

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6708 of 2017

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1. Katyani Contractor Pvt Ltd. having its office at Pareo, Bihta, P.S. - Bihta, District - Patna, through its Director, Ashok Kumar Son of Late Ram Chandra Sah Resident of Village - Pareo, Bihta, P.S. - Bihta, District - Patna.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Mines and Geology, Bihar, Patna.
3. The District Magistrate, Aurangabad.
4. The Assistant Director, Mines and Geology, Aurangabad.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sanjeev Kumar, Mr. Priya Ranjan, Mr. Amit Kumar Singh
For the State	:	Mr. G.P. Ojha, GA VII
For the Mines Dept.	:	Mr. Rajendra Prasad Singh

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 08-08-2017

Heard learned counsel for the petitioner and learned counsel for the State as well as Mines Department.

In the present case, petitioner is claiming for return of security amount of Rs.3,21,60,979/- as having been declared second highest bidder but even after lapse of two years neither money has been returned nor he has been extended offer to enter into an agreement.

An advertisement was published for auction of Block No.2 situated at Plot No.1269, Thana No.698, Mauza- Pachar measuring an area of 12.97 acres in the district of Aurangabad.



The land was placed for auction for mining lease. The petitioner and others have applied. Tender was opened and one K.P.S. Structure Pvt. Ltd. declared as highest bidder as offered Rs. 32,10,00,000/- whereas petitioner offered lesser amount. In terms of NIT the first person is required to enter into agreement with the State within 120 days, in failure, the offer will be extended to the second tenderer. In failure the Mining Department is required to go for a fresh tender. NIT also prescribes so long the agreement is not entered with highest tenderer security money of second tenderer will not be returned. It will be relevant to quote relevant part of the NIT:

6. सफल निविदादाता का चयन :

(vi) प्रथम (उच्चतम) डाकवक्ता द्वारा किसी कारणवश बंदोबस्ती लेने में असफल रहने पर अथवा खनन पट्टा संविदा का निष्पादन के पूर्व उनका बंदोबस्ती रद्द होने पर, उनके द्वारा जमा अग्रधन एवं सम्पूर्ण राशि जब्त कर ली जाएगी तथा उसके पश्चात् द्वितीय डाकवक्ता को नियमानुसार सभी प्रावधानों का अनुपालन करने के शर्त पर उक्त पत्थर खनन पट्टा की बंदोबस्ती लेने का अवसर प्रदान किया जायेगा।

(vii) द्वितीय डाकवक्ता द्वारा विहित समयावधि माईनिंग प्लान एवं पर्यावरण स्वच्छता प्रमाण-पत्र आदि अन्य कागजात दाखिल नहीं कर पाने अथवा अन्य कारणों से नियमानुसार बंदोबस्ती लेने में असफल रहने पर उनके द्वारा जमा अग्रधन तथा अन्य



संपूर्ण राशि को जब्त करते हुए पुनः विज्ञापन प्रकाशित कराकर नये सिरे से उक्त खनन पट्टा की बंदोबस्ती की कार्रवाई की जायेगी।

- (xi) असफल डाकवक्ताओं (द्वितीय उच्चतम डाकवक्ता को छोड़कर) को अग्रधन राशि समाहर्ता द्वारा डाक प्रक्रिया पूर्ण होने के उपरांत वापस की जायेगी। द्वितीय उच्चतम डाकवक्ता की अग्रधन राशि प्रथम (सफल) डाकवक्ता के पक्ष में पट्टा निष्पादन के पश्चात् वापस किया जायेगा।

7. चयन के बाद की औपचारिकताएँ :

- (ii) सफल निविदादाता को सैद्धान्तिक स्वीकृत्यादेश निर्गत होने के 120 दिनों के अन्दर फार्म 'डी' में खनन पट्टा संविदा निम्नलिखित कागजातों के साथ दाखिल करना होगा।

(क) संबंधित खनन पट्टा क्षेत्र के माईनिंग प्लान नियमावली में वर्णित प्रावधानों के अनुसार तैयार एवं अनुमोदित कराकर समर्पित करना होगा।

(ख) पर्यावरण एवं वन मंत्रालय, भारत सरकार की राज्य स्तरीय समिति (SEIAA) पर्यावरण स्वच्छता प्रमाण-पत्र प्राप्त कर समर्पित करना होगा।

(ग) बंदोबस्ती राशि के 10 प्रतिशत के समतुल्य प्रतिभूति राशि का भुगतान (अग्रधन एवं डाक के दौरान जमा राशि) को समायोजित करते हुए बैंक ड्राफ्ट के माध्यम से करना होगा।

(घ) बंदोबस्ती राशि की 20 प्रतिशत राशि (प्रथम किस्त) का भुगतान बैंक ड्राफ्ट के माध्यम से करना होगा।



(ड.) प्रथम किस्त के दो प्रतिशत् राशि तथा उसपर देय अधिभार का भुगतान आयकर के रूप आयकर विभाग को भुगतेय बैंक ड्राफ्ट के माध्यम से करना होगा।

(च) पृथक कोष के रूप में प्रथम किस्त का दो प्रतिशत् राशि जिलाधिकारी को भुगतेय बैंक ड्राफ्ट के माध्यम से करना होगा।

(छ) आवेदित क्षेत्र का मानचित्र मूल मानचित्र के अनुरूप) के रूप में समर्पित करना होगा।

Admittedly in the present case the auction has been done in 2015 and after lapse of two years highest tenderer has not entered into agreement on some reasons or other, nor the petitioner has been offered to enter into an agreement. In such situation prayer has been made that either he should be extended lease of the property mentioned in the tender or the amount which is lying with the State should be returned, as blocking the money is causing immense loss of interest as well as heavy money has remained stagnant without any gain whereas learned counsel for the State submits that in terms of Clause 6(xi) money will be returned only after the agreement with the highest tenderer.

Learned counsel for the State has tried to impress upon this



Court as and when highest tenderer enter into agreement, that moment the money will be returned. But the State has placed reliance on one clause but ignored to place another clause of NIT. As per the NIT, agreement has to be materliazed within 120 days, in failure it will be extended to the second bidder. More than two years have passed even then the State has not extended the offer to the petitioner but resisting the money should not be released to the petitioner but in the interest of justice, if the State has not extended the offer to the petitioner even after 120 days which is normal period then the equity demands State cannot keep money thereafter, depriving him of his money beyond reasonable period cannot be approved, as he could have invested for proper return.

In such view of the matter, this Court directs the State Government to pay the aforesaid amount along with 7% simple interest.

With the aforesaid observation this writ petition is disposed of.

Vinay/-

(Shivaji Pandey, J)

AFR/NAFR	NAFR
CAV DATE	NA
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Transmission Date	NA

