IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.913 of 2015
In
Civil Writ Jurisdiction Case No. 5280 of 2014
With
Interlocutory Application No. 3483 of 2015
In
Letters Patent Appeal No.913 of 2015

==

M/S Param Enterprises (P) Ltd. Through Puneet Pathak (M.D.), Son o f Sri Satya Narayan Pathak. Resident of - 12/2, Hungerford Street, Flat No. - 1, P.S.- Shakespeare Sarani Thana, Kolkata - 700017 (West Bengal).

.... Petitioner/Appellant

Versus

1. The Eastern Railway through General Manager, Eastern Railway, Kolkata.
2. The Sr. A.F.A./CON /Eastern Railway, Bhagalpur.
3. The Dy. Chief Signal & Telecom Engineer/ Cons, Eastern Railway, Malda.
4. The Financial Advisor and Chief Accounts Officer/CON/Kolkata.
5. The Chief Signal & Telecom Engineer/ CON/Eastern Railway, Kolkata.

.... Respondent/s

==

Appearance :

For the Appellant/s	:	Mr. Anjani Kumar, Sr. Advocate
		Mr. Shailendra Kumar Singh, Advocate
For the Respondent/s	:	Mr. Anil Singh, Advocate

==

CORAM: HONOURBLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL ORDER
(Per: HONOURABLE THE CHIEF JUSTICE)

3 12-05-2015 The unsuccessful petitioner in CWJC No. 5280 of 2014 is the appellant. The writ petition was dismissed by the learned Single Judge through order dated 5.8.2014.

The appellant is a civil contractor registered with the Eastern Railways, the first respondent herein. As many as four contracts of various descriptions were awarded to it between 2009-2011. In the context of payment of bill, the petitioner submitted a representation with a prayer to extend the benefit of escalation in terms of the agreement, and the contract policy of the Railways. The petitioner relied on the policy contained in the Railway Board's Circular dated 28.9.2007 as amended through Railway letter dated 7.3.2008 (Annexure-1).

The Senior Assistant Financial Advisor, the second respondent herein, rejected the claim of the petitioner through letter dated 12.4.2013. According to the second respondent, variation is admissible if it is only more than 5% and since the claim made by the appellant is less than 5%, it is inadmissible. Another reason is also mentioned. Challenging the said letter the appellant filed the writ petition. He pleaded that once the contracts are governed by the general policy laid down by the Railway Board, there was no basis for the impugned order. The respondents pleaded that the terms of the contract entered into between the appellant and the Railway did not provide for escalation and the same was communicated to the appellant. The learned Single Judge dismissed the writ petition.

Heard Shri Anjani Kumar, learned senior counsel for the appellant and Shri Anil Singh, learned counsel for the respondents-Railways.

It is no doubt true that as many as four separate and individual agreements were entered into between the appellant and the Railways; and the agreements in turn contained various clauses. The fact however remains that the Railways frame the broad policy to govern the various aspects of contract and other related matters in general. It is necessary to take note of the policy, contained in the Railway Board's Circular dated 28.9.2007 (Annexure-2). Clause 2 thereof deals with the amendment to price variation clause in the works contract and it reads as follows:-

> **"2. Amendment to PVC clause in works contract**
>
> In partial modification of Board's letter No.85/W-1/CT/7-Vol.1 dated 4.4.96. the following changes are introduced regarding Price Variation Clause:-
>
> (i) The minimum prescribed limit of one year of contract completion period for incorporating Price Variation Clause in tenders (para I(a) of above referred letter dated 4.4.96) stands deleted.
>
> (ii) Price Variation Clause (PVC) shall be applicable for tenders of value more than Rs. 1 crore irrespective of the contract completion period and PVC shall not be applicable to tenders of value less than Rs. 1 crore.
>
> (iii) The present stipulation that *"Price Variation Clause will not apply if the price variation is upto 5% and that reimbursement/recovery due to variation in prices will continue to be made only for the amount in excess of 5% of the amount payable to the contractor"* vide para 1 of above referred letter dated 4.4.96 shall continue to be enforced. However, the existing upper limit prescribed at 15% and 25% (vide para I(b) and I(c) of Board's letter dated 4.4.96 referred above) for price variation claim stands deleted."

From a perusal of the above clause, it is evident that price variation cannot be allowed if it is less than 5% of the contracted rate. To be more specific, it was also mentioned that claim for variation would be allowed if only it is in excess of 5% of the rates mentioned in the agreement. The ceiling to the extent of 15% or 25%, depending upon the nature of contract, was done away with.

In the next year, the policy was modified through letter of the Railways dated 7.3.2008 (Annexure-1) whereby the minimum limit for price variation was deleted. Therefore, the situation would be that price variation would be allowed even it is less than 5%. It is represented that the variation claimed by the appellant is less than 5%. Once the clause limiting the price variation upto minimum of 5% has been deleted, there is no reason why the appellant be not extended the benefit.

Therefore, the appeal is allowed. The order dated 5.8.2014 passed by the learned Single Judge in CWJC No.5280 of 2014 is set aside. The writ petition is allowed and letter dated 12.4.2013 is set aside. The second respondent is directed to examine the claim of the petitioner with reference to the policy contained in Annexure-1.

Interlocutory Application shall stand disposed of.

There shall be no order as to costs.

(L. Narasimha Reddy,CJ)

(Sudhir Singh, J)

mrl

U			