

GAHC010236602018



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

Case No. : WP(C)/7393/2018

D.G.RAJ COMMERCIAL PVT. LTD.
HAVING ITS REGD. OFFICE AT 8226, FIRST FLOOR, SREET NO. 5, MULTANI
DHANDA, PAHAR GANJ, DELHI- 110055,, REP. BY ITS AUTHORISED
REPRESENTATIVE SHRI PRABHAKAR PANDEY, AGED ABOUT- 27 YRS, S/O-
SHRI CHANDESHWAR PANDEY, R/O- FLAT NO 1C, FIRST FLOOR,
PRAHRITIK NIBAAS, KANWACHAL ROAD, GHY, P.O. SILPUKHURI, P.S.
CHANDMARI, DIST- KAMRUP (M), ASSAM, PIN- 781003

VERSUS

THE UNION OF INDIA AND 9 ORS.
REP. BY THE GENERAL MANAGER,, NORTHEAST FRONTIER RAILWAY,
MALIGAON, GHY-11

2:THE RAILWAY BOARD
REP. BY THE SECY.
MINISTRY OF RAILWAYS
GOVT. OF INDIA
RAIL BHAWAN
NEW DELHI- 110001

3:THE DIRECTOR OF FREIGHT MARKETING
RAILWAY BOARD
GOVT. OF INDIA

RAIL BHAWAN
NEW DELHI- 110001

4:THE GENERAL MANAGER
NORTHEAST FRONTIER RAILWAY
MALIGAON
GHY-11

5:THE CHIEF COMMERCIAL MANAGER
NORTHEAST FRONTIER RAILWAY
MALIGAON
GHY-11

6:THE CHIEF COMMERCIAL MANAGER (FM)
NORTHEAST FRONTIER RAILWAY
MALIGAON
GHY-11

7:THE DIVISIONAL RAILWAY MANAGER
TINSUKIA DIVISION
NORTHEAST FRONTIER RAILWAY
TINSUKIA
DIST- TINSUKIA
ASSAM
PIN- 786125

8:THE ADDL. DIVISIONAL RAILWAY MANAGER
TINSUKIA DIVISION
NORTHEAST FRONTIER RAILWAY
TINSUKIA
DIST- TINSUKIA
ASSAM
PIN- 786125

9:THE DIVISIONAL COMMERCIAL MANAGER
TINSUKIA DIVISION
NORTHEAST FRONTIER RAILWAY
TINSUKIA
DIST- TINSUKIA
ASSAM
PIN- 786125

10:THE SENIOR DIVISIONAL COMMERCIAL MANAGER
TINSUKIA DIVISION
NORTHEAST FRONTIER RAILWAY
TINSUKIA
DIST- TINSUKIA
ASSAM
PIN- 78612

Advocate for the Petitioner : MR. P D NAIR

Advocate for the Respondent : SC, NF RLY

**BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI**

ORDER

07.03.2024

Heard Shri D. Das, learned Senior Counsel for the petitioner assisted by Shri G. Alam, learned counsel. Also heard Shri B. Sharma, learned counsel representing the Railways, who submits that affidavit-in-opposition has also been filed in this case on 05.06.2023.

In view of the submissions made by the learned Senior Counsel for the petitioner at the outset, this Court may not be required to go deep into the facts of the case and the *inter se* merits of the rival parties. However, a basic narration of the facts would be necessary.

A tender process was initiated vide a notice dated 08.12.2017 for leasing of a Parcel Cargo Express Train on round trip basis from New Tinsukia to Shakur Basti at Delhi for a period of 6 years. It is the case of the petitioner that pursuant to the same, the petitioner had deposited an amount of Rs.50,00,000/- as the Earnest Money Deposit (EMD) as a pre- condition for participating in the tender process. As per the petitioner, it was declared to be the highest tenderer and accordingly a Letter of Acceptance was issued on 19.02.2018. As per the petitioner, the Security Deposit was submitted by way of FDRs on 12.03.2018 and a contention has been made that the remaining Rs.50,00,000/- was to be adjusted from the EMD. However, on such denial of request, the balance of Rs.50,00,000/- was tendered by a way of 2 FDRs whereafter the impugned letter dated 01.05.2018 was issued forfeiting the petitioner's EMD and the tender was discharged.

Shri Das, the learned Senior Counsel for the petitioner submits that there is no justification for issuing the impugned letter dated 01.05.2018 and a hyper technical approach was taken by the Railways without taking into consideration the relevant facts and circumstances. He has otherwise informed this Court that the period of 6 years of the contract is over and therefore, the issue of discharge of the tender is not required to be gone into at this stage. He has further informed this Court that a Departmental Appeal was preferred which is still pending. As regards the affidavit-in-opposition, Shri Das, the learned Senior Counsel submits that a rejoinder affidavit was filed on 17.11.2023.

Shri Sharma, the learned counsel for the Railways, while broadly accepting the facts and background has however denied the payment of the balance amount. By referring to the affidavit-in-opposition, he submits that the balance amount was never accepted by the Railways and there was no provision for adjustment with the EMD. The learned Standing Counsel has however submitted that he would not oppose in principle regarding a direction for consideration and disposal of the appeal filed on 25.05.2018.

Rival contentions have been duly considered.

This Court has noticed that while issuing notice vide order dated 12.10.2018, there was a direction not to initiate fresh tender process for the same route. This Court has however been informed by the learned counsel for the petitioner that due to non feasibility, the said services is not presently under operation and in any case, there was an embargo by this Court vide order dated 12.10.2018 which is operating till date.

Be that as it may, this Court is of the opinion that taking into consideration the developments and the efflux of time, no effective purpose would be served

by going into the merits of challenge regarding the entire process. At the same time, this Court has noted that an appeal was preferred by the petitioner which is to be considered. This Court has been informed that only because of the fact of pendency of this case, such appeal has not been considered till date.

In view of the above, this Court is of the opinion that interest of justice would be served if this writ petition is disposed of with a direction to consider and dispose of the appeal dated 25.05.2018 by the Appellate Authority in accordance with law.

Ordered accordingly.

It is also directed that at the time of consideration of the appeal, the petitioner be afforded an opportunity of hearing by its representative.

Since this matter is a long pending one, let a date be notified by the Appellate Authority for consideration of the appeal which is required to be on or before 28.03.2024.

Writ petition accordingly stands disposed of.

Interim order passed earlier accordingly stands vacated.

JUDGE

Comparing Assistant