

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17087 of 2023

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Dhanveer Singh, Son of Musafir Singh, Resident of Village- Bhim Nagar,
P.S.- Birpur, District- Supaul.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Water Resources Development Department, Bihar. Patna.
2. The Engineer-in-Chief, Headquarter, Water Resources Department, Bihar. Patna.
3. The Chief Engineer, Flood Control and Water Discharge, Water Resources Department, Samastipur.
4. The Additional Secretary, Water Resources Department, Bihar, Patna.
5. The Executive Engineer, Water Discharge Division, Darbhanga.
6. The Executive Engineer, Water Discharge Division, Darbhanga.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Raju Kumar, Adv. Mr. Pradhan Murli Manohar Pd., Adv. Mr. Sanjay Pd., Adv.
For the Respondent/s	:	Mr. Subham Samrat, Adv. Mr. Anjani Kumar (Aag4)

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

11 04-02-2026 Heard the parties.

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

“(i) To issue an appropriate order/s, direction/s including a writ preferably in nature of Mandamus commanding the respondents to make the payment of earnest money amounting to Rs. 2,00,000/-against short term invitation information No. 01/2022-23 for the works allotted under anti erosion work on the right bank of Kamla river in village-Sajjanpura and Kanhauli under Benipur Block of District- Darbhanga vide Agenda No. 186/19/2022.



(ii) To direct the respondents to make the payment of Rs. 3.50,000/-for soil dumping sand/ on the work site against the work in question.

(iii) To direct the respondent to make the payment of 18% interest on the abovementioned dues to the petitioner on account of delay and latches on the part of respondent.”

3. The following paragraph has been added vide order dated 22.10.2024 by way of I.A. No. 01 of 2024.

“(iv) To quash the order dated 31.05.2022 vide letter No. 630 issued by the Executive Engineer, Drainage Division, Darbhanga whereby and whereby he ordered for forfeiting the earnest money of Rs.1,92,200/- against short term Invitation Information No. 01/2022-23 for the works allotted under anti erosion work on the right bank of Kamla River in Village- Sajjanpura and Kanhauli under Benipur Bloci of District Darbhanga vide Agenda No. 186/19/2022.”

4. Learned counsel appearing on behalf of the Respondent Nos. 1 to 3 and 5 submits that he has filed the soft copy of the supplementary counter affidavit before the Registry but could not file the hard copy. Learned counsel seeks permission to place the same on record before this Court.

5. Permission is granted.

6. Hard copy of the supplementary counter affidavit filed by the Respondent Nos. 1 to 3 and 5 is handed over across



the Bench and the same is taken on record.

7. It is the case of the petitioner that pursuant to the tender notice bearing NIT No. 01/2022-23 dated 27.04.2022, the petitioner has participated in the same and being lowest bidder, the contract was awarded to him vide order dated 19.05.2022. Learned counsel submits that as per the terms and conditions of the tender the petitioner was obligated to furnish the security performance within a period of 15 days and also execute certain documents. However the authority without waiting for the 15 days to be over has passed the impugned order on 31.05.2022 forfeiting the EMD paid by the petitioner but also recommending the name of the petitioner for black listing. Learned counsel submits that the act of the respondents in terminating the contract and forfeiting the EMD is an arbitrary exercise of power is contrary to the terms and conditions of the NIT. Learned counsel has therefore prayed this Hon'ble Court to allow the present writ petition and consequentially direct the respondent-authority to refund the EMD amount and also not to take any coercive steps against the petitioner in respect of the present NIT.

8. Per contra, the learned counsel appearing on behalf of the respondent-State has vehemently opposed the very



maintainability of the present writ petition and stated that the petitioner in spite of being given several opportunities has failed to deposit the security performance and also turn up before the authority concerned for executing the necessary documents. Learned counsel has stated that the authority was well within its rights to cancel the allotment and forfeit the EMD amount as the petitioner has not turned up before the authority in spite of being put on notice. Further it is stated that the petitioner has violated the terms and conditions of the NIT more specifically Clause 1.7 of the NIT and therefore the authority left with no other option had to cancel the allotment and forfeit the EMD amount. Learned counsel has therefore prayed this Hon'ble Court to dismiss the present writ petition.

9. This Court vide order dated 05.02.2025 duly taking note of the contents of the pleadings, directed the respondent authorities to clarify the query raised by this Court which reads as under:-

“3. In the meanwhile, the respondents shall also specify by way of supplementary counter-affidavit as to whether there is any clause or any other document between the parties stipulating that in case the successful bidder does not deposit the security and also additional performance



guarantee then his EMD likely to be forfeited."

10. Thereafter the 2nd supplementary counter affidavit is filed by the Respondent Nos. 1 to 3 and 5 wherein it is reiterated that after the allotment of the work, the petitioner has failed to turn up before the authority in spite of granting several opportunities. That the authority left with no other option has cancelled the allotment made in favour of the petitioner and forfeited the EMD amount.

11. In order to appreciate the issue involved in the present writ petition, it is necessary to extract Clause 1.7 of the NIT which reads as under:-

"Within 15 days from the date of issue of the letter accepting his tender the successful tenderer shall furnish the required security of performance and attend the office of the Executive Engineer named in the letter of acceptance for execution of contract documents. If he fails to furnish the security of performance or to execute the contract his earnest money deposit shall be forfeited to Government of Bihar and tenderer may be disqualified for tendering in future for works in the State of Bihar."

12. Admittedly in this particular case, the contract



was allotted to the petitioner on 19.05.2022 and thereafter the termination order was passed on 31.05.2022, i.e., well before the 15 days has expired.

13. In the 2nd supplementary counter affidavit filed by the Respondent Nos. 1 to 3 and 5, the authority has taken a stand, which reads as under:-

“13.That in the light of Clause 1.7 of the Instruction to bidder the Petitioner was duty bound to furnish the security of performance and to execute the agreement as the Petitioner was selected as LI and work order had been issued in his favour. But the Petitioner did not turn up for execution of agreement as well as to furnish the security performance before the concerned Executive Engineer despite repeated requests. Thus the Petitioner violated the provision of Clause 1.7 of the Instruction to bidder which is the part of NIT.”

14. It is not understandable as to how the authority has taken the stand that the petitioner has violated Clause 1.7 of the NIT, when it is manifestly clear that the termination order is passed even before the expiry of 15 days from the date of allotment. Once the authorities have issued a public tender the terms and conditions for the said tender are binding on both the



parties and any correspondence between the parties contrary to the said terms and conditions of the tender are not lawful. The contention of the respondents authority that number of reminders were sent to the petitioner to furnish the security performance he has failed to do so is contrary to the provisions of Clause 1.7 of the NIT.

15. Having regard to the above, the impugned order dated 31.05.2022 passed by the Executive Engineer, Drainage Division, Darbhanga is set aside. The authorities are directed to refund the EMD amount which has been forfeited back to the petitioner within a period of four weeks from the date of receipt of a copy of this order. The authorities are directed not to take any coercive steps against the petitioner in respect of the NIT which is subject matter of the present writ petition.

16. The present writ petition stands allowed to the extent indicated above.

(A. Abhishek Reddy , J)

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