

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 2863 of 2016

Along with

Interlocutory Application No. 1466 of 2016

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Mahendra Prasad S/O Late Shiv Narayan Prasad R/O Mohalla Khilanganj
Dharamshala Road Ward No.-31 P.O & P.S.- Sasaram District- Rohtas.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Urban Development & Housing Department.
2. The Executive Officer (Town) Nagar Parishad Sasaram, District- Rohtash.
3. Executive Engineer District Urban Development Agency (DUDA) Sasaram at Rohtash.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Diwakar Prasad Singh, Adv.
For the Nagar Parishad	:	Mr. Vijay Shankar Upadhayay, Adv. Mr. Parwej Khan, Adv.
For the State	:	Mr. Akhileshwar Singh, Adv. A.C. to G.A. 5

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 26-02-2016

Heard learned counsel for the parties.

The petitioner has moved the Court against the publication of e-NIT dated 04.01.2016 which was also published in the daily newspaper Prabhat Khabar on 08.01.2016.

Learned counsel for the petitioner submits that earlier for the same work the N.I.T. was published on 07.04.2015 in which the petitioner was one of the tenderers and being the successful bidder, decision was taken in his favour. However, without cancelling the same, fresh N.I.T. was published for the same work which is illegal and arbitrary. It is submitted that the time fixed for completion of the work in question was five months and the respondent authority on the one hand not finalizing the tender for almost nine months and on the other hand going ahead



with fresh N.I.T. without cancelling the previous N.I.T. have acted beyond jurisdiction and the same being patently illegal deserves to be set aside. Learned counsel further submits that even the reason for such cancellation is fictitious as plea taken by the authority, that on the comparative chart relating to the tender in question the signature of the Executive Engineer was doubtful and later on upon verification found to be forged, is not tenable for the reason that the said signature was genuinely made by the Executive Engineer and because the petitioner was not able to satisfy the demand for illegal gratification of the concerned respondents, a ground has been made to justify re-tendering. Learned counsel submits that the very fact that no decision was taken on the first tender for almost nine months is also indicative of the fact that the respondent authorities were trying to 'negotiate' with the petitioner and other tenderers and upon them having failed in their nefarious design, the process of re-tender has been resorted to. Learned counsel further draws the attention of the Court to the fact that the procedure of tendering has been directed to be completed within a fixed time frame as per the direction of the Road Construction Department, Government of Bihar contained in Memo No. Pra.6/Da.Vi.-Niyam-03-02/2004 9979(S) dated 29.07.2008 which has been totally given a go-by by the respondents as there is no explanation for sitting over the matter for such a long period.

Learned counsel for the Nagar Parishad, Sasaram, which is the contesting respondent, submits that once before the



authorities a doubt was raised with regard to the genuineness of the signature of the Executive Engineer and upon verification the suspicion having been found to be well founded for which F.I.R. was also lodged, the entire process having been vitiated on account of such fraud, the action of the authorities in going for a fresh tender cannot be faulted and was *bona fide*. However, learned counsel is not in a position to explain the inordinate delay in taking a decision when clearly the notice itself stipulates that the work for which tender was called for had to be completed within five months.

Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court is of the opinion that once a fraud has been brought to the notice of the authority concerned, they could not have shut their eyes as fraud vitiates all subsequent action and strikes at the root of the matter. In such view, the Court finds that no relief can be granted to the petitioner. However, since the conduct of the respondents no. 2 and 3 have come under some clout due to the first tender process being lingered for almost nine months for no justifiable reason especially when the completion time for work in question was only five months, it is deemed appropriate to refer the matter to the respondent no. 1 to get an enquiry conducted into the working of the Nagar Parishad, Sasaram especially in matters relating to settlement of tenders which are required to be taken to their logical conclusion within the period stipulated as per the relevant circulars of the Government and in any case

within the shortest possible time which seems to have been flagrantly violated in the present case. The respondent no. 1 shall ensure that such enquiry is conducted within one month and follow up action taken with the object of ensuring that in future such situation does not recur.

At this juncture, learned counsel for the petitioner submits that his earnest money is lying with the respondents which should be returned. In view of the aforesaid, since the money of the petitioner is lying with the respondents and no laches or fault have been attributed to him, if the petitioner files an application for withdrawal of the amount before the respondent no. 2 within three weeks from today along with a copy of this order, the same shall be returned to him with 9% per annum simple interest within two weeks thereafter. The Court would further observe that the Nagar Parishad, Sasaram shall be at liberty to realizing the amount after fixing responsibility on person(s) who were responsible for such a situation.

Learned counsel for the State shall communicate the order to the respondent no. 1 for necessary action and compliance.

The writ petition, accordingly, stands disposed off in the aforementioned terms.

(Ahsanuddin Amanullah, J.)

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