

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17680 of 2022

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M/S Kumar Kant Constructions through its Proprietor Shambhu Nath Choudhary, Male, aged about 73 years, Son of Late Kartik Prasad Choudhary, Resident of Kotwali Chowk, near Dr. Pramod Tiwari Clinic, P.S. Bettiah Town, District Bettiah, West Champaran, Bihar.

... .. 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, Rural Works Department, Government of Bihar, Patna.
4. The Superintending Engineer cum Nodal Officer, PMGSY BRADA, Patna.
5. The Superintending Engineer, Rural Works Department, Works Circle, Sitamarhi, District Sitamarhi, Bihar.
6. The Executive Engineer, Rural Works Department, Works Division, Belsand, District Sitamarhi, Bihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Prabhat Ranjan, Advocate
For the Respondent/s : Mr.Ajay (GA5)

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 27-02-2023

In the instant petition, petitioner has prayed for the following relief:-

“(i) Quashing of the Letter bearing Memo NO. 758 dated 25.04.2022, by which, the Executive Engineer, without issuance of any Notice to Show Cause and contrary to the terms of the Standards Bidding Document, has recommended for rescission of the Agreement and blacklisting of the Registration to the Superintending Engineer;

(ii) Quashing the order contained in Memo No. 860 dated 09.05.2022 (Annexure 24) whereby without issuing any Notice to Show Cause and that too on the dictates of the higher authorities, contrary to the terms of the Standard Bidding Document and the Departmental Circulars, the Agreement of the petitioner has been rescinded and the blacklisting of the Registration has been recommended; and

(iii) Restraining the Respondents from taking any coercive / penal action during the pendency of the writ petition against the petitioner in consequence of the impugned decisions dated 25.04.2022 and 09.05.2022 (Annexure 25 and Annexure 24 respectively)."

2. On 30.01.2023, this Court passed the following order:-

"Learned counsel for the petitioner states that prior to issuance of the impugned orders dated 25.04.2022 (Annexure-23) and 09.05.2022 (Annexure-24), no notice was issued to the petitioner. With the passing of the impugned orders, which are penal in nature, both civil and criminal, the petitioner's right to apply for the N.I.Ts. issued by the respondents stands foreclosed.

Reply be filed within two weeks. Rejoinder thereto, if any, be filed within one week thereafter.

List on 27.02.2023."

3. Today Learned counsel for the respondent has filed

counter-affidavit.

4. Learned counsel for the respondent stressed on Annexure-21 to apprise this Court that there is a compliance of issuance of show-cause notice and it suffice that principle of natural justice has been complied before Annexure-23 dated 25.04.2022 is passed.

5. *Per-contra*, learned counsel for the petitioner reiterated his argument that Annexure-23 is without issuing notice to him. On this issue, learned counsel for the petitioner submitted that pursuant to Annexure-21, earlier notice dated 17.12.2021, matter was taken up before the Empowered Standing Committee and it has decided certain issues on 31.03.2022. Thereafter, the petitioner has not been provided opportunity of show-cause notice with reference to Empowered Standing Committee's report/decision.

6. Heard learned counsel for the respective parties.

7. From perusal of Annexure-23, it is evident that petitioner has not been provided an opportunity of hearing like issuance of show-cause notice. Show-cause notice issued on 17.12.2021 cannot be taken into consideration and to hold that it is a show-cause notice before the impugned action at Annexure-23, for the reasons that in the interregnum period from show-cause notice dated 17.12.2021 and 25.04.2022 the matter was under consideration before the Empowered Standing Committee as is

evident from the Paragraph-2 of the Annexure 23 dated 25.04.2022.

8. In the light of these facts and circumstances, both the concerned parties are hereby directed to approach Empowered Standing Committee. The Empowered Standing Committee be constituted by the Competent Authority. The Empowered Standing Committee shall take up the subject matter of issue and decide after giving opportunity to the respective parties and will proceed to pass orders and communicate the decision to the respective parties. On receipt of Empowered Standing Committee report/ decision, the Concerned Authority is hereby directed to take further steps after issuing show-cause notice to the petitioner. The above exercise shall be completed within a period of 4 months from the date of receipt of this order.

9. Accordingly, impugned orders dated 25.04.2022 and 09.05.2022 are set aside and petition stands disposed of.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

Himanshu/
Daya/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	03.03.2023
Transmission Date	NA