

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1627 of 2018

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1. Prakash Kumar Gupta, son of Suresh Sah, resident of Village- Raxaul Mauza, Ward No. 13, P.S.- Raxaul, District- East Champaran, Secretary Matsyajivi Jal Nyantran Machhiyari Sahyog Samiti Ltd.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Animal Husbandry and Fisheries Department, Bihar, Patna.
2. The Divisional Railway, Manager (Engg.), East Central Railway, Samastipur.
3. The Engineer, Mandal, Headquarter, Eastern Zone, Railway, Samastipur.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sandip Kumar Mr. Ajit Kumar Mr. Ram Nibash Prasad
For the Respondent/s	:	Mr. Devendra Kr. Sinha, Sr. Adv. Mr. Kumar Priya Ranjan, Adv.
For the State	:	Mr. Rakesh Kumar Shrivastava, A.C.-GP15

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 12-02-2018

Heard both sides.

The petitioner has filed this writ petition to quash the Tender Notice No. TC-299-SPJ of 2017 dated 29.12.2017 as contained in Annexure-5 by which the Divisional Railway Manager (Engg.), East Central Railway, Samastipur has invited fresh E-Tender for settlement of section-Kundwachainpur excluding (Km-144/6) to Raxaul including (Km-188/5) for the year 2018 to 2021.

Learned counsel for the petitioner submits that in pursuance of the tender notice issued in *Prabhat Khabar* for



settlement of 16 jalkars including the jalkars in question, the petitioner filled up a form on 28.08.2017 for settlement of the jalkars. The bid of the petitioner amounting to Rs. 28,50,000/- was accepted and the petitioner was directed to deposit annual license fee. The first installment of annual license fee amount to Rs. 11,21,000/- was directed to be deposited within seven days from the date of issue/receipts of the letter no. W/362/FR/SPJ/2017-20/SPJ/W-4/277 dated 23.11.2017. The petitioner received the letter on 08.12.2017 and filed a petition to extend the date of deposit the earnest license fee on 28.12.2017, but the respondents issued fresh tender on 29.12.2017 itself without cancelling the settlements made in favour of the petitioner.

Mr. Sandip Kumar, learned counsel for the petitioner, further submits that the respondents filed counter affidavit and stated that when the petitioner failed to deposit the first installment of annual license fee, the petitioner was communicated that his offer was rejected and cancelled on 29.12.2017, but from perusal of page 19 of the reply to counter affidavit, it would appear that letter no. 468 was never sent to the petitioner. Only letter no. 471 and 470 were sent to the petitioner and the letter of cancellation of the offer of the petitioner was never communicated to the petitioner. It has further been submitted that the noting of the department is not an



effective order unless the order of cancellation of the offer of the petitioner is duly served on the petitioner and therefore the fresh tender is illegal. Learned counsel has placed his reliance on the judgments in case of ***Sethi Auto Service Station & Another Vs. Delhi Development Authority & Ors.*** reported in ***2009(1)SCC 180*** and in case of ***Ropan Sahoo Vs. Ananda Kumar Sharma*** reported in ***2013(2)PLJR SC61*** in which it has been held that unless the letter is communicated, the noting in the file is not suffice for cancellation of the offer or license.

Mr. Devendra Kumar Sinha, learned counsel for the respondents has raised preliminary objection on the maintainability of the writ petition. It has been submitted that the ponds was settled in favour of Matasyajive Jal Niyantaran Machhiyari Sahyog Samiti, East Champaran. The Samiti is registered under the Societies Act and can sue and be sued. The petitioner did not make the society as party in the writ petition. The petitioner is not authorized by the members of the society to pursue the writ petition.

It appears that the petitioner has made statement in para 3 of the writ petition that the petitioner is Secretary of the society and the secretary of the society is competent to sue and to be sued. The statement in paragraph 3 of the writ petition has not been denied in the counter affidavit. Therefore, I do not find the preliminary objection of



the learned counsel for the respondents is acceptable.

Mr. D.K. Singh, learned counsel for the respondents further submits that from perusal of Annexure-3 itself, it appears that the bid offered by the petitioner was accepted and the petitioner was directed vide letter no. 277 dated 23.11.2017 to deposit Rs. 11,21,000/- within one week from the date of issue/receipt of the letter. Admittedly, the petitioner received the letter on 08.12.2017, but according to the case of the petitioner, the petitioner filed a petition on 28.12.2017 for extension of time to deposit the first installment of the license fee. There was no agreement on account of non-deposit of first installment of license fee. Therefore, no question arises for cancellation of the offer. The letter itself contains that in case the licensee fails to submit the requisite balance amount of earnest money, the same would be forfeited and the failed tenderer shall be debarred from participating in the re-tender. Therefore, no question arises for cancellation of the offer.

Having considered the facts and submissions of both sides, it is admitted that the petitioner is the highest bidder and he offered Rs. 28,50,000/- for settlement of Kundwachainpur K-144/6 to Raxaul including Km-188/5 of both sides of Railway track, but the petitioner failed to deposit the first installment of license fee, i.e. Rs. 11,21,000/- within time. Letter no. 277, which was received by the



petitioner on 08.12.2017 itself, contains that in the event, if the petitioner fails to deposit the first installment of Rs. 11,21,000/- within seven days from the date of receipt of the order, the earnest money deposited by the petitioner will be forfeited and the failed tenderer shall be debarred from participating in re-tender. Admittedly, petitioner received the aforesaid letter dated 08.12.2017 but the petitioner neither deposited the amount on or before 15.12.2017 nor made request for the extension of time for deposit of the first installment. Therefore, I find that the petitioner has lost his right to get the agreement executed in his favour by not depositing the required license fee within time.

Accordingly, the writ petition is dismissed.

(Prabhat Kumar Jha, J.)

Rakhi

AFR/NAFR	
CAV DATE	N.A.
Uploading Date	23.02.2018
Transmission Date	

