

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18488 of 2015

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M/s Topline Infra Projects Pvt. Ltd. having its place of business at Ambedkar Chowk, Mirchai Bari, Katihar through its authorized signatory namely Rakesh Kumar Khudania son of Sri Nand Lal Khudania resident of Deharai Bara Bazar, P.S. and District- Katihar.

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary Department of Road Construction, Govt. of Bihar, Patna.
2. The Secretary, Road Construction Department, Govt. of Bihar, Patna.
3. The Engineer in Chief Cum Additional Commissioner cum Special Secretary Department of Road Construction, Govt. of Bihar, Patna.
4. The Chief Engineer, Department of Road Construction, South Bihar Sub Division, Patna.
5. The Superintending Engineer, East Bihar Circle, Department of Road Construction, Bhagalpur.
6. The Executive Engineer, Department of Road Construction, Road Division, Munger.
7. The Executive Engineer, Department of Road Construction, Road Division, Purnea.

.... Respondent/s

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Appearance :

For the Petitioner/s :

For the Respondent/s :

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 03-02-2016

Heard learned counsel for the parties.

The petitioner has moved the Court for quashing the decision/order communicated under letter dated 04.11.2015 issued by the respondent no. 3 as well as consequential letters dated 10.11.2015 and 19.11.2015 issued by the respondents. No. 6 and 7 by which security deposit, earlier refunded to the petitioner for another tender, was sought to be recovered from the work which was being executed

by the petitioner subsequently under the respondents no. 6 and 7.

The brief facts of the case are that the petitioner was the successful bidder for a tender of strengthening and widening the roads in the district of Jamui for which Letter of Acceptance was issued by the authorities on 27.09.2012. Thereafter, the petitioner was called upon to furnish the performance security amount. However, on 10.10.2012, the petitioner wrote to the authority that as per tender, stone chips were to be picked from the mines in the district of Sheikhpura but since none of the mines were working, permission may be given to him to get the chips from another place as there was difficulty in executing the agreement as per the original specifications.

There does not seem to have been any consideration with regard to plea of the petitioner. However, the tender in favour of the petitioner was terminated and an order was passed on 29.11.2012 forfeiting the earnest money/security deposit of the petitioner. Upon representation made by the petitioner, the Road Construction Department (hereinafter referred to as the 'Department'), after seeking advice from the Finance Department, finally refunded the forfeited amount on 19.11.2014. Thereafter, it appears that due to some audit objection, the Department has found that the refund was not in accordance with law and, therefore, the impugned letters have been issued to recover the earnest money/security deposit from the ongoing

projects of the petitioner.



Learned counsel for the petitioner submits that after termination of the contract in favour of the petitioner, the authority itself had re-advertised the work in which the place from where the stone chips were to be taken has been mentioned as Mirza Chowki which is outside the district of Sheikhpura. It is , thus, submitted that once the authorities themselves have accepted the factual position that no mines for stone chips was operating in the district of Shiekhpora, the petitioner having not entered into an agreement on the said terms, was not a violation of such a nature to result in forfeiture of earnest money/security deposit of the petitioner. It is further submitted that once the Department has itself found substance in the contention of the petitioner and refunded the money, the subsequent action to recover the amount from other ongoing projects of the petitioner is not justified. It is submitted that even looking at the issue from another angle, on a simple point of violation of principles of natural justice, the order cannot be sustained, as admittedly, no show cause or notice was ever issued to the petitioner prior to taking such drastic action.

Learned counsel for the State submits that as per various clauses of the tender document itself, since the petitioner had not entered into an agreement or given performance security, the earnest money was required to be forfeited. However, learned counsel is not

in a position to defend or counter the fact that the original terms of contract of getting stone chips from the district of Sheikhpura was itself erroneous which latter on was corrected by the Department in the subsequent tender.

Upon considering the facts and circumstances of the case and the submissions of the learned counsel for the parties, this Court is of the opinion that the action of the respondents cannot be sustained. The Department having itself refunded the money finding the case of the petitioner to be genuine and even otherwise on merits, the work having been re-tendered with a different location mentioned for getting the stone chips, the petitioner cannot be faulted for not entering into an agreement on the original terms and conditions of the contract. Moreover, in the present facts of the case, there being admittedly no show cause or notice issued to the petitioner prior to issuance of the order of forfeiture or recovery of the earnest money/security deposit, the action of the Department cannot be upheld. Accordingly, the impugned orders stand quashed.

The writ petition stands disposed off.

(Ahsanuddin Amanullah, J)

Sujit/-

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