

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVIEW No.448 of 2018

In
Civil Writ Jurisdiction Case No.3499 of 2017

-
1. The State Of Bihar
 2. The Principal Secretary, Road Construction Department, Government of Bihar, Patna.
 3. The Engineer-in-Chief, Road Construction Department, Government of Bihar, Patna.
 4. The Superintendent Engineer, Magadh Road Circle, Gaya.
 5. The Executive Engineer, Road Division No. 1, Jehanabad.

... .. Petitioner/s

Versus

Mahesh Kumar Singh Son of late Bharat Singh Resident of Village- Kalpa,
P.S.- karpa O.P. Jehanabad, District- Jehanabad.

... .. Opposite Party/s

with
Miscellaneous Jurisdiction Case No. 3310 of 2018
In
Civil Writ Jurisdiction Case No.3499 of 2017

Mahesh Kumar Singh Son of late Bharat Singh Resident of Village - Kalpa,
P.S.- karpa O.P. Jehanabad, District- Jehanabad.

... .. Petitioner/s

Versus

1. The State Of Bihar Through The Principal Secretary, Sri Amrit Lal Mina, Road Construction Department
2. Sri Amrit Lal Mina, The Principal Secretary, Road Construction Department, Government of Bihar, Patna.
3. Sri Laxmi Narayan Das, The Engineer-in-Chief, Road Construction Department, Government of Bihar, Patna
4. Pramod Kumar Munu, The Superintendent Engineer, Magadh Road Circle, Gaya.
5. Rajendra Prasad Ranjan, The Executive Engineer, Road Division No. 1, Jehanabad.

... .. Opposite Party/s

Appearance :

(In CIVIL REVIEW No. 448 of 2018)

For the Petitioner/s : Mr. Ashok Kumar Dubey, AC to AAG 11



For the Opposite Party/s : Mr. Vikas Kumar, Advocate
(In Miscellaneous Jurisdiction Case No. 3310 of 2018)
For the Petitioner/s : Mr. Vikas Kumar
For the State : Mr. Ashok Kumar Dubey, AC to AAG 11

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

4 17-04-2025

M.J.C. No. 3310 of 2018

Heard learned counsel for the petitioners and learned
counsel for the opposite party-respondent.

2. The present contempt application has been
preferred for:

*“ initiating a proceeding of contempt against
Opposite Parties for their willful and deliberate
violation of order dated 03.07.2018 passed by
Hon’ble Mr. Justice Vikash Jain in CWJC No.
3499 of 2017 whereby and where under the writ
application was disposed of with liberty to
petitioner to approach the dispute review expert
within a period of one week from today for
resolving the dispute between the parties. It was
further observed that it is expected that dispute
review expert would take up and dispose of the
matter expeditiously and any event within a
further period of two weeks thereafter.”*

FACTS OF THE CASE:

3. It is to be noted that the writ petitioner Mahesh
Kumar Singh approached Patna High Court for grant of
following relief(s).



“to allocate FDR work of Manikpur-Bithra-Senari Road, under Road Division No. 1 Jehanabad, Magadh Road Circle, Gaya to the Petitioner under OPRMC Scheme instead of going for fresh tender for the aforesaid work. The Respondent authorities may be restrained from allocating the “FDR work of Manikpur-Bithra-Senari Road” to any other contractor by making fresh advertisement.”

4. The parties filed their respective affidavits and the matter writ petition (CWJC 3499 of 2017) was taken up finally by a bench of this Court (Hon'ble Mr. Justice Vikash Jain) and the different Interlocutory Applications with the prayer for amendments in the main petition were allowed. The relevant part of the order passed in the writ petition finds incorporated in **Paragraph Nos. 10 to 14** which reads as follows:

“10. Having heard the parties and on consideration of the materials on record, this Court is of the view that as far as the claim of the petitioner for being allocated the work in terms of Section V-G2 of the agreement, the same is a matter which arises from the terms of contract between the parties. Moreover, the claim of the petitioner has been disputed in the counter affidavit. In such circumstances, it will be appropriate to direct the petitioner



to seek remedy in accordance with Section VI-6 of the agreement relating to general conditions, which provides for resolving of dispute or difference by mutual consultation and upon its failure by reference in writing by either party to the Disputes Review Expert.

11. In this view of the matter and with consent of parties, the petitioner is granted liberty to approach the Disputes Review Expert within a period of one week from today, for resolving the dispute between the parties. It is expected that the Disputes Review Expert would take up and dispose of the matter expeditiously and in any event within a further period of two weeks thereafter. If the petitioner approaches the Disputes Review Expert within the stipulated period of one week as aforesaid, the tender notice issued for the subject work (Annexure-10) shall remain in abeyance until the decision of the Disputes Review Expert, considering the provisions of Section VI-6.1.4 and 6.4 of the agreement.

12. As concerns the issue relating to the debarment of the petitioner, there is no material on record to suggest that the same has been passed after grant of opportunity of hearing to the petitioner and



the same is therefore in clear violation of the fundamental principles of natural justice. It is well settled that any order which visits a person with civil consequences may be passed only after an opportunity of hearing has been granted to the affected person.

13. In the above circumstances, the impugned order of debarment as contained in Memo No. 79 dated 23.01.2018 (Annexure- 26) is hereby quashed. No fruitful purpose will be served in remanding the matter of debarment to the concerned authority at this stage, considering that the issue relating to the allocation of work is required to be decided by the Disputes Review Expert. Any decision for debarment of the petitioner may be initiated at the appropriate time, if so advised, and only after grant of a reasonable opportunity of hearing to the petitioner.

14. The writ petition stands disposed of with the aforesaid observations and directions.

5. A perusal of the order would show that so far as the debarment of the petitioner was concerned, the same was quashed. The parties agreed to the fact that against the said



order, no appeal was preferred and it has now become final.

6. The second part relating to the claim of the petitioner for allocation of work is concerned, the Writ Court held that it would be appropriate that he approaches the concerned authority annexing the agreement relating to general conditions and the Dispute Review Expert thereafter shall be taking a decision. Till then, the tender notice issued for the subject work Annexure 10 dated 09.03.2017 shall remain in abeyance.

7. The case of the writ petitioner is that the respondents no. 2 to 5 failed to take a decision but they went ahead and the tender notice was again floated and ultimately allotted to someone.

8. The matter was taken up on 12.09.2018 and the coordinate Bench directed the Respondents-Opposite Parties to file their show cause.

9. Learned counsel for the writ-petitioner submits that while the contempt petition was pending and the respondent-opposite parties were directed to file show cause, in the meantime, they issued fresh tender and the date of issuance of notice inviting tender is 30.11.2018. This was brought by the writ petitioner by way of an Interlocutory Application.



10. The show cause came to be filed on 09.10.2018 in which in paragraph- 6, the opposite party nos. 2 to 5 recorded as follows:

“6. That it is important to mention here that provisions of constitution of Disputes Review Expert (hereinafter referred to as DRE) has been inserted in the agreement which provides that selection of DRE immediately after Letter of Acceptance. However, under Section VI-6.1.2 of the agreement it is provided that “if the DRE is not selected within 28 days of the date of the Letter of Acceptance, then upon the request of the either or both the parties the DRE shall be selected as soon as practicable by the Appointing Authority specified in the Particular Condition” of agreement. However, Section -VII, Particular Condition (in Short PC), page-275 of agreement, substituted 28 days with 90 days.”

11. Upon query from the learned counsel representing the State of Bihar whether pursuant to the tender notice dated 30.11.2018 work was allotted to someone and/or whether the petition of the writ petitioner was taken to its logical conclusion or not, the answer is not forthcoming.

12. It to be noted that the Writ Court quashed the order of debarment of the petitioner. He was directed to



submit representation which was to be decided by respondents-opposite parties. Till the decision is/was to be taken, the matter relating to allotment of tender was to be kept in abeyance.

13. It is the case of the respondents-opposite parties that so far as the Tender notice no. 06 /2016-17 is concerned, the same was cancelled. However, they have no answer as to how without taking any decision on the representation of the petitioner, the another tender notice dated 30.11.2018 was issued.

14. Clearly, the petitioner has made out a contempt against the opposite party-respondents in the present case. However, before taking further steps, since the State is in dark as to what steps/development took place pursuant to tender notice dated 30.11.2018, they are required to file a comprehensive show cause on behalf of opposite party no. 1, Principal Secretary, Road Construction Department, Government of Bihar, Patna.

15. The show cause is to be filed in six weeks after service of copy to the learned counsel for the petitioner who shall be free to file reply within two weeks.

16. List this case after eight weeks.



Civil Review No. 448 of 2018

17. The present review application has been preferred
for:

“ for review of judgment and order dated 03.07.2018 passed by Hon’ble Mr. Justice Vikash Jain in CWJC No. 3499 of 2017 whereby and where under the Hon’ble Court has been pleased to dispose of the writ petition with liberty to the petitioner/respondent to approach to the Disputes Review Expert within a period of one week from that day, for resolving the dispute between the parties. It is further observed and expected that the Disputes Review Expert would take up and dispose of the matter expeditiously and in any event within a further period of two weeks thereafter. The Hon’ble Court has further been pleased to hold that if the petitioner /respondent approaches the Disputes Review Expert within the stipulated period of one week as aforesaid, the tender notice issued for the subject work (Annexure-10) shall remain in abeyance until the decision of the Disputes Review Expert, considering the provisions of Section VI-6.1.4 and 6.4 of the agreement. ”

18. The ground taken to file review petition stands
incorporated in paragraphs 7 to 10 and reads as follows:

“7. That it is important to mention here that provisions of constitution



of Disputes Review Expert (hereinafter referred as DRE) has been inserted in the agreement which provides that selection of DRE immediately after Letter of Acceptance. However, under Section VI-6.1.2 of the agreement it is provided that “If the DRE is not selected within 28 days of the date of the Letter of Acceptance, then upon the request of the either or both the parties the DRE shall be selected as soon as practicable by the Appointing Authority specified in the Particular Condition” of agreement. However, Section-VII, Particular Conditions (in short PC) page-275 of agreement, substituted 28 days with 90 days.

8. That it is submitted that from above facts it is clear that if DRE has not been selected within 90 days from the date of the Letter of Acceptance then upon the request of the either or both the parties the DRE can be selected by the Appointing Authority, as specified in the Particular Condition.

9. That it is submitted that the word “Appointing Authority” has been defined in Section-VII, Particular Conditions (in short PC), page 275 of agreement, which provides as follows:

“The Appointing Authority is:



The Chairman, the Institute of Engineers /IRC/Indian Institute of Arbitration.”

10. That it is submitted that from conjoint reading of Section VI-6.1.2 of the agreement and Section-VII, Particular Conditions, page 275 of agreement, it is clear that if DRE has not been selected within 90 days of the date of the Letter of Acceptance, then upon the request of the either or both the parties the DRE can be selected by the Appointing Authority. Since nighters the parties have requested the Appointing Authority to select DRE s such, it has not been selected till date and now the terms of agreement is going to expire in the month of December, 2018 hence the order dated 03.07.2018 passed in CWJC No. 3499 of 2017 is fit to be rejected.”

19. This Court has already recorded that the order in the writ petition was only to take a decision and till then process was to be kept in abeyance.

20. Learned counsel representing the writ petitioner submits that bare perusal of the aforesaid paragraphs shows that the opposite parties- respondents filed the present petition only after the knowledge of the contempt petition filed against them. Even the paragraphs 7 to 10 which have been referred by the learned State Counsel deals with the constitution of the Disputes



Review Expert Committee. Technicality apart, the fact remains that the Writ Court simply wanted them to take a decision on the representation. Having failed to do so, they are not entitled to any review.

21. This Court has taken note of the fact of the case and also the materials on record which also stands incorporated in the contempt petition. Instead of taking a decision on the representation of the petitioner, after taking time in the contempt petition for filing show cause, the review petition was filed.

22. Further, as submitted by the writ petitioner, despite knowledge of all these facts that both the review petition and contempt petition are pending, it went ahead and issued the tender notice dated 30.11.2018. In that background, no relief can be granted.

23. Accordingly, Civil Review No. 448 of 2018 stands dismissed.

24. As recorded above, list on 19.06.2025.

(Rajiv Roy, J)

Ranjeet/-

U			
---	--	--	--

