

Adarsh Nirman Construction, ... vs The State Of Bihar And Ors

Citation : 2023 Latest Caselaw 787 Patna

Date : 16 February, 2023

Patna High Court

Adarsh Nirman Construction, ... vs The State Of Bihar And Ors on 16 February, 2023

IN THE HIGH COURT OF JUDICATURE AT PATNA Civil Writ Jurisdiction Case No.2117 of 2019

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1. Adarsh Nirman Construction, through its Power of Attorney Holder, Gyan Chandra Kumar and ors a proprietorship firm having its registered office at Piprahi, Khutauna, Laukaha, District- Madhubani, Pin Code- 847421, resident of Village and P.O.- Chaturbhuji, Piprahi, Via- Laukaha, District- Madhubani
2. Bindeshwar Yadav Construction Pvt. Ltd. through its Managing Director namely Bindeshwar Yadav having registered office at Hariraha Rustampur, P.S. Laukahi, District- Madhubani, resident of Village- Hariraha Rustampur, P.S. Laukahi, District- Madhubani
3. Sanjay Kumar Jha a Proprietorship firm through its Proprietor, Sanjay Kumar Jha Balakant Jha resident of Village- Sitapatti Mahindwar, P.O.- Navtoli, P.S.- Phulpras, District- Madhubani
4. Ravirajan Kumar Raja, a Proprietorship Firm through its Proprietor, Ravirajan Kumar Raja Suchit Kumar Goit resident of Village- Parsahi Sirsiya, Via- Laukaha, Anchal- Khutauna, P.S.- Khutauna, District- Madhubani
5. Kanhaiya Jha, a Proprietorship firm through its Proprietor, Kanhaiya Jha Binod Jha resident of Village and P.O.- Arariya, Via- Tulapatganj, P.S.- Jhanjharpur, District- Madhubani.

... .. Petitioner/s Versus

1. The State of Bihar through 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-III, Rural Works Department, Government of Bihar, Patna.
4. The Superintendent Engineer-cum- Nodal Officer, GTSNY, Rural Works Department, Government of Bihar, Patna.
5. The Superintendent Engineer, Rural Works Department, Work Circle, Darbhanga.
6. The Executive Engineer, Rural Works Department, Works Division, Phulpras.

... Respondent/s
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 Appearance :

For the Petitioner/s : Mr. Y.V. Giri, Sr. Advocate Mr. Ashish Giri, Advocate Ms. Riya Giri, Advocate Mr. Sumit Kumar Jha, Advocate For the Respondent/s : Ms. Archana Meenakshee (Gp6)

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Patna High Court CWJC No.2117 of 2019 dt.16-02-2023 2/4 CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI and HONOURABLE MR. JUSTICE ARUN KUMAR JHA ORAL JUDGMENT (Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI) Date : 16-02-2023 In the instant petition, petitioners have prayed for the following relief(s):-

"i) To issue a writ/order/ direction in the nature of certiorari for quashing the letter no. GTSNY-33-31/2018 5836 dated 18.12.2018 issued by the Superintendent Engineer cum Nodal Officer, GTSNY, Rural Works Department, Government of Bihar by which the Chief Engineer-III, Rural Works Department has been recommended to cancel the tender ID bearing no. 62228, 62229, 62230, 62231, 62232, 62239, 62240 & 62246 and to initiate proceeding for blacklisting of such tenderers who have not deposited earnest money. (Annexure-14, page 60).

ii) To issue a writ/order/ direction in the nature of certiorari for quashing the letter no. 84 dated 11.01.2019 issued by the Executive Engineer, Rural Works Works Department, Works Division Phulpras addressed to the Superintendent Engineer Rural Works Department, Works Circle Darbhanga (wrongly written as Phulpras) by which recommendation has been given for blacklisting the petitioners in terms of the registration rule in relation to non- submission of earnest money. (Annexure- 15, page 61).

iii) To hold and declare that in absence of any of the conditions under Rule 11(Ka) of the Bihar Contractor Registration Rule, 2007 being attracted no

process for blacklisting can be instituted against the petitioners which becomes wholly without jurisdiction.

iv) To any other relief or reliefs for which Patna High Court CWJC No.2117 of 2019 dt.16-02-2023 3/4 the petitioners are found to be entitled in the facts and circumstances of the case."

Short question for consideration in the present lis is before impugned action whether the petitioners have been heard in the matter or not? Admittedly the petitioners were not heard by the respondent authority in the matter like issuance of show cause notice and seeking his explanation and while proceeding to pass order.

On the other hand, learned counsel for the respondent submitted that petitioner has remedy of appeal before the appellate authority/Tribunal. Not issuing notice to the aggrieved persons, would go to the root of the matter. Therefore, the petitioners need not exhaust the statutory remedy of appeal before the appellate authority, since impugned action is in violation of principles of natural justice.

Accordingly, petitioners have made out a prima facie case so as to interfere with the impugned action of the respondent at Annexure-6 dated 27.06.2018. Accordingly, it is set aside, reserving liberty to concerned official respondent to proceed in accordance with law. The concerned authority is hereby directed to take note of Apex Court's decision in the case of Kranti Associate Pvt. Ltd. & Anr. vs. Masood Ahmed Khan & Ors. reported in (2010) 9 SCC 496 (Para 47), for the reasons Patna High Court CWJC No.2117 of 2019 dt.16-02-2023 4/4 that if any action of the respondent is amenable to judicial review, in that event, necessary steps were required to be taken by the concerned official respondent.

Accordingly, present petition stands allowed.

(P. B. Bajanthri, J) (Arun Kumar Jha, J) shoaib/-

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