

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2017 of 2022

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M/s Vikash Industries Through its Proprietor Abhimanyu Kumar, aged about 33 years, (Male) Son of Rajeev Kumar, Resident Village - Ginji, P.S. Ghosi, District- Jehanabad.

... .. Petitioner/s

Versus

1. The State of Bihar Through the Principal Secretary, Department of Mines and Geology, Government of Bihar, Patna.
2. The Bihar State Mining Corporation Limited Through its General Manager, Bihar, Patna.
3. The General Manager, The Bihar State Mining Corporation Limited, Bihar, Patna.
4. The Authorized Officer, Bihar State Mining Corporation Limited, Bihar, Patna.
5. The District Magistrate, cum Collector, Gaya.
6. The District Mining Officer, Gaya.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shivendra Prasad, Advocate

For the Respondent/s : Mr. Gyan Prakash Ojha (Ga7),

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE SATYAVRAT VERMA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 02-02-2023

Heard Mr. Shivendra Prasad, the learned



Advocate for the petitioner and Mr. Naresh Dixit, the learned Advocate for the Mines Department.

2. Mr. Gyan Prakash Ojha, the learned counsel for the State has also rendered his assistance.

3. The petitioner had applied for grant of tender for extracting sand *ghats* of cluster 2 in the District of Gaya. It appears that ultimately he was found to be the sole tenderer who could have been given the license for extracting the sand, but only after approval of the authorities. Such approval was taken and the petitioner was directed to furnish his financial bid, which he did, but the Mines Department was not satisfied with the offer and a fresh tender, therefore, was issued cancelling the earlier tender process.

4. The petitioner is not aggrieved by the issuance of fresh tender, but has approached this Court only because the earnest money which he had deposited (25% of the total bid amount) has been confiscated on the ground that the petitioner, after the tender was



finalized, acted in such a manner which has caused general prejudice to the Mines Department.

5. Clause 18 of the tender document has been taken into account for refusing to refund the earnest money.

6. We have examined Clause 18 of the tender document on record also of the agreement with the petitioner which indicates that in case of E-tender, if any irregularity is committed by the tenderer or the tenderer reflects any corrupt behaviour or indulges in any artifice, the tender would be cancelled and the earnest money deposited by him would be confiscated.

7. We find no rationale behind this open-ended clause in the tender document which does not even specify as to what kind of irregularity would attract such strict provision.

8. In the case of the petitioner, when he was permitted to offer his price even after being declared as the sole tenderer, he offered a price which was less



than Rs. 10,00,000/-, which was a necessary condition.

This cannot be, it has been urged by the learned counsel for the petitioner, a misdemeanor of the kind which would entitle the Department to confiscate the earnest amount deposited by him.

9. Any Clause in the agreement or the tender paper in such a situation has to be read *contra proferentem*. It would be too much for the Mines Department to confiscate the earnest money only for the reason of the petitioner not having offered the price of Rs. 10,00,000/-, which was one of the conditions of the tender.

10. We, therefore, find that the decision of the Mines Department is not sustainable in the eyes of law.

11. We would have otherwise struck down such clauses in the agreement/tender document, but since it has not been prayed before us, we stop sort of this and direct that the earnest money of the petitioner be returned positively within a period of 60 days, to be



counted from the date of receipt/production of a copy
of this order before the Department by the petitioner.

12. Accordingly, the writ petition stands disposed
off.

(Ashutosh Kumar, J)

(Satyavrat Verma, J)

Rishabh/Praveen

AFR/NAFR	NAFR
CAV DATE	N/A
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