

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9169 of 2016

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Bhagwan Yadav, son of Late Dasrath Yadav, resident of Mohalla Dixon Road
Mundichak, P.S. Tilkamanjhi, District- Bhagalpur.

... Petitioner/s

Versus

1. The Union of India through Divisional Railway Manager, Eastern Railway,
Malda District Malda.
2. Divisional Railway Manager, Eastern Railway Malda Divisional, Malda.
3. Senior Divisional Commercial Manager Eastern Railway, D.R.M. Building
P.O. Jhaljhalia, District Malda.
4. Chief Commercial Manager (P.M.) Eastern Railway, Kolkata (W.B).
5. Commercial Control Incharge, Malda Division Eastern Railway, Malda.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Dr. Manoj Kumar Mr. Rajendra Narain, Sr. Advocate
For the Respondent/s	:	Mr. Anil Kumar Sinha
For the Railways	:	Mr. Devendra Kumar Sinha, Sr. Advocate Mr. Satyeshwar Prasad, Advocate

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 12-07-2016

Heard Mr. Rajendra Narain, learned Senior Counsel
appearing for the petitioner and Mr. Devendra Kumar Sinha,
learned Senior Counsel appearing for the Railways assisted by Mr.
Satyeshwar Prasad.

The petitioner is aggrieved by the order dated 21.4.2016
passed by the Senior Divisional Commercial Manager, Eastern
Railway, Malda whereby the annual maintenance contract for
maintenance of computer peripheral equipments (except
networking equipments) at various locations within Malda
Division have been terminated *inter alia* on grounds of failure of



the petitioner to deposit the performance guarantee of Rs.88,080/- within the period stipulated in the letter of acceptance dated 14.12.2015 which requires the petitioner to deposit the amount within a period of 30 days subject to extension of the period upto 60 days but which is to be accompanied with interest @ 15 per cent per annum.

It is not in dispute that the petitioner failed to carry out this obligation. It is also not in dispute that no agreement has been executed between the petitioner and the Railways. It is also admitted that performance guarantee was deposited by the petitioner on 29.2.2016 through term deposit receipt and which is beyond the period of 60 days and undisputedly does not accompany the interest @15% per annum, which the petitioner was required to deposit as per the letter of acceptance dated 14.12.2015. In these undisputed circumstances, it is the argument of Mr. Narain, learned Senior Counsel appearing for the petitioner in reference to certain work orders issued by the Assistant Station Manager, a copy of which is present in rejoinder to the counter affidavit, that the Railways having acted upon the contract they could not have retracted their steps to terminate the same.

On the other hand, Mr. Sinha, learned Senior Counsel for the Railways submits that the default is admitted and thus a mere

allocation of work would not cure the default and secondly it is not known whether the work order so relied upon by the petitioner is relatable to the contract in question.

I have heard learned counsel for the parties and I have perused the records.

No doubt an extreme measure has been taken by the Railways but then it is the petitioner who has to be blamed for the consequences resulting. The letter of acceptance was issued as back as 14.12.2015, a copy of which is present at Annexure-1 and which in paragraph-2 very clearly commands the petitioner to make payment of the performance guarantee within 30 days of the issuance of the letter of acceptance subject to extension upto 60 days but in such circumstance the performance guarantee amount has to be accompanied with payment of interest @ 15 % per annum effective from the 31st day of the issuance of the letter of acceptance. Now even when the petitioner was aware of this stipulation and though he pleads a case of ailment but there is nothing on record to satisfy this Court on this issue and whether any prayer was made for by the petitioner for condoning the delay so caused nor the deposit is accompanied with the penal interest @ 15 % per annum. Clearly the petitioner has defaulted in his obligation and which could only result in the order dated

21.4.2016.



In the circumstances the order impugned at Annexure-3 dated 21.4.2016 in so far as it records the termination of contract, warrants no interference although in the opinion of this Court in absence of any agreement, the contract never was formalized. This opinion of the Court also has a second facet and that is if the contract never came into being because the petitioner defaulted in deposit of the performance guarantee within time or non-accompaniment of penal interest then either the same should not have been accepted and even if it was accepted then it certainly cannot be forfeited.

In the nature of the dispute at hand the order of the Senior Divisional Commercial Manager in so far as it orders for forfeiture of the performance guarantee and the earnest money, is held wholly unsustainable for the occasion never arose. The order is also unsustainable on grounds that no notice in this regard was served on the petitioner.

In the circumstances discussed, this Court while upholding the decision of the Railways in not awarding the contract to the petitioner on his failure to discharge his obligation, is unable to uphold the decision of the Railways in forfeiting the performance guarantee amount of Rs.88,100/- as well as earnest money of

Rs.39,200/- of the petitioner and the order of the Senior Divisional Commercial Manager dated 21.4.2016 impugned at Annexure-3 to that extent is set aside. The Senior Divisional Commercial Manager, Eastern Railway, Malda is directed to refund the said amount to the petitioner within 3 months of receipt/production of a copy of this order.

This writ petition is allowed in part.

(Jyoti Saran, J)

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