

GAHC010254762024



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

Case No. : WP(C)/6379/2024

MVVS PKR JV RAMENDRA KUTHI
COL. CHOWMUHANI , KRISHNANAGAR, AGARTALA, WEST TRIPURA DIST,
TRIPURA PIN-799001.
REP. BY ONE OF ITS PARTNER MVV SATYANARAYANA, AGE 67 YRS,
S/O- LATE M MUTYALA RAO,
R/O- 6-1-136/5/A, MEHER NIVAS, BALRAM COLONY, WALKER TOWN,
PADMARAONAGAR, SECUNDRABAD, P.O- MUSHEERABAD, DIST-
HYDERABAD, PIN-500020

VERSUS

THE UNION OF INDIA AND 5 ORS
REP. BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF
RAILWAYS, 21 RAIL BHAWAN MARG, NEW DELHI-01

2:THE RAILWAY BOARD
REP. BY MEMBER INFRA
21
RAIL BHAWAN MARG
NEW DELHI-01

3:THE GENERALMANAGER (CONSTRUCTION)
N.F RAILWAY (CON)
MALIGAON
GUWAHATI-11
DIST- KAMRUP (M)
ASSAM

4:THE PRINCIPAL FINANCE ADVISORAND CAO/
(CON)
MALIGAON
GUWAHATI-11

DIST- KAMRUP (M)
ASSAM

5:THE CAO II
CON
N.F RAILWAY (CON)
MALIGAON
GUWAHATI-11
DIST- KAMRUP (M)
ASSAM

6:THE CHIEF ENGINEER /CON/8/MLG
N.F RAILWAY (CON)
MALIGAON
GUWAHATI-11
DIST- KAMRUP (M)
ASSA

Advocate for the Petitioner : MR B D DAS, MRS R DEKA,MR. R MAJUMDAR,MS. J GHOSH

Advocate for the Respondent : DY.S.G.I.,

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

ORDER

02.12.2024

Heard Mr. B.D. Das, learned Sr. Counsel for the petitioner assisted by Mr. R. Majumdar. Also heard Ms. B. Sarma, learned CGC for all the respondents.

2. The petitioner's prayer in this writ petition is for a direction to be issued to the respondent No.2, to take a decision as to whether an Insurance Surety Bond could be submitted in lieu of a Bank Guarantee for payment of Performance Guarantee, pursuant to Clause 16(4) of the General Clauses of the contract in Tender Notice No. CON/2024/FEB/03 dated 26.02.2024 (hereinafter referred to as 'the NIT').

3. The petitioner's counsel submits that in pursuance to the NIT for construction of an approach road, the petitioner was given Letter of Acceptance dated 06.11.2024 and it was asked to submit its Performance Guarantee in terms of Clause 16(4) of the NIT.

4. The petitioner's counsel submits that the Government of India, Ministry of Finance has issued various OM's dated 02.02.2024, 01.01.2024 & 24.09.2024 for acceptance of Insurance Surety Bond in lieu of a Bank Guarantee for payment of Performance Guarantee, with an aim free the working capital of contractors.

5. The petitioner's counsel submits that the petitioner had submitted representations to the respondent authorities, to take a decision as to whether the Insurance Surety Bond could be accepted in lieu of Bank Guarantee. He submits that the 60 days period provided to the petitioner to submit its Performance Guarantee will expire on 05.01.2025 and as such, a decision should be taken by the Railway Board (respondent No.2) as to whether the Insurance Surety Bond can take the place of a Bank Guarantee. He submits that in a similar case, i.e., WP(C) No.6061/2024 (*SKPL-PKR JV Vs. The Union of India and 5 Ors.*), which was disposed of vide judgment and order dated 20.11.2024, this Court had directed the respondent authorities to consider the representation of the petitioner, with regard to the same subject matter and the Railway Board was to take the decision within a period of 2 months from the date of receipt of the order. He accordingly submits that a similar order may be passed by this Court and in the meantime, the Performance Guarantee payable in terms of Clause 16(4)(b) of the NIT would be paid by the petitioner, to be replaced by an Insurance Surety Bond, if a decision was made in favour of the petitioner by the Railway Board.

6. Ms. B. Sarma, learned CGC submits that the petitioner's representations have already been decided by the office of the General Manager(Con.), North East Frontier Railway vide letter dated 21.11.2024 and the petitioner has been asked to submit the Performance Guarantee as given in Clause 45 of Chapter-II/Clause 16(4)(b) of the NIT.

7. I have heard the learned counsels for the parties.

8. A Coordinate Bench of this Court passed judgment and order dated 20.11.2024 in WP(C) No.6061/2024, directing the Railway Board to take a decision with regard to whether the Insurance Surety Bond could replace the Bank Guarantee as payment of Performance Guarantee. The same was to be decided within a period of 2 months and in the meantime, the petitioner therein was to make payment of the Performance Guarantee in terms of Clause 16(4) (b) of the NIT.

9. Though the petitioner's representations has been decided by the office of the General Manager, North-East Frontier Railway in the present case, this Court is of the view that the Railway Board should take a decision with regard to the issue raised by the petitioner. Accordingly, this Court directs the Railway Board to take a decision, as to whether the Insurance Surety Bond can replace the Bank Guarantee for payment of Performance Guarantee in relation to the NIT issued in this case. The decision should be taken by the Railway Board within a period of 8(eight) weeks from the date of receipt of a certified copy of this order. The petitioner shall however have to comply with the payment of the Performance Guarantee in terms of Clause 16(4) of the NIT in the meantime. If a decision is taken by the Railway Board that the Insurance Surety Bond can

replace the Bank Guarantee in this case, the respondent authorities shall allow the petitioner to replace the Bank Guarantee by an Insurance Surety Bond.

10. The writ petition is accordingly disposed of.

JUDGE

Comparing Assistant