

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7718 of 2025

M/s Halcons through its working partner Mr. Binod Kumar Singh, Aged about 53 Years (Male), Son of Late Deo Kumar Singh, Resident of Mohalla- South Chitragupta Nagar, Behind Sanjeevani Hospital, Kankarbagh P.O- Lohia Nagar, P.S-Patrakar Nagar, District- Patna-800020.

... .. Petitioner/s

Versus

1. Bihar Police Building Construction Nigam through its Chairman-cum Managing Director, Kautilya Nagar, B.M.P-5 Campus, Patna-800014.
2. The Chairman-cum-Managing Director, Bihar Police Building Construction Nigam, Kautilya Nagar, B.M.P-5 Campus, Patna-800014.
3. The Chief Engineer, Bihar Police Building Construction Nigam, Kautilya Nagar, B.M.P-5 Campus, Patna-800014.
4. The Superintending Engineer-2, Bihar Police Building Construction Nigam, Kautilya Nagar, B.M.P-5 Campus, Patna-800014.
5. The Executive Engineer, Bihar Police Building Construction Nigam, Muzaffarpur Division camp Hajipur.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Rajendra Narain, Sr. Adv.
	:	Mr. Manish Sahay, Adv.
	:	Mr. Anil Kumar Sinha, Adv.
	:	Mr. Siddhartha Aditya, Adv.
	:	Mr. Amrit Kirti, Adv.
	:	Mr. Aman Raj, Adv.
For the Respondent/s	:	Mr. Prasoon Sinha, Adv.

CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY
ORAL JUDGMENT

Date : 08-07-2026

Heard the learned counsel for the parties.

The present writ petition has been filed for the following
relief(s):-

“(I) For commanding and directing the concerned Respondent to refund a sum of Rs. 18,51,464/-(Rupees Eighteen Lakhs Fifty One Thousand Four Hundred Sixty Four) only in favour of the petitioner which was deposited by him through online as Earnest Money (i.e. EMD) in his following tenders arising out of NIT No. 26 / SBD /2023-24.



Sl.	NIT No.	Name of Works	Group Nos.	Amount of Earnest Money
1.	NIT No. 26/SBD/202 3-24	Construction of Model Police Station Building (G+2 Structure), Out House with Electrification at Jaitpur O.P in the District of Muzaffarpur.	GR No. 09	Rs. 9,03,943/-
2.	NIT No. 26/SBD/202 3-24	Construction of Model Police Station Building (G+2 Structure), Out House with Electrification at Jaitpur O.P in the District of Muzaffarpur.	GR No. 18	Rs. 9,47,521/-
Total				Rs. 18,51,464/-

(II) For declaring that the actions of the respondents are arbitrariness, colourable exercise of powers, discriminatory as well as against the law.

(III) For passing such an order or orders for which the petitioner would be entitle in accordance with law in the facts and circumstances of this case.”

3. Learned counsel appearing on behalf of the petitioner submits that pursuant to the NIT issued by the respondent authority vide Inviting Tender No. 26 / SBD /2023-24, the petitioner has participated in the said bids. However, the technical bids of the petitioner were rejected on the ground that the experience certificate was not proper and correct and for which an FIR was lodged against the partners of the petitioner’s firms bearing Hawaii Adda P.S. Case No. 43 of 2024. That the authorities have issued a fresh NIT solely on the ground that two bidders who have participated in the tender process remained non-responsive and the technical bids were rejected. Thereafter, on the basis of the fresh NIT, the work was allotted to some other contractors and the



work has been completed. That when the petitioner has made a request for refund of the earnest money deposited (EMD) to the tune of Rs. 18,51,464/- for above two tenders (group 9 & 18), the authorities did not refund the same. Therefore, the petitioner left with no other alternative has to approach this Hon'ble Court. Learned counsel submits that as per Clause 16.6 of the instruction to the bidders of the Standard Bidding Document (SBD), the EMD by the bidders can be forfeited only on the grounds enumerated therein but not otherwise. That the technical bids of the petitioner were rejected on the ground that the petitioner had submitted false experience certificate and the said ground is not available under Clause 16.6. Learned counsel has therefore, prayed this Hon'ble Court to allow the present writ petition and direct the respondents to refund the EMD amount of Rs. 18,51,464/- by fixing a time-frame.

4. *Per contra*, the learned counsel appearing on behalf of the respondent-State has vehemently opposed the very maintainability of the present writ petition. Learned counsel has stated that the petitioner had filed a false experience certificate and for which an FIR was also lodged. Further, the petitioner after opening of the technical bids was non-responsive and therefore, the authority has taken a decision to forfeit the EMD amount paid



by the petitioner. Learned counsel has stated that as per terms and conditions of the NIT, the authorities are well within their rights to forfeit the EMD amount if the participants have played any fraud or submitted false documents.

5. In order to resolve the issue involved in the present writ petition, it is necessary to extract the relevant portion of the instruction to bidders of the Standard Bidding Document, more specifically, Clause 16.6 which reads as under;

*“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. Admittedly in the present case, the forfeiture of the EMD by the respondent authorities is not on the basis of the above enumerated clauses.

7. A Division Bench of this Hon'ble Court while interpreting the Clause 16.6 of the Standard Bidding Document in CWJC No. 15901 of 2023 dated 11..09.2024 has held as under;

“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”*

8. Having regard to the above mentioned facts and also the judgment of a Division Bench of this Hon’ble Court, this Court is of the opinion that the act of the respondents in not refunding the EMD amount of Rs. 18,51,464/- has to be held as arbitrary, illegal, bad and contrary to the terms and conditions of the NIT.

9. Having regard to the same, the present writ petition is allowed. The respondent authorities are directed to refund the amount of Rs. 18,51,464/- as expeditiously as possible preferably within a period of four weeks from the date of receipt of a copy of this order.

10. With the above directions, the present writ petition stands allowed to the extent indicate.

(A. Abhishek Reddy, J)

Ayush/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	10.07.2026.
Transmission Date	NA

