

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No. 2146 of 2016

In
Civil Writ Jurisdiction Case No.2812 of 2013

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Bihar State Road Transport Corporation

... .. Appellant/s

Versus

1. Eden Transport Private Limited and Ors Son of Jaleshwar Rai Flat No-7 Third Floor, Loudan Street, Kolkata- 700017
2. Chief Mechanical Engineer C.M.E., Bihar State Road Transport Corporation, Sultan Palace, Veer Chan
3. Additional Chief Administrator ACA Bihar State Road Transport Corporation, Sultan Palace, Veer Cha

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr.Mukul Sinha, Advocate
For the Respondent/s	:	Mr. Abhinav Srivastav, Sr. Advocate
		Mr.Raushan, Advocate
		Mr. Sahil, Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and

HONOURABLE MR. JUSTICE S. B. PD. SINGH
ORAL JUDGMENT

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

Date : 01-07-2025

The appellant has assailed the order of the learned Single Judge dated 28.05.2016 passed in CWJC No. 2812 of 2013, core issue involved in the present lis is respondent – *Eden Transport Private Limited* is into the transportation business. Pursuant to number of NITs, respondent No. 1 has participated and he was successful in some NITs and unsuccessful in some



NITs. The respondent was unsuccessful to any of the route under NIT vide Annexure-5, on the other hand he was successful in some other NIT. Insofar as NIT Annexure-5 is concerned, he is stated to have deposited a sum of Rs. 57,10,000/- . In the ordinary course, when he was unsuccessful bidder in Annexure-5, it was bounden duty of the appellant to refund the EMD amount of Rs. 57,10,000/-. The same was not refunded to the respondent. On the other hand, respondent was due a sum of Rs. 57,10,000/- in respect of certain successful bid in some other NIT. The same is required to be adjusted or not, is a subject matter of litigation. In this regard, respondent preferred a petition CWJC No. 2812 of 2013. The learned Single Judge proceeded to allow the writ petition. Feeling aggrieved by the order of the learned Single Judge, appellant – *Bihar State Road Transport Corporation* preferred LPA No. 2146 of 2016.

2. Learned counsel for the appellant – *Bihar State Road Transport* corporation submitted that the learned Single Judge has not taken note of undertaking given by the appellant vide Annexure-G to the counter affidavit, such undertaking is dated 21.09.2015. Reading of the proposal to settle the old dues and proceed with the payments which is the subject matter of petitioner's communication dated 22.09.2015 to the appellant



herein. It is crystal clear that respondent had given an undertaking for the purpose of adjustment and also quoted adjustment has been shown within “Annexure-01”, this has not been taken note of by the learned Single Judge while passing order, therefore order of the learned Single Judge is required to be interfered.

3. Learned counsel for the respondent submitted that there is no infirmity in the order of the learned Single Judge, the proposal or undertaking given by the respondent dated 22.09.2015 is only a proposal therefore it shall not be treated as admission for adjustment of a sum of Rs. 57,10,000/- towards the EMD amount to be adjusted. It is further submitted that in respect of successful bid and proposal for adjustment of EMD of Rs. 57,10,000/- is a subject matter of litigation. In such circumstances, respondent is entitled for refund of EMD of Rs. 57,10,000/- vide NIT (Annexure-5 of the writ petition).

4. Heard the learned counsels for the respective parties, the appellants should have been invoked remedy of filing of Civil Review before the learned Single Judge, having regard to the fact that along with the counter affidavit filed on behalf of the appellant they had furnished proposal/undertaking given by the respondent dated 22.09.2015 was not argued or



taken into consideration. It is to be noted that learned Single Judge passed the order dated 28.01.2016 in the open Court, therefore it was bounden duty of the appellant counsel to point out in respect of consideration of proposals/undertaking given by the respondent dated 22.09.2015. Even though, matter is required to be remanded. Having regard to the fact that the present LPA is pending consideration for the last about nine years and disputed issue is relating to whether respondent is entitled to refund of EMD amount of Rs. 57,10,000/- vide NIT (Annexure-5 to the writ petition) or not. If the respondent has not given such proposal or undertaking of adjustment of Rs. 57,10,000/- towards certain dues to the appellant, in that event, the contention of the respondent is in order to the extent that he is entitled to EMD a sum of Rs. 57,10,000/- pursuant to the NIT vide Annexure-5 to the writ petition.

5. Having regard to the admitted fact that respondent requested the authorities to adjust the amount of EMD of Rs. 57,10,000/- and the same has not been taken note of by the learned Single Judge. It is necessary to interfere with the learned Single Judge order in view of the letter dated 22.09.2015 proposals/adjustment on behalf of the respondent. It is necessary



to reproduce the letter of the respondent dated 22.09.2015 and it reads as under:-

“Date:22.09.2015

To

Shri K K Chaubey

Consultant Operations cum Chief of Operations

BSRTC

Patna

Subject: Proposal to settle the ord dues and proceed with payments.

Dear Sir,

Based on series of meetings held in your office in presence of CME, BSRTC Shri Rajesh Jha and Consultant PPP Shri Suresh Prasad, we proposed below mention solution for closure of outstanding issues and settlement of disputes between Eden Transport Private Limited (ETPL) & BSRTC.

1) We understand that your Letter No: 3782, Dated 08/09/2015 is in context of waiver of Siwan's royalty amount as you are aware that buses do not operate from Siwan Depot. No infrastructure has been provided by BSRTC and hence buses are forced to leave from roadside. Although Siwan buses hardly stop at Chapra Depot but as a compromised solution we are ready to pay the royalty amount till Chapra as we have been allotted space inside depot premises.

2) You are aware of the fact that buses did not operate as expected because so many issues cropped up between BSRTC & ETPL for various reasons. With effect from Feb 2013 BSRTC charges 07% of royalty from other operators who are not willing to enjoy subsidy. I request BSRTC on account of Inter City



Services that ETPL's calculations should be done on 07% scheme and in that case ETPL should be ready to forgo the demand of subsidy on this particular fleet.

3) We accept this calculation based on actual operations done by our buses on Patna Chapra & Siwan routes without any penalty charges as we have cooperated fully in order to settle the disputed agendas on our mutual understanding of the above. To prove our intent in order to solve the issue and improve the public transportation services, we have deposited an amount of Rs 20 Lakhs in the month of July 2015. Also, amount of royalty is being paid on regular monthly basis these days.

4) We request to adjust the amount of EMD of Rs 57.10 Lakhs which was paid against various routes on which operations could not start. This amount of EMD is refundable to ETPL. Its adjustment has been shown in "Annexure 01".

5) Details of Calculations have been attached in "Annexure 01", based on which payment shall be done, subject to approval from BSRTC. In "Annexure 01" the calculations have been done based on the actual operations done by our buses on Patna Chapra Siwan routes. Anything mentioned, claimed or compromised in this letter is based on discussions held in good will in your office and subject to approval from BSRTC in order to settle the disputes and proceed with the payments. This is without prejudice to our rights.



We kindly request you to kindly reply in acceptance of this proposal so that we can move ahead with the payment procedures.”

[Underline supplied]

6. Tenor and intention of the respondent, in furnishing proposal/undertaking and without withdrawal of such plea, it is evident that he had given consent for the purpose of adjustment of EMD of Rs. 57,10,000/- with reference to “Annexure-01” which has been quoted by the respondent in his communication dated 21.09.2015 cited supra, suffice to hold that respondent is not entitled to refund of Rs. 57,10,000/- paid with reference to NIT vide Annexure-5 read with deposit of EMD. Accordingly, order of the learned Single Judge stands modified to the above extent that respondent is not entitled to refund of EMD Rs. 57,10,000/- which has been adjusted.

7. Reserving liberty to the respondent to pursue his other litigations in respect of certain dues against appellant-corporation. LPA No. 2146 of 2016 stands allowed in part.

(P. B. Bajanthri, J)

(S. B. Pd. Singh, J)

Ankit Kumar/-

AFR/NAFR	NA
CAV DATE	NA
Uploading Date	10.07.2025
Transmission Date	NA

