

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8949 of 2025

Ramesh Prasad Gupta, Male, aged about 60 years, Son of Late Laxman Prasad Gupta, Resident of 104, Tari Mohalla, Near Akhtar Hind Press, P.S. Ara Town, District Bhojpur, Bihar 802301.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Minor Water Resources Department, Government of Bihar, Patna.
2. The Engineer In-Chief, Minor Water Resources Department, Government of Bihar, Patna.
3. The Chief Engineer, Minor Water Resources Department, Bhagalpur, Government of Bihar, Patna.
4. The Superintending Engineer, Minor Irrigation Circle, Bhagalpur, District Bhagalpur, Bihar.
5. The Superintending Engineer, Minor Irrigation Division, Banka, District Bhagalpur, Bihar.
6. M/s Maa Laxmi Construction, through its Proprietor Reena Devi, Resident of Village- Kairba, P.O. Saho Bigha, District Jehanabad, Bihar.

... .. Respondents

Appearance :

For the Petitioner : Mr. Prabhat Ranjan, Advocate
For the State : Mr. Amish Kumar, A.C. to A.G.

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
and
HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

3 21-04-2026 Heard learned counsel for the petitioner and learned counsel for the State.

2. The petitioner, in the present writ application, has sought the following reliefs:

“1 (I) Quashing of the ex-parte decision of the Departmental Tender Committee dated 05.05.2025 contained in Letter No. 448



corresponding to the Notice Inviting Tender No. 07/2024-25 (Group No. 16) (Annexure P/4) by which, after declaring the technical bid of the petitioner responsive, after opening of the financial bid and declaring the petitioner as Lowest Bidder, the technical bid has again been re-evaluated at the instance of third party to the bidding process and the technical bid and financial bid of the petitioner has been declared non-responsive with a further direction to award the work to M/s. Maa Laxmi Construction at a price of 17.5% below the schedule of rate;

(ii) Restraining the Respondents from giving effect to the order dated 05.05.2025 (Annexure P/4) the pendency of the present writ application and/or the without the leave of this Hon'ble Court."

3. Upon perusal of Memo No. 448 (Mo) dated 05.05.2025 (Annexure-P/4 to the writ application), it appears that the petitioner was disqualified from the tender process for the following reasons:-

“4. विभागीय निविदा समिति का निर्णय—

समिति के समक्ष उपस्थापित संलेख पर विचारोपरान्त विभागीय निविदा समिति, मुख्य अभियंता, लघु जल संसाधन विभाग, भागलपुर के पत्रांक—787 दिनांक 04.03.2025 द्वारा अनुशंसा किया गया है।

उल्लेखनीय है कि उक्त निविदा का तकनीकी बीड



का मूल्यांकन की कार्रवाई दिनांक 19.02.2025 को निर्गत की गई है। श्री रमेश प्रसाद गुप्ता को लघु सिंचाई प्रमंडल, रोहतास अन्तर्गत वित्तीय वर्ष 2023-24 में 10 (दस) अदद आवंटित कार्यों में से 08 (आठ) अदद योजनाओं का जीर्णोद्धार कार्य पूरा नहीं किये जाने के कारण कार्यपालक अभियंता, लघु सिंचाई प्रमंडल, रोहतास के पत्रांक 643 दिनांक 12.04.2025 के द्वारा डिबार किया गया है।

स्पष्ट है कि श्री गुप्ता के द्वारा तथ्यों को छुपाकर गलत शपथ पत्र के आधार पर निविदा प्राप्त किये जाने का प्रयास किया गया है। जिससे SBD की IFB कंडिका 4.8 का उल्लंघन हुआ है। अतएव इनकी वित्तीय निविदा को अमान्य किया जाता है।”

4. The record further reveals that the aforesaid decision was based upon Letter No. 643 dated 12.04.2025 (Annexure-P/6 to the writ application), whereby the respondent authorities had indicated that out of 10 ongoing projects, 08 projects attributed to the petitioner had not been completed.

5. The said communication dated 12.04.2025 (Annexure-P/6 to the writ application) was challenged by the petitioner in C.W.J.C. No. 8572 of 2025, wherein a Co-ordinate Bench of this Court, vide order dated 01.09.2025, was pleased to pass the following order:

“3. Accordingly, impugned action dated 12.04.2025 stands set aside. The matter is remanded to the concerned authority to



proceed to pass a fresh order after due consideration of the notice dated 24.09.2024 read with the petitioner's reply dated 22.04.2025 within a period of three months from the date of receipt of this order. Pending Interlocutory Applications, if any stand disposed of."

6. In pursuance to the aforesaid order, the respondent authorities passed a fresh order vide Letter No. 69 dated 11.12.2025, which reads as follows:

“माननीय उच्च न्यायालय, पटना द्वारा पारित उक्त न्यायादेश के आलोक में कार्यपालक अभियंता, लघु सिंचाई प्रमंडल, रोहतास, सासाराम के पत्रांक-1912 दिनांक- 20. 09.2025 द्वारा संवेदक को डिबार करने संबंधी आदेश पत्रांक-643 दिनांक-12.04.2025 को निरस्त कर दिया गया, एवं कार्यपालक अभियंता, लघु सिंचाई प्रमंडल, रोहतास, सासाराम के 2113 दिनांक-22.10.2025 एवं अधीक्षण अभियंता, लघु सिंचाई अंचल, पटना के पत्रांक-2759 दिनांक-29.10.2025 द्वारा संवेदक को डिबार करने हेतु भेजे गये प्रस्ताव के आलोक में मुख्य अभियंता, लघु जल संसाधन विभाग, पटना के पत्रांक-3532 दिनांक-31.10.2025 द्वारा संवेदक के विरुद्ध डिबार की कार्रवाई हेतु विहित प्रपत्र में अनुशंसा सहित प्रस्ताव एवं संबंधित अभिलेखों की प्रति इस कार्यालय को उपलब्ध करायी गयी। उक्त प्रस्ताव के आलोक अग्रेतर कार्रवाई के पूर्व संवेदक का पक्ष प्राप्त किया जाना उचित प्रतीत होने के कारण बिहार ठीकेदारी निबंधन नियमावली, 2007 के नियम 11(ख) के तहत इस कार्यालय के पत्रांक-1126 दिनांक-11.11.2025 द्वारा संवेदक से कारण पृच्छा की



गयी जिसका जबाव उनके पत्रांक Ref No. -RAM/71 दिनांक-17.11.2025 द्वारा इस कार्यालय को उपलब्ध कराया गया जिसमें संवेदक द्वारा उन्हें आवंटित 10 अद्द योजनाओं का जीर्णोद्धार कार्य में से 08 (आठ) अद्द योजनाओं का कार्य पूर्ण नहीं करने हेतु स्थानीय विवाद एवं भूमि की अनुपलब्धता को कारण बताया गया है, परन्तु विभाग द्वारा इस संबंध में जांच हेतु अपर सचिव, लघु जल संसाधन विभाग, पटना की अध्यक्षता में गठित जांच दल द्वारा समर्पित प्रतिवेदन के अवलोकन से स्पष्ट होता है कि कुछ एक मामलों जहां विवाद था, को छोड़कर संवेदक द्वारा उन कार्यों को भी पूरा नहीं किया गया है, जहाँ कोई विवाद नहीं है। अतः संवेदक का स्पष्टीकरण पूर्णतः स्वीकार करने योग्य नहीं है।

अतः वर्णित परिप्रेक्ष्य में संवेदक का जबाव पूर्ण रूप से स्वीकार योग्य नहीं होने के कारण सम्यक विचारोपरान्त प्राप्त स्पष्टीकरण के जवाब को अमान्य करते हुए संवेदक श्री रमेश प्रसाद गुप्ता, पिता- स्व० लक्ष्मी प्रसाद गुप्ता, मोहल्ला-तरी मोहल्ला, अखाड़ा हिन्द प्रेस के नजदीक, पो०-आरा चौक, थाना- आरा शहर, जिला भोजपूर, पिन कोड-802301 (निबंधन सं०-MWRD0924CIIN492057 श्रेणी-1) को बिहार ठीकेदारी निबंधन नियमावली, 2007 की कंडिका 11 (क) की उप कंडिका-(ii) में निहित प्रावधानों के आलोक में अगले आदेश तक निविदा में भाग लेने से वंचित/डिबार किया जाता है।”

7. Aggrieved by the said order, the petitioner preferred an appeal before the Appellate Authority, which came to be decided vide Memo No. 1847 dated 17.03.2026. The Appellate Authority, in paragraph nos. 7 and 8, held as under:



“7. श्री गुप्ता के अभ्यावेदन की समीक्षा अपीलीय प्राधिकार द्वारा की गयी। समीक्षोपरान्त निर्गत विभागीय आदेश सं०-1613 दिनांक-06.03.2026 को निरस्त/रद्द किया जाता है। साथ ही मुख्य अभियंता (यो०+अनु०+भू०), लघु जल संसाधन विभाग, पटना का सकारण आदेश सं०-69 सह-पठित ज्ञापांक-1284 दिनांक-11.12.2025 द्वारा संवेदक श्री रमेश कुमार गुप्ता को अगले आदेश तक निविदा में भाग लेने से वंचित/डिबार किये जाने संबंधी आदेश के विरुद्ध उनके अपील अभ्यावेदन को तत्काल प्रभाव से स्वीकृत किया जाता है।

8. उक्त आशय के प्रस्ताव पर अपीलीय प्राधिकार का अनुमोदन प्राप्त है।”

8. Learned counsel for the petitioner submits that since the issue relating to the alleged 08 pending projects is subject matter of consideration before the Appellate Authority and interim protection has been granted in favour of the petitioner, the respondents were not justified in issuing Memo No. 448(Mo) dated 05.05.2025.

9. Per contra, learned counsel for the State submits that the order dated 05.05.2025 has to be examined on the basis of the materials available on that date. It is submitted that on the relevant date, Letter No. 643 dated 12.04.2025 was in existence and formed the basis of the impugned decision. It is further submitted that although the said letter was subsequently set aside and reconsidered, even the fresh decision dated



11.12.2025 records that 08 projects remained incomplete, thereby justifying the action of the respondents.

10. Having heard learned counsel for the parties and upon perusal of the materials on record, the core issue which arises for consideration is as to whether the subsequent order passed by the Appellate Authority vide Memo No. 1847 dated 17.03.2026 can be applied retrospectively so as to invalidate the decision of the Departmental Tender Committee dated 05.05.2025.

11. It is a settled principle of law that the validity of an administrative or executive action is to be adjudged on the basis of the facts and materials which were available at the time when such decision was taken. Subsequent developments cannot ordinarily be relied upon to either validate or invalidate an action which was otherwise lawful on the date of its issuance.

12. In this regard, reference may be made to the judgement of the Hon'ble Supreme Court in ***Mohinder Singh Gill v. Chief Election Commissioner reported in (1978) 1 SCC 405***, wherein it has been held that an order must stand or fall on the reasons contained therein and cannot be supplemented by fresh reasons or subsequent developments. The relevant part of the said order reads as follows:



“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in Gordhandas Bhanji [Commr. of Police, Bombay v. Gordhandas Bhanji,] :

“Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.”

Orders are not like old wine becoming better as they grow older.”

13. Apart from the above, it is equally well settled



that in matters relating to award of contracts, the scope of judicial review is extremely limited. In ***Tata Cellular v. Union of India reported in (1994) 6 SCC 651***, the Hon'ble Supreme Court, in paragraphs 70 and 94, held that the Court does not sit as an appellate authority over administrative decisions in tender matters and judicial review is confined to examining the decision-making process and not the merits of the decision itself.

“94. The principles deducible from the above are: (1) The modern trend points to judicial restraint in administrative action. (2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made. (3) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible. (4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made



qualitatively by experts. (5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides. (6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.”

14. The said principle has been further reiterated in ***Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corporation Ltd. reported in (2016) 16 SCC 818***, wherein in paragraph 15, it has been held that the employer is the best judge of its requirements and the Court should exercise restraint unless the decision is found to be arbitrary, mala fide or in violation of statutory provisions. The relevant extract of said order reads as:

“15. We may add that the owner or the employer of a project, having authored the tender documents, is the best person to understand and appreciate its requirements



and interpret its documents. The constitutional courts must defer to this understanding and appreciation of the tender documents, unless there is mala fide or perversity in the understanding or appreciation or in the application of the terms of the tender conditions. It is possible that the owner or employer of a project may give an interpretation to the tender documents that is not acceptable to the constitutional courts but that by itself is not a reason for interfering with the interpretation given.”

15. Applying the aforesaid settled principles to the facts of the present case, it is evident that on the date of issuance of Memo No. 448 dated 05.05.2025, the communication dated 12.04.2025 was in existence and formed the basis of the impugned decision. The subsequent setting aside of the said communication and remand of the matter would not, by itself, render the earlier decision illegal by putting the clock back. More so, when upon reconsideration, the competent authority, vide order dated 11.12.2025, has again recorded that 08 ongoing projects attributed to the petitioner remained incomplete.

16. In such circumstances, this Court is of the considered opinion that the subsequent order passed by the



Appellate Authority dated 17.03.2026 cannot be given retrospective effect so as to invalidate the decision dated 05.05.2025, which was otherwise based on the materials available at the relevant point of time.

17. In view of the aforesaid, we find no merit in the present writ application and the same stands dismissed.

18. Pending application(s), if any, shall also stand disposed of.

(Sudhir Singh, J)

(Shailendra Singh, J)

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