

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7952 of 2024

M/s Shanti Construction A registered partnership Firm having its Office at Jay Prakash Nagar, Karma Road, Aurangabad, P.S.- Town, District- Aurangabad through its partner Shri Ashu Abhinav (male), aged about 39 years, Son of Sri Vishwanath Prasad, Resident of Jay Prakash Nagar, Karma Road, Aurangabad, P.S.-Town, District- Aurangabad, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar Through the Principal Secretary, Road Construction Department, Government of Bihar, Patna.
2. The Principal Secretary, Road Construction Department, Government of Bihar, Patna.
3. The Chief Engineer, South Secretary, Road Construction Department, Government of Bihar, Patna.
4. The Chief Engineer, South, Road Construction Department, Bihar, Patna.
5. The Chief Engineer, North, Road Construction Department, Bihar, Patna.
6. The Executive Engineer, Road Division-1, Aurangabad, Road Construction Department, Government of Bihar.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Ashish Giri, Advocate Mr. Sumit Kumar Jha, Advocate Ms. Riya Giri, Advocate
For the Respondent/s	:	Mr. P.K. Shahi, Advocate General

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 13-05-2024

The short question which has to be answered in the above case is as to whether the Power of Attorney produced by the petitioner is properly stamped or not. Earlier, the petitioner had challenged a similar disqualification in the tender but since the tender itself was cancelled and renotified, he had withdrawn



the said writ petition.

2. The learned Government Advocate as a preliminary objection contended that the very same ground was raised in the earlier writ petition and he cannot agitate the same cause in the subsequent writ petition. We cannot but notice that there was no adjudication on merits as to whether the disqualification was valid or not. There can be no *res judicata* argued against the petitioner for merely withdrawing the writ petition since the ground would not survive for consideration, for the reason of the tender itself having been cancelled.

3. We have heard Mr. Ashish Giri learned Counsel for the petitioner and Mr. Amish Kumar, learned Counsel for the respondents.

4. The petitioner applied under Annexure-P/1 for the construction of North Koel Canal Road (Bara Fall se NH-2 via Mahi Bigha Ramnagar Simri Gosaidih Parsaganesh Mandar Ankorha Khaira Lohapipra Nakayin Malukharira Tak) work for the year 2023-24.

5. By the NIT Clause 2.1.5 the Bidder was to submit a Power of Attorney in the format at Appendix-III authorizing the signatory of the BID to commit the Bidder to the various conditions. Appendix-III is also seen from Page 75 of the



memorandum of the writ petition. Annexure-P/10 series is the affidavit submitted by the petitioner which was stamped with Rs. 200/-. We cannot but observe that this is a very crucial document, which would hold down the bidder, if the work is awarded, to the various terms and conditions of the NIT.

6. Learned Counsel for the petitioner pointed out from the Stamp Act that as per the Bihar Amendment there was no requirement for stamping a Power of Attorney, except in the case of transfer of immovable properties; if it is not done between blood-relations. The relevant provisions of the Stamp Act as amended in the State of Bihar is produced along with the writ petition

7. Under Section 3 a *proviso* was added by the Bihar Amendment Act 16 of 1937, which is as hereinbelow:-

“The following provisions have been added by Bihar Amendment Act 16 of 1937 in this Section.-

1[Provided that except as otherwise expressly provided in this Act and notwithstanding anything contained in Clause (a), (b) or (c) of this Section, the amount indicated in Schedule 1A to this Act shall subject to the exemptions contained in that schedule be the duty chargeable on the following instruments, mentioned in Clauses (aa) and (bb) of this proviso, as the proper duty therefore respectively.

(aa) Every instrument mentioned in Schedule 1-A as chargeable with duty under that Schedule which not having been previously executed by any person is executed in Bihar on or after the first of January 1938; and

(bb) Every instrument mentioned in Schedule 1-A as chargeable with duty under that



Schedule which not having been previously executed by any person is executed out of Bihar on or after the first day of January 1938 and relates to any property situated or to any matter or thing done or to be done in Bihar and received in Bihar:]”

8. Schedule 1A, including Power of Attorney, which is at Item No. 48 of the Indian Stamp Act, applicable to the State of Bihar is as follows:-

48. Power of attorney: As defined by Section 2 (21) not being a proxy;-

1[(a) When given to (a) Same as Conveyance (No. person other than the father, 23) for a consideration or value mother, wife husband, sons, as fixed in MVR of the property daughters, brothers, sisters formally subject matter of such (children of executants parents), authority, whichever is more. wife of son, grandson, granddaughter (children of executants son/ daughter) in relation to the executants authorizing such person to sell or transfer immovable property situated in the State of Bihar.

(b) When given to blood (b) Rs. 1000/- (Rupees One relations as mentioned in thousand) column (a) authorizing to sell or transfer immovable property, or When required in suits or proceedings in a court, or Given for purposes other than authorizing to sell or transfer or convey immovable property situated in the State of Bihar.

The controversy revolves around the interpretation of Item No. 48 (b).

9. Learned Counsel would submit that only when power is conceded for any matter, to blood relations would there be a



requirement of Rs. 1000/-. We are unable to countenance the said contention.

10. Clauses (a) and (b) of Item no. 48 in Schedule-1A of the Indian Stamp Act has to be read together. Clause-(a) makes any power executed in favour of the persons other than blood relations, authorizing such person to sell or transfer immovable property situated in the State of Bihar, requiring stamp duty as in a conveyance. Clause-(b) first provides that when such sale or transfer of immovable property is executed in favour of blood relations then the document has to be stamped only with Rs. 1000/-. Clause-(b) in the second limb goes on to say that any other Power of Attorney, i.e. other than power authorizing sale or transfer of immovable property also requires to be stamped with Rs. 1000/-. It cannot be said that every transaction, other than sale or transfer of immovable property, which has to be stamped with Rs. 1000/- is only when power is conceded to blood relations.

11. What comes out from Clause-(b) is that any Power of Attorney authorizing blood relations for sale or transfer of immovable property, should be stamped with Rs. 1000/-. In other words, sale or transfer of immovable property, if authorized to a third party, other than blood relations, then it



would have to be stamped as in conveyance. Any other Power of Attorney executed for sale or transfer of immovable property authorising blood relations and that executed for any other purpose would have to be stamped with Rs. 1000/-. That executed for any purpose other than for sale or transfer of immovable property being stamped with Rs. 1000/-; irrespective of whether the parties to the Power of Attorney are blood relations or not. The Power of Attorney submitted by the writ petitioner is grossly deficient.

12. We reject the contention of the petitioner and as a consequence reject the writ petition *in limine*.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

ranjan/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	17.05.2024
Transmission Date	NA

