

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14521 of 2023

Vijay Raj Mewar Construction Company Private Limited, Having Registered No. 1190016, at Madhubani Tola, Banbairiya, Rangialahi, Anchal Madhubani, District West Champaran, through its Authorized Signatory, Abhay Kumar Singh, aged about 45 years, Male, son of Arun Kumar Singh, resident of Ward No. 02, Village Bramhaul, P S Nanpur, District Sitamarhi.

... .. Petitioner/s

Versus

1. The State of Bihar Through the Principal Secretary, Rural Works Department, Government of Bihar, Patna.
2. The Engineer in Chief, Rural Works Department, Government of Bihar, Patna.
3. The Chief Engineer - 3, Patna, Rural Works Department, Government of Bihar, Patna.
4. The Superintending Engineer, Rural Works Department, Works Circle, Bettiah, District West Champaran, Bihar.
5. The Executive Engineer, Rural Works Department, Works Division, Narkatiaganj, District West Chamaran, Bihar.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Prabhat Ranjan, Advocate Mr. Chandan Kumar, Advocate Mr. Ansh Prasad, Advocate Mr. Sukarn Gop, Advocate
For the Respondent/s	:	Mr. Anjani Kumar (AAG 4) Mr. Deepak Sahay Jamvar, A.C. to AAG -4

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE RAMESH CHAND
MALVIYA

ORAL ORDER

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

4 09-11-2023 In the instant writ petition, the petitioner has prayed
for the following reliefs.

(i) Quashing of the Notice to Show Cause contained in Letter No. 3569 dated 11.07.2023 whereby the Engineer in Chief without any authority of law and in the absence of any



legal provision, contrary to the terms of the Agreement has directed the petitioner to submit the reply within 14 days as to why the firm be not declared defaulter and debarred from participating in the future contract on account of non completion of the work relating to Construction of Road from Bettiah to Parsa under New Maintenance Policy, 2018;

(ii) A declaration to the effect that the Engineer in Chief has got no jurisdiction to issue an order of debarment from participating in the future Tender and further more that there is no legal provision for issuing an order of debarment against the Contractor for non completion of the work; and

(iii) Restraining the Respondents from giving effect to the Show Cause Notice contained in Letter No. 3569 dated 11.07.2023 and taking any other coercive action in connection with Agreement No. 65 / 2019 – 20 dated 05.02.2020, during the pendency of the present writ application and / or without the leave of this Hon'ble Court.

2. Ordinarily, writ petition is not maintainable against show cause notice unless and until it is issued by incompetent authority or contrary to any statutory rules as held by the Apex Court in the case of **Union of India and Another v. Kunisetty Satyanarayana** reported in (2006) 12 SCC 28 and **Secretary, Ministry of Defence and Others v. Prabhash Chandra Mirdha** reported in (2012) 11 SCC 565. The principle laid down in the aforementioned decision is attracted in the present case to the extent that there is no source of power for debarring



the petitioner under any statutory provision and the same has not been apprised by the respondents in the counter affidavit. In the counter affidavit they have produced Annexure-F Bihar Registration of Contractors Rules (Rural Works Department) 2007. Rule 11 of the aforementioned Rules provides for blacklisting and suspension and not for debarment. Therefore, on this short ground, the petitioner has made out a case to interference with the impugned show cause notice dated 11.07.2023. Accordingly, the impugned order dated 11.07.2023 (Annexure -P/5) stands set aside, reserving liberty to the concerned respondent to initiate appropriate proceedings with reference to relevant statute or executing order read with the status of the petitioner and related work. If there are any provision or the Rules, 2007 cited supra is applicable to the present case the concerned authority is hereby directed to undertake fresh exercise within a period of three months and proceed in accordance with law.

(P. B. Bajanthri, J)

(Ramesh Chand Malviya, J)

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