

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17602 of 2023

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M/s Star Construction Balua Tal Motihari, West Champaran, P.S.- Nagar Town, District West Champaran, through its Proprietor Pervez Ahmad Khan, aged about 51 years, Male, son of Haseen Ahmad Khan, Resident of Balua Tal Motihari, West Champaran, P.S.- Nagar Town, District West Champaran.

... .. Petitioner

Versus

1. The State of Bihar through the Additional Chief Secretary, Rural Works Department, Government of Bihar, Patna.
2. The Additional Chief Secretary, Rural Works Department, Government of Bihar, Patna.
3. The Engineer-in-Chief, Rural Works Department, Government of Bihar, Patna.
4. The Chief Engineer-3, Rural Works Department, Government of Bihar, Patna.
5. The Superintending Engineer, Rural Works Department, Work Circle Darbhanga.
6. The Executive Engineer, Rural Works Department, Work Division, Madhubani.

... .. Respondents

with

Civil Writ Jurisdiction Case No. 15320 of 2023

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M/s Star Construction Balua Tal Motiahri, West Champaran, P.S.-Nagar Town, District West Champaran, through its Proprietor Pervez Ahmad Khan, aged about 51 Years, Male, Son of Haseen Ahmad Khan, Resident of Balua Tal Motihari, West Champaran, P.S.-Nagar Town, District-West Champaran.

... .. Petitioner

Versus

1. The State of Bihar through the Additional Chief Secreary, Rural Works Department, Government of Bihar, Patna.
2. The Additional Chief Secretary, Rural Works Department, Government of Bihar, Patna.
3. The Engineer-in-Chief, Rural Works Department, Government of Bihar, Patna.
4. The Chief Engineer-3, Rural Works Department, Government of Bihar, Patna.
5. The Superintending Engineer, Rural Works Department, Work Circle Darbhanga.
6. The Executive Engineer, Rural Works Department, Work Division, Madhubani.



... .. Respondents

Appearance :

(In Civil Writ Jurisdiction Case No. 17602 of 2023)

For the Petitioner/s : Mr. Ranjeet Kumar, Advocate

For the Respondent/s : Mr. Raghwanand, GA-11

Mr. Pratik Kumar, AC to GA-11

(In Civil Writ Jurisdiction Case No. 15320 of 2023)

For the Petitioner/s : Mr. Ranjeet Kumar, Advocate

For the Respondent/s : Smt. Binita Singh, SC-28

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 07-05-2024

The petitioner is aggrieved with the cancellation of the contract awarded and the blacklisting for ten years as a consequence of the cancellation. The order of termination is challenged in C.W.J.C. No. 15320 of 2023 and the consequent order of blacklisting is challenged in C.W.J.C. No. 17602 of 2023.

2. An agreement was executed on 26.07.2022 with respect to repairing and maintenance work of road from Atihi Hotel NH to Heart Hospital Mangrauni under the New Maintenance Niti, 2018. The total amount of the contract was Rs. 94,27,076/-, out of which, the repairing work would consume almost Rs. 84,00,000/-. After the repairing, the Contractor was obliged to carry out the maintenance work also for five years, for which the amount would be Rs. 10.84 lakhs.



The first year maintenance amount came to Rs. 82.246 lakhs.

3. The work was commenced on 26.07.2022 and the repairing was completed as on 05.01.2023. Payments were also made. The first quarterly maintenance was commenced on 06.01.2023 and was completed on 05.04.2023. The second quarterly maintenance was commenced on 06.04.2023 but payments were not made. It is the submission of the petitioner that the second maintenance was completed but the respondents point out that the second quarterly maintenance was not completed.

4. The time period for third quarterly maintenance was between 06.07.2023 to 05.10.2023 and on 09.09.2023, a show-cause notice was issued which has been produced at Exhibit P/4. The petitioner submitted its reply (Exhibit P/5) to the show-cause. Without considering the reply, the contract was terminated on 20.09.2023 which is challenged in C.W.J.C. No. 15320 of 2023 and the consequent order of blacklisting dated 27.11.2023 which is also challenged in C.W.J.C. No. 17602 of 2023.

5. After arguments, we were of the opinion that there could be nothing done under Article 226 of the Constitution of India but, however, considering the fact that the entire repairing



was done and only maintenance remained, we were of the opinion that the parties could sit across a table and resolve their conflicts.

6. The State also would be burdened with further process of tendering and awarding of contract for maintenance of the original work carried out by the petitioner herein.

7. We, hence, sought instruction from the petitioner as to whether he was ready to undertake that he would complete the maintenance work as agreed upon.

8. The learned counsel for the respondents submitted that the petitioner should not make any demand for payment with respect to the earlier maintenance which was completed.

9. On our intervention, an affidavit was filed by the petitioner agreeing to carryout the maintenance if the respondents restricted the traffic on the road.

10. We were not inclined to proceed on such an undertaking. Hence, as on today, a supplementary counter affidavit has been filed on 04.05.2024, in which the petitioner has categorically undertaken to complete the quarterly maintenance as originally agreed upon.

11. We, hence, record the undertaking of the petitioner and direct the respondents to resume the contract to the



petitioner on the basis of the undertaking but, however, with specific observation that if any default is conducted, the Awarder would be entitled to proceed against the Contractor.

12. The writ petitions stand disposed of setting aside the order of termination dated 20.09.2023 and the appellate order of blacklisting dated 27.11.2023.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

rohit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	08-05-2024
Transmission Date	

