

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16433 of 2014

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Westinghouse Saxby Farmer Limited, a company incorporated under the provision of the Companies Act, 1956 and a Government Company with more than 99% shareholding of Government of West Bengal having its registered office at 17, Convent Road, Entally, Kolkata - 700014, outside the jurisdiction of this Hon'ble High Court through representative Partha Sarathi Dutta.

.... Petitioner

Versus

1. Union of India service through Service Ministry of Railway, Rail Bhawan, Raisina Road, New Delhi - 110001.
2. Indian Railway, Service through Ministry of Railway, Rail Bhawan, Raisina Road, New Delhi - 110001.
3. The Controller of Stores, East Central Railways, Old G.M. Building, Hajipur, District - Vaishali, Pin - 844101, Bihar.
4. The Director General, Research Development and Standards Organization, Govt. of India, Ministry of Railways, Manak Nagar, Lucknow - 226011.
5. Urban Engineers Association Pvt. Lt. 32/J, Sahitya Parishad Street, Kolkata - 700006.
6. Crompton Greaves Limited, CG House, 6th Floor, Dr. Anni Besant Road, Worli, Mumbai - 400030.
7. Hytronics Enterprises, 24B Electronics Complex, Kushaiguda, Hyderabad-500062, Andhra Pradesh (Deleted vide order dated 31.07.2015)

.... Respondents

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Appearance :

For the Petitioner : Mr. D. Banarjee,
Mr. Md. Fahimuddin, Advocates

For the Railways : Mr. Anil Kumar Sinha,
Mr. Abhimanyu Deo
Mr. Ankit Katriar, Advocates

For Respondent No. 5 : Mr. Manoj Kumar
Mr. Sujeet Kumar Sinha, Advocates

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 25-08-2015

The present writ petition has been filed with a prayer for a direction to the Respondents to consider the selection of the petitioner as fit candidate for supply of 4398 numbers of QNI 12F/4B relay, after cancelling the supply order issued in favour of private respondent no. 5 pursuant to the Railway tender published on

03.01.2014 and for connected reliefs.

2. The short issue which falls for consideration in the present writ petition is whether the respondent-Railways are justified in not inviting the petitioner for negotiation and award of work for supplying 4398 nos. of QNI 12F/4B relays in respect of which petitioner undisputedly stood at L1 among the Part-I suppliers having been registered with Railway Designs & Standards Organization (RDSO), on the solitary ground that the requisite security deposit had not been offered by the petitioner.

3. The petitioner is a Government Undertaking Company with 99% shareholding of Govt. of West Bengal and is carrying on business of manufacturing railway brakes, coupler, signaling relays, signaling equipments and General engineering products and has been recognized as Part-I vendor to Indian Railways for supply of safety items which admittedly include the subject relays.

4. Pursuant to a tender notice floated by the Railways on 03.01.2014, the petitioner submitted its bid documents, inter alia, claiming and requesting for exemption from Earnest Money Deposit (EMD) & Security Deposit (SD) to which it was entitled being a Government Company registered with the RDSO. Upon coming to learn that the respondent no.3 had called only the private respondent no.5 for the negotiation process on 23.06.2014 despite the petitioner



being ranked L-1, it represented before the respondent-authorities with a request for being considered for award of the work and also requesting for waiver of the EMD and SD. Through letter dated 24.06.2014, the petitioner acknowledged that the Railways had almost invariably permitted waiver of EMD and SD for the petitioner in the past while however, also expressing that the petitioner did not deny to submit the SD. Having received no response from the Railways, the petitioner has approached this Court with the present writ petition.

5 Mr. D. Banarjee, learned counsel for the petitioner, submits that the action of the respondent-Railways is wholly arbitrary and illegal and the petitioner ought to have at least been communicated the reasons for not being invited for consideration for making supply. It is submitted that even in the past, the petitioner had been awarded work to supply the materials with the exemption from payment of Security Deposit.

6. Mr. Anil Kumar Sinha, learned counsel for the respondent-Railways, on the other hand, opposes the writ petition submitting that there is no irregularity or illegality in not inviting the petitioner. He invites attention to the eligibility criteria laid down in the tender document which are very specific and no departure from the same could be or has been made. Serial No. 5 of the "Special

Conditions and Checklist for bidders” appearing at Clause ‘C’ of the tender document reads as follows:-

“Security Deposit: The tenderer while offering their rates for the procurement of safety item [For value more than Rs.10 lakh] must agree to deposit security money along with their offer itself as there is no exemption available to the firms in this category to any firms on any ground”.

Similarly, Serial No. 12 of Clause ‘C’ also specifically provides as follows:

“Note : (i) In case of any deviation /silence /contradiction in respect of conditions [5] and [7] and [7.1] above offer of the tenderer will be summarily- rejected without any further correspondence /back reference”

7. It is, therefore, submitted by learned counsel for the Respondents that the petitioner was well aware of the stringent consequence of non-deposit of the security deposit and it is no longer open to it to question the terms of the tender after having been unsuccessful thereunder. He also refers to letter no. 2004/RS (G)/779/11 dated 24.07.2007 on the subject of “Earnest Money Deposit & Security Deposit for Stores tenders”. Serial No. 2 (i) thereof specifically deals with Security Deposit for safety items and reads as follows:-

“(i) Safety Items: The Security Deposit (SD) / Performance Guarantee shall be taken from all firms for contracts for all safety items placed against advertised tenders and Global

tenders subject to following exemptions:

- a. Vendors registered with NSIC upto the monetary limit of their registration for the items ordered.”

8. It is further stated that the exemption in respect of even the vendors registered with NSIC as referred to above was subsequently withdrawn in terms of the Railways letter No. 2004/RS (G)/779/11 dated 15.10.2008, as a result of which the requirement for payment of Security Deposit in respect of the safety items was unexceptionable.

9. The petitioner in its rejoinder has, however, sought to take a plea that the petitioner was entitled to exemption from payment of security deposit in view of the Rules of the Railway Board.

10. Learned counsel refers to the Railway Ministry's Rules embodying the Railway Board's instructions issued upto 31.12.2008, Clauses 1.1.8 and 1.1.12 whereof appear to suggest that the petitioner would be entitled for the exemption from payment of Security Deposit. However, the tender conditions requiring payment SD have not been questioned on this account.

11. Having heard learned counsel for the parties and upon a careful consideration of the materials on record, this Court is not persuaded to accept the submissions advanced on behalf of the

petitioner.

12. The eligibility criteria in the tender documents were clear and specific and the petitioner applied under the tender conditions without questioning the validity thereof at that stage, much less with reference to the Rules of the Railway Ministry. The request made in the tender for such exemption remains a mere request as evident from the petitioner's letter dated 24.06.2014 whereby it was stated that the petitioner was not averse to submitting the SD. In other words, the petitioner also appears to have correctly carried the impression that there was no inviolable right of exemption from payment of SD. The action of the respondents in not deviating from the specific terms enumerated in the tender documents with regard to compulsory payment of security deposit without any exemption whatsoever to any category of tenderers cannot be faulted as any deviation therefrom would cause loss of objectivity in the matter of selection. The petitioner's reference to the Rules of the Railway Ministry cannot also come to its aid, considering that the same was restricted only for official use and internal guidance in the matter of Railways entering into supply contract. No specific challenge to the validity of the tender conditions on the strength of the Railway Ministry's Rules has also been raised by the petitioner.

13. In the facts and circumstances of the case, this

Court is not inclined to grant any relief to the petitioner. The writ petition is devoid of merit and accordingly, stands dismissed.

(Vikash Jain, J)

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