

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14536 of 2024

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Mahendra Kumar, a proprietorsip firm, having its registered office ward no.8,
At + Post- Shishwa (Sarsawa), Police Station - Chautam, District - Khagaria
through its proprietor namely Mahendra Kumar (Male), aged about 49 years,
Son of Late Ramotar Yadav, resident of Ward No.8, Post- Shishwa (Sarsawa),
Police Station - Chautam, District- Khagaria.

... .. Petitioner/s

Versus

1. The State of Bihar through Additional Chief Secretary, Rural Works Department, Government of Bihar, Patna.
2. The Additional Chief Secretary, Rural Works Department, Government of Bihar, Patna.
3. The Engineer-in-Chief, Rural Works Department, Government of Bihar, Patna.
4. The Chief Engineer, Rural Works Department, Government of Bihar, Patna.
5. The Superintending Engineer, Rural Works Department, Government of Bihar, Patna.
6. The Executive Engineer, Rural Works Division- Simri Bakhtiyarpur, Rural Works Department, Government of Bihar, Patna.

... .. Respondent/s

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with

Civil Writ Jurisdiction Case No. 14629 of 2024

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Mahendra Kumar, a proprietorsip firm, having its registered office ward no.8,
At and Post- Shishwa (Sarsawa), Police Station - Chautam, District -
Khagaria through its proprietor namely Mahendra Kumar (Male), aged about
49 years, Son of Late Ramotar Yadav, resident of Ward No.8, Post- Shishwa
(Sarsawa), Police Station - Chautam, District- Khagaria.

... .. Petitioner/s



Versus

1. The State of Bihar through Additional Chief Secretary, Rural Works Department, Government of Bihar, Patna.
2. The Additional Chief Secretary, Rural Works Department, Government of Bihar, Patna.
3. The Engineer-in-Chief, Rural Works Department, Government of Bihar, Patna.
4. The Chief Engineer, Rural Works Department, Government of Bihar, Patna.
5. The Superintending Engineer, Rural Works Department, Government of Bihar, Patna.
6. The Executive Engineer, Rural Works Division- Simri Bakhtiyarpur, Rural Works Department, Government of Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Sanjeev Kumar, Advocate
Mr. Pravashankar Mishra, Advocate
For the Respondent/s : Mr. P.K. Shahi, Advocate General
Mr. Vikas Kumar, AC to AG

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 26-10-2024

The petitioner is aggrieved with Annexure-P/10 (in CWJC No. 14536 of 2024) and Annexure-P/9 (in CWJC No. 14629 of 2024), which cancelled the Letter of Acceptance (LOA) issued to the petitioner with respect to two works he applied for under Annexure-P/1 Notice Inviting Tender (NIT) and was declared L-1.



2. The brief facts to be noticed are that the NIT issued by the respondents was for carrying out construction and maintenance work of roads. The petitioner had applied under Serial No. 44 and 45. CWJC No. 14536 of 2024 is with respect to Serial No. 45 and CWJC No. 14629 of 2024 is with respect to Serial No. 44. The facts are identical and hence, we refer to CWJC No. 14536 of 2024.

3. The petitioner having been issued with LOA, was issued with Annexure-P/3 order dated 23.02.2024, which directed furnishing of Performance Security and additional security within 10 days of the LOA and also execution of the agreement.

4. Learned Counsel for the petitioner submits that immediately, within 5 days, i.e., within the period in which the Performance Guarantee had to be furnished, the petitioner responded with Annexure-P/4 dated 28.02.2024 requesting handing over of the land. It is contended that there were two other contracts he had bid and was successful in which the land was not handed over. The petitioner hence, had not furnished the Performance Guarantee or executed the agreement, only for reason of failure of the respondents to hand over the lands. The petitioner also submits that even today, he is ready to take up the



work and he would pay up the Performance Guarantee within 24 hours.

5. The learned Advocate General, on the other hand, submits that the petitioner's case is squarely covered by Clause 30.3 of the NIT. It is submitted that a fresh tender has also been issued and the last date was 17.10.2024, which proceeding is on-going.

6. Clause 30.3 reads as under:-

“30.3 Failure of successful bidder to comply with the requirement of delivery of Performance Security of two and a half percent of Contract Price plus additional security for unbalanced bids as per provisions of Clause 30.1 shall constitute sufficient ground for cancellation of award and forfeiture of the Bid Security. Such successful bidder who fails to comply with the above requirements is liable to be debarred from participating in bids under PMGSY for a period of one year.”

7. Admittedly, the petitioner did not furnish the Performance Guarantee; the petitioner's claim for handing over of land even before furnishing of Performance Guarantee and execution of agreement, cannot at all be countenanced. The petitioner has failed to comply with the conditions of the NIT and has to face the consequences.

8. We find absolutely no reason to interfere with Annexure-P/10 order (in CWJC No. 14536 of 2024) and



Annexure-P/9 order (in CWJC No. 14629 of 2024), produced in the respective writ petitions, which is with respect to forfeiture of Performance Guarantee.

9. The writ petitions are dismissed, *in limine*.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

P.K.P./-.

AFR/NAFR	
CAV DATE	
Uploading Date	28.10.2024
Transmission Date	

