

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.14705 of 2021**

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Anand Consultants a proprietary firm through Rupesh Kumar Srivastava, son of AnandBihari Srivastava, resident of 157- C Patliputra Colony, Near Tennis Court, Patna - 800013.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary.
2. Infrastructure Development Authority (A Government of Bihar Undertaking) 1st Floor, Udyog Bhawan, East of Gandhi Maidan, Patna - 800004.
3. The Managing Director, Infrastructure Development Authority, 1st Floor, Udyog Bhawan, East of Gandhi Maidan, Patna - 800004.
4. Director (Project and Implementation), Infrastructure Development Authority, 1st Floor, Udyog Bhawan, East of Gandhi Maidan, Patna - 800004.
5. Executive Engineer, Infrastructure Development Authority, 1st Floor, Udyog Bhawan, East of Gandhi Maidan, Patna - 800004.

... .. Respondent/s

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**Appearance :**

|                      |   |                                                                                                                                                                              |
|----------------------|---|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| For the Petitioner/s | : | Mr. Umesh Prasad Singh, Sr. Advocate (On behalf of:-<br>Mr. Rakesh Kumar, Advocate<br>Mr. Vaibhava Veer Shankar, Advocate<br>Mr. Sameer Sawarn, Advocate<br>Mr. Kumar Saurav |
| For the Respondent/s | : | Mr. Subash Prasad Singh, GA-3<br>Mr. Shiv Kumar, AC to GA-3                                                                                                                  |

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**CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI**  
**and**  
**HONOURABLE MR. JUSTICE ARUN KUMAR JHA**  
**ORAL JUDGMENT**  
**(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)**

**Date : 26-04-2023**

Pursuant to the previous order dated 12.04.2023, Mr. Pankaj Dixit, I.A.S., M.D., I.D.A. is present in the Court to assist in the matter.

02. In the instant petition, petitioner has prayed for the following relief(s):-



*“(i) To quash and cancel the reasoned order as contained in an Order dated 19/20th July, 2021 communicated to the petitioner vide Memo no. 1419/Tech dated 20th July, 2021 (Annexure-P/19) by which 103/SBD/2015-16 executed the between Agreement Infrastructure Development Authority and the Petitioner has been terminated, at the risk and cost of the petitioner forfeiture the performance guarantee; under Clause 1.(iv), Security deposit with the Earnest Money deposited by the petitioner, as also with held the amount of Rs. 1,76, 33,509 crores payable to the petitioner also Rs. 2.85 Crores payable to the petitioner for the extra work executed by the petitioner.*

*(ii) To issue a writ of mandamus restraining the respondents from giving effect to the order / direction as contained in the aforementioned Order dated 19/20 July, 2021 communicated to the petitioner vide Memo no. 1419/Tech dated 20th July, 2021 (Annexure P/19).*

*(iii) To issue mandamus directing the respondents, to pay the outstanding amount for the work executed as per the Bill of quantity: the amount payable with regard to the additional/ extra work and items executed, the Security Deposit and EMD also the amount received by encashing the Bank Guarantees with interest at the rate of 18% per annum from the date the amount became payable and received on encashment of the Bank guarantees.*

*(iv) To issue other appropriate*



*writ/writs, direction / directions as this Hon'ble Court may deem fit and proper in the facts and circumstances of this case.”*

03. The impugned order is relating to forfeiting of Earnest Money Deposit (EMD) and performance guarantee amount. Insofar as forfeiting of performance guarantee issue is concerned, the concerned-respondent has not issued show-cause notice and seeking the petitioner's explanation, in other words, there is violation of principles of natural justice. On this short ground, the petitioner has made out a *prima facie* case, so as to interfere with the order dated 19.07.2021 and, accordingly, it is set aside, reserving liberty to the concerned-respondent to proceed in accordance with law after giving due opportunity of hearing to the petitioner. In this regard, the competent authority is hereby directed to take note of Apex Court's decision in the case of ***UMC Technologies Pvt. Ltd. vs. Food Corporation of India and Anr.***, reported in ***(2021) 2 SCC 551*** and later decision in the case of ***Isolators and Isolators Through Its Proprietor Mrs. Sandhya Mishra vs. Madhya Pradesh Madhya Kshetra Vidyut Vitran Co. Ltd. and Anr.***, reported in ***2023 LiveLaw (SC) 330 (Para-34)*** and principles laid down therein before issuing show-case notice and passing final order on receipt of petitioner's explanation.



04. The above exercise shall be completed within a period of three months from the date of receipt of this order.

05. All the contentions are left open to be urged by the petitioner in his reply to the show-cause notice including the issue decided by Apex Court.

06. The writ petition stands allowed.

07. Pending Interlocutory Application/s, if any, stands disposed of.

**(P. B. Bajanthri, J)**

**(Arun Kumar Jha, J)**

Ashish/-  
Daya/-

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|-------------------|------------|
| AFR/NAFR          | NAFR       |
| CAV DATE          | NA         |
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