

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5589 of 2024

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Ramadhar Sah Son of Ramsundar Sah, Resident of Ward No.15 (Now ward No.16), P.S- Sheohar, District- Sheohar, Bihar-843329.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Urban Development and Housing Department, Government of Bihar, Vikas Bhawan, Bailey Road, Patna- 800001.
2. The Managing Director, Bihar Urban Infrastructure Development Corporation Limited, Rajapur Pul, West Boring Canal Road, Patna- 800001.
3. The Chief General Manager, Bihar Urban Infrastructure Development Corporation Limited, Rajapur Pul, West Boring Canal Road, Patna- 800001.
4. The Superintending Engineer, Design, Planning, Monitoring, Bihar Urban Infrastructure Development Corporation Limited, Rajapur Pul, West Boring Canal Road, Patna- 800001.
5. The Project Director, Design, Planning, Monitoring, Bihar Urban Infrastructure Development Corporation Limited, Rajapur Pul, West Boring Canal Road, Patna- 800001.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Mrigank Mauli, Sr. Advocate Mr.Kumar Nikhil, Advocate
For the Respondent/s	:	Mr.Lalit Kishore, Sr. Advocate Mr.Rabindra Priyadarshi, Advocate Mr.Kanishka Sheohar, Advocate Mr.Ayush Kr. Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 08-05-2024

We heard Shri Mrigank Mauli, learned Senior Counsel for the petitioner and Mr. Lalit Kishore, learned Senior Counsel for the respondent.

2. The petitioner is aggrieved with the forfeiture of Earnest Money Deposit (for brevity “EMD”) on his



disqualification, which was also on the ground of false representation having been made. The petitioner applied under Annexure-P-2 Notice Inviting Tender (for brevity “NIT”) for the 6th item, which is the construction of ‘Comprehensive Storm Water Drainage Systems in Patna Nagar Nigam, Khagaul, Danapur Phulwarisharif and the adjoining area in Bihar under Nischay-2’. The EMD deposited was Rs. 0.513 crores and the estimated cost of the work was Rs. 41.29 crores. One of the conditions as per the NIT was that the bidder should have similar experience of 5 years, out of which at least one work should be 50% of the estimated cost of the work tendered for.

3. Admittedly, the petitioner uploaded a document showing the total contract amount as Rs. 2589 lakhs, which on verification was found to be only Rs. 589 lakhs. The petitioner hence fell short of the required experience. The petitioner was disqualified, blacklisted for ten years and the EMD forfeited.

4. The blacklisting order was reduced to two years in compliance of the order produced as Annexure-P-1. The petitioner does not challenge that before us and the petitioner also does not challenge the disqualification. The petitioner’s challenge is only against the forfeiture of EMD.



5. As per the NIT, Clause 16.6 provided for the forfeiture of EMD which is extracted hereunder....

16.6 The Earnest money may be forfeited

(a) if the Bidder withdraws the Bid after Bid opening during the period of Bid validity;

(b) if the Bidder does not accept the connection of the Bid Price, pursuant to Clause 26; or

(c) in the case of a successful Bidder, if the Bidder fails within the specified time limit to

(i) sign the Agreement; or

(ii)Furnish the required Performance Security.

6. Obviously, the forfeiture as per the NIT did not contemplate it as a consequence, in a situation where a false representation has been made. The learned Senior Counsel appearing for the respondent specifically pointed to Annexure-P-9; second show-cause notice, wherein a Government letter was noticed, Memo No. 926 dates 23.07.2018. It is the submission of the learned Senior Counsel that the said letter visited the consequence of forfeiture of EMD in all circumstances where a false representation is made. The submission is that here there is no doubt that a false representation was made and the same has not been challenged by the petitioner also.

7. We do not find ourselves persuaded to uphold the forfeiture of EMD on the basis of a letter which was not incorporated in the NIT. If the conditions in the letter was



incorporated in the NIT, definitely the consequence of forfeiture could have visited the petitioner. Clause 16.6 as we extracted from the NIT does not contemplate a situation of false representation resulting in forfeiture of the EMD.

8. On the above reasoning, we find the forfeiture to be illegal and not in consonance with the NIT. Annexure-P-10 order to the extent it forfeits the EMD is set aside. The petitioner shall be returned the EMD within a period of one month from today, failing which interest @ 6% shall be levied.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

Anushka/-

AFR/NAFR	
CAV DATE	
Uploading Date	09.05.2024
Transmission Date	

