

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15012 of 2009

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M/S S.S. Communications having its registered Office At A-403, Taj Apartment , Main Road , Ghazipur, Delhi and Branch Office At 207, above Punjab & Sind Bank , Fraser Road, Patna through its Proprietor, Sumi Sharma, D/O Shri G.C.Sharma, resident of A-403, Taj Apartment, Main Road, Ghazipur, Delhi

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Old Secretariat , Patna
2. The Principal Secretary, Urban Development & Housing Department Government of Bihar, Vikas Bhawan , Patna
3. The Director, Bihar Urban Development Agency, Urban Development & Housing Department Bihar, Vikas Bhawan , Patna
4. Patna Municipal Corporation, 2nd Floor, C- Block, Maurya Lok Complex Patna through the Municipal Commissioner
5. The Municipal Commissioner- cum- Chief Executive Officer, Patna Municipal Corporation, 2nd Floor, C- Block, Maurya Lok Complex, Patna
6. The District Magistrate, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Suraj Samdarshi, Advocate

For the Respondent Nos. 1 to 3 & 6 : Mr.P.K.Verema, AAG 5

Mr.Saroj Kumar Sharma, AC to AAG 5

For the Respondent Nos. 4 & 5 : Mr.Sajay Prakash Verma, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA

ORAL JUDGMENT

Date: 18-03-2015

Heard the parties.

2. The petitioner has filed the present writ petition under Article 226 of the Constitution of India with a prayer to quash the advertisement dated 10.08.2009 (Annexure-5) issued under the signature of the respondent no.3, whereby expression of interest has been invited by the different candidates/private companies/Advertising Agencies for maintaining different parks situate within Patna town for a period of three years. The applications by the candidates/Private Companies were required to reach latest by 21st August, 2009 before the respondent no.5, whereafter final

decision was required to be taken by the competent authority. The petitioner has also prayed for stay of the bid invited by the Patna Municipal Corporation on 5th August, 2009 which was scheduled to be opened on 10th November, 2009.

3. Learned counsel appearing on behalf of the petitioner submits that pursuant to the certain orders passed in a PIL vide CWJC No. 2290 of 1990 (Arun Kumar Mukherjee and others Vrs. The State of Bihar and others), a Beautification Cell was constituted under the Chairmanship of the respondent District Magistrate, Patna for beautification of the State capital. The petitioner claims to have developed two triangles at Dhanki Mor near Ganga Overbridge, roundabouts near CDA Building, Kadamkuan and a triangle median near the exit point of the Airport. According to him, the petitioner has invested huge amount for development/beautification of the aforesaid points/parks/roundabouts. Therefore, the respondent no.3 could not have issued advertisement with respect to the aforesaid points/roundabouts/medians developed by the petitioner and was obliged to allow the petitioner to continue the maintenance works and thereby the petitioner could have realized the charges/rent from different companies for displaying their advertisements at the locations in question in order to recover the expenses borne by it for their developments.

4. Separate counter affidavits have been filed on behalf of the respondent no. 3 as also on behalf of the respondent nos. 4 and 5, wherein claims raised on behalf of the petitioner have been contested. According to learned Additional Advocate General No. 5, the petitioner has not been able to show any enforceable legal rights with respect to Parks/medians/ intersections or roundabouts developed by it under the beautification scheme of Patna town. Therefore, the

petitioner cannot be permitted to challenge the validity and correctness of the terms and conditions of the advertisement itself.

5. Learned counsel appearing on behalf of the Patna Municipal Corporation, by referring to the averments made in paragraph 14 of the counter affidavit filed on behalf of the respondent nos. 4 and 5, submits that total outstanding dues on account of share of advertisement rent against the petitioner as on 31.03.2014 was Rs.10, 40,543.00, but the petitioner has paid only Rs.50,000.00 and despite reminders issued remaining amount is not being paid by it. He has further stated that for another spot also, some outstanding dues are against the petitioner, which is not being paid despite reminder letters issued by the respondent Patna Municipal Corporation.

6. After having heard the parties at length and on consideration of the materials available on record, this Court finds that the petitioner has not been able to show any enforceable legal rights accrued to it with respect to the locations in question by virtue of either certain orders or decisions taken by the competent authority of the State Government or the Patna Municipal Corporation on the ground that it had developed these locations. In absence of accrual of any enforceable legal right, the writ petition has to be held to be not maintainable. The challenge to the impugned advertisement dated 10.08.2009 (Annexure-5) has also to be held to be not maintainable on three counts; firstly, the petitioner had not submitted its application in response to the impugned advertisement (Annexure-5); secondly, the advertisement for maintenance of different Parks/roundabouts of Patna town was only for three years, and that period, has already expired; and thirdly, it is well settled legal proposition that terms and conditions of the advertisement cannot be the subject matter of judicial scrutiny. It is well within the domain of the State or its

instrumentalities. The reference in this regard may be made to a judicial pronouncement of the Hon’ble Apex Court in the case of **Meerut Development Authority Vrs. Association of Management Studies and another [(2009) 6 SCC 171: paragraphs 26, 27 and 29]**.

7. For the reasons recorded above, the writ petition has to fail and is, accordingly, dismissed, but there shall be no order as to costs.

(Birendra Prasad Verma, J)

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