

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8850 of 2010

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M/s Kumar A.S. Construction, Ashok Maqur, Bhatt Bigha, Gaya, through its
Managing Partner Smt. Pramila Singh W/O Sri Anuj Kumar Singh R/O Mohalla-
Ashok Nagar, Bhatt Bigha, Gaya, P.S. Rampur, Distt.- Gaya

.... Petitioner

Versus

1. The State of Bihar
2. The Principal Secretary, Road Construction Department Government Of Bihar, Patna
3. The Engineer-In-Chief Cum Additional Commissioner Cum Special Secretary Road Construction Deptt. Government of Bihar, Patna.
4. The Chief Engineer (Mechanical) South Bihar Sub Division, Road Construction Department, Govt. of Bihar, Patna
5. The Superintending Engineer, Magadh Road Circle, Gaya, Road Construction Department, Distt.- Gaya
6. The District Magistrate, Gaya, Distt.- Gaya
7. The Executive Engineer, State Highway Division Road Construction Department, Gaya Distt.- Gaya

.... Respondents

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Appearance :

For the Petitioner : Mr. Ashok Kumar Dubey
Mrs. Mamta Vijaya
Mr. Suma Shanker Singh, Advocates.
For the Respondents : Mr. AAG-11

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 20-07-2018

Heard learned counsel for the petitioner and learned
counsel for the respondents.

2. The present writ petition has been filed for
quashing the order contained in letter no. 321 dated 23.05.2008 issued
by the respondent no. 7 whereby and whereunder the amount of
earnest money amount to Rs. 4,64,300/- (Four lakhs sixty four
thousand and three hundred only) which was deposited by the



petitioner before respondent no. 7 at the time of submission of tender documents to participate in the tender for construction work of model Bus Stand at Sikaria More, Gaya under National Sum Development Scheme has been forfeited without assigning any reason; and for a direction to refund the said amount of Rs. 4,64,300/- to the petitioner with interest.

3. Learned counsel for the petitioner-firm submits that pursuant to tender notice published in July, 2007 for construction of Model Bus Stand at Sikaria More, Gaya, the petitioner-firm submitted its documents and was selected for the work. It is stated that more than six months after publication of the tender notice, the respondent no. 7 wrote a letter dated 12.02.2008 to the petitioner requiring deposit of the remaining amount of earnest money of Rs. 7,88,500/- and to make agreement for the work. It is submitted that the construction work was required to be completed within six months but requiring the petitioner to start the work after such delay and that too without revising the rates as required under Rule 103 of the Public Works Department Code is wholly arbitrary. It is further stated that the petitioner requested for rate revision which was not granted and instead a fresh tender was floated for the work at revised rates and the construction work to be completed within a period of 12 months.

4. A counter affidavit has been filed on behalf of the



respondents in which it is stated that the petitioner had offered 10% above the Schedule of Rates. Thereafter in course of negotiations in December, 2007, the petitioner reduced its offer to 8% above the Schedule of Rates without demur. The petitioner did not seek any revision of rates at the time of negotiations in the background of Rule 103 of the Public Works Department Code. It is in the backdrop of such negotiation in which the petitioner had consented to complete the work at the agreed 8% above the Schedule of Rates that the work was allotted to him by letter dated 12.02.2008 but the petitioner did not come forward to execute the agreement despite reminders. As such the petitioner was made to forfeit the amount of Rs. 4,64,300/- deposited by him towards earnest money as he could not be allowed to withdraw from the tender after the work was allotted to it.

5. Having heard the parties and on a consideration of the materials on record, this Court is not inclined to interfere in the matter. A categorical stand of the respondents to the effect that the petitioner had entered into negotiations with the respondents in December, 2007 and agreed to execute the work at 8% above the Schedule of Rates has not specifically been controverted in the rejoinder. It is also not disputed that in course of such negotiation, the petitioner did not seek to avail the provisions of Rule 103 of the Public Works Department Code. The petitioner did not respond to the



reminders of the respondents to enter into agreement for execution of the work and hence no fault can be found with the respondents in directing forfeiture of the amount of the earnest money of the petitioner. As a matter of fact, the fresh tender issued at the revised rates is indicative of due compliance with Rule 103 of the Public Works Department Code, the tender having been issued after the month of January, before which such revision was not required to be made.

6. In the above circumstances, the writ petition stands dismissed.

(Vikash Jain, J)

Md. Ibrarul/BT

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	23.07.2018
Transmission Date	N.A.

