

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13573 of 2013

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M/S Rollcon Project Private Limited Having Registered Office At 3 - B, Pocket - A, Vikas Puri Extn., New Delhi - 110018 Through Its Director Mr. P.S. Madan Son Of Late Laxman Das Madan

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Department Of Sugarcane Industries, Vikash Bhawan, Patna - 800015, Government Of Bihar, Patna
3. The Selection Committee, Department Of Sugarcane Industries, Government Of Bihar, Patna
4. Cane Commissioner, Department Of Sugarcane Industries, Government Of Bihar, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ramakant Sharma, Senior Advocate
Mr. Lakshmi Kant Sharma, Advocate
Mr. Rajesh Kumar, Advocate

For the State : Mrs. Manisha Singh, AC to GP-7

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 06-11-2018

I.A. No.2828 of 2018

This interlocutory application has been filed for substitution of the Director of the petitioner- Company who died on 16.03.2017 during the pendency of the writ petition.

2. Learned counsel for the respondents appears and has no objection to such prayer.

3. Having regard to the nature of the prayer, let the name of Director of the petitioner- Company be substituted with the names of his legal heirs, namely, Hemlata Madan, wife of Late P.S.



Madan and Bhuvan Shanker Madan, son of Late P.S. Madan in the array of the respondents as described in paragraph-4 of the I.A. The interlocutory application stands disposed of.

C.W.J.C. No.13573 of 2013

4. The present writ petition has been filed for a direction to the respondent authority not to retract from the letter of the intent no.311 dated 18.02.2009 issued pursuant to the general advertisement by the respondent authority inviting the desirous persons for long term lease of Lohat sugarcane unit of the Bihar State Sugarcane Corporation Limited; to provide assistance in getting finance or loan from the financial institution so that awarded project shall be commenced; not to float any fresh tender regarding already settled tender with respect to the Lohat Unit at Madhubani; and alternatively to refund the deposit made by this petitioner with the respondent authority i.e. approximately Rs.27 lacs part of 10% bid amount and release of Bank guarantee of Rs.10 lacs.

5. Mr. Ramakant Sharma, learned senior counsel appearing on behalf of the petitioner states that he presses only the alternative prayer for refund of deposit of Rs.27 lacs towards bid amount and release of bank guarantee of Rs.10 lacs, and that the remaining prayers need not be pressed which are accordingly dismissed.



6. Learned counsel for the petitioner submits that the petitioner, after being selected as the highest bidder for Lohat Unit, deposited Rs. 10 lacs by way of bank guarantee and also amount of Rs.27 lacs towards 10% of the bid amount being Rs.2 crore 80 lacs. It is submitted that the petitioner defaulted in making due payments for reasons beyond its control as financial assistance was not forthcoming from financial institutions.

7. Learned counsel for the respondents submits that the petitioner failed to deposit even the requisite 10% of the bid value and despite reminders, the petitioner merely filed representations but did not deposit the requisite amounts, in view of paragraph 1.2.4 of the RFQ, the EMD of Rs.10 lacs was subjected to forfeiture. It is submitted that failure to deposit Rs.28 crores by the petitioner has caused considerable loss to the Government of Bihar. It is submitted that the requisite 10% of the bid amount, namely Rs.2 crore 80 lacs, was required to be deposited within one month of the award but even after reminders, the petitioner deposited only Rs.27 lacs and did not make good the deficit. As such, the amount of Rs.27 lacs is also liable to forfeiture on account of breach of contract.

8. Having heard the parties and on consideration of the materials available on record, this Court is not inclined to interfere in the matter. It is not in dispute that for want of financial assistance, the



petitioner was unable to make payment of even 10% of the bid value of Rs.28 crores, i.e., Rs.2 crore 80 lacs, as against which he deposited only Rs.27 lacs after reminders. In such a situation, this Court is unable to find any infirmity in the action of the respondents and the bank guarantee of Rs.10 lacs deposited by the petitioner stood forfeited. No interference in this regard is called for.

9. As regards, the amount of Rs.27 lacs deposited by the petitioner towards the bid amount, it is not clear from the averments made in the counter affidavit whether such amount has also finally been subjected to forfeiture. In this view of the matter, the petitioner is granted liberty to approach the concerned authority with an appropriate representation for redressal of its grievances, which if filed within a period of four weeks from the date of receipt/production of a copy of this judgment, shall be disposed of on its own merit in accordance with law expeditiously and in any event within a period of eight weeks thereafter.

10. The writ petition stands disposed of with the aforesaid observations and directions.

(Vikash Jain, J)

N.H./- B.T.

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	19-11-2018
Transmission Date	N/A

