

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15800 of 2016

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M/s Radhe Krishna Construction Pvt. Ltd. through its Managing Director Mr. Rajendra Prasad Yadav, Son of Sri Shiv Shankar Yadav Resident of Village-Samdah, P.O. Sahevan, P.S. Ratanpura, District Supaul, State Bihar Pin-854338.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Water Resources Department, Sinchai Bhawan, Patna-15
2. The Principal Secretary, Water Resources Department, Sinchai Bhawan, Patna- 15.
3. The Joint Secretary, Water Resources Department, Sinchai Bhawan, Patna-15.
4. The Engineer-in-Chief, Sinchai Srijan, Water Resources Department, Sinchai Bhawan, Patna- 15.
5. The Chief Engineer, Water Resources Department, Birpur, Supaul.
6. The Superintending Engineer, Water Resources Department, Barrage Circle , Birpur, Supaul.
7. The Executive Engineer, Water Resources Department, Eastern Embankment Division, Birpur, Supaul.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Manish Sahay, Advocate Mr. Anil Kr. Sinha, Advocate Mr. Siddharth Aditya, Advocate
For the Respondent/s	:	Mr. Sumant Kr. Singh, AC to GA-2

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE JITENDRA KUMAR

ORAL JUDGMENT

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

Date : 02-08-2023

Heard learned counsels for the parties.

2. In the instant petition, petitioner has prayed for



following reliefs:-

"1. **That** this writ application is being filed issuance of a writ or writs in the nature of "Certiorari" or any other appropriate writ/writs, order/orders, direction/directions, following

RELIEF(S):-

(I) For quashing of decision bearing No. 47 dated 10-01-2006, issued by respondent Joint Secretary, Water Resources Department, Government of Bihar, as contained in Annexure-2, whereby and where under decision has been taken to give preference to Nepali Tenderer for award of contracts in the state of Bihar for Maintenance of that Part of Kosi Barrage which falls in the Nepal Area.

(II) For restraining the concerned respondent for making such type of discrimination between Tenderer of Bihar including the petitioner.

(III) For further directing the concerned respondent not to give preference to the Nepali bidders ignoring the bidders of Bihar in relation to award of contract for restoration work of existing porcupine screen and providing porcupine deflector in between Km 25.25 to 26.00 and spur km 26.00 and 26.40 of E.A.B.

(IV) For further passing such an Order or Orders for which the petitioner is entitled under the law in the facts and circumstances of this case."

3. The matter was heard from time to time. On

10.05.2023 following order was passed:-



"Learned counsel for the respondents is directed to file an additional counter-affidavit clarifying certain points insofar as to whether Indian contractors are to be excluded in case the work area is falling in India as well as in Nepal while drawing lottery in terms of Annexure-2 dated 10.01.2006. Further, the policy decision is to be clarified with regard to the criteria for giving preference to the contractor hailing from Nepal, since the agreement as quoted in Annexure-C of the counter-affidavit mentions only about labour contractors from Nepal to be given preference. Further, learned counsel for the respondent is directed to produce letter dated 30.12.2005 of the Superintending Engineer on the basis of which Annexure-2 has been issued. The counter-affidavit be filed within two weeks.

2. Re-list this matter on 28.06.2023."

4. Thereafter, despite giving sufficient time, State-Respondent could not apprise this Court to the extent that the State Government has passed resolution in adopting whatever the policy of the Central Government so as to contend that preference would be given to the citizens of Nepal in respect of certain contracts, in other words, there is no policy of the State Government. Even in the absence of any State policy and the State Government has not adopted Central Government policy whereas on 25.04.1954, Government of India and Government of Nepal entered into agreement on the



Kosi Project. This is in relation to construction of a barrage, head works, other appurtenant about 3 miles upstream of Hanuman Nagar Town on the Kosi River and there is no independent policy and its applicability to State of Bihar. In the absence of these two ingredients impugned communication dated 10.01.2006, vide Annexure-2 is arbitrary and illegal. Moreover, the impugned communication is not even in terms of Article 166 of Constitution of India. Hence, petitioner has made out a *prima facie* case so as to interfere with the impugned communication dated 10.01.2006 (Annexure-2 of the writ petition) and it is set aside.

5. Accordingly, the present writ petition stands allowed.

(P. B. Bajanthri, J)

(Jitendra Kumar, J)

rakhi/-

AFR/NAFR	
CAV DATE	N.A.
Uploading Date	01.09.2023
Transmission Date	N.A.

