the Petitioner/s : Mr. Prabhat Ranjan, Advocate
Mr. Chandan Kumar, Advocate
For the State : Mr. Sita Ram Yadav, GP-16
Mr. Jitendra Kumar, A.C. to G.P-16

**CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)**

Date : 24-01-2023

In CWJC No. 14260 of 2022, petitioner has prayed
for the following relief(s):-

“(i) Quashing of the Notice to Show Cause contained in Letter no. 1776 dated 31.08.2022 purported to have been issued under Bihar Contractors Registration Rules, 2007 whereby, the petitioner has been asked to Show Cause as to why for the reasons stated therein, the firm should not be debarred / blacklisted;

(ii) Direction upon the Respondents to open the Financial Bid and finalize the Tender process in connection with the notice Inviting Tender No. 14/2021-22 which is pending since 17.06.2022; and

(iii) Restraining the Respondents from giving effect to / proceed in connection with Notice to Show Cause contained in Letter no. 1776 dated 31.08.2022 during the pendency of the present writ



petition or without the permission of this Hon'ble Court.”

In CWJC No. 16951 of 2022, petitioner has prayed for the following relief(s):-

“(i) Quashing of the decision of the Technical Bid Evaluation Committee dated 16.11.2022 in connection with Tender ID No. 26797 (Annexure 1) whereby, the Technical Bid of the petitioner has been rejected and held to be non responsive merely on the ground that the Chief Engineer has recommended for blacklisting the Registration of the petitioner.

(ii) Quashing of the Letter No. 2004 dated 10.10.2022 (Annexure 3) whereby, on the basis of an exparte enquiry and without seeking any explanation, severe adverse and penal action has been recommended against the petitioner;

(iii) Restraining the Respondents from taking any coercive action the petitioner in connection with the Letter NO. 2004 dated 10.10.2022 without the leave of this Hon'ble Court during the pendency of the present writ application; and

(iv) Restraining the Respondents from finalizing / creating any third party rights in connection with Tender ID No. 26797 pursuant to the decision of the Technical Bid Evaluation Committee dated 16.11.2022 without the leave of this Hon'ble Court.”

In response to the averments made by the petitioner,



the respondents have taken a categorical stand, which inter alia, is extracted as under:-

“17. That it would be evident from the aforesaid facts that the impugned letter dated 31.08.2022 is not a show cause notice under Rule 11 (Kha) of the Bihar Contractors Registration Rules, 2007 as it has not been issued by the registering authority, who is the Chief Engineer (Planning, Monitoring and Ground Water), Minor Water Resources Department, Bihar, Patna. In fact, by the said letter, the Chief Engineer, Minor Water Resources Department, Patna, who had floated the tender, asked explanation from the petitioner as to why the matter should not be reported to the registering authority who would take further steps in the matter. But instead of submitting his explanation the petitioner has rushed to this Hon’ble Court though neither tender process has been finalized nor any punitive action has been taken against the petitioner till date. As such the petitioner had no cause of action for filling the present writ application.”

Evidently, the action initiated by the authorities in terms of impugned letter dated 31st of August, 2022, is only for the purposes of ascertaining the factual information. Pending such inquiry, for the purposes of recommending action to the competent authority, seeking cancellation of the petitioner’s registration, in our considered view, the authorities



could not have rejected the petitioner's tenders submitted in relation to other bids. We may also point out that the works referred to in the impugned communication dated 31st of August, 2022 stood completed by the contractor, as is so stated before us, much prior to the issuance of the said communication. The authorities do have a right to ascertain the factual information with regard to the documents submitted by the petitioner which purportedly were fake, but then they cannot resort to witch hunting in the manner which is now sought to be done by the authorities. The authority competent to cancel the registration is not the person who had issued the impugned communication, but as is so admitted by the respondents themselves, is the registering authority i.e. the Chief Engineer (Planning, Monitoring and Ground Water), Minor Water Resources Department, Bihar, Patna.

In this view of the matter, we are left with no other option but to quash the impugned communication dated 31st of August, 2022 issued by the Chief Engineer, Minor Water Resources Department, Bihar, Patna (Annexure-6), leaving it open for the authorities to initiate appropriate action in accordance with law.

Such of those NITs for which the petitioner has



submitted the bid, shall be processed in accordance with law.

Both the petitions stand disposed of in the aforesaid terms.

Interlocutory Application(s), if any, shall stand disposed of.

(Sanjay Karol, CJ)

(Partha Sarthy, J)

avinash/PKP

AFR/NAFR	
CAV DATE	
Uploading Date	25.01.2023
Transmission Date	

