

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13301 of 2012

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1. M/S Asian Paints Ltd. Company, Incorporated Under The Provision Of Company Act, 1956 Having Its Office Situated At Arihant Building, 53A, Mirza Ghalib Street, Kolkata-700016 And Having Its Branch Office M/S Asian Paints Ltd., 418, Asiana Tower, Exhibition Road, Patna-800001, Represented Through M/S S.K. Painting Works, Proprietor S.K.Choudhary, Station Road, Kahalagaon, District- Bhagalpur

.... Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry Of Power, New Delhi
2. Executive Director (RED-1), Patna-1, 2nd Floor, L.N.J.P. Bhawan, Patna-800001
3. General Manager (N.T.P.C./KHSTPP), Kahalgaon, Bhagalpur, Bihar-813214
4. A.G.M. Finance N.T.P.C./(KHSTPP), Kahalgaon, Bhagalpur, Bihar-813214
5. Deputy General Manager (Dy. G.M.) P, N.T.P.C., Kahalgaon, Bhagalpur
6. Deputy General Manager (Dy. G.M.) (C & M), Contract Incharge, N.T.P.C., Kahalgaon, Bhagalpur
7. Deputy General Manager (Dy. G.M.) (M.E. 1/Civil), N.T.P.C., Kahalgaon, Bhagalpur
8. Senior Manager (Sr. Manager) (Vigilance), N.T.P.C., Kahalgaon, Bhagalpur
9. M/S Kansai Nerolasc Paint Ltd. (Knp) Represented Through M/S B.P. Construction Chapaltola, Kahalgaon, P.O.- Kahalgaon, District- Bhagalpur

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Satish Kumar Agrawal
Mr. Binay Kumar
For the Respondent/s : Mr. Anil Kumar Sinha
Mr. Akash Keshaw

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CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL ORDER

16 31-07-2017 Heard learned counsel for the petitioner and learned counsel appearing on behalf of the NTPC.

2. The petitioner seeks a writ in the nature of mandamus restraining the respondent authority from proceeding further with the tender process for preparation of the award work order in



favour of the Respondent No. 9.

3. It is submitted on behalf of the petitioner that the respondent authority had invited tender No. Khs.92.CS.7629 of 2012 dated 12.01.2012 for the work, namely, Internal and External Painting of Balance Residential and Public Building at the Township (TPS and PTS) amounting to Rs. 1,10,96,060.00 (Rupees One Crore Ten Lacs Ninety-Six Thousand and Sixty only). The petitioner had participated in the tender and had deposited the security amount being Rs. 2,21,000/- (Rupees Two Lacs Twenty One Thousand only) through bankers' cheque dated 02.02.2012. The petitioner had deposited 21% higher than the estimated amount. The petitioner in its tender had quoted a higher price above the estimated amount i.e., Rs. 1,33,21,688.60 (Rupees One Crore Thirty-Three Lacs Twenty-One Thousand Six Hundred Eighty-Eight and Paise Sixty only). After the tender date having been adjourned on several occasions, ultimately, the Tender was opened on 02.04.2012 at a much higher rate than that which was quoted by the petitioner at a lower price.

4. Learned counsel for the petitioner submits that though the Respondent No. 9 had violated the terms and conditions of the tender, the Respondents illegally and arbitrarily allotted the tender in favour of the Respondent No. 9. Though the Tender Papers of



the Respondent No. 9 contained several lacunae which was pointed out by the petitioner, the Respondent NTPC without considering the various objections raised by the petitioner, the Respondents have awarded the contract in his favour. Thus, the petitioner in the present writ application prayed for cancelling the bid documents of Respondent No. 9 being M/s Kansai Nerolac Paint Ltd through M/s B.P. Construction, Kahalgaon and for commanding the respondents to proceed to allot the tender in favour of the petitioner which was in accordance with terms and conditions of the tender dated 04.02.2012.

5. A comprehensive counter-affidavit has been filed by the Respondents in which it has been stated amongst other things with the writ application has now become infructuous.

6. In view of the fact that the tender has already been allotted in favour of the respondent No. 9 who has proceeded to work as per the terms of the tender bid and has completed the work and the payments for the work undertaken by the Respondent No. 9 have also been made to him and the present writ application has been rendered infructuous. It appears that notices have also been issued to Respondent No. 9 in the present writ application and though validly served, they have chosen not to enter appearance.



7. Having heard learned counsel for the petitioner and learned counsel appearing on behalf of the NTPC, it appears that the contract in question already stands concluded which renders the present writ application as infructuous.

8. For the reasons aforementioned, the Writ Court would thus refrain from interfering in a concluded contract under Article 226 of the Constitution of India.

9. The writ application is thus without any merit and is dismissed.

(Anjana Mishra, J)

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