

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16652 of 2007

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M/S Patna Motors, proprietor – Mrs. Rita Goenka, w/o Sri Vijay Goenka, R/o H. N. Sah Lane, P.S. Chowk Patna City, District Patna

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Patna
2. The Managing Director, Bihar Industrial Area Development Authority, Government of Bihar, Patna
3. The Industrial Development Commissioner, Industries Department, Government of Bihar

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. N.K. Agrawal, Sr. Counsel
Mr. P.C.AGRAWAL, Counsel
Mr. Gautam Kejriwal,
For the Respondent No. 2: Mr. Piyush Lal

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 14-05-2015

Heard Sri Nawal Kishore Agrawal, learned senior counsel, who was assisted by Mr. P.C. Agrawal, learned counsel for the petitioner, learned AC to GP No. 1, who appears on behalf of the respondent no. 1 and 3 /State and Sri Piyush Lal, learned counsel for the respondent no. 2 / Managing Director, Bihar Industrial Area Development Authority.

The petitioner, an entrepreneur, invoking writ jurisdiction of this court under Article 226 of the Constitution of India, has filed this writ petition with a prayer to quash a letter dated 28.7.2007 (Annexure – 5 to the writ petition) whereby the petitioner was communicated regarding cancellation of allotment of plot to the



petitioner and he was further intimated regarding forfeiture of the 10% of the bid amount which was deposited by the petitioner before participation in the bid and has further prayed for directing the respondents to refund the forfeited amount to the petitioner. At the time of hearing of the present writ petition, learned counsel for the petitioner has confined his prayer to the extent of directing the Respondent No. 2 to only refund the forfeited amount.

Short fact of the case is that some time in the month of June, 2007 an advertisement was published by the respondent no. 2 in the daily newspaper for auction of plots in Capital City of Patna on certain conditions among which it was prescribed that applicant must attach 10% of the auction value, thereafter, successful bidder was required to deposit 30% of the offered amount within 30 days and within 90 days 60% of the offered amount was to be deposited. As per advertisement the petitioner after depositing 10% of the bid amount i.e. Rs. 70,150/- of the bid amount of Rs. 7,01,500/- participated in the bid and he was successful in the bid, where after vide Annexure – 3 to the writ petition i.e. letter dated 19.6.2007 the petitioner was intimated regarding allotment of the plot in question, which was 7,000 Sq. Feet in Plot No. C-28 in Patna Industrial Estate, for establishment of service station. The total cost of land was Rs. 7,01,500/-. After receipt of the allotment letter the petitioner noticed



that certain additional conditions were imposed in the allotment letter which was not agreeable to the petitioner and as such, vide letter dated 13.7.2007 the petitioner represented to the Executive Director, BIADA with a request either to remove such conditions particularly condition no. 02, 08, 20A-e, f, g, 21 from the allotment letter or refund the 10% of the deposited amount. The petitioner through its letter also made it clear that allotment letter dated 19.6.2007 was received by the petitioner only on 31.6.2007.

Sri Agrawal, learned senior counsel for the petitioner, submits that once the respondent no. 2 had deviated from its own terms and conditions, the petitioner rightly approached the respondent no. 2 either to remove such conditions or the petitioner may be permitted to withdraw from such bid and deposited 10% of the amount may be refunded. However, the respondent no. 2 without taking note of the objections raised by the petitioner, even without noticing the fact that allotment letter was received by the petitioner on 31.6.2007 before expiry of 30 days from the date of receipt, the respondent no. 2 has come out with Annexure – 5 i.e. a communication dated 28.7.2007 whereby besides cancelling the allotment made in favour of the petitioner, the petitioner was intimated regarding forfeiture of the 10% of the deposited amount by the petitioner. It has been argued that the respondent no. 2 itself had

breached the contract and as such, the respondent no. 2 was not at all authorized, at least to forfeit the deposited amount by the petitioner. Of- course in the advertisement some conditions were incorporated but condition prescribed in the advertisement was violated by the respondent no. 2 by way of incorporating additional conditions in the allotment letter. Accordingly, it has been prayed for directing the respondents to refund the deposited amount to the petitioner.

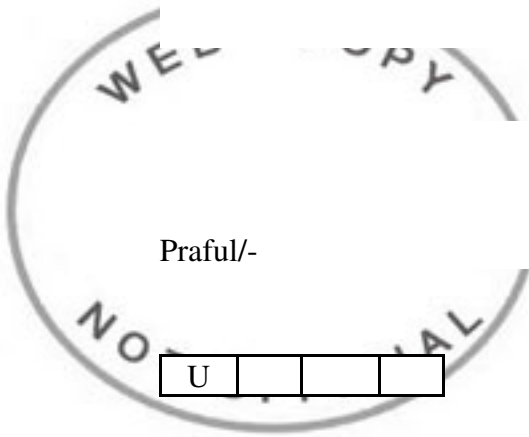
Sri Piyush Lal, learned counsel for the respondent no. 2 has vehemently opposed the prayer of the petitioner. He submits that in clear terms through advertisement all the concerned were intimated that in case of non- deposit of 30% of the bid amount after the allotment, besides cancelling allotment, the deposited amount was required to be forfeited. He submits that in similar manner in all such types of bids conditions are prescribed and it is consistently followed. According to Sri Lal, since the petitioner had violated the terms and conditions of the advertisement, while cancelling the allotment the respondent no. 2 has rightly forfeited the deposited amount.

Besides hearing learned counsel for the parties, I have also perused the materials available on record. Fact remains that if in a contract there is breach on the part of a party, the same party may not be entitled to take the shelter of condition imposed after the advertisement. It is true that in the advertisement there was indication



of forfeiture of initial amount in case of failure to deposit the money, but at the same time in allotment letter certain new conditions were imposed which were not at all indicated in the advertisement. Once the respondent no. 2 has violated the terms and conditions of the advertisement, at the same time the respondent no. 2 was not at all authorized or entitled to pass an order of forfeiture of deposited amount, that too in a situation where petitioner in clear term before acceptance of the allotment letter had stated that either such condition should be removed or petitioner may be allowed to withdraw the deposited amount. So far the submission made by learned counsel for the petitioner that cancellation order has been issued before expiry of 30 days, the court is of the opinion that the period is to be counted as per the date of allotment and not from the date of communication. However, in any event, the respondent no. 2, which is apparently a State instrumentality may not be allowed to behave like a private litigant, and in that view of the matter it is desirable to direct the respondent no. 2 to refund the deposited amount i.e. Rs. 70150/- to the petitioner within a period of six weeks from the date of receipt/ production of a copy of this order. Besides the deposited amount the respondent no. 2 is also required to pay the said amount with Bank interest from the date of deposit till the date of payment.

The writ petition with above observations stands allowed.



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(Rakesh Kumar, J)