

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19102 of 2011

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Krishna Prasad and Company through its partner Eklavya Kumar C/o Raj Ballabh Prasad, Head Officer, Village Pathara English, P.O, Orhanpur, P.S. - Mufassil, District Nawada

.... Petitioner

Versus

1. The State of Bihar
2. The Principal Secretary cum Commissioner, Road Construction Department, Government of Bihar, Patna
3. The Engineer in Chief, National Highway Road Construction Department, Bihar, Patna
4. The Superintending Engineer, National Highway Road Construction Department, Bihar, Patna
5. The Superintendent Engineer, National Highway Work Circle, Patna
6. The Executive Engineer, National Highway Division, Bihar Sharif, District Nalanda

.... Respondents

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Appearance :

For the Petitioner : Mr. N.K. Agrawal, Sr. Advocate
Mr. Sanjeet Kumar,
Mr. Raj Kamal, Advocates

For the Respondents : Mr. Gautam Bose, AAG 8
Mr. Rohit Mishra, AC to AAG 8

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 24-06-2016

I.A. No. 2483 of 2016

In view of subsequent developments, I.A. No. 2483 of 2016 has been filed for amendment of the relief portion in the writ petition by adding the following prayer:

“That the petitioner further prays that the letter dated 13.03.2008 contained in memo no. 304 issued under the signature of Executive Engineer, N.H. Division, Bihar Sharif be quashed as same is not in accordance with law and hence fit to be quashed by an order of this Hon’ble Court”

2. Having regard to the nature of the prayer, the interlocutory

application is allowed and the petitioner is permitted to make amendment in the writ petition accordingly.

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3. The present writ petition has been filed for directing the respondents to release/refund the amount of Rs. 8,40,000/- (Eight Lac forty thousand) deposited as earnest money, with interest.

4. Learned senior counsel, Mr. N.K. Agrawal, appearing for the petitioner, makes a short submission to the effect that the respondents have acted arbitrarily in directing for forfeiture of the earnest money of the petitioner and ought not to have required the petitioner by their letter dated 25.01.2008 to execute the work in question. A categorical statement has been made in paragraph 28 of the writ petition that the rates of B.O.Q were valid for 180 days. It is therefore, submitted that the B.O.Q. having been furnished by the petitioner in May 2007 was no longer valid in July, 2008 when the petitioner was required to execute the work. Even the fact of subsequent negotiation in July, 2007 whereby the petitioner agreed to reduce the quoted rate by 2.5% made little difference as the respondents delayed by a further about six months until 25.01.2008 when the petitioner was finally directed to execute the work.

5. Learned Additional Advocate General No. 8, Mr. Gautam Bose, appearing for the State, submits that the petitioner ought to have

commenced the work in January 2008 as required, in view of the negotiated rate having been accepted by the petitioner as stated in paragraph 10 of the counter affidavit.

6. Having heard the parties and on careful consideration of the materials available on record, this Court finds merit in the submissions of the learned counsel for the petitioner. The specific statement of the petitioner that the rates of B.O.Q. were valid only for 180 days has not been controverted in the counter affidavit of the respondents. It is also not in dispute that the rates of bitumen required by the petitioner to execute the work had escalated multifold, on the face of it making it unviable for the petitioner to execute the work. the further delay of six months by the respondents after reduction of 2.5% of the quoted rate further added to the problems of the petitioner as by that time the rates of bitumen had increased yet further. The petitioner could not enter into the agreement and go forward with the execution of work awarded to it, in absence of any direction by the respondents which finally came as late as on 25.01.2008. In such circumstances, therefore, the petitioner cannot be said to have acted negligently nor can lack of bonafides be attributed to the petitioner.

7. In the above view of the matter, there appears very little justification for the respondents to have directed for forfeiture of the earnest money of the petitioner, which in the facts and circumstances

of the case was arbitrary. The impugned letter no. 304 dated 13.03.2008 is accordingly set aside only to the extent that it contains the direction for forfeiture of the earnest money of the petitioner and the respondents are hereby directed to refund Rs. 8,40,000/- being the amount deposited by way of earnest money by the petitioner, within a period of eight weeks from the date of receipt/production of a copy of this judgment.

8. The writ petition accordingly stands allowed with the aforesaid observations and directions.

(Vikash Jain, J)

B.T/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	28.06.2016
Transmission Date	N/A