

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15034 of 2025

Raj Kishor Singh, aged about 57 years, Male, Son of Sri Bambihari Singh,
resident of village- Indrapur, Badhada, P.S. Raniganj, District- Araria, Bihar.

... .. Petitioner

Versus

1. The State of Bihar through the Additional Chief Secretary, Road Construction Department, Government of Bihar, Patna.
2. The Engineer in Chief, Road Construction Department, Government of Bihar, Patna.
3. The Bihar Rajya Pool Nirman Nigam Ltd., through its Chairman, 7, Sardar Patel Marg, Bir Chand Patel Road Area, Patna, Bihar- 800001.
4. The Chairman, Bihar Rajya Pool Nirman Nigam Ltd., 7, Sardar Patel Marg, Bir Chand Patel Road Area, Patna, Bihar- 800001.
5. The Managing Director, Bihar Rajya Pool Nirman Nigam Ltd., 7, Sardar Patel Marg, Bir Chand Patel Road Area, Patna, Bihar- 800001.
6. The Deputy Chief Engineer (Works Circle-1), Bihar Rajya Pool Nirman Nigam Ltd., 7, Sardar Patel Marg, Bir Chand Patel Road Area, Patna, Bihar- 800001.
7. The Senior Project Engineer, Bihar Rajya Pool Nirman Nigam Ltd., Works Division, Katihar, District Katihar, Bihar.

... .. Respondents

Appearance :

For the Petitioner	:	Mr. Prabhat Ranjan, Advocate
For the State	:	Mr. Standing Counsel-9
For the B.R.P.N.Ltd.,	:	Mr. P.K. Shahi, Sr. Advocate, Mr. Vikas Kumar, Advocate, Mrs. Aradharana Kumari, Advocate and Mr. Akash Deep, Advocate

CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

8 27-07-2026 Heard learned counsel for the parties

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

“1(i) Quashing of the Letter of Acceptance



(LOA.) as contained in Letter No. 1223 dated 12.06.2025 by which, the Senior Project Engineer, without any jurisdiction and contrary to the express provision of the Bidding document and even after expiry of the Bid Validity Period has issued the Letter of Acceptance in connection with the Bid submitted by the petitioner corresponding to NIT No. 1862 dated 06.11.2024 and further directed the petitioner to furnish performance guarantee and Addl. Performance Guarantee equivalent to Rs. 4,79,49,408.00 within a period of 21 days failing which the action under Para 31.3 of the ITB is contemplated;

(ii) Direction upon the Respondents to revoke the Letter of Acceptance and further return the original copy of the Bank Guarantee No. 1592624BG0Y0078 dated 10.12.2024 valued for Rs. 36,65,000.00 which was already expired on 09.06.2025 as earnest money deposit;

(iii) Restraining the respondents from giving effect to and taking any coercive action on the basis of Letter of Acceptance (LOA) as contained in Letter No. 1223 dated 12.06.2025 during the pendency of the present writ application and/or the without the leave of this Hon'ble Court.

3. The present writ application arises out of Notice Inviting Tender (NIT) No. BRPNNL/WD/KA17/1862/2024 dated 16.11.2024, issued by the Bihar Rajya Pul Nirman Nigam Limited (BRPNNL) for construction of an RCC Bridge (8 × 24.00 m) with approach road over the Parman River from Chandani Chowk to Azmatpur Road in Araria District, having an estimated contract value of Rs. 19,87,12,838/-.



4. Pursuant to the aforesaid NIT, the petitioner submitted its bid and furnished an Earnest Money Deposit by way of Bank Guarantee No. 15926248G0Y00179 dated 10.12.2024 for a sum of Rs. 36,65,000/-, which was valid up to 09.06.2025.

5. It is the case of the petitioner that upon opening and evaluation of the financial bids, the petitioner was declared the lowest (L-1) bidder, having quoted a rate 25.44% below the estimated cost, which was acknowledged vide Letter No. BRPNNL/WC-2/1969 dated 04.05.2025.

6. The grievance of the petitioner is directed against Letter No. 1233 dated 11.06.2025 (communicated on 12.06.2025) issued by the Senior Project Engineer, BRPNNL, Works Division, Katihar, whereby a Letter of Acceptance (LoA) was issued in favour of the petitioner in respect of the aforesaid tender and the petitioner was directed to furnish the Performance Security and Additional Performance Security amounting to Rs. 4,79,79,408/- within 21 days, failing which action under Clause 31.3 of the Instructions to Bidders (ITB) was proposed.

7. Learned counsel for the petitioner submits that the impugned Letter of Acceptance (LoA) contained in Letter No.



1233 dated 11.06.2025 (communicated on 12.06.2025) is wholly without jurisdiction and contrary to the provisions of the Standard Bidding Document (SBD). It is submitted that under Clause 30 of the Instructions to Bidders (ITB), the Letter of Acceptance is required to be issued by the “Employer” before the expiry of the bid validity period. According to the petitioner, the impugned LoA has been issued by the Senior Project Engineer, who is merely the Engineer-in-Charge and not the “Employer” as defined under the Contract Data. It is further submitted that the bid validity period was 120 days from the last date of submission of bids and had expired before issuance of the impugned LoA. In the absence of any extension of the bid validity in accordance with Clause 15.2 of the ITB, the issuance of the LoA after expiry of the bid validity period is stated to be wholly unsustainable. It is also argued that before directing the petitioner to furnish the Performance Security and Additional Performance Security, the Employer ought to have sought rate justification, whereas the same was sought by the Engineer-in-Charge, who had no authority to undertake such exercise. Consequently, the proposed action under Clause 31.3 of the ITB, including forfeiture of the bid security, is also stated to be without authority of law.



8. Per contra, learned counsel appearing for the respondents submits that the petitioner has not approached this Court with clean hands and has suppressed material facts. It is submitted that since the petitioner had quoted a rate 25.44% below the BOQ value, the Senior Project Engineer, vide Letter No. 954 dated 07.05.2025, required the petitioner to furnish justification for quoting such a substantially lower rate. In response thereto, the petitioner submitted a letter dated 10.05.2025 along with an affidavit and undertaking unequivocally stating that he was ready and willing to execute the work at the quoted rate with the prescribed technical specifications within the stipulated period. It is submitted that only after receipt of the said justification and undertaking was the impugned Letter of Acceptance dated 12.06.2025 issued. According to the respondents, having voluntarily furnished such an undertaking and accepted the terms of execution, the petitioner is estopped from challenging the Letter of Acceptance. It is, therefore, contended that the LoA does not suffer from any legal infirmity warranting interference by this Court.

9. In rejoinder, learned counsel for the petitioner submits that the respondents have attempted to justify the



impugned Letter of Acceptance by relying upon the petitioner's affidavit and undertaking dated 10.05.2025. However, according to the petitioner, such reliance is wholly misconceived. It is submitted that under Clause 10 of the Notice Inviting Tender read with Clauses 15.1 and 15.2 of the ITB, the bid remained valid only for a period of 120 days, and any extension thereof could be made only upon a written request by the Employer before expiry of the original bid validity period specifying the additional period of extension, followed by the bidder's written consent. Admittedly, no such request was ever made by the Employer before expiry of the bid validity period, nor was any written extension furnished by the petitioner. Learned counsel submits that the furnishing of rate justification or the affidavit dated 10.05.2025 cannot be construed as an extension of the bid validity period, as the two concepts operate in distinct fields under the bidding documents. While rate justification is sought under Clause 27.4 of the ITB, extension of bid validity is governed exclusively by Clause 15.2 and must strictly conform to the procedure prescribed therein. It is, therefore, submitted that the respondents cannot rely upon the petitioner's undertaking to validate an LoA issued after expiry of the bid validity period, and the impugned action remains contrary to the



express terms of the tender conditions.

10. The limited issue which arises for consideration before this Court is as to whether the petitioner, having voluntarily furnished an affidavit and undertaking expressing its unconditional willingness to execute the work at the quoted rate pursuant to the respondents' request and on the basis whereof the Letter of Acceptance came to be issued, is estopped from challenging the validity of the said Letter of Acceptance on the grounds of want of jurisdiction and expiry of the bid validity period.

11. The principal challenge of the petitioner is to the Letter of Acceptance dated 12.06.2025 on the ground that the same has been issued by an authority not competent under the Standard Bidding Document and after expiry of the bid validity period, without any formal extension thereof in terms of Clause 15.2 of the Instructions to Bidders. It is the petitioner's contention that the bid validity period expired on 12.03.2025 and, in the absence of any written request by the Employer seeking extension of the bid validity and the petitioner's written consent thereto, the Letter of Acceptance is non est in the eye of law. It is further submitted that the subsequent furnishing of rate justification or affidavit cannot be construed as an extension of



the bid validity period.

12. The aforesaid contention, however, cannot be examined in isolation and must necessarily be tested in the backdrop of the admitted conduct of the petitioner during the tender process.

13. It is not in dispute that the petitioner had quoted a rate which was 25.44% below the BOQ value. Owing to such substantially lower quoted rate, the respondents, vide Letter No. 954 dated 07.05.2025, called upon the petitioner to furnish justification for the quoted rate. In response thereto, the petitioner, by its communication dated 10.05.2025, furnished the requisite rate justification together with an affidavit and undertaking categorically stating that it was ready and willing to execute the work at its quoted rate with the prescribed technical specifications within the stipulated time.

14. Significantly, the petitioner has neither pleaded nor established that the said affidavit and undertaking were obtained by fraud, coercion, misrepresentation or any other vitiating circumstance. The undertaking was admittedly furnished voluntarily and without any protest. It was only thereafter that the respondents proceeded to issue the impugned Letter of Acceptance requiring the petitioner to furnish the Performance



Security and Additional Performance Security in terms of the tender conditions.

15. Thus, the sequence of events clearly demonstrates that the issuance of the Letter of Acceptance was preceded by and founded upon the petitioner's own unequivocal representation expressing its willingness to execute the work. Having consciously represented its readiness to proceed with the contract, the petitioner cannot now seek to invalidate the very consequence which ensued on the basis of such representation.

16. The law on the subject is no longer res integra. In ***R.N. Gosain v. Yashpal Dhir, reported in (1992) 4 SCC 683***, the Hon'ble Supreme Court, while explaining the doctrine of election, held in paragraph 10 that a party cannot be permitted to both approbate and reprobate and that a person cannot accept and reject the same instrument or transaction. The relevant portion of the said order reads as follow:

“10. Law does not permit a person to both approbate and reprobate. This principle is based on the doctrine of election which postulates that no party can accept and reject the same instrument and that “a person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be



entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage”. According to Halsbury's Laws of England, 4th Edn., Vol. 16, “after taking an advantage under an order (for example for the payment of costs) a party may be precluded from saying that it is invalid and asking to set it aside”.”

17. The aforesaid principle has been reiterated by the Hon'ble Supreme Court in ***Rajasthan State Industrial Development & Investment Corporation v. Diamond & Gem Development Corporation Ltd., reported in (2013) 5 SCC 470***, wherein in paragraphs 23 to 25, it was held that a party cannot blow hot and cold, fast and loose, or approbate and reprobate by accepting one part of a transaction while repudiating the other. The Court explained that such inconsistent conduct is impermissible in law. The relevant portion of the said order reads as follow:

“15. A party cannot be permitted to “blow hot-blow cold”, “fast and loose” or “approbate and reprobate”. Where one knowingly accepts the benefits of a contract, or conveyance, or of an order, he is estopped from denying the validity of, or the binding effect of such contract, or conveyance, or



order upon himself. This rule is applied to ensure equity, however, it must not be applied in such a manner so as to violate the principles of what is right and of good conscience.”

18. The aforesaid principles squarely apply to the facts of the present case. Although the petitioner has sought to contend that submission of rate justification cannot be equated with extension of the bid validity period, this Court is of the considered view that such argument overlooks the petitioner's own subsequent conduct. The petitioner did not merely furnish a rate justification. It went a step further and voluntarily submitted an affidavit and undertaking unequivocally expressing its readiness and willingness to execute the work at the quoted rate. Acting upon such representation, the respondents proceeded to issue the Letter of Acceptance.

19. Once the petitioner consciously represented its willingness to perform the contract and induced the respondents to act upon such representation, it cannot thereafter be permitted to challenge the Letter of Acceptance on grounds which were available even at the time when the undertaking was furnished. If the petitioner was genuinely of the view that the bid validity had already expired or that the Senior Project Engineer lacked



competence to proceed further, nothing prevented it from asserting such objections at the stage when the respondents sought the rate justification. Instead, the petitioner unequivocally accepted the respondents' request and affirmed its willingness to execute the work. Such conduct clearly amounts to acquiescence in the continuation of the tender process.

20. It is trite that the extraordinary jurisdiction under Article 226 of the Constitution is equitable and discretionary. A litigant invoking such jurisdiction must act fairly, consistently and with candour. A party who voluntarily adopts a particular position and induces another to alter its position on the basis thereof cannot subsequently resile from its own representation merely because the consequences have become inconvenient.

21. In the considered opinion of this Court, therefore, the petitioner, having voluntarily furnished the affidavit and undertaking expressing its unconditional willingness to execute the work and having induced the respondents to issue the Letter of Acceptance on the basis thereof, is precluded from questioning the validity of the said Letter of Acceptance on the grounds now urged in the writ petition. Permitting the petitioner to do so would amount to allowing it to approbate and reprobate in the same transaction, which is impermissible in law.



22. In view of the aforesaid, the issue framed is answered against the petitioner and in favour of the respondents.

23. This Court finds no substance in the challenge raised by the petitioner, and therefore, the present writ application stands dismissed.

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

(Sudhir Singh, ACJ)

(Rajesh Kumar Verma, J)

U.K./-A.F.R.

U			
---	--	--	--

