

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1507 of 2020

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M/s Swanky Infrastate Energy Pvt. Ltd. through its Director, Shri Amit Abhishek S/o Late Ajay Kumar, Sex- Male, Aged about 39 years, having its Corporate registered office at Rampur Jalalpur, Dalsinghsarai, Distt-Samastipur- 843114.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Rural Works Department, Govt. of Bihar, Patna.
2. The Engineer-in-Chief cum Addl. Secretary cum Special Secretary, R.W.D. Bihar at Patna.
3. The Chief Engineer-3, Rural Works Department at Patna.
4. The Superintending Engineer, Rural Works Circle, Samastipur.
5. The Executive Engineer, Rural Works Division, Dalsinghsarai, Distt-Samastipur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mrs. Kumari Rashmi, Advocate
		Mr. Suresh Prasad Singh, Advocate
For the Respondent/s	:	Mr. Manish Kumar, A.C. to AAG-6

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

3 20-09-2022 Petitioner has prayed for the following relief(s):-

- i. For quashing the order contained in Letter No. 2239 dt. 6.12.2019 issued by the respondent no.5 whereby and where under in a pure illegal and arbitrary manner, he has threatened to blacklist the petitioner and forfeit his EMD submitted in connection with NIT No. RWD/MR3054/2018-19/04 out of Package no.MR3054 dated 3.1.2019, overlooking it were the respondents who have prepared the faulty DPR and on that basis prepared BOQ, which is not



fulfilling the requirement of repair and maintenance of the roads particularly one of the road out of three i.e. from T-05 to Mahisary Nikaspur Road, as width of the Road under existence is only 10, but 3.75 meter wide premixing work is marked which is impossible, similarly on many places there is not even Brick soling road available where without proper GSB and WMM work nor premixing could be possible, but the BOQ is not commensurate, similarly the road passes through a village where all along water log remained, but no provision for PCC is made, and on two three places the culverts are broken, but there is no provision made for construction of culverts, and in such situation repair of the road is without imagination and thus in public interest and to save the public Exchequer soon after declaration of the petitioner as successful bidder, the petitioner requested the respondent No.5 vide letter No. 2.09.2019 to rectify the defects in BOQ prepared on the basis of such faulty DPR or to exclude one road from contract, but instead of considering the same, just to hide the own lapses, he has issued such illegal letter which is going to affect the petitioner adversely without no latch on part of the petitioner, hence the impugned order/letter may be quashed holding the same as illegal, arbitrary and not sustainable in law.

- ii. Further for staying operation of the impugned letter dated 6.12.2019 as well as its entire consequential orders, if any passed during pendency of this writ application.



- iii. For declaring and holding the impugned order/ letter dt. 6.12.2019 as nonest in law, under reason that without making any physical measurement of the road in question firstly the faulty DPR of the Road was prepared from the office and on that basis an imaginary BOQ is prepared without ascertaining the actual length & width and required material for repair and maintenance of the road, which could not made unless the error pointed out by the petitioner can be rectified, but insisted of rectifying the same, the respondent no.5 is going to take coercive step against the petitioner for not executing agreement, overlooking that the petitioner is always remained ready to execute agreements subject to a joint physical inspection may be made by the respondent no.5 and accordingly the defects in BOQ may be rectified, hence just to hide his own lapses, the respondent no.5 cannot be permitted to penalize the petitioner by passing such orders as impugned. As the petitioner being a reputed contractor does not want to come under litigancy after executing agreements.
- iv. For holding impugned action of the respondent no.5 as patent illegal, as in such manner blacklisting and forfeiture of EMD that too for no fault of the contractor cannot be allowed, which may ruin the entire business of the petitioner just for fancies of the respondent no.5.
- v. For granting any relief /reliefs for which the petitioner may be found entitled in the eye of law.

Learned counsel for the petitioner submits that in view of the intervening developments, the present petition has become infructuous, and as such, the petitioner may be



permitted to withdraw the present petition.

Permission granted.

The instant petition stands disposed of as
withdrawn.

Interlocutory Application(s), if any, shall stand
disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

P.K.P./Amrendra

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