

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17327 of 2018

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M/s R. P. Construction through its Partner Upendra Kumar Singh, son of Late R.P. Singh, resident of Dak Bunglow Road, P.S. Kahalgaon, District Bhagalpur, Bihar, Permanent Resident of Village- Nandlalpur, P.O. Nandlalpur, P.S. Kahalgaon, District Bhagalpur, Bihar.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Rural Works Department, Government of Bihar, Patna
2. The Deputy Secretary, Rural Works Department, Government of Bihar, Patna.
3. The Chief Engineer- 2, Rural Works Department, Patna, Bihar.
4. The Superintending Engineer, Rural Works Department, Works Division, Bhagalpur.
5. The Executive Engineer, Rural Works Department, Work Division, Kahalgaon, District Bhagalpur, Bihar

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Prabhat Ranjan, Advocaes
For the Respondent/s	:	M/s K.P.Gupta, GP 10
		Anwar Karim, AC to GP 10

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CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY

ORAL JUDGMENT

Date : 12-09-2025

1 The petitioner has filed the instant application for the following reliefs:

“(i) Quashing of the exparte Enquiry Report dated 09.01.2014 as furnished by the Superintending Engineer, Technical Vigilance Cell, whereby on the basis of an exparte Enquiry and Inspection, certain defects



have been reported and action against the petitioner has been recommended;

(ii) Quashing of the Letter No. 1186 dated 23.10.2015 (Annexure 7) issued by the Deputy Secretary, Respondent No. 2 directing the petitioner to furnish the explanation against contemplated adverse actions on the basis of an exparte Flying Squad Enquiry; and

(iii) Direction upon the respondent to release the Security deposit and other deductions which have been deducted from the Running Account Bills of the petitioner and becomes liable to be refunded after the lapse of the defect liability period."

2. The brief facts culled out of the writ petition is that the petitioner firm is a registered Class-I contractor with the Rural Works Department, Government of Bihar. The dispute is



related to an ex parte enquiry and a report submitted thereafter concerning the Special Repair Work of Kharhara Santhal Pargana Road, Block Sanahula, District Bhagalpur. It is submitted that administrative approval amounting to Rs. 2,09,60,000/- was granted on 28.07.2012 by the Superintending Engineer, Rural Works Department, Works Division, Bhagalpur and the work was allotted to the petitioner, by the Chief Engineer 2, Rural Works Department, Patna, vide Letter No. 2589 dated 10.10.2012, at 2.99% below the estimated cost. The jurisdictional Executive Engineer issued the work order, vide Letter No. 271 dated 19.10.2012, specifying the commencement date as 18.10.2012 and the contemplated completion date as on 28.02.2013. Thereafter, the work was carried out and the work was completed as per prescribed quality and specifications without any adverse report or notification of any defects from jurisdictional officers and payments were made after quality test reports.

3. It is submitted that at the instance of



a local MLA some complaints were made. The departmental ministers reported certain defects vide Letter No. 1689 dated 13.02.2013, requesting for rectification of the pointed defects. Subsequently, the same public representative issued Letter No. 1981 dated 23.07.2013, certifying that all defects were rectified and no further action was necessary. Notwithstanding the above, the Additional Secretary, Department of Vigilance, vide Letter No. 4179 dated 08.08.2013, requested an enquiry despite the lapse of the defect liability period. It is further submitted that on the basis of this request, the Technical Vigilance Cell conducted an enquiry and submitted a report dated 09.01.2014.

4. It is contended that the report was reviewed at departmental level, and vide Letter No. 1941 dated 04.06.2015, the Joint Secretary, Rural Works Department, directed the Engineer-in-Chief to take appropriate action against the petitioner. On 13.10.2015, the petitioner was served Letter No. 1186, directing him to furnish



explanation within a specified time, failing which appropriate ex parte action would be taken. Thereafter, the petitioner submitted a detailed reply on 03.12.2015 denying the allegations and requested the department to release the earnest money and security deposit upon completion and lapse of defect liability period. Despite lapse of over three years, no communication was received regarding acceptance of the reply or release of the security deposit.

5. The Learned counsel for the petitioner submitted that the enquiry report dated 09.01.2014 and subsequent Letter No. 1186 dated 23.10.2015 were based on an ex parte enquiry, conducted without following the due procedures and Principles Of Natural Justice. It is further submitted that the petitioner was never given prior notice of the enquiry or site inspection, as required under the Standard Bidding Document.

6. It is contended on behalf of the petitioner that there was no direction or entry in the site order book authorizing such an enquiry,



which is essentially required. Further, the enquiry report was signed by only one Superintending Engineer, whereas the presence and signature of at least two Engineers is mandatory for quorum, thus invalidating the report.

7. Further, the samples were collected in the absence of the petitioner or any of his representative, without proper documentation regarding the source, method of collection, sealing, or certification. The enquiry was conducted after the lapse of the six-month defect liability period, beyond which the contractor cannot be held liable for defects. It is submitted that the enquiry report is vague and does not provide any concrete findings regarding guilt or substandard work.

8. The Learned counsel for the petitioner pointed out that the work was completed on 28.02.2013, but the inspection was conducted on 09.01.2014, after the road was submerged in the flood water for one season besides and heavy traffic, which could have caused damages unrelated to the petitioner's workmanship.



9. It is argued that the enquiry and show cause notice have adversely affected the petitioner's ability to participate in tenders, as the pending enquiry must be disclosed, leading to adverse consequences. Security deposits and bank guarantees have been wrongfully withheld for over five years, causing serious financial losses.

10. It is submitted that the Technical Vigilance Cell is only mandated to submit reports to the department, and further action lies with the concerned department, which explains why the Vigilance Cell was not impleaded as a respondent.

11. Though the respondents were directed to file a counter affidavit vide order dated 24.09.2018, no such affidavit has been filed till date.

12. However, the Learned counsel for the respondents submitted that the enquiry and subsequent actions were initiated based on complaints and administrative instructions as itself stated in the Writ petition.

13. It is further submitted that the



enquiry was conducted following departmental procedures to address the alleged defects.

14. Heard the Learned counsel for the petitioner as well as the respondents.

15. Upon perusal of records and pleadings, it is apparent that the enquiry dated 09.01.2014 and the Show Cause Letter No. 1186 dated 23.10.2015 were conducted and an ex parte order was issued, violating the principles of natural justice. From perusal of the records, it appears that the petitioner was never given prior notice under the Standard Bidding Document before conducting the enquiry or of site inspection. No entry or direction in the site order book authorized the enquiry, which is mandatory under the procedural rules. The inspection report was signed by only one Superintending Engineer; however, the presence and signature of at least two Engineers are necessary for quorum, which renders the enquiry report invalid. It further appears that sample collection took place in the absence of the petitioner or his representatives, without proper



documentation of the sampling process, sealing, and certification, thereby undermining the validity of the report. The record further reveals that the enquiry was conducted after the expiry of defect liability period of six months, which legally absolves the contractor from liability for defects. This Court opines that the withholding of the security deposit and bank guarantees despite completion of work and lapse of defect liability period is unjust, causing financial hardship to the petitioner. The failure of respondents to file a counter affidavit despite repeated directions also weighs against them.

16. Accordingly, the impugned ex parte enquiry report dated 09.01.2014 and Show Cause Letter No. 1186 dated 23.10.2015 are hereby quashed and set aside.

17. The matter is remitted to the respondent authorities for a fresh enquiry in accordance with law, if it is permitted and the said enquiry shall be concluded within three months from the date of receipt of a copy of this order. It is



needless to say that reasonable opportunity shall be given to all concerned parties.

18. With the above observations and directions, the writ petition is allowed.

19. Interlocutory Application, if any, shall stands disposed of.

(G. Anupama Chakravarthy, J)

Spd/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24.09.2025
Transmission Date	

