IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1271 of 2024
In
Civil Writ Jurisdiction Case No.15034 of 2014

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1. The Secretary, Health-cum-Executive Director, State Health Society, Bihar, Swasthya Bhawan, Sheikhpura, Patna.
2. The State Programme Officer, State Health Society, Bihar, Swasthya Bhawan, Sheikhpura, Patna.

... ... Appellant/s

Versus

1. M/s Suraksha Diagnostics Pvt. Ltd. A company incorporated under the Companies Act, having its registered office at DD-18/1, Salt Lake City, Sector-1, Kolkata-700091, through one of its Directors namely Shri Raman Kejriwal, son of Shri K.K. Kejriwal, resident of JC21, Salt Lake City, Sector-3, Kolkata-700098.
2. The State of Bihar through Principal Secretary, Department of Health and Family Welfare Govt. of Bihar, Patna.

... ... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. P.K. Shahi, Sr. Advocate Mr. Kishore Kumar Sinha, Advocate
For Respondent No. 1	:	Mr. Ashish Giri, Sr. Advocate Ms. Riya Giri, Advocate
For the State	:	Mr. Anil Kr. Verma, AC to AAG-9

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

Date : 24-04-2025

Heard Mr. P.K. Shahi, the learned Senior Advocate assisted by Mr. K.K. Sinha for the appellant/Secretary, Health-cum-Executive Director, State Health Society, Bihar and Mr. Ashish Giri, the learned Senior Advocate for the respondent No. 1.

2. By the impugned judgment dated 09.08.2024, the appellant/Society has been directed to refund the amount of bank guarantee of Rs. 1.5 crores along with 9% simple interest to the respondent No. 1 from the date of its encashment.

3. The matter was argued on merits. However, later, it transpired during the course of hearing that the appellant/Society is agreeable to refund the amount of Rs. 1.5 crores (Rs. 30 lacs for each work), which had been deposited as earnest money by respondent No. 1, but only when no interest on such amount is insisted upon.

4. To recapitulate the facts in short, the appellant/ Society had floated a RFP for design, installation, refurbishment, operationalization and maintenance of imaging centres in six Government Medical Colleges and Hospitals on 07.03.2014. The respondent No. 1 had participated in the bid and his

proposal was accepted. He had also agreed to enter into a Memorandum of Understanding (MoU), the draft of which was first provided to him on 11.08.2014. There were communications between the parties for making necessary changes in the MoU for it to be finally accepted. However, because of the delay in the MoU being finalized, the earnest money which was deposited by way of five bank gurantees of Rs. 30 lacs each, was encashed by the appellant.

5. After the encashment of the bank guarantees by the State, the respondent No. 1 made a communication with the appellant that the amount be returned as the respondent No. 1 would not be interested in continuing with the process of finalizing the MoU.

6. While assailing the decision of the appellant in encashing the bank guarantee even before the term of the bank guarantee had expired, Mr. Giri, the learned Senior Advocate has argued that the action

itself manifestly demonstrates that the decision was discriminatory and for no reason, hostile. All that the respondent No. 1 wanted, was amendment in the clauses of the MoU, which could either have been refused or allowed. But without responding to the last of the communications, the earnest money deposited through bank guarantees could not have been unilaterally encashed.

8. Opposing to the aforenoted contentions, Mr. Shahi, the learned Senior Advocate for the appellant has contended that the encashment of bank guarantee was under the provisions of the finance regulation of the State of Bihar, permitting the tenderer to encash the bank guarantee deposited by way of earnest money for the failure of the party to agree and sign the MoU for commencing the work.

9. Responding to the aforenoted agreement, Mr. Giri has submitted that even if it were the case, merely because the term of the bank guarantee was

expiring, such a decision could not have been taken and the appellant ought to have awaited till the last date of the validity of the bank guarantee. The decision, Mr. Giri submitted, was in haste and with a hostile intent.

10. Nonetheless, with the parties agreeing over the issue of refund of the encashed amount to the respondent No. 1 within a fortnight, but without any interest, which had been directed by the learned Single Judge, we deem it appropriate to record the consent of the parties for the aforenoted arrangement.

11. The appellant/ Society shall have the amount so encashed but no interest thereon, refunded to the respondent No. 1 within a period of 15 days, to be counted from today, the acceptance of which shall be the end of the litigation on this aspect of the matter.

12. The appeal stands disposed off accordingly with the aforenoted modification in the

judgment of the learned Single Judge.

(Ashutosh Kumar, ACJ)

(Partha Sarthy, J)

Rajesh/Saurabh

AFR/NAFR	NAFR
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