

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2307 of 2013

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M/S Kumar Enterprises through Ramdeo Pathak being the partner, office situated In
302, Hem Plaza, Fraser Road, P.S. - Kotwali Town Patna, District – Patna.

.... Petitioner/s

Versus

1. The Union of India through General Manager, E.C. Railway, Hajipur.
2. East Central Railway (through the Deputy Chief Engineer/Construction/I/
Office situated in Samastipur.
3. Chief Engineer/Con/NE/ East Central Railway Mahendru Ghat, Patna
4. F & CAO/Construction, East Central Railway, Office situated in Mahendru
Ghat, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Subodh Kumar Sinha

For the Respondent-Railway : Mr. Sunil Kumar Ravi

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 22-02-2016

Heard Mr. Subodh Kumar Sinha, learned counsel
appearing for the petitioner and Mr. Sunil Kumar Ravi, learned
counsel appearing for the Railways.

The petitioner is aggrieved by order dated 20.4.2012 of
the Deputy Chief Engineer/Con/1, East Central Railway,
Samastipur impugned at Annexure-6 whereby earnest money
deposit made by the petitioner of Rs.3,50,520/- has been forfeited
for his failure to submit the performance guarantee within the
required 60 days of the issuance of the letter of acceptance and for
his failure to perform the contractual obligation. By the same order
the contract stands terminated.

The facts leading to the impugned order stands well



discussed in paragraph 5 of the counter affidavit and demonstrate that a tender was invited vide Tender Notice No.03 of 2011-12 for construction of sub-structure on pile foundation of Major Bridge No.29 (6x18.30m) in between Kusheshwar Asthan and Harnagar Station in communication with construction of New Broad Gauge line between Sakari-Hasanpur road. The tender was opened on 1.7.2011 and amongst five tenderers, who participated the petitioner's offer was found to be lowest and the validity of offer was 120 days i.e. up to 28.10.2011. As the tender process could not be completed within the validity period that a letter was written by the Deputy Chief Engineer to the petitioner on 25.10.2011 requesting him to extend the validity of the offer by a further 45 days for finalization of the tender. According to the petitioner, he accepted the request and extended his tender validity for 45 days which was communicated to the Deputy Chief Engineer vide letter dated 26.10.2011 present at Annexure-2 but this letter of the petitioner is doubted by the respondent who rely upon another letter present at Annexure-A also dated 26.10.2011 which consents an extension of validity period of 55 days. It is relying upon this letter present at Annexure-A that the respondent issued an offer letter dated 22.12.2011 present at Annexure-3 under the signature of the Deputy Chief Engineer requiring the petitioner to complete the



tender formalities including furnishing of performance guarantee etc. Since according to the petitioner, the validity period so extended by him vide Annexure-2 had expired by the said time that responding to the letter dated 22.12.2011 placed at Annexure-3, the petitioner informed the Deputy Chief Engineer vide letter dated 16.1.2012 placed at Annexure-4 that since the validity of tender has expired and the Railways did not take any steps to finalise the tender hence he would not give consent to the same and the earnest money deposit so made by the petitioner be released.

Thereafter a series of correspondences ensued through which the petitioner was requested to complete the formalities of the tender but since according to the petitioner, he had already declined to give consent to the tender after expiry of the validity and had prayed for release of the earnest money deposit, that he reiterated his request and which has been rejected by the impugned order dated 20.4.2012 issued by the Deputy Chief Engineer and who while terminating the contract has forfeited the earnest money deposit.

The sheet anchor of the Railways is Annexure-A and which is an absurdity on the face of it. Although Mr. Sinha, learned counsel for the petitioner questions the veracity of the document placed at Annexure-A to submit that it is a manufactured document



and is confirmed from a plain comparison with Annexure-2 but even otherwise it would be absurd to believe that the petitioner in response to a request made by the Railways for extending the validity period of his tender by 45 days vide Annexure-1 has gone ahead to extend it by 55 days. The interesting part is that the respondent Railways do not dispute the veracity of their request of 45 days vide Annexure-1. The issue at hand is a reflection of the leisurely functioning of the railways at public cost. The Railways having themselves faltered in the completion of tender process even after the extension of validity period by the petitioner that they have procured a document present at Annexure-A which on the face is not worthy of reliance and the reasons are two-fold:

- (a) There was no occasion for the petitioner to extend the validity of offer by 55 days when the Deputy Chief Engineer in his letter dated 25.10.2011 present at Annexure-1 only requested 45 days extension; and
- (b) There is absolutely no similarity in the letter head present at Annexure-2 and that present at Annexure-A.

Obviously the validity of the tender period having expired the petitioner did not chose to respond positively to the letter dated 22.12.2011 present at Annexure-3 asking him to complete the formality rather the petitioner while declining to give

consent thereto chose to pray for release of the earnest money deposit vide letters dated 16.1.2012 and 5.5.2012 present at Annexures-4 and 7 respectively.

An unwarranted issue is sought to be raised by Mr. Ravi, learned counsel appearing for the Railways to submit that although the letter is dated 16.1.2012 but it was in fact dispatched on 5.5.2012 and for which he relies upon a postal envelope enclosed with Annexure-B which shows that the dispatch was made on 5.5.2012. I am rather astonished by the kind of opposition and how the envelope at Annexure-B is attached to the letter dated 16.1.2012 while ignoring the letter dated 5.5.2012 present at Annexure-7 which is the explanation to the envelope dated 5.5.2012 at Annexure-B. Mr. Sinha on the other hand has invited the attention of this Court on the receipts issued by the courier placed at Annexure-9 which shows the dispatch on 16.1.2012 which is in tune with Annexure-4.

In the circumstances so discussed, it is manifest that the Railways have tried to mislead this Court by enclosing documents which are apparently of doubtful character and the reason is plain and simple. It is because for the own laches and delay by the respondents that the tender process could not be taken to its logical conclusion even after the petitioner accepted the request to extend

the validity period of 45 days.

Another glaring illegality in the order impugned at Annexure-6 is that even when the Deputy Chief Engineer proceeds to forfeit the earnest money deposit of Rs.3,50,520/- vide order 20.4.2012, the order is not preceded by any show cause notice to the petitioner.

In any other situation, I would have remitted the matter to the authorities for reconsideration of the issue but in the glaring circumstances reflecting from the proceedings where arbitrariness, unfairness and an attempt to mislead this Court by the Railways is writ large over the proceedings, I find no occasion for remittance of the matter for the facts on record clearly speaks that the respondents have tried to save their lapses by indulging in acts lacking character and which illegality is perpetuated by the forfeiture of the earnest money deposit of the petitioner.

For the reasons aforementioned the order of forfeiture of earnest money deposit issued by the Deputy Chief Engineer vide letter dated 20.4.2012 impugned at Annexure-6 cannot be upheld and is accordingly set aside.

The writ petition is allowed. The Deputy Chief Engineer/Con/1, East Central Railway, Samastipur is directed to refund the earnest money deposit of the petitioner amounting to

Rs.3,50,520/- together with simple interest @ 12% per annum calculated from the date of deposit until the date of refund.

I was inclined to impose heavy cost on the Deputy Chief Engineer and the concerned authority of the Railways who have tried to justify their illegal actions by taking recourse to doubtful documents but with a lot of reluctance I have refrained myself from doing so. Nonetheless the authorities are warned to be more careful in future.

(Jyoti Saran, J)

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