

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.230 of 2017

In

Civil Writ Jurisdiction Case No.18488 of 2015

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1. The State of Bihar through the Secretary Department of Road Construction, Government of Bihar, Patna.
 2. The Secretary, Road Construction Department, Government of Bihar, Patna
 3. The Engineer in Chief Cum Additional Commissioner Cum Special Secretary, Department of Road Construction, Government of Bihar Patna.
 4. The Chief Engineer, Department of Road Construction, South Bihar Sub Division, Patna
 5. The Superintending Engineer, East Bihar Circle, Department of Road Construction, Bhagalpur.
 6. The Executive Engineer, Department of Road Construction, Road Division, Munger.
 7. The Executive Engineer, Department of Road Construction, Road Division, Purnea.

... .. Appellant/s

Versus

M/s Topline Infra Projects Pvt. Limited having its place of Business at Ambedkar Chowk, Mirchai Bari, Katihar through its authorized signatory namely Rakesh Kumar Khudania, Son of Sri Nand Lal Khudania, Resident of Deharai Bara Bazar, Police Station and District - Katihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Dinesh Maharaj, Advocate Mr. S.D. Yadav, AAG-9 Mr. A.K. Dubey, AC to AAG-9
For the Respondent/s	:	Mr. Gautam Kumar Kejriwal, Advocate Mr. Atal Bihai Pandey, Advocate Mr. Mukund Kumar, Advocate Ms. Maria Nazir, Advocate

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE ARUN KUMAR JHA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 07-04-2023

In the instant L.P.A., appellant has assailed the order of the learned Single Judge dated 03.02.2016 passed in C.W.J.C. No. 18488 of 2015.



2. The respondent-petitioner Company participated in the NIT of 2012. The petitioner furnished EMD of Rs. 34.66 lacs and 34.91 totally 69.57 lacs. Thereafter, certain procedures have been completed like letter of acceptance and demand to furnish performance security, order of acceptance and demand of security deposit. The petitioner later on failed to accept the work, in the result, the concerned Executive Engineer, Munger returned EMD. The petitioner had also participated in yet another NIT which was in the territorial jurisdiction of Executive Engineer, Purnea.

3. In this backdrop, return of EMD amount to the petitioner was objected by the officials of the concerned department. After noticing this, the Engineer in Chief cum Additional Commissioner cum Special Secretary, Department of Road Construction, Government of Bihar, Patna proceeded to take action through his Executive Engineer, Munger asking him to write a letter to the Executive Engineer, Purnea insofar as recovery of 69.57 lacs from the petitioner. Such communication of recovery by the Executive Engineer, Purnea is a subject matter of litigation in C.W.J.C. No. 18488 of 2015 and it was allowed in favour of the petitioner, hence the present appeal by the State.

4. The State appeal is frivolous for the reasons that Executive Engineer, Purnea has no territorial jurisdiction for issuance of letter of recovery of 69.57 lacs from the petitioner in



respect of subject matter of NIT under the territorial jurisdiction of Executive Engineer, Munger. Further, it is learnt that if there was any dispute, in that event, they had remedy before the arbitrator.

5. Therefore, the present L.P.A. stands disposed of, reserving liberty to the State-appellant to invoke appropriate remedy insofar as disputing whether EMD amount of Rs. 69.57 lacs could be recovered from the petitioner in respect of NIT of the year 2012 which fall under the Executive Engineer, Munger, or not? It is to be noted that petitioner had remedy before Arbitrator or jurisdictional forum. Order passed in C.W.J.C. No. 18488 of 2015 dated 03.02.2016 would not come in the way of invoking appropriate remedy. The learned Single Judge has erred in not providing liberty to the State – appellant.

6. Hence, present L.P.A. stands disposed of, subject to payment of Cost of Rs. 10,000 by the State-appellant. Cost shall be remitted in the Patna High Court Legal Service Committee within a period of 8 weeks from today.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

shoaib/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.04.2023.
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