

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1890 of 2016
with
I.A. No. 9020 of 2016
In
Civil Writ Jurisdiction Case No.14637 of 2012

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M/s R. D. Enterprises Pvt. Ltd. a company incorporated under the indian companies Act,1956 having its office at 304,Mahendra Lok Apartment ,Near Rajendra Nagar over bridge ,Kankarbagh,Patna-20 through one of its director sri Raju prasad son of sri krishna kumar, R/o of 304, Mahendra Lok Apartment, Near Rajendra Nagar Over Bridge, Kankarbagh, Patna, Bihar

... .. Appellant

Versus

1. The State of Bihar through the Principal Secretary, Public Health and Engineering Department, Govt. of Bihar, Vishwawwshraiya Bhawan, Bailey Road, Patna
2. The Principal Secretary, Public Health and Engineering Department, Govt. of Bihar, Vishwawwshraiya Bhawan, Bailey Road, Patna
3. The Engineer In Chief-cum-Special Principal Secretary, Public Health and Engineering Department, Govt. of Bihar, Vishwawwshraiya Bhawan, Bailey Road, Patna
4. The Chief Engineer Public Health and Engineering Department, Govt.of Bihar Vishwaweshraiya Bhawan, Bailey Road ,Patna
5. The Superintending Engineer Public Health and Engineering Circle Govt.of Bihar, Chajjubagh, Patna
6. The Executive Engineer,Public Health Division Patna East, Chajjubagh, Patna

... .. Respondents

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Appearance :

For the Appellant/s : Mr. Raj Kishore Prasad, Advocate
For the Respondent/s : Mr. Shiv Kumar, AC to GA3

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 14-12-2017

Delay of nine days in preferring the appeal is condoned. I.A.

No. 9020 of 2016 is allowed. Appeal is taken up on merits.

Heard learned counsel for the appellant and learned counsel representing the State.

The appellant is aggrieved by the judgment dated 16.08.2016 passed by a learned single Judge of this Court in C.W.J.C. No.



14637 of 2012 by which the learned single Judge has been pleased the dismiss the writ application and refused to interfere with the order by which the earnest money deposit (for short 'EMD')of the petitioner was forfeited vide letter dated 03.11.2008 issued under the signature of Engineer-in-Chief-cum-Special Secretary, Public Health and Engineering Department.

It appears from perusal of the letter dated 03.11.2008 (Annexure-12 to the writ application) that the petitioner having become successful tenderer for the work of augmentation of the Barh Water Supply Scheme on turn key basis failed to execute the agreement with the Executive Engineer, Public Health and Engineering Department, Patna East. Several reminders were issued to the petitioner but he did not turn up to execute the agreement. Later on, he requested for issuance of the work order but that was not to be considered because he failed to execute the agreement. As a result of the failure of the petitioner to execute the agreement, the department forfeited the 'EMD'.

The order of forfeiture of the 'EMD' as contained in letter No.1056 dated 03.11.2008 was served upon the petitioner which he did not challenge for considerable period of four years thereafter. The writ application came to be filed only in the year 2012 that too for, in fact, restraining the department from getting



encashment of the 'EMD'. In the aforesaid background the learned single Judge was not persuaded to interfere with the right of the department to encash the 'EMD'.

We have considered the materials available on the record. Learned counsel for the appellant has only plea that for various reasons not attributable to him, the final agreement was not executed at that stage and hence he has been challenging the encashment of 'EMD' at this stage.

We are not at all convinced with the reasons put forth after a period of four years by filing a writ application. If it is one of the terms of the tender that if a party who is declared successful fails to do certain acts and deeds such as execution of agreement which he has failed to do, then by virtue of terms agreed by him in the tender document, the 'EMD' shall be liable to be forfeited. We see no reason to interfere with the order passed by learned single Judge.

Appeal has no merit. it is dismissed.

(Ajay Kumar Tripathi, J)

(Rajeev Ranjan Prasad, J)

Pawan/-

AFR/NAFR	N.A.F.R.
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