

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15901 of 2023

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Savitri Surendra Security Pvt. Ltd. having its Registered Office at Flat No. D -402, Vamika Enclave, Murli Chak, near Majar, Jagdeo Path, P.S.- Hawai Add, District Patna, through its Director, Sandip Kumar, aged about 47 years, Male, son of Late Surendra Prasad Singh, Presently residing of Flat No. D-402, Vamika Enclave, Murli Chak, near Majar, Jagdeo Path, P.S.- Hawai Adda, District Patna, Permanent resident of Village and P.O.- Ekdanga, P.S.- Belchhi, District- Patna, Bihar.

... .. Petitioner/s

Versus

1. The Bihar Police Building Construction Corporation, B.M.P.-5 Campus, Patna through its Chairman cum Managing Director.
2. The Chairman cum Managing Director, Bihar Police Building Construction Corporation, B.M.P.-5 Campus, Patna.
3. The Chief Engineer, Bihar Police Building Construction Corporation, B.M.P.-5 Campus, Patna.
4. The Superintending Engineer, Works Circle-2, Bihar Police Building Construction Corporation, B.M.P.-5 Campus, Patna.
5. The Executive Engineer, Bihar Police Building Construction Corporation, B.M.P.-5 Campus, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Prabhat Ranjan, Advocate

For the Respondent/s : Mr. Prasoon Sinha, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

15 11-09-2024 The petitioner was a bidder under a Notice Inviting Tender issued by the respondents-authorities produced as Annexure-P/1. The petitioner was the successful bidder under Serial Nos.5 and 9. The petitioner in the above writ petition is concerned with the forfeiture of his EMD.



2. Admittedly, the petitioner was blacklisted for reason of producing forged experience certificate. The blacklisting was for an indefinite period which *suo motu* was converted to a five year period. An appeal was filed in which the blacklisting was confined upto the last date of the financial year which ceased on 31.03.2024.

3. The learned Counsel for the petitioner submits that the forfeiture as per Annexure-P/8 series was only on the ground that an FIR has been registered with respect to the forged documents submitted.

4. We have seen Annexure-P/8 series, both of which orders speak only of the FIRs instituted before the Patna Airport Police Station for an act of forgery.

5. The Standard Bidding Document contains Clause 16.6 which enables forfeiture of EMD. Clause 16.6 is extracted herein below:

“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 correction 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. We have to observe that the forgery of a document or the registration of an FIR is not a situation contemplated under the Standard Bidding Document (SBD) for the purpose of forfeiture of earnest money deposit.

7. The learned Counsel for the respondent-Corporation points out from the supplementary counter affidavit that the petitioner had also not signed the agreement, despite notices having been issued as per Annexure R/k and R/l. The non-signing of an agreement would definitely enable forfeiture of earnest money deposit as per the above extracted clause. However, on the basis of the verification made of the experience certificate, the award itself was not carried out. In such circumstances, the question of signing of agreement pales into insignificance.

8. We also have to notice that the reason stated in Annexure P/8 series is that an FIR was registered, for the act of forgery, in the Patna Airport Police Station on which ground alone the forfeiture was made. Reliance can be usefully made to *Mohinder Singh Gill & Anr. vs. The Chief Election Commissioner, New Delhi & Ors. [(1978) 1 SCC 405]* which held that a counter affidavit cannot supplement reasons, which are not available in the orders passed.



9. We hence set aside Annexure P/8 series and direct the respondent-authorities to refund the EMD.
10. The writ petition stands allowed.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

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