

Smeatons Projects Pvt. Ltd. Vs. State of Bihar and ors.

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Court : Jharkhand

Decided On : Sep-19-2002

Reported in : II(2003)BC699; [2003(1)JCR480(Jhr)]

Judge : S.J. Mukhopadhaya, J.

Acts : [Constitution of India](#) - Article 226

Appeal No. : CWJC No. 5267 of 2002

Appellant : Smeatons Projects Pvt. Ltd.

Respondent : State of Bihar and ors.

Advocate for Def. : Anoop Kr. Mehta, SC I and; C. Prabha, JC to SC I

Advocate for Pet/Ap. : Rajiv Ranjan, Adv.

Judgement :

ORDER

S.J. Mukhopadhaya, J.

1. Heard the counsel for the parties.

2. It is not in dispute that the petitioner is to deposit the earnest money/security deposit at the time of submitting tender documents as per the Government guidelines.

3. The only question is whether the respondents can force its tenderers to deposit earnest money/security deposit only in the form of NSC or Fixed Deposit or not.

4. The grievance of the petitioner is that Clause 12 of Tender Notice No. 2 of 2002-03 published by Executive Engineer, R.E.O. Works Division, Godda asking for earnest money/security deposit in the form of NSC/'or Fixed Deposit in violation of the Division Bench order dated 23rd January, 2002 of this Court in CWJC No. 1258 of 2001 (Bigla Kachhap @ Dilip Kachhap v. State of Jharkhand and Ors. and analogous case).

In the said case, the Court passed the following orders :

'The concept of the requirement relating to the amount of earnest money by a tenderer is to secure the interests of the Govt. The depositing of earnest money alongwith the submission of the tender document insisted because the Govt. or for that matter any other contracting party might like to secure its interest one way or the other. Why cannot such interests be duly secured if the tenders are asked to deposit the earnest money in cash or through a bank guarantee or by submitting valid for the or by submitting F.D.Rs. Valid for the duration of the contract or till its conclusion, also by containing a stipulation of the same being automatically renewed if the contract period is extended for any reason? We are of the considered opinion and view that the insistence on the earnest money being deposited only through NSC is both irrational, illogical and has no nexus with the object to be aggrieved.

We, accordingly, direct that the State-respondents in this particular contract as well as in all future contracts shall not insist upon this requirement or prescribe the same with respect to the securing of earnest money. Instead, the State-respondents shall ensure that the earnest money payment is properly secured by whatever possible means and methods, whether it is by payment through cash, furnishing of a Bank guarantee or a proper and valid F.D.R. for such period as may be desirable or required.'

5. In the light of the decision aforesaid, I direct the Respondents to accept the earnest money/security deposit, if the petitioner or any other person deposits

along with tender documents in pursuance of Tender Notice No. 2 of 2002-03 either in cash or F.D.R. for the period of contract or Bank guarantee, as ordered by the Division Bench, as quoted above.

6. The writ petition stands disposed of.

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