

GAHC010096992022



AS:11748-DB

2024:GAU-

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WA/190/2022

M/S D.G. RAJ HIGHWAY SERVICES AND ANR.
A PARTNERSHIP FIRM HAVING ITS OFFICE AT 493/B/57, BUNGALOW NO.47
AND 48, GROUND FLOOR, G.T. ROAD (SOUTH), P.O. AND DIST. HOWRAH,
WEST BENGAL, PIN-711102.

2: DADAN PRASAD
S/O. LT. JAGANNATH PRASAD
(A PARTNER OF THE PETITIONER NO.1 FIRM)
R/O. 493/B/57
BUNGALOW NO.47 AND 48
FIRST FLOOR
G.T. ROAD (SOUTH)
HOWRAH
P.O. AND DIST. HOWRAH
WEST BENGAL
PIN-711102. (BOTH PETITIONER ARE REP. BY THEIR POWER OF
ATTORNEY HOLDER
SHRI NIRAJ KUMAR RAO
S/O. SHRI DINANATH RAO
PERMANENT RESIDING AT-493/B/57
BUNGALOW NO. 47 AND 48
GT ROAD
BIKRAM BIHAR
OPPOSITE JAIN HOSPITAL
P.O. AND DIST. HOWRAH
WEST BENGAL
PIN-711102)

VERSUS

THE UNION OF INDIA AND 7 ORS.
REP. BY THE GENERAL MANAGER, NORTHEAST FRONTIER RAILWAY
MALIGAON, GUWAHATI, ASSAM, PIN-781011.

2:THE RAILWAY BOARD

REP. BY THE SECRETARY
MINISTRY OF RAILWAYS
GOVT. OF INDIA
RAIL BHAWAN
NEW DELHI-110001.

3:THE GENERAL MANAGER

NORTHEAST FRONTIER RAILWAY MALIGAON
GUWAHATI
ASSAM
PIN-781011.

4:THE PRINCIPAL CHIEF COMMERCIAL MANAGER

NORTHEAST FRONTIER RAILWAY MALIGAON
GUWAHATI
ASSAM
PIN-781011.

5:THE CHIEF COMMERCIAL MANAGER (FM)

NORTHEAST FRONTIER RAILWAY
MALIGAON
GUWAHATI
ASSAM
PIN-781011.

6:THE SENIOR DIVISIONAL COMMERCIAL MANAGER

TINSUKIA DIVISION
NORTH EAST FRONTIER RAILWAY
TINSUKIA
DIST. TINSUKIA
ASSAM
PIN-786125.

7:THE DIVISIONAL RAILWAY MANAGER

TINSUKIA DIVISION
NORTH EAST FRONTIER RAILWAY
TINSUKIA
DIST. TINSUKIA
ASSAM
PIN-786125.

8:THE ADDL. DIVISIONAL RAILWAY MANAGER

TINSUKIA DIVISION
NORTH EAST FRONTIER RAILWAY
TINSUKIA
DIST. TINSUKIA
ASSAM
PIN-786125

Advocate for the Petitioner : MR. P D NAIR, MR G ALAM,MR. H ROHMAN,S R A NASER

Advocate for the Respondent : SC, NF RLY, MR. K GOGOI,MR. K GOGOI

**BEFORE
HONOURABLE THE CHIEF JUSTICE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

Date of Hearing: 21-11-2024

Date of Judgment: 27-11-2024

JUDGMENT & ORDER (CAV)

(N. Unni Krishnan Nair. J)

Heard Mr. D. Das, learned Senior Counsel assisted by Mr. G. Islam, learned counsel for the appellants. Also heard Mr. K. Gogoi, learned CGC appearing for the respondents.

2. The present Intra Court Appeal has been instituted, assailing the Judgment & Order dated 21.04.2022, passed by the learned Single Judge in WP(C)710/2022.

3. The appellant herein, who is a category-A registered lease holder of Tinsukia Division, NF Railway had submitted his bid in pursuance to an NIT dated 25.08.2021, issued by the Tinsukia Division, NF Railway for leasing of 24.00 tonne VPH by Train No. 05960/05959, Kamrup Express Special from Dibrugarh Railway Station to Howrah Railway Station and back on Round Trip basis. The bid of the petitioner, having been found to be suitable, the Senior Divisional Commercial Manager, Tinsukia, vide

communication dated 08.10.2021, issued a Letter of Acceptance (LoA) in respect to the petitioner, accepting his bid for leasing of the 24 tonne VPH by Train No. 05960/05959, Kamrup Express. In terms of the said LoA, the petitioner was to furnish the Security Deposit within 15 days from the date of issue of the LoA. The petitioner was also required to execute an agreement. The LoA dated 08.10.2021, further specified that all other Terms and Conditions of the tender documents shall remain applicable. The appellant herein had not furnished the Security Deposit within the time frame so mandated in the LoA and had only submitted the same on 05.11.2021. The Security Deposit being required to be furnished within 15(fifteen) days from the date of issue of the LoA and loading also being required to be commenced within a period of 15(fifteen) days w.e.f. the date of issue of the LoA, the competent authority vide communication dated 26.11.2021, accorded his approval to the delayed submission of Security Deposit money as well as with regard to the delay occasioning in commencement of loading of the leased 24 tonne VPH by the train involved, thereby condoning the same.

4. It is to be noted that although the LoA was issued to the appellant on 08.10.2021, it had not commenced loading within 15 days as mandated by the provisions contained in the NIT dated 25.08.2021. Vide the said communication dated 26.11.2021, the appellant was further requested to immediately furnish the intermediate loading/unloading points so that allotment order may be issued.

5. The Railway authorities thereafter, on receipt of the response from the petitioner in pursuance of the communication dated 26.11.2021, proceeded vide communication dated 29.11.2021 to issue an allotment order to the appellant herein, for loading of 24 tonne VPH by the train involved. Vide the said communication dated 29.11.2021, the appellant was directed to start loading of the leased out 24 tonne VPH of the train involved by 07.12.2021.

6. At this stage, it is to be noted that the appellant herein had issued a

communication dated 08.11.2021 and therein, by justifying the delay occasioning in starting of the loading operations by it, had undertaken that the loading would be started w.e.f. 21.11.2021. It is seen from the materials brought on record that the appellant had not started the loading operations in spite of lapse of considerable period of time since the date of issuance of the LoA. The Railway authorities vide a communication dated 17.12.2021 had required the appellant to attend the Office of the Senior Divisional Commercial Manager, Tinsukia, on 20.12.2021, for signing the contract agreement for the leased 24 tonne VPH which was said to be ready in all respects. It is seen that the appellant had not complied with the requirement as made of it vide the communication dated 17.12.2021, leading to the Railway authorities to issue a further communication on 21.12.2021, requiring the appellant to attend the Office of the Senior Divisional Commercial Manager on 22.12.2021 for signing of the contract agreement and for commencement of the loading operations of the leased 24 tonne VPH. It is seen that the appellant had also not complied with the directions contained in the communication dated 21.12.2021.

7. Poised thus, the Railway authorities vide communication dated 24.12.2021, had intimated to the appellant that the competent authority of the NF Railway Headquarters had accorded sanction on 26.11.2021, for relaxation of 30(thirty) days period for commencement of loading which was also intimated to the appellants vide the communication dated 26.11.2021. It was also highlighted that on receipt of options from the appellant for the intermediate loading/unloading points on 27.11.2021, an allotment order was issued to the appellant on 29.11.2021 with the request to start loading without further delay.

8. In the said communication dated 24.11.2021, it was noted that the appellant had not commenced loading but, vide communication dated 14.12.2021 had insisted upon execution of the contract agreement to enable him to operate the contract within a week. The said communication further proceeded to note that the appellant had not turned up for signing the contract agreement on the dates fixed i.e. on 20.12.2021

and 22.12.2021. Accordingly, the Railway authorities intimated the appellant that the overall relaxation period for commencement of loading was to expire on 25.12.2021 and requested it to commence loading of the leased VPH on/or before 25.12.2021.

9. It is seen that the appellant had thereafter, issued a communication dated 25.12.2021, requesting the Railway authorities for facilitating execution of the agreement on 27.12.2021. However, the Railway authorities in view of the fact that the maximum period of relaxation for commencement of loading of the leased VPH having lapsed, the Railway authorities vide communication dated 03.01.2022, proceeded to terminate the contract of the leased 24 tonne VPH by Train No. 05960/05959, Kamrup Express, granted to the appellant herein by invoking the provisions of the tender conditions and other applicable circulars. The Railway respondents vide the communication dated 03.01.2022, in view of the fact that the contract was terminated also by invoking the provisions of the tender document as well as the extant guidelines of the Comprehensive Parcel Leasing Policy, 2014, proceeded to forfeit the entire security deposit amounting to Rs. 40,03415/- (Rupees Forty Lakhs Three Thousand Four Hundred Fifteen only) furnished by the appellant. The said communication also proceeded to impose debarment of the appellant firm from participating in Parcel Leasing Tenders in Tinsukia Division and all over NF Railway for a period of 02 years with immediate effect i.e. w.e.f. 03.01.2022. Being aggrieved by the issuance of the said communication dated 03.01.2022; the appellant had instituted WP(C)/710/2022.

10. The learned Single Judge, upon hearing the learned counsel for the parties as well as the learned counsel for the Railway respondents and on perusal of the materials coming on record, had proceeded vide Judgment and Order dated 21.04.2022 to dismiss the writ petition as filed by the appellant herein, thereby maintaining the order dated 03.01.2022, issued by the Railway respondents.

11. Mr. Das, learned counsel for the appellant by referring to the various

communications available on record, has contended that the period from which the appellant is required to commence loading is to be so reckoned from the date of issuance of the allotment order, which in the case of the appellant happens to have occasioned on 29.11.2021. Mr. Das, has further submitted that reckoning 29.11.2021 as the date for commencement of the loading operations, the appellant having approached the respondent authorities within the period of one month from the date of issuance of the said allotment order for execution of the contract agreement i.e. on 27.11.2021, the appellant cannot be said to have committed any default in the matter and the appellant was entitled to be allowed to commence the loading operations upon execution of the contract agreement by it on 27.12.2021.

12. Mr. Das, learned counsel for the appellant by referring to the Judgment and Order dated 21.04.2022, passed by the learned Single Judge in WP(C)710/2022 has contended that the learned Single Judge had committed an error in the matter, in concluding that the appellant herein was required to commence the loading operations within a period of 15 days from the date of issuance of the LoA to it. Mr. Das has submitted that the contract could not have been deemed to have been granted to the appellant herein merely, on issuance of the LoA and such contract would have come into operation only upon execution of the contract agreement, which was required by the appellant to be so executed on 27.12.2021. Accordingly, Mr. Das has submitted that the premises under which the learned Single Judge had proceeded to consider the issues arising in the writ petition i.e. presuming that the contract had come into effect immediately, with the issuance of the LoA in question, being erroneous, the Judgment and Order dated 21.04.2022 would call for an interference. Mr. Das has further submitted that the Railway respondent while proceeding to terminate the contract in question vide the communication dated 03.01.2022, could not have proceeded to forfeit the security deposit furnished by the appellant in the matter and further could not have debarred the appellant from participating in similar contracts for a period of 02 years without first issuing a notice to the appellant in the matter

and thereafter, affording him an opportunity to submit his reply thereto.

13. The Railway respondents having proceeded to forfeit the security deposit along with the debarment of the appellant for a period of 02 years from participating in similar Parcel Leasing contracts, it was submitted that the rights of the appellant came to be infringed and such infringement having been effected in violation of the principles of natural justice, the order dated 03.01.2022 would call for an interference. It was further contended that the learned Single Judge while passing the impugned Judgment and Order dated 21.04.2022, had ignored to appreciate the said aspects of the matter in its proper perspective, and accordingly, the impugned Judgment and Order, which had upheld the order dated 03.01.2022, passed by the Railway respondents would call for an interference.

14. In support of his contentions, Mr. Das, learned counsel has placed reliance on the following decisions of the Hon'ble Supreme Court:-

- 1. *H. H. Raja Harinder Singh Vs S. Karnail Singh and Ors., reported in AIR 1957 SC 217.***
- 2. *M/S Erusian Equipment & Chemicals Ltd. Vs State of West Bengal and Anr., reported in (1975) 1 SCC 70.***
- 3. *Huda and Anr., Vs Dr. Babeswar Kanhar and Anr., reported in (2005) 1 SCC 191.***
- 4. *Mohd. Ayub Vs State of Uttar Pradesh, reported in (2009) 17 SCC 70.***

15. Mr. K. Gogoi, learned CGC appearing for the respondents has submitted that the impugned order dated 03.01.2022, was so issued by the Railway respondents, strictly, in accordance with the tender conditions as well as in compliance of the guidelines contained in the Comprehensive Parcel Leasing Policy holding the field with regard to leasing of 24 tonne VPH in question.

16. Mr. Gogoi has placed reliance on the affidavit filed by the respondents in the writ proceedings and has submitted that the perusal of the steps taken by the Railway

respondents in the matter and the inaction on the part of the appellant to commence the operations, inspite of being granted a relaxation in the matter would be clearly evident. Mr. Gogoi has submitted that on issuance of the LoA, the applicant in terms of the tender conditions as well as the provisions made in this connection in the Comprehensive Parcel Leasing Policy was required to commence loading operations within 15 days. Mr. Gogoi has submitted that such a stipulation has been so made with regard to the contract involved inasmuch as, delay occasioning in commencement of loading operations by the lease holder would lead to a revenue loss occasioning to the Railway authorities in the matter. Mr. Gogoi, has further submitted that the signing of the contract agreement is not mandatory prior to commencement of loading of operations of the leased VPH and in this connection, has referred to the instances so set out in the said affidavit filed by the Railway respondents in the writ proceedings, wherein leaseholder awarded similar contracts had commenced loading of the VPH wagons on the strength of the LoA's so issued and prior to execution of Contract Agreements. Mr. Gogoi, has further submitted that the forfeiture of the security deposits submitted by the appellant and its debarment for a period of two years from participating in Parcel Leasing Tenders in Tinsukia Division and over NF Railway for a period of two years w.e.f. 03.01.2022, on termination of the contract granted to the appellant herein, was so done in strict compliance of the provisions contained in the NIT dated 25.08.2021 and the Comprehensive Parcel Leasing Policy and accordingly, it is submitted that the stipulations made in the communication dated 03.01.2022 would not call for any interference. Mr. Gogoi, in the above premises submitted that the Learned Single Judge had not committed any error in drawing the conclusion so drawn in the Judgment and Order dated 21.04.2022 in WP(C)/710/2022 and accordingly, the same would not call for any interference from this Court.

17. We have heard the learned counsels appearing for the parties and perused the materials available on record including the Judgments relied upon by the learned Senior Counsel appearing for the appellants.

18. On appreciating the submissions made by the appellant, we find that the same has already been taken into consideration by the learned Single Judge in the Judgment and Order dated 21.04.2022. Accordingly, the conclusions as reached by the learned Single Judge in the matter being relevant, the same is extracted herein below:-

“21. I have heard the counsels for the parties and have also perused the materials on record. The records reveals that on 25.08.2021 the Notice Inviting Tender was issued for leasing out of 24 Tonne VPH By Train No.05960/05959 Kamrup Express Special. Various documents formed a part of the tender documents. The 3rd part is the “Instruction to Tenderers”. In the said “Instruction to Tenderers”, various terms and conditions have been mentioned therein. The issue involved in the instant proceedings relates to the interpretation to Clause 8(a) and 8(b) of the said “Instruction to Tenderers”. The said Clauses have already been quoted hereinabove. It has also been mentioned hereinabove that the said Clause 8(a) and 8(b) are similar in content with Clauses 20.1 and 20.2 of the Comprehensive Parcel Leasing Policy. It is also relevant herein to mention that an Amendment was made pursuant to the floating of the said tender on 04.10.2021 known as the Amendment No.13. In terms with the said Amendment No.13, Clause 20.1 of the Comprehensive Parcel Leasing Policy was amended whereby the Principal Chief Commercial Manager of the Zonal Railways upon recommendation of the Division was empowered to grant relaxation in the period for commencing of the contract up to a maximum period of 30 days after duly considering the merits of the case. It is also relevant herein to note that the said power entrusted upon the Principal Chief Commercial Manager of the Zonal Railways could be exercised when circumstances arises beyond the control of the successful bidder (such as curfew, lockdown, natural calamity etc.) to prefer an appeal within 15 days of normalization of the situation. The said power therefore, cannot be exercised at the whims of the authorities but has to be on the ground where the circumstances exist beyond the control of the successful bidder. The facts of the instant case would further show that the Petitioner Firm submitted its tender

on 21.09.2021 at 12.41 PM. Thereupon, on 08.10.2021 the Letter of Acceptance was issued containing the various terms and conditions. Clause 3 of the Letter of Acceptance stipulates that the Security Deposit of Rs. 40,03,415/- was to be deposited in terms with Clause 7 of the "Instruction to Tenderers" within 15 days from the date of issue of Letter of Acceptance. Clause 4 of the said Letter of Acceptance stipulates that the Petitioner Firm was required to execute the Licensing Agreement on non-judicial stamp paper of Rs.100/- within 15 days from the date of issue of the Letter of Acceptance. Clause 5 of the Letter of Acceptance categorically mentioned that all other terms and conditions of the tender documents shall be applicable, meaning thereby Clause 8(a) and Clause 8(b) of the "Instruction to Tenderers" was applicable with effect from the issuance of Letter of Acceptance. It further reveals from the record vide a communication bearing Letter No.DGR/Lease of VP/Acceptance/A-577, the petitioners firm have duly accepted the Letter of Acceptance. Consequently, a binding contract ensued upon the petitioners for compliance with the tender conditions which included Clauses 8(a) and 8(b). A perusal of Clause 8(a) stipulates that the commencement of loading has to be done within 15 days from the date of allotment of the contract. As already stated hereinabove with the issuance of the Letter of Acceptance on 08.10.2021, it would be deemed that the contract in question has been allotted and this aspect of the matter was also accepted by the Petitioner Firm by accepting the said Letter of Acceptance vide the communication as above mentioned.

22. Now, in terms with Clause 8(a), the Petitioner Firm was required to commence the loading within a period of 15 days which would expire on 22.10.2021 but the Petitioner Firm did neither submitted the Security Deposit as was required in terms with Clause 7 of "Instruction to Tenderers", as well as the Letter of Acceptance dated 08.10.2021 nor commenced the loading as required under Clause 8(a) of the "Instruction to Tenderers". A day before the expiry of the period of 15 days, the Petitioner Firm issued a communication dated 21.10.2021 wherein the Petitioner Firm intimated that on account of certain difficulties faced, the Petitioner Firm was not in a position to submit the Bank Guarantee and the execution of the agreement/commencement of loading for the

subject contract. The Petitioner Firm vide the said communication, requested for granting an additional period of 10 days to execute the leasing contract on submission of the requisite amount of BG. It was further requested to grant the Petitioner Firm 10 to 15 days, so that the Petitioner Firm may start leasing work smoothly.

23. Immediately on receipt of the said communication dated 21.10.2021, the Respondent No.6 vide a communication dated 22.10.2021 informed inter alia the Petitioner Firm that the Security Deposit has to be remitted by the successful bidder within 15 days from the date of issue of Letter of Acceptance. It was also mentioned that in terms with Para 20.1 of the Commercial Parcel Leasing Policy, it was the requirement that on allotment of the contract, the successful bidder (the leaseholder) shall be required to commence the loading within a period of 15 days, failing which the contract will be terminated and the Earnest/Security Deposit would be forfeited. In the said communication, it was also mentioned that it is the Accepting Authority who is empowered to condone the delay on merits of the case on a written application from the leaseholder and can grant another 15 days (maximum period) to the leaseholder for commencement of the contract. On the basis thereof, the Respondent No.6 therefore, requested the Petitioner Firm to commence loading of the VPH by way of submitting the requisite SD money in the form of Bank Guarantee or FDR or DD at the earliest.

24. The Petitioner Firm thereupon on 05.11.2021 submitted the Demand Draft of a value of Rs. 40,03,415/- which is the Security Deposit amount. The Petitioner Firm also on 05.11.2021 submitted a Stamp Paper for execution of agreement. While doing so, vide the forwarding letter dated 05.11.2021, the Petitioner Firm also requested for providing the draft copy of the agreement and the work order. By the time the Petitioner Firm submitted the said Demand Draft, the initial period of 15 days had already expired and the subsequent period which could have been condoned by the Accepting Authority was about to expire inasmuch as the deposit of the Security Deposit was submitted 13 days after the expiry of the initial period of 15 days. The records show at that relevant point of time, the Tender Accepting Authority who was competent to condone the delay was on

leave for which the Divisional Office/The Tender Accepting Authority did not have the power to condone the delay beyond the expiry of the 15 days, after the expiry of the initial period of 15 days.

25. It is in these circumstances that the Petitioner Firm issued the communication dated 08.11.2021 whereby the Petitioner Firm invoked Amendment No.13 of the Comprehensive Parcel Leasing Policy and thereby requested permission to start the operation of the said VPH by Train No.05960/05959 Kamrup Express Special EX DBRG to HWH Railway Station and back on round trip basis from 22.11.2021. It was categorically mentioned in the communication dated 08.11.2021 that the petitioner would be ready to start the operation from 22.11.2021 in full swing. The records further goes to show that in view of the accepting authority being on leave at that relevant point of time, the matter was placed before the Principal Chief Commercial Manager, Headquarter, N.F. Railway on 22.11.2021 for granting relaxation in the light of the liberalization guidelines circulated vide FM Circular No.22/2021 (Amendment No.13) dated 04.10.2021. The competent authority granted the maximum relaxation to the Petitioner Firm on 26.11.2021 and immediately on the said date the petitioner was duly informed that the delay in submission have been duly condoned and the Petitioner Firm was directed to commence the loading. The Petitioner Firm immediately on receipt of the said communication dated 26.11.2021 issued a communication dated 27.11.2021 raising certain issues pertaining to allowing the petitioner to load perishable consignments. At this stage it may be relevant herein to mention that 26.11.2021 was Friday and on Monday i.e. on 29.11.2021, the Respondent No.6 issued the allotment order whereby the petitioner was asked to start loading by 07.12.2021, on receipt of the allotment order. It was also mentioned that the petitioner was requested to deposit 50% of the lump sum freight i.e. Rs.1,53,978/- at each end, along with 2% development charge and 5% GST and other taxes as leviable by the Central/State Government or other competent authority. It was also mentioned that as per the commitment made by the Petitioner Firm vide communication dated 08.11.2021, the Petitioner Firm was requested to start loading of the Leased VPH without further delay and the petitioner was also informed to execute a Contract Agreement in that regard.

At this stage it may be relevant herein to mention that the concept of issuance of allotment order for commencement of loading is nowhere to be found in terms with the "Instruction to the Bidders" or even in the Draft Agreement (which forms a part of the tender document) as well as in the Commercial Parcel Leasing Policy. A perusal of the said documents only show that the loading has to be commenced upon allotment of the contract.

26. The Petitioner Firm instead of commencing the loading operation, for the first time raised the issue that without the execution of the Contract Agreement, it would not be possible on the part of the Petitioner Firm to operate the Leased VPH, as the loaders and parcel aggregators were not allowing to offer or load consignments on the Lease VPH without the adjudication of the agreement. Vide the said communication, it was also mentioned that the Petitioner Firm would also require sometime for reaching to the local traders and parcel aggregators for the successful intermediate handling; and under such circumstances requested 2 to 3 weeks time for starting operation of the Lease VPH and in the meantime a suitable date may be fixed for executing the Contract Agreement for operating of the Lease VPH by the Petitioner Firm. At this stage it may be relevant herein to mention that neither in the "Instruction to Tenderers" nor in any part of the tender documents there is any mention that commencement of loading shall start with the execution of the Contract Agreement. Upon receipt of the said communication dated 06.12.2021, the Respondent No.6 immediately replied on 07.12.2021 asking the petitioner to commence loading of the Lease VPH with effect from 14.12.2021 positively. It was also mentioned that as far as the matter of agreement was concerned, the same was under process and would be executed shortly. At this stage, it is very pertinent to mention that the contract in question is a revenue earning contract of the Railways and with each day of delay in commencement of the loading, the Railway Authorities have been suffering revenue loss. It is relevant to mention that taking into account, the reserved price as was mentioned in the "Instruction to Tenderers" which was far less than the bid submitted by the Petitioner Firm, the loss which the Railways would suffer for noncommencement of the loading for each day was Rs.2,14,020/- and weekly loss was Rs.10,70,100/-. The monthly loss is 42,80,400.

It is under such circumstances that respondent authorities have been insisting the Petitioner Firm to commence loading.

27. The Petitioner Firm instead of commencing the loading operation issued another communication on 14.12.2021 wherein requested the respondent authorities to execute the agreement and thereupon the petitioner shall be able to operate the lease within a week therefrom. In right earnest, the respondent authorities therefore asked the Petitioner Firm vide a communication dated 17.12.2021 to appear before office of Respondent No.6 on 20.12.2021 for signing of the Contract Agreement. The petitioner however, in spite of receipt of the said communication did not appear on 20.12.2021 for signing of the said Contract Agreement. The Respondent No.6 thereupon on 21.12.2021 again requested the Petitioner Firm to appear before the Respondent No.6 on 22.12.2021 for signing of the agreement. The Petitioner Firm again did not respond to the same in spite of receipt of the said communication. Even there is no explanation in the writ petition as to why the partners of the petitioners firm or any authorized representative could not be present on 20.12.2021 or 22.12.2021 for signing of the Contract Agreement.

28. Situated thus on 24.12.2021, it was intimated to the Petitioner Firm that the period of 30 days which is the maximum relaxation period would be expiring on 25.12.2021 and as such the Petitioners Firm should commence loading on or before 25.12.2021. A perusal of the communication dated 24.12.2021 would clearly show that there was no request or direction to the Petitioner Firm for the purpose of signing the Contract Agreement. However, the Petitioner Firm did not take any steps for loading. On the other hand, issued a communication on 25.12.2021, intimating to the Respondent No.6 that an authorized person would be present on 27.12.2021 to sign the Contract Agreement and thereafter shall commence loading.

29. As the maximum relaxation period had expired on 25.12.2021, the respondent authorities did not enter into Contract Agreement on 27.12.2021 when the authorized respondents of the Petitioner appeared and terminated the contract on 03.01.2022 along with forfeiture of the Security Deposit and debarring the

Petitioner Firm from participating in similar contracts for a period of 2 years in respect to the same Division of N.F. Railway. The above facts would clearly go to show that the respondent authorities have granted the petitioner ample opportunities to commence the loading. Clause 8(a) categorically mandates commencement of loading from the date of allotment of the contract and the issuance of the Letter of Acceptance as already stated hereinabove would be deemed to be the allotment of contract; ,more so, when the said Letter of Acceptance was duly accepted without any question. Under such circumstances the non-commencement of the loading by the petitioner violates the mandate of Clause 8(a) of the "Instruction to the Tenderers" and consequently the Railway Authorities were justified in terminating the said contract and forfeiting the Security Deposit. The petitioners clearly knew at the submission of their tender, that non-compliance to Clause 8(a) would result in befalling of the consequences under said Clause 8(a) and 8(b) and under such circumstances this Court does not find any illegality in passing of the impugned order.

30. The said aspect of the matter can further be seen from another angle. The instant contract in question is a revenue earning contract of the Railways and with each day of non-commencement of loading there is a revenue loss to the Railway Authorities or in other words loss to the Public Exchequer. In terms with the tender documents, the Petitioner Firm was required to start loading latest by 22.10.2021. Non-commencement of the loading operation has caused colossal revenue loss to the Railway Authorities for which the Railway Authorities were justified in forfeiting the Security Deposit.

31. Coming to the submissions made by the learned counsel for the petitioners about the applicability of Clause 10 of the General Clauses Act, 1897 and the judgments of the Supreme Court rendered in the case of H.H. Raja Harinder Singh Vs. S. Karnail Singh and Others reported in AIR 1957 SC 271; Huda and Another Vs. Dr. Babeswar Kanhar and Another reported in (2005) 1 SCC 191 and Mohd. Ayub Vs. State of Uttar Pradesh and Others reported in (2009) 17 SCC 70, this Court is of the opinion that the said are totally misplaced in the facts of the instant case inasmuch as the petitioners were requested to attend on 20.12.2021

and 22.12.2021 for signing of the Contract Agreement. The said dates were admittedly not designated as holidays. Vide the communication dated 24.12.2021, the petitioner was only asked to commence loading and not to come for signing on 25.12.2021. Apart from what has been stated herein above, it is also relevant to take note of that signing of a Contract Agreement is one thing and commencement of loading operation is another thing. The respondents in the affidavit as well as also in the stay vacating application have submitted details that in various other similar contracts also commencement of loading operations started even without the Contract Agreement. The “Instruction to the Tenderers” do not in any manner stipulate that the commencement of loading shall start with effect from the signing of the Contract Agreement. It would also be seen that it was only on 06.12.2021 that the Petitioner Firm for the first time raised the said issue that without the execution of the Contract Agreement, it was not possible to start commencement of loading whereas all along, prior thereto, the petitioners had given commitment to start loading as would be very much apparent from the communication dated 08.11.2021 wherein the petitioner gave a commitment to start loading on 22.11.2021. Under such circumstances, the action of the Respondent Authorities to terminate the contract, forfeit the Security Deposit and debar the petitioner in terms with Clause 8(b) of the “Instruction to the Tenderers” cannot be said to be illegal or arbitrary or unreasonable. Consequently no interference is called for to the impugned order dated 03.01.2022.”

19. A perusal of the conclusions as drawn by the learned Single Judge in the matter and extracted herein above would go to reveal that the learned Single Judge had taken into account all relevant factors and had thereafter, drawn its conclusions which are found to be well reasoned and germane to the issues arising in the matter. Accordingly, on appreciating the conclusions drawn by the learned Single Judge in the impugned Judgment, in the light of the submissions made by the learned counsel for the appellant, we are not persuaded to take a different view in the matter. Accordingly, we are of the considered view that the conclusions drawn by the learned

Single Judge in the impugned Judgment would not call for an interference.

20. Having concluded as above, we would now like to deal with the submission made by the learned counsel for the appellant that the Railway respondents while issuing the communication dated 03.01.2022, could not have also while terminating the contract, proceeded to forfeit the entire security deposit furnished by the appellant and also debarred the appellant from participating in similar Parcel Leasing Tenders in Tinsukia Division and over NF Railway for a period of two years w.e.f. 03.01.2022, without first complying with the principles of natural justice.

21. Clause 8 of the NIT dated 25.08.2021, more particularly, Clause 8 (a) and (b) of the Comprehensive Parcel Leasing Policy, relevant to the issue arising in the present proceeding, is extracted herein below:-

8. Failure of leaseholder to start or operate lease contract:

(a) On allotment of contract, the bidder (leaseholder) shall be required to commence the loading within a period of 15(fifteen) days, failing which, the contract will be terminated and Earnest Money/Security Deposit will be forfeited.

The accepting authority shall be empowered to condone the delay on the merit of the case on written application from leaseholder and give another 15 days (maximum period) to the lease holder for commencing the contract.

(b) If the highest bidder fails to take up or to start the lease contract, he/she/they must be debarred at least for 02 years from participating in the tender in that Division/Zonal Railway.

22. A perusal of the provisions of Clause 8(a) mandates that in the event the bidder/leaseholder fails to commence the loading within 15 days from the date of allotment of the contract, the contract would be terminated and the earnest money/security deposit would stand forfeited. Provisions of Clause 8(b) of the Comprehensive Parcel Leasing Policy, further stipulates that if the highest bidder fails to take up or to start the lease contract, he/she/they must be debarred at least for 02

years from participating in the tender in that Division/Zonal Railway. Accordingly, the forfeiture of the security deposit and debarment from participating in a Parcel Leasing Tender is to be held to be a natural corollary to the termination of the Parcel Leasing contract as entered into with the appellant with the issuance of the LoA dated 08.10.2021. Provisions similar to one existing in Clause 8 of the Tender conditions, is also found in Clause 20 of the Comprehensive Parcel Leasing Policy.

23. The appellant herein while submitting his bids in the matter had also accepted the provisions of Clause 8 of the Tender conditions and accordingly, we are of the considered view that the forfeiture of the security deposit and the debarment of the appellant firm from participating in Parcel Leasing Tender in Tinsukia Division and/or over NF Railway for a period of 02 years with immediate effect, as imposed by the communication dated 03.01.2022 being a natural corollary of the termination of his contract on account of failure to commence loading even after being granted relaxation for the maximum period permissible by the competent authority in this connection, such stipulations cannot be said to be illegal and/or arbitrary. Further given the nature of the contract involved and the revenue loss occasioning to the Railways on account of the delay occasioning in commencement of loading operations by the appellant, the contention of the learned counsel for the appellant that the forfeiture of security deposit and debarment of the appellant could have been so imposed, only after following the Principles of Natural Justice, would not merit acceptance. It is to be noted that the debarment of the appellant firm for 2(two) years in addition to being in compliance of the tender conditions is restricted only to similar tenders issued by various divisions of the NF Railways.

24. At this stage, it is to be noticed that in the present proceedings, this Court had vide order dated 08.06.2022, on a submission made on behalf of the appellant that it was willing to undertake the contract work provisionally, subject to the decision in the appeal, permitted the appellant, herein, to undertake the contract in the interregnum. However, the appellant had failed to undertake the work in terms of the liberty

granted to it by this Court and the said aspect of the matter was informed to this Court on 24.08.2022 by the learned counsel for the appellant. Accordingly, this Court on 24.08.2022 reiterated its decision as contained in the order dated 08.06.2022 granting liberty to the Railways to proceed with floating of fresh tender, however, finalization of the tender was required to be made with the leave of this Court.

25. In view of the conclusions reached by us herein above, with regard to the forfeiture of the security deposit and debarment of the appellant firm in terms of the communication dated 03.01.2022, on termination of the contract entered into with it, we are of the considered view that the judgments relied upon by the learned Senior Counsel would not advance the case of the appellant herein.

26. In view of the above discussions, we are of the considered view that the impugned Judgment and Order dated 21.04.2022, passed in WP(C)/710/2022, would not call for any interference and accordingly, the writ appeal is held to be devoid of any merit and consequently, the same stands dismissed. However, there would be no order as to costs.

JUDGE

CHIEF JUSTICE

Comparing Assistant