

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1699 of 2026

JSP Projects Pvt. Ltd., having its registered office at E-27, Ground Floor, Geetanjali Enclave, Malviya Nagar, New Delhi- 110017, through its Authorised Representative, Mr. Saurabh Tyagi (Male), aged about 43 years, son of D. K. Tyagi, resident of Village Dhanaura, P.O. and P.S. Hapur, Dist. Hapur, U.P., PIN- 245101, at present residing at Flat no. G-1, Block C, Indraprast Apartment, Ramesh Colony, Daryapur Road, Kurthoul, Patna-804453.

... .. Petitioner

Versus

1. The State of Bihar through the Secretary, Road Construction Department, Bihar, Patna.
2. The Secretary, Road Construction Department, Bihar, Patna.
3. The Bihar State Road Development Corporation Ltd., Patna, in the matter of Tender for Constructions of Chhapra- Majhi-Darauli Guthani Road in the State of Bihar under Civil Works Contract Package No. BSHP- IV (Phase 1)/ Pkg 3, through its Managing Director, BSRDCL, Patna.
4. The Managing Director, BSRDCL, Patna.
5. The Chief General Manager, BSRDCL, Patna.

... .. Respondents

Appearance :

For the Petitioner	:	Mr. Manish Gupta, Advocate, Mr. Ray Saurabh Nath, Advocate, Mrs. Manjari Nath, Advocate, Mrs. Shalini Sinha, Advocate and Mr. Akshat Kumar, Advocate
For the State	:	Mr. Vikash Kumar, SC-11
For the BSRDCL	:	Mr. P.K. Shahi, Sr. Advocate and Mr. Manish Dhari Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
and
HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

5 18-03-2026 Heard learned counsel for the petitioner through
video conferencing, learned counsel for the State and learned



senior counsel for the B.S.R.D.C.L.

2. The following reliefs have been sought in the present writ application:

*1. For seeking the indulgence of the Hon'ble High Court to set aside the letter dated 16.12.2025 and letter dated 26.12.2025 issued by the Respondent No. 3 i.e., Bihar State Road Development Corporation Ltd., Patna (hereinafter referred as "**BSRDCL**") wherein it has been demanded an additional unconditional Bank Guarantee of Rs. 42,99,04,895/- (Rupees Forty Two Crores Ninety Nine Lakhs Four Thousand Eight Hundred and Ninety Five Only) on account of "Abnormally Low Bid" (hereinafter referred as "**ALB**") and above the performance unconditional Performance Bank Guarantee of Rs. 19,19,21,829/- (Rupees Nineteen Crores Nineteen Lacs Twenty One Thousand Eight Hundred and Twenty Nine Only) being 5% of the Contract value. The said decision of the Respondent No. 3 is directly in contravention of Clause 38.2(b) of the Instruction of Bidders (hereinafter referred as "**ITB**") being part of the Tender.*

3. The brief facts of the present case is that a tender



was floated by the respondent authorities for construction of Chhapra–Majhi–Darauli–Guthani Road. The petitioner participated in the said tender process and was declared the lowest bidder (L-1). Pursuant thereto, a Letter of Acceptance dated 16.12.2025 was issued in favour of the petitioner, wherein the petitioner was also required to furnish an additional unconditional Bank Guarantee of Rs. 42,99,04,895/- on the ground that its bid was an Abnormally Low Bid (ALB). The petitioner, being aggrieved by the said condition, submitted a objection/ representation dated 17.12.2025 objecting to the demand of the additional Bank Guarantee. It is the case of the petitioner that the said representation was not considered and, in the meantime, the respondents reiterated the demand vide communication dated 26.12.2025.

4. By order dated 16.12.2025, the following order was passed by the Chief General Manager, B.S.R.D.C.L.

“ Sub: Construction of Chhapra-Manjhi-Darauli-Guthani Road in the State of Bihar under Civil Works Contract Package No. BSHP-IV (Phase-1) Pkg-3.

Sir,

This is to notify you that your bid dated 22.07.2025 for execution of ‘Construction of Chhapra-Manjhi-Darauli-Guthani Road in the State of Bihar under Civil Works Contract Package No. BSHP-IV



*(Phase-1)/Pkg-3' in the State of Bihar under Civil Works Contract Package No. BSHP-IV (Phase-1) Pkg-2' for the Contract Price in the equivalent of **INR 383,84,36,563.34 (Indian Rupees Three Hundred Eighty-Three Crore Eighty-Four Lakh Thirty-Six Thousand Five Hundred Sixty-Three and Paise Thirty-Four)** only exclusive of GST is hereby accepted by Bihar State Road Development Corporation Ltd.*

*You are requested to furnish an unconditional Bank Guarantee amounting to 5% of Contract Price, i.e., **INR 19,19,21,829/-** (Indian Rupees Nineteen Crore Nineteen Lakh Twenty-One Thousand Eight Hundred Twenty-Nine) only towards Performance Security as per Section-8 of ADB's SBD.*

*As your bid is found to be on the lower side, you are further requested to furnish an unconditional Bank Guarantee amounting to **INR 42,99,04,895** (Indian Rupees Forty-Two Crore Ninety-Nine Lakh Four Thousand Eight Hundred Ninety-Five) only towards an Additional Performance Security in accordance with the Clause 38.4 (b) of ITB.*

The above said Bank Guarantee(s) towards Performance Security and Additional Performance Security shall



*be submitted **within 28 days** of the receipt of Notification of Award and shall be in the form acceptable to the Employer in accordance with Clause 45 of ITB.”*

5. When the matter was taken up on 16.02.2026, a query was put by this Court as to whether the representation submitted by the petitioner was still pending consideration before the competent authority. Upon the same being taken note of, the respondents were required to ascertain the position of the said representation.

6. Learned counsel for the petitioner submits that the impugned action of the respondents in demanding additional Bank Guarantee is wholly arbitrary, illegal and contrary to the terms and conditions of the tender. It is submitted that the action of the respondents is in clear contravention of Clause 38.2(b) read with Clause 38.3 of the Instructions to Bidders (ITB), which mandates that in cases of an alleged Abnormally Low Bid, the Employer is required to first seek a written explanation from the bidder and undertake an objective evaluation of the justification furnished before taking any adverse decision. It is submitted that in the present case, without adhering to the aforesaid mandatory procedure, the respondents have straightaway imposed the condition of furnishing additional



Bank Guarantee, rendering the impugned communications unsustainable in law.

7. Learned counsel for the respondents, referring to the supplementary counter affidavit, has brought to the notice of this Court that in compliance of the order dated 16.02.2026, the representation of the petitioner has been duly considered and a reasoned order bearing Order No. 853/2026 dated 08.03.2026 has already been passed, which has been brought on record vide Annexure 5A to the supplementary counter affidavit.

8. Upon perusal of the materials available on record and having heard learned counsel for the parties, it transpires that the primary grievance of the petitioner in the present writ petition is directed against the communications dated 16.12.2025 and 26.12.2025, whereby the petitioner was called upon to furnish additional Bank Guarantee, and the consequential grievance is that its representation dated 17.12.2025 was not considered by the respondents.

9. It further transpires that during the pendency of the present writ petition, this Court, vide order dated 16.02.2026, had specifically directed the respondents to ascertain the position of the representation of petitioner. In pursuance thereof, the respondents have now passed a detailed



and reasoned order dated 08.03.2026.

10. Since the order dated 08.03.2026 has been passed on the representation of the petitioner and the same is not under challenge in the present proceedings, this Court finds no occasion to examine the merits thereof. However, if the petitioner remains aggrieved by the said order dated 08.03.2026, he has always liberty to take a legal recourse against the said order.

11. In such circumstances, the cause of action, as originally pleaded in the writ application, stands surpassed by the subsequent development, namely, the passing of the final order dated 08.03.2026. Once a final, reasoned order has been passed by the competent authority on the subject matter of dispute, the earlier communications merge into the said final decision and it is the said order which governs the field.

12. At this juncture, it is pertinent to take note of the judgment rendered by the Hon'ble Supreme Court while deciding the case of *Kunhayammed and Ors. vs. State of Kerala* reported in (2000) 6 SCC 359, wherein it has been observed that the doctrine of merger is not of universal application but postulates that once a superior forum or competent authority has passed a final order, it is that order



which subsists and governs the rights of the parties. The relevant part of the said order reads as follows:

“44. To sum up, our conclusions are:

(i) Where an appeal or revision is provided against an order passed by a court, tribunal or any other authority before superior forum and such superior forum modifies, reverses or affirms the decision put in issue before it, the decision by the subordinate forum merges in the decision by the superior forum and it is the latter which subsists, remains operative and is capable of enforcement in the eye of law....”

13. This Court also finds that the reliefs sought in the present writ petition are confined to the earlier communications dated 16.12.2025 and 26.12.2025, which now stand subsumed in the final order dated 08.03.2026. In such circumstances, adjudication of the said communications in isolation would not be appropriate. Moreover, this Court refrains from entering into the merits of the case at this stage, as the same would necessarily involve examination of the correctness of the reasoned order dated 08.03.2026, which is not under challenge in the present proceedings.

14. Considering the fact that a final order has



already been passed during the pendency of the writ application, this Court is of the considered view that no further order is required to be passed in the present writ application in relation to the reliefs originally sought.

15. Accordingly, the writ petition stands disposed of.

16. However, the petitioner, if so advised, shall be at liberty to challenge the order dated 08.03.2026 in accordance with law.

17. Pending application(s), if any, shall also stand disposed of.

(Sudhir Singh, J)

(Shailendra Singh, J)

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