

COURT MATTER
URGENT

110

Government of Orissa
Works Department



No. FA-C-173/2011. 6315 /W.

Dt. 16-6-11

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From
Sri P.K.Rout.
F.A.-cum-Addl. Secretary to Govt..

To
The E.I.C.(C), Orissa, BBSR/
All Chief Engineers, Orissa, BBSR.

Sub: The clarification regarding exemption of Earnest Money Deposit (EMD) availed by Engineer-Contractors against the tender.

Sir,

In inviting reference to the subject cited above, I am directed to say that pursuant to the orders of Hon'ble High Court of Orissa dt. 27.01.2011 in W.P.(C) No.20921/2010 filed by Sri Satya Brata Pattanaik-Vrs.-State of Orissa and others (Copy enclosed), exemption of Earnest Money Deposit(EMD) to the Engineer-Contractors will be allowed for a maximum of three works in a financial year and the fact of awarding a work with exemption of E.M.D. should be entered in the original Registration Certificate of the Engineering Contractors.

You are requested to issue instructions in the matter to all concerned under your control for follow up action.

The order issued in the Department letter No.835 dt.24.1.2011 stands cancelled.

Yours faithfully

[Signature]
16.6.2011

F.A.-cum-Addl. Secy. to Govt.

Memo No. 6316 /W., Dt. 16-6-11

Copy forwarded to all Govt. Departments/Accounts-I Section/Accounts-II Section, Works Deptt. for information and necessary action.

Copy forwarded to File No.FA-Codes-6/2011 for reference.

[Signature]
16.6.2011

F.A.-cum-Addl. Secy. to Govt.

9/16/11

Sri Satya Brata Pattanaik, aged abo
40 years, S/o Subash Chandra Pattanaik
Resident of At: Near Ankuli R.D.C.
Colony, U.P. School, P.O/P.S.: Berhampur
District: Ganjam.

At present residing at Plot No.103,
Maruti Residency, At/P.O.: Raghunathpur
P.S: Baranga, Bhubaneswar,
District: Khurda.

..... Petitioner.

- Versus -

State of Orissa, represented through
the Chief Secretary to Government.

Works Department, At: Sachivalaya Marg
Bhubaneswar, Dist: Khurda.

The Engineer in Chief (Civil), Orissa-
cum-Secretary to Government,
Works Department, Bhubaneswar,
District: Khurda.

The Chief Engineer, Buildings,
Bhubaneswar, Dist: Khurda.

The Superintending Engineer

Southern Circle (R & B)
Berhampur, Dist: Ganjam.

The Superintending Engineer,
Cuttack (R&B) Circle, Cuttack.
At/P.O/Dist: Cuttack.

..... Opp. Parties.

Contd. P/3.

U.P. School P.O/P.S.: Berhampur
District: Ganjam.
At present residing at Plot No.103,
Maruti Residency, At/P.O.: Raghunathpur
P.S: Baranga, Bhubaneswar,
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Works Department, Bhubaneswar,
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The Chief Engineer, Buildings,
Bhubaneswar, Dist: Khurda.

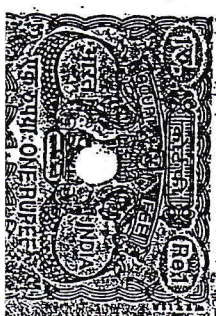
The Superintending Engineer

Southern Circle (R & B)
Berhampur, Dist: Ganjam.

The Superintending Engineer,
Cuttack (R&B) Circle, Cuttack.
At/P.O/Dist: Cuttack.

B.K. NAYAK
NOTARY
Cuttack Town

Contd. P/3.



IN THE HIGH COURT OF ORISSA :: C U T T A C K .

(Original Jurisdiction Case)

W.P.(C) No. 2092 /2010.

Code No. 982008

In the matter of :

An application Under Articles 226 and 227 of the Constitution of India;

A N D

In the matter of :

An application under the Orissa Public Works Department Code;

A N D

In the matter of :

An application challenging the illegal and arbitrary action of the Opp. party authorities in making entry of the non

awarded works in the original Registration Certificate of the petitioner for

the purpose of exemption of the Earnes money Deposited in although such entry

should have been made in respect of the awarded works only and not in respect

of the tender works in which a candida only offers his participation as per

the guideline fixed by the Govt. of Orissa in consonance with the addressa

Code;

A N D

In the matter of :

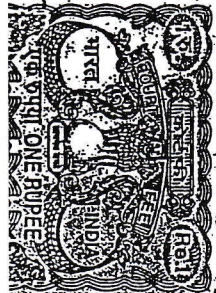
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Letter Received D/...

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B.K. NAYAK
NOTARY
Cuttack Town

Signature

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1.2.11

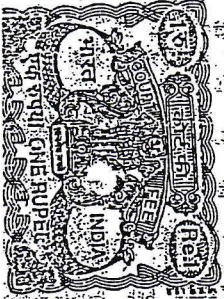
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Sl. No. of Order	Date of Order	ORDER WITH SIGNATURE	Office note as to action (if any), taken on Order
5	27.01.2011	<p>Though this matter was adjourned to today, the same was not in today's list. On being mentioned, this matter was taken up on the strength of Special Notice.</p> <p>Heard learned counsel for the petitioner and learned counsel for the State.</p> <p>The petitioner, who is a registered Engineer-Contractor, has filed this writ application with a prayer to direct opposite parties to permit him to participate in future tender by availing the benefit of exemption of E.M.D., as extended by the Govt. of Orissa in the Works Department vide circular dated 24.5.2001 (Annxure-3) providing facilities to the Graduate Engineers and Diploma Holders to work as Contractor.</p> <p>While issuing notice of admission, on 3.12.2010 this Court as an interim measure directed the opposite parties to allow the petitioner to participate in the tender in question for getting the benefit under Annexure-3, which shall be subject to the result of the writ petition.</p> <p>On 19.1.2011, the petitioner filed a petition being Misc. Case No. 1312 of 2011 alleging therein that in spite of the specific direction of this Court, the Superintending Engineer Southern Miner Irrigation Circle, Berhampur had not accepted his bid for opening of the financial bid submitted in response to Bid Identification No. SESMIC-2/2010-11.</p> <p>This Court considering the allegation made in the said misc. case and finding that the opposite parties have violated the order of this Court, directed personal appearance of the concerned officers.</p>	<p>Office note as to action (if any), taken on Order</p> <p>Learned counsel for the State submits that in terms of this Court's order, all the officers came to appear</p>



SLB

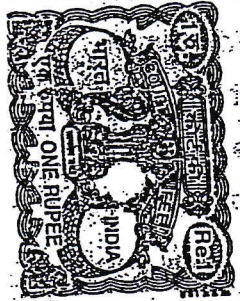
Sl No. of Order	Date of Order	ORDER WITH SIGNATURE	Office note as to action (if any) taken on Order
		<p>efore this Court in person, but finding that the case was not listed today, they left the Court after filing Counter affidavit and show cause affidavit.</p> <p>The counter affidavit has been filed on behalf of the opposite parties through the Superintending Engineer. Show cause affidavit has also been filed by the Superintending Engineer.</p> <p>In the said counter affidavit, a stand has been taken that pursuant to the direction of this Court, the petitioner was allowed to participate in the tender, but the allegation made by the petitioner in the petition filed on 19.1.2011 is in respect of some other work, for which bid had been invited by the Superintending Engineer, Southern Circle (R&B) and the said work was in respect of the tender in question. Interpreting in that way, the Superintending Engineer did not allow the petitioner to participate in the tender.</p> <p>The circular in Annexure-B is quite clear as the same speaks that exemption of E.M.D. to the Engineer-Contractors will be allowed for a maximum of three works in a financial year and the fact of awarding a work with exemption of the E.M.D. should be entered in the original registration certificate of the concerned Engineering Contractor.</p> <p>So only participation in the tender cannot be construed to be awarding of work, which has been wrongly interpreted by the opposite parties in many cases so also in this case. To such effect endorsement is necessary.</p> <p>As regards such endorsement, it is indicated in the counter affidavit that an Engineer-Contractor can very well get endorsement from the tendering authority regarding non-award</p>	



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Sl. No. of Order	Date of Order	ORDER WITH SIGNATURE	Office note as to action (if any), taken on Order
		<p>of work after the tender in which he participated is finalized. After such an endorsement, he may further participate availing the benefit of non-payment of EMD upto three tenders per financial year as per the prevailing Rules of the Government.</p> <p>It is stated by learned counsel for the petitioner that this practice has never been adhered to by the tendering authorities. So we make it clear that an Engineer-Contractor shall be allowed to participate in the tender by availing the benefit of Annexure-3 so long as he had not been availed the benefit of award of three works in one financial year.</p> <p>The writ petition is allowed to the aforesaid extent. At the same time, we direct the Secretary, Works Department to issue a circular to the tendering authorities to make necessary endorsement regarding non award of works to the Engineer-Contractors, after the tender in which they have participated, is finalized.</p>	



sd/- B. P. Das, J.

sd/- S. Panda, J.

sd/- B. P. Das, J.

sd/- S. Panda, J.

Comp. by SXB
18-2-2011