

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22255 of 2018

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Pramila Devi w/o Shailendra Kumar, resident of Vill.-Korari, P.O.-Korari,
P.S.-Belchh Korari, District-Patna, Bihar- 803110

... .. Petitioner/s

Versus

1. The Bihar State Through Secretary, Rural Works Deptt. and Ors
2. The Secretary, Rural Works Deptt. Government of Bihar, Patna.
3. The Engineer in Chief, Rural Works Deptt. Government of Bihar, Patna.
4. The Chief Engineer, Rural Works Deptt. Government of Bihar, Patna.
5. The Superintending Engineer, RWD Works Circle, Patna.
6. The Executive Engineer, RWD, Works Division, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sushant Kumar, Advocate
		Mr. Gautam Kumar Yadav, Advocate
For the Respondent/s	:	Mr. Pratik Kumar Sinha, AC to GA V, Mr. Ajay

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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 : 14-07-2023

Heard learned counsels for the parties.

2. In the instant petition, petitioner has prayed for
following reliefs:-

"1. That through this writ
application the petitioner make a prayer for
issuance of the appropriate writ/s, order/s
or direction/s to the respondents for
following relief/reliefs:-

(a) To quash the letter contained
in letter no. 4361 dt. 27.09.2018 issued by
Engineer in Chief (Respondent No. 3) by
which all Chief Engineer, all
Superintending Engineer, and all Executive
Engineer, have been directed to issue



Centralized NIT in a package under head of 3054 for class and Class II Road only with the purpose to give benefit to Grade-I contractor and to debar the Grade-II, III, IV contractor like the petitioner not to participate in NIT.

(b) To stay the letter contained in letter no. 4361 dt. 27.9.2018 (Annexure-2) issued by Engineer-in-Chief RWD Govt. of Bihar Patna till final disposal of writ application.

(c) During pendency of the present writ application to stay the letter contained in letter no. 4361 dt. 27.9.2018 (Annexure-2) issued by Engineer-in-Chief RWD Govt. of Bihar Patna.

(d) Any other relief/reliefs for entitle the petitioner is under the facts and circumstance of the case."

3. Petitioner is aggrieved by the internal communication of Engineer-in-Chief to all his subordinates like Chief Engineer, Superintending Engineer, Executive Engineer etc. insofar as certain directions were to be followed. Such directions are affecting the petitioner's right as Class 2 contractor. It is necessary to re-produce direction given by the Engineer-in-Chief to all his subordinates dated 27.09.2018, vide Annexure- 2, which reads as under:-

"बिहार सरकार
ग्रामीण कार्य विभाग

पटना/दिनांक - 27/9/18

पत्रांक -मु0 अ0 -4 (मु0) 3054 -04-03/12 4361

प्रेषक,

सुभाष चन्द
अभियंता प्रमुख ।



सेवा में,

सभी मुख्य अभियंता,
सभी अधीक्षण अभियंता, कार्य अचल,
सभी कार्यपालक अभियंता, कार्य प्रमंडल।

विषय - शीर्ष 3054 के अंतर्गत केन्द्रीकृत (Centralised) निविदा प्रकाशन एवं पैकेज में निविदा आमंत्रित करने के संबंध में।

महाशय,

आप सभी अवगत हैं कि ग्रामीण कार्य विभाग द्वारा ग्रामीण सड़कों के रख-रखाव हेतु "बिहार ग्रामीण पथ अनुरक्षण नीति-2013" सकल्प स0-533 दिनांक 25.02.2014 के माध्यम से अधिसूचित है। इसके आलोक में श्रेणी-1 एवं श्रेणी-2 पथ के लिए निविदा निकाली जाती है। कार्य प्रमंडलों द्वारा निकाले जानेवाले NIT में एकरूपता आवश्यक है। साथ ही मूल मरम्मत कार्य के पश्चात 5 वर्षीय रूटीन अनुरक्षण को प्रभावी बनाने हेतु पक्षों को पैकेज के रूप में निविदा भी आवश्यक है।

2. उपर्युक्त संदर्भ में विभाग द्वारा निम्नलिखित प्रावधान निर्णय लिये गये हैं-

(i) शीर्ष 3054 के अंतर्गत केन्द्रीकृत (Centralised) निविदा प्रकाशित होगी।

(ii) श्रेणी-1 एवं श्रेणी-2 पथों व लिए अलग-अलग पैकेज बनाकर निविदा की जायेगी।

(iii) श्रेणी-1 / श्रेणी-2 पक्षों के पैकेज निम्न प्रकार बनेगे-

किसी कार्य प्रमंडल के अधीन ने प्रखंड जिसमें अधिकांश चयनित पथ आते हैं एवं इस प्रखंड की सीमा से सटे प्रखंडों के अंतर्गत सभी पथों का एक पैकेज (निविदा की अधिकतम राशि ₹10 करोड) बनेगा।

विश्वासभाजन

(सुभाष चन्द्र)
अभियंता प्रमुख



ज्ञापांक- मु०अ० (मु०) 3054-04-03 / 1:4361 पटना/
दिनांक- 27/9/18
प्रतिलिपि -सचिव, ग्रामीण कार्य विभाग, विहर, पटना को
सूचनार्थ समर्पित।

अभियंता प्रमुख"

4. Learned counsel for the petitioner submitted that such issuance of internal communication by the Engineer-in-Chief to his subordinates is in the absence of any policy of the State Government. Engineer-in-Chief has no source of power to issue such guidelines or directions to his subordinates. Therefore, the impugned communication dated 27.09.2018 be set aside.

5. *Per contra*, learned counsel for the respondents resisted the aforesaid contentions and submitted that such internal communication between Engineer-in-Chief and his subordinates is with reference to government policy decision. Therefore, no interference is called for.

6. Heard learned counsels for respective parties.

7. Undisputed facts are that the petitioner is a Class-2 contractor as on 27.09.2018, the date on which internal communication was issued by the Engineer-in-Chief to the subordinate officials to follow such directions. The Respondent-



State have failed to apprise this Court that there was State Government policy and thereafter Engineer-in-Chief has issued certain directions to his subordinates. Despite giving sufficient time the respondent could not apprise this Court in producing relevant policy decision of the State Government issued under Article 166 of the Constitution read with rules of business and rules of transaction of the State of Bihar.

8. On the other hand, it is submitted that certain files relating to policy decision were burnt in fire accident. In this regard concerned department has initiated criminal case in filing F.I.R. which is pending consideration. Taking note of these material information petitioner has made out a *prima facie* case to the extent that Engineer-in-Chief has no authority of law to issue any directions to his subordinates in the absence of statutory policy of the State Government, its sub-delegation of power to Engineer-in-Chief. Moreover, there is no reference to the State Government policy in the impugned communication dated 27.09.2018. Therefore, we have to draw inference that no policy have been framed insofar as the directions issued in the impugned communication. Hence, impugned communication dated 27.09.2018, vide Annexure-2 to the writ petition stands set



aside. The present writ petition stands allowed.

(P. B. Bajanthri, J)

(Jitendra Kumar, J)

rakhi/-

AFR/NAFR	
CAV DATE	N.A.
Uploading Date	18.07.2023
Transmission Date	N.A.

