

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8506 of 2011

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All India Environment Education Social Welfare Society, A1/155-C Madhu Vihar Dwarka, New Delhi-11005, it's Branch Office, D.M.C.H. Min Gate, Darbhanga, Bihar through it's Chairman Ram Kumar Roy, S/O Late Sita Ram Roy, resident of Village Harpur Alloth, P.S. Mushrigharari, District Samastipur

.... Petitioner/s

Versus

1. The Union of India through it's General Manager, East Central Railway, Hajipur
2. The General Manager, Commercial, East Central Railway, Hajipur
3. The Divisional Railway Manager, East Central Railway, Samastipur
4. The Divisional Railway Manager, Commercial, East Central Railway, Samastipur
5. Manoj Kumar Mishra, Secretary, New Yuwak Sangh Shramik Swalambi Sahkari Samiti, resident of Village- Shokhara, P.O. Barauni, Distt. Begusarai

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Md. Ataul Haque, Advocate.

For the Respondent No.1 to 4 : Mr. D.K. Sinha, Sr. Advocate.

Mr. Sunil Kumar Ravi, Advocate.

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 01-10-2015

The present writ petition has been filed for quashing the order dated 21.04.2011 by which the Divisional Railway Manager, Commercial East Central Railway, Samastipur (Respondent No. 4) has allotted tender in favour of Respondent No. 5 despite the petitioner having offered a higher bid.

2. Learned counsel for the petitioner submits that the reasons for non-consideration of the petitioner's tender are wholly arbitrary and unsustainable and beyond the conditions stipulated in the tender documents. The respondents in their counter affidavits have erroneously supported their action on the



ground that the earnest money had not been furnished by the tenderer society rather the same had been furnished from the account of its Chairman, Sri Ram Kumar Roy, in his personal capacity. It is submitted with reference to Clause 5(7) of the tender document that the only requirement with regard to earnest money was that the relevant receipts had to be furnished in original and not that they should have been furnished from the account of the tenderer alone.

3. Learned Senior counsel Mr. D.K. Sinha, on behalf of the respondent Railways, on the other hand, submits that furnishing of the earnest money by the Chairman of the tenderer in his personal capacity defeats of the very purpose of inviting tender from the reputed Organizations/Cooperative Societies and no fault can be found in the action of the respondents. It is further submitted that the tenderers had been invited to be present at the time of opening of the tenders so that defects, if any, could be cured by them but the petitioner chose to stay away during the opening of the tender and as such Packet-B of the petitioner was not opened.

4. Having heard the parties and on consideration of the materials on record, this Court is of the view that the writ petition must succeed.

5. A perusal of Clause 5(7) of the tender document discloses that the receipt/MMDC/FDR relating to the earnest



money had to be furnished in original but there is nothing to show that such earnest money had to be made from the account of the tenderer alone. In other words, the tender document does not appear to bar a tenderer for arranging the payment of earnest money from other resources and furnishing the same with its application. This becomes further evident on perusal of other requirements of Clause-5 of the tender document which specifically contemplate compliance in the name of the Organization/Cooperative Society.

6. This Court is of the view that the absence of the petitioner at the time of opening of Packet-A would therefore not be of much consequence, inasmuch as the Tender Committee appears to have treated the furnishing of earnest money by the petitioner as defective, where in fact the same cannot be treated as defective in view of Clause-5 of the tender document. The Tender Committee appears to have read something more into Clause-5 of the tender document which is in fact not to be found therein.

7. Though appearance has been entered on behalf of the private Respondent No. 5, none is present on his behalf when the matter is called today.

8. In such circumstances, the impugned letter dated 21.04.2011 (Annexure-1) is hereby set aside with a direction to the respondent Railway authorities to reconsider and proceed in

the matter in accordance with law, and in any event preferably within a period of three months from the date of receipt/production of a copy of this judgment.

9. The writ petition stands allowed.

(Vikash Jain, J)

Md. Ibrarul/-

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