

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3976 of 2021

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1. Dharmendra Singh S/o- Shri. Mukti Nath Singh R/o- Mahajan Toli No. 1, Mahadeva Road, Arrah, District- Bhojpur, Bihar- 802301.
 2. Indu Singh W/o- Shri. Dharmendra Singh R/o- Mahajan Toli No. 1, Mahadeva Road, Arrah, District- Bhojpur, Bihar- 802301.

... .. Petitioner/s

Versus

1. The State of Bihar through its Chief Secretary, Govt. of Bihar, Main Secretariat, Patna- 800015, Bihar.
2. The Principal Secretary Urban Development and Housing Department, Vikas Bhawan, Bailey Road, Patna, 800015.
3. Ajay Kumar Pandey, Nodal Officer E- Tendering cum BUDA and DUDA of Urban Development and Housing Department, O/O UD and HD, First Floor, New Secretariat, Vikas Bhawan, Bailey Road, Patna, 800015.
4. Kiran Kumari Sinha, Nodal Officer Bihar State Electronic Development Corporation, BELTRON Bhawan, Shastri Nagar, Bailey Road, Patna 800023.
5. The District Magistrate District of Bhojpur, State of Bihar, Office of the Collector and District Magistrate, Collectorate Campus, Krishi Bhawan, Ara District- Bhojpur PIN- 802301.
6. The Municipal Commissioner Ara Municipal Corporation, Ara Nagar Nigam, Old Police Line, Ara, 802301.
7. Alok Kumar Project Manager, BELTRON.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Vishal Kumar Singh, Advocate
For the Respondent/s	:	Mr. Subhash Prasad Singh, GA-3
		Mr. Santosh Kumar, Advocate
		Mr. Girijish Kumar, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

(The proceedings of the Court are being conducted by Hon'ble the Chief Justice/ Hon'ble Judges through Video Conferencing from their residential offices/residences. Also, the Advocates and the Staffs joined the proceedings through Video Conferencing from their residences/offices.)



Date : 21-01-2022

Heard learned counsel for the parties.

2. Petitioners have prayed for the following relief(s):-

“I. For the issuance of appropriate writ of Mandamus or any other appropriate writ(s) or orders(s) or direction(s) commanding the Respondents to immediately return and refund the Earnest Money Deposit (EMD) which amounts to INR 2,21,000 (Two Lacs Twenty One Thousand Only) deposited by the Petitioner No. 1 to participate in the e-tender invited by Respondent No. 6 vide letter no. NIT/02/2020-21 dated 20.02.2020, which directed willing contractors to deposit Earnest Money Deposit (EMD) not later than 04.09.2020.

II. For the issuance of appropriate writ of Mandamus or any other appropriate writ(s) or orders(s) or direction(s) commanding the Respondents to immediately return and refund Earnest Money Deposit (EMD) which amounts 1,17,000 (One lac Seventeen Thousand Only) deposited by Petitioner No.2 to participate in the e-tender invited by Respondent No. 6 vide letter no. NIT/03/2020-21 dated 20.02.2020, which directed willing contractors to deposit Earnest Money Deposit (EMD) not later than 08.09.2020.

III. For the issuance of appropriate writ of Mandamus or any other appropriate, writ(s) or orders(s) or direction(s) commanding the Respondent



No.2, Respondent No.3, Respondent No.4 and Respondent No.5 to expedite the procedure with utmost priority to return the EMD deposited by the Petitioners which the Petitioner No.1 and Petitioner No.2 are entitled after participating the bid but failing to secure certain tenders.

IV. For the issuance of appropriate writ of Mandamus or any other appropriate writ(s) or orders(s) or direction(s) commanding the Respondent no. 2, Respondent No.3 and Respondent No.4 to return and refund the EMD with compensation of rate of 14% per annum along with compensation for mental agony and financial hardship faced and litigation cost i.e. INR 4,39,830 (3,38,000 as EMD + 11, 830 interest + 50,000 mental agony and financial hardship and 40,000 as litigation cost) as the Respondents have illegally without proper justification has detained the EMD deposited by the Petitioner No.1 and Petitioner No.2 causing serious financial injury and danger to livelihood which is serious breach of Article 21 of the Constitution.

V. For the issuance of appropriate writ of Mandamus or any other appropriate writ(s) or orders(s) or direction(s) commanding the Respondent No.3, Respondent No.4, Respondent No.5, Respondent No.6 to return the unjustified detention of EMD causing breach of freedom of trade and commerce enshrined under the Article 19(1)(g) of the Constitution as the petitioners are the person with smaller means and capitals who are involved in the business of construction as registered contractor Sahabad Path Pramandal.



VI. For the issuance of appropriate writ of Mandamus or any other appropriate writ(s) or orders(s) or direction(s) commanding the Respondents 5 and Respondent No. 6 not to invite any further bid via e- tendering till the EMD deposited for NIT/02/2020-21 and NIT/03/2020-21 is returned and all other EMD backlog is cleared from the end of Respondent NO.3, Respondent No.4 and Respondent No.7 as the collusive behaviour of Respondent No.3, Respondent No.4 and Respondent No.5 are destined in the direction to profit the cartel of contractors with appreciable capital so as to siphon out smaller contractors causing serious infringement of right to equality as enshrined under Article 14.

VII. For the issuance of appropriate writ of Mandamus or any other appropriate writ(s) or orders(s) or direction(s) commanding the Respondent no. 2, Respondent No.3, Respondent No. 4 and Respondent No.6 as return the EMD of petitioner No. 1 and Petitioner No. 2 along with all other contractors who were declared as unsuccessful bidder for the tenders invited vide NIT/02/2020-21 and NIT/03/2020-21 as under the patron of Respondent No. 3 and Respondent No.4 the e- tendering is synchronized is a way to create cartel of financially sounds contractors leading to promotion of anti-competitive agreements as to benefit bigger players.

VIII. For the issuance of appropriate writ of Mandamus or any other appropriate writ(s) or orders(s), or direction(s) commanding the Respondent No.3, Respondent No.4 and Respondent No.7 to create acceptance and return gateway in eproc.2 whose



maintenance and solutions are provided by BELTRON.

IX. For the issuance of appropriate writ of Mandamus or any other appropriate writ(s) or orders(s) or direction(s) commanding the Respondent 1 to 3 and Respondent No.6 not to demand Bank Guarantee for the tender invited which costs less than One Crore as it violates and over-rides Regulation 161 of Bihar Public Work Department Code and demand of Bank Guarantee below One Crore is unnecessarily over-burdening the micro and smaller contractors as bank guarantee unnecessarily accumulates miscellaneous costs like bank fee and stamp duty fee and the bank guarantee as collateral is quite time consuming because this instrument is always needed to be acquired from Regional Branch of Banks.

X. For the issuance of appropriate writ of Mandamus or any other appropriate writ(s) or orders(s) or direction(s) commanding the Respondent No.1, Respondent No.2 and Respondent No.6 to reinstate the Term Deposit (T.D.) and National Saving Certificate (NSC) as the instrument for Earnest Money Deposit (EMD) as these instruments are least formalities concerned and give better return as interest-to micro and small contractors who sustain and carry their business with lesser means and T.D. and NSC can easily be authenticated and cross checked.

XI. For the issuance of appropriate writ of Mandamus or any other appropriate writ(s) or orders(s) or direction(s) commanding the Respondent No.1, Respondent No.2 and Respondent No. 3 and Respondent No.4 to make all the circulars and bye-laws regulating EPROC 2 and BELTRON available on their



respective websites to enable every citizens including the registered contractors and Petitioner no.1 and 2 to know about the binding terms and obligatory rules and regulations subsisting between Respondent No. 3 to 7 and Petitioner No. 1 and 2.

XII. For the issuance of appropriate writ of Mandamus or any other appropriate writ(s) or order(s) or direction(s) commanding the Respondent No.1, Respondent No.2, Respondent No. 3 and Respondent no. 6 to ensure proper training of their subordinate staffs to mitigate the technical glitches which may delineate time to time and such training should be solution oriented to avoid any present alike situation for which the present writ is preferred.

XIII. For the issuance of appropriate writ of Mandamus or any other appropriate writ(s) or orders(s) or direction(s) commanding the Respondent No.1 and Respondent No.2 and Respondent No.6 to take proper and stringent action against staffs responsible for delay in the return and refund of Earnest Money Deposit (EMD) deposited by the Petitioners

AND/OR

XIV. Pass any such order or direction which may deem fit to this Hon'ble Court in the best interest of the petitioner.”

3. After the matter was heard for some time, finding the Bench not to be agreeable with the submissions made by learned counsel for the petitioners, learned counsel for the



petitioners, under instructions, states that petitioners shall be content if a direction is issued to the authority concerned to consider and decide the representation which the petitioners shall be filing within a period of four weeks from today for redressal of the grievance(s).

4. Learned counsel for the respondents states that if such a representation is filed by the petitioner, the authority concerned shall consider and dispose it of expeditiously and preferably within a period of three months from the date of its filing along with a copy of this order.

5. Statement accepted and taken on record.

6. As such, petition stands disposed of in the following terms:-

(a) Petitioners shall approach the Respondent No. 6 namely The Municipal Commissioner, Ara Municipal Corporation, Ara Nagar Nigam, Old Police Line, Ara, 802301, within a period of four weeks from today by filing a representation for redressal of the grievance(s);

(b) The said authority shall consider and dispose it of expeditiously by a reasoned and speaking order preferably within a period of three months from the date of its filing along with a copy of this order;



(c) The order assigning reasons shall be communicated to the petitioner;

(d) Needless to add, while considering such representation, principles of natural justice shall be followed and due opportunity of hearing afforded to the parties;

(e) Also, opportunity to place on record all relevant materials/documents shall be granted to the parties;

(f) Equally, liberty is reserved to the petitioners to take recourse to such alternative remedies as are otherwise available in accordance with law;

(g) We are hopeful that as and when petitioners take recourse to such remedies, as are otherwise available in law, before the appropriate forum, the same shall be dealt with, in accordance with law and with reasonable dispatch;

(h) Liberty reserved to the petitioners to approach the appropriate forum/Court, should the need so arise subsequently on the same and subsequent cause of action;

(i) We have not expressed any opinion on merits. All issues are left open;

(j) The proceedings, during the time of current Pandemic- Covid-19 shall be conducted through digital



mode, unless the parties otherwise mutually agree to meet
in person i.e. physical mode;

7. The petition stands disposed of in the aforesaid
terms.

8. Interlocutory Application(s), if any, stands
disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

Amrendra/PKP

AFR/NAFR	
CAV DATE	
Uploading Date	24.01.2022
Transmission Date	

