

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 13274 of 2015

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Santosh Kumar Singh, son of Shri Ganesh Prasad Singh, Resident of Mohalla - Ashok Nagar, Bhatt Bigha, Police Station - Rampur, District - Gaya.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Road Construction Department, Secretariat Building, Government of Bihar, Patna.
3. The Engineer-in-chief-cum-Additional Commissioner-cum-Special Secretary, Road Construction Department, Secretariat Building, Government of Bihar, Patna.
4. The Chief Engineer, South Bihar Upbhag, Road Construction Department, Government of Bihar, Secretariat Building, Patna.
5. The Superintending Engineer, Magadh Road Circle, Road Construction Department, Gaya, District - Gaya.
6. The Executive Engineer, Road Construction Department, Sherghati Division, Sherghati, District - Gaya.
7. The Executive Engineer, Rural Works Department, Imamganj Division, District - Gaya.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Manoj Priyadarshi, Advocate.

For the Respondent/s : Mr. K. K. Jha, A.A.G. 14.

Mr. Amish Kumar, A.c. to A.A.G. 14.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 29-03-2016

Heard learned counsel for the parties.

The writ petition has been filed for quashing the office order contained in Memo No. 407 dated 27.07.2015 issued by respondent no. 6 by which the work allotted to the petitioner has been cancelled.

Learned counsel for the petitioner submits that pursuant to the Notice Inviting Tender he had applied for three work contracts and he was successful in one, being the lowest bidder. It is submitted that he had to furnish certain amount as



Performance Security and Additional Performance Security but the same was to be deposited together with the signing of the agreement, but because the work in question was already given to another contractor by the Rural Works Department and agreement had also been signed, the petitioner brought this to the notice of the Road Construction Department and thereafter the matter was settled only on 25.05.2015, when the petitioner was informed that the concerned road had been taken over by the Road Construction Department and that he should proceed with the work and deposit the Performance Security and Additional Performance Security. Learned counsel submits that the same was to be deposited within 21 days and on 11.06.2015, he wrote letter to the authority that his earnest money in the present bid as well as another bid of Rs. 16,70,000/- be adjusted and the remaining Rs. 9,00,000/- he was submitting in the form of NSC. It is submitted that the petitioner having satisfied the total amount of demand of Rs. 42,90,000/-, the cancellation of the work allotment in his favour is illegal and arbitrary.

Learned counsel for the State submits that the contentions of learned counsel for the petitioner are erroneous and misconceived. He submits that as per the terms and conditions of the CMBD based NIT, the Performance Security as well as Additional Performance Security has to be deposited within 21 days of the work having been allotted and even if it is taken that the work was finally cleared on 25.05.2015, though the



petitioner had given a letter to the Department for adjusting the earnest money deposit and stating that the shortfall of Rs. 9,00,000/- was being deposited in the form of 3 NSCs, the instruments were never handed over to the Department and thus the amount clearly and admittedly remained short of Rs. 9,00,000/- and thus having not deposited the Performance Security and the Additional Performance Security within the time stipulated, the work allotted to the petitioner has rightly been cancelled. He further submits that subsequent to the same, upon a request from the petitioner, the entire earnest money deposit of the present contractor has also been returned to the petitioner.

Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds substance in the contentions of learned counsel for the State. Even if it is accepted that the earnest money was lying with regard to other tenders with the Department could have been adjusted, still there was a shortfall of Rs. 9,00,000/- and though in the letter it was written that he was submitting 3 NSCs totaling Rs. 9,00,000/-, but it is again the admitted position that the instruments were not actually and physically deposited. Thus, clearly the amount of Rs. 42,90,000/-, which was required to be deposited by the petitioner was neither deposited nor was made good in the form of submission of NSCs. For the reason aforesaid, the Court does not find any fault in the action of the respondents in cancelling the work allotment in favour of the petitioner.



On a query by the Court with regard to the current position, it has been informed that the work has not been allotted to anybody and moreover now a fresh tender has been issued since the work allotted to the petitioner has been cancelled. In that view of the matter, keeping in mind the larger public interest in the sense that the passage of time also leads to escalation of cost, if the lowest bid in the second tender is above the rate quoted by the petitioner in the present case, the authority may consider allotting the work to the petitioner if he is ready to do the same as per the rate quoted by him in the present writ application. The Court would not like to interfere in the tender process but in the larger public interest, that too when there is lapse both on the part of the authority as well as the petitioner resulting in the tender not being finalized and much time having lapsed, to prevent any loss to the public exchequer, the above observation has been made by the Court.

The writ petition stands disposed off in the aforementioned terms.

(Ahsanuddin Amanullah, J.)

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