

HONOURABLE SRI JUSTICE S.V.BHATT

WRIT PETITION No. 9555 OF 2015

DATED 27TH APRIL, 2015.

BETWEEN

M/s. Seven Seas Trading Company,

Rep. by its Prop. Mohammed Akram, Hyderabad.

....Petitioner

And

Union of India,

Rep. by its General Manager,

South Central Railway,

IIIrd Floor, Rail Nilayam, Secunderabad, and ors.

...Respondents.

HONOURABLE SRI JUSTICE S.V.BHATT

WRIT PETITION No. 9555 OF 2015

ORDER:

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Heard learned Counsel for the petitioner and Sri T.S.Venkataramana, learned Standing Counsel for the respondents.

The petitioner prays for mandamus declaring letters No.C/C/37/RSLR-I/18646/2014-15/III, dated 10.03.2015 and 26.03.2015 issued by the third respondent as arbitrary and illegal and for consequential direction to refund the EMD of Rs.1,00,000/- to petitioner.

The case of the petitioner is that it is a lease holder (Category 'A') in Secunderabad Division of South Central Railway. The third respondent called tenders for leasing 4 tonnes space in SLRs and one tonne space in Assistant Guard's cabin for a period of three years through tender notification No.C/C/37/leasing/SLR-AGC/2014/III, dated 30.10.2014. The last date for submission of tenders was 03.12.2014. The tender is valid for a period of 90 days from the date of opening tender. The petitioner admits opening of tenders in the presence of officers, tenderers and other representatives. The petitioner is the highest bidder for Train No. 18646--East Coast Express run from Hyderabad to Howrah. The petitioner is expecting communication of acceptance of its tender by the third respondent. As there was delay, representation dated 02.02.2015 was made to the respondents and no reply was received by it. On 30.03.2015, the petitioner received letter dated 26.03.2015 and a xerox copy of letter dated 10.03.2015. It is the definite case of petitioner that till 30.03.2015 it has not received any communication from the respondents. In other words, the complaint sought to be made is that either the cancellation of tender or forfeiture of EMD is contrary to the terms of tender notification and the occasion to refuse the execution of contract arises if the petitioner received letter dated 10.02.2015 accepting the petitioner's tender.

On the notice directed by this Court, the learned Standing Counsel has produced the records and the respondents have filed counter affidavit.

The short point that arises for consideration is whether the impugned letter dated 10.03.2015 is legal, tenable and consequently whether the respondents have discharged the burden of dispatch of acceptance of petitioner's tender through letter dated 10.02.2015 and the same is communicated and is received by the petitioner. The petitioner categorically stated that the letters dated 10.03.2015 and 26.03.2015 are only letters received by it and without communication of rejection letter, cancellation of contract and forfeiture of EMD do not arise.

The objection raised by the petitioner is examined by perusing the original record. The Sub Post Master of Bowenpally Post Office, Secunderabad through letter No.500300-21431, dated 23.04.2015 has informed the third respondent on the delivery status of registered letter sent with acknowledgement on 11.02.2015. The same reads as follows:

“ In continuation of our letter regarding the Complaint No.500300-21431, it is to inform you that the complaint of Non Receipt of Ack./Proof of Delivery of Registered Letters with Acknowledgement with Transaction No.RN058429080IN on 11/02/2015 is settled on 23/04/2015 with the following information that 'Article delivered to the addressee on 12/02/2015'.

As regards the other letter dated 26.03.2015, the reply of Sub Post Master of Bowenpally Post Office is as follows:

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“ In continuation of our letter regarding the Complaint No.500300-21432, it is to inform you that the complaint of Non Receipt of Ack./Proof of Delivery of Registered Letters with Acknowledgement with Transaction No.RN169062886IN of bowenpally on 28/02/2015 is settled on 24/04/2015 with the following information that 'Article delivered to the addressee on 30/03/2015'.

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From the status of receipt of articles sent by RPAD vide replies of the Sub Post Master, I am not inclined to entertain the Writ Petition inasmuch as the petitioner has not disclosed true and correct facts on the impugned letters. Once it is established that sanction letter was sent on 10.02.2015 and the same was received by the petitioner on 12.02.2015 and there is inaction on the part of the petitioner in proceeding further under the subject tender notification, the respondents are justified in taking action impugned in the Writ Petition. On this short ground, the Writ Petition is dismissed.

Miscellaneous petitions pending consideration if any in the Writ Petition shall stand closed in consequence. No order as to costs.

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JUSTICE S.V.BHATT

Dated 27TH April, 2015

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