IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.56 of 2016

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Ms. Satyam Infra JV through its Partner namely Raj Kumar Singh, son of Shri Panchdeo Singh, resident of Puranmal Colliery, Post Office-Siyarsol Rajwadi, Police Station-Ranigunj, District-Vardhman (West Bengal)

.... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Department of Mines & Minerals, Government of Bihar, Patna
3. The District Magistrate, Sheikhpura, Bihar
4. The Mining Development Officer, Sheikhpura, Bihar

.... Respondent/s

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Appearance:
For the Petitioner/s : Mr. Ashutosh Singh
Mr. Amaresh Kumar
For the Mines Department: Mr. D.K. SINHA, Sr. Advocate
For the State : Mr. Chittaranjan Sinha

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL JUDGMENT
Date: 09-12-2016

Heard Mr. Ashutosh Singh, learned counsel appearing for the petitioner, Mr. D.K. Sinha, learned senior counsel appearing for the Mining Department along with Mr. Rajendra Prasad, Advocate and learned counsel for the State.

The petitioner prays for a writ in the nature of certiorari for quashing the order dated 26.11.2015 of the District Magistrate, Sheikhpura whereby the request of the petitioner for refund of the security deposit of Rs. 1,42,29,166/- has been rejected and the petitioner has been directed to deposit the balance deposit amount of Rs. 2,70,834/- being the balance amount of security, failing which the

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security earlier deposited by the petitioner would be forfeited. A copy of the order is impugned at Annexure-5 to the writ petition.

The matter relates to settlement of stone Block No. 9 in the district of Sheikhpura and the grievance of the petitioner is that though in the third round exercise the petitioner never participated but yet the respondents are thrusting the settlement on him. Facts of the case briefly stated is that whereas the first advertisement was responded to by only one applicant, namely, M/s Champion Group, the second round was responded to by two applicants i.e. the petitioner and M/s Champion Group of whom the petitioner's offer was found to be most suitable. Now even though the petitioner's case was recommended by the Collector, Sheikhpura for approval by the Headquarters but the Department decided otherwise and directed for re-advertisement vide letter dated 01.6.2015. Following the directions the block was again advertised for the third time in which neither the petitioner nor anyone else did participate. It is the contention of the petitioner that since the third round exercise did not give any response from the public that now the settlement is being thrust on the petitioner. The petitioner seeks a refund of his security deposit in the circumstances explained.

I have heard learned counsel for the parties and I have

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perused the records. The order impugned is being defended by Mr. Sinha, learned senior counsel appearing for the Department in reference to the provisions underlying Rule 52(3) of the Bihar Minor Mineral Concession Rules which *inter alia* provides that any bidder who once has submitted documents as mentioned in sub-rule (2) shall not be allowed to withdraw till the grant of quarry lease. According to Mr. Sinha although the settlement in question has taken a three round exercise but once the petitioner has submitted his tender and he did not choose to withdraw from the contest before the third advertisement, his candidature stood carried forward and he cannot now withdraw from the contest to seek refund of the security. It is submitted that even though the third round exercise did not give any response but since in the second round the petitioner was found to be the suitable tenderer, that a decision was taken to settle the block in his favour but now the petitioner wants to withdraw from the tender which is impermissible.

In between the contest, the only issue which remains is, whether the settlement for the stone block in question, can be thrust upon the petitioner. The facts are not in dispute rather the supplementary counter affidavit filed by the Mining Department explains it all at paragraph-6 onwards. I have already taken note of the

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sequence of events and find no reason to reiterate the same. The undisputed position is that even when the offer of the petitioner in the second round exercise was approved and was recommended by the Collector, Sheikhpura for approval by the Department but the opinion of the Department was otherwise and they directed for re-advertisement of the block vide letter dated 01.6.2015. The petitioner was not ready for the ready third round exercise and he did not participate. The third tender programme was published from 11.7.2015 to 15.7.2015. Unfortunately there was no response to the third tender. It is then that the department got wiser and attempted to rope in the petitioner for which he was not ready. In these circumstances, the respondents cannot force the petitioner to take the settlement simply because he was a participant in the second tender and his offer was found to be suitable. The respondents also cannot thrust the settlement on the petitioner relying upon Rule 52(3) to contend that he cannot withdraw from the contest. In my opinion, Rule 52(3) of the Rules in no manner is applicable in the present case. Rule 52(3) is applicable to participants in a tender process and not where the department chooses to abandon the process and goes for fresh tender, not responded by any. Rule 52(3) cannot be invoked as a tool to remedy the failure of the Department to get a valid settlement.

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A candidature of an applicant to a tender process may be kept alive by the Department by taking recourse to fresh tender process with a view to get a better settlement but unless the applicant of the previous tender process chooses to participate in the freshly initiated process, even if his candidature is kept alive at the discretion of the Department, the final option has to be that of the applicant because he has not chosen to participate in the freshly initiated process and a settlement cannot be thrust upon him.

The obligation cast on a tenderer under Rule 52(3), begins and culminates with the tender process. Meaning thereby once the applicant files his tender, he cannot withdraw from the contest until the settlement of quarry. The petitioner thus, certainly could not have withdrawn from the second tender process but the Department did not choose to settle the quarry in favour of the petitioner even though he was the most suitable candidate in the second tender process rather went ahead with the third tender process in which the petitioner never participated. In these circumstances, the reliance by Mr. Sinha, learned senior counsel for the Department on Rule 52(3) of the rules , would certainly not come to the aid of the respondents for they have missed the bus by ignoring the offer of the petitioner made in the second tender process. In the unfortunate circumstances existing, the

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blame entirely rests with the Department and the concerned authorities who were party to the decision for the third round exercise even when the Collector of the District had opined for settlement in favour of the petitioner. The wisdom exercised by the Department for the third round exercise was unwarranted and the consequences resulting only confirm that the decision was against the revenue interest of the State.

For the reasons and discussion aforementioned, the order dated 26.11.2015 impugned at Annexure-5 passed by the District Magistrate, Sheikhpura cannot be upheld and is accordingly quashed and set aside. The District Magistrate, Sheikhpura is directed to refund the security of the petitioner within a period of four weeks from the date of receipt/production of a copy of the order.

The writ petition is allowed.

(Jyoti Saran, J)

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