

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7281 of 2016

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Mohini Sikshit Shramik Swablambi Sahkari Samiti Ltd., through its Secretary Amit Bhattacharya, son of Late A.T. Bhattacharya, permanent resident of S.N. Bose Road, Deshbandhu Para, P.S.- Siliguri, District-Darjiling, present residing at Indira Nagar, Laliyahi, Sahayak Thana, Post Office- Katihar Mills, District- Katihar

.... Petitioner

Versus

1. The Secretary, Ministry of Railways, New Delhi
2. The General Manager, North East Frontier Railway Maligaon, Assam
3. The Chief Commercial Manager, North East Frontier Railway Maligaon, Assam
4. The Senior Divisional Commercial Manager, Katihar Division, North Frontier Railway, Katihar

.... Respondents

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Appearance :

For the Petitioner/s : Mr. J.S.Arora with M/S Manoj Kumar & Gaurav Pratap, Advocates

For the Respondent/s : Mr. Anil Kumar Sinha with Mr. Kumar Ravish, Advocates

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA
ORAL ORDER

4 02-09-2016 Heard learned counsel for the petitioner and learned counsel for the Railway.

The petitioner seeks quashing of the tender notice dated 9.3.2016 issued by the Northeast Frontier Railway, Katihar Division, Commercial Branch. The aforesaid tender notice was issued for filing tenders in sealed cover from Genuine (Registered) working Labour Co-operative Societies of State/Central Government with valid registration and currency having field of operation of loading and unloading of Parcels covering Katihar



Railway Station for loading and unloading of parcels at Katihar Railway Station for three years. The estimated cost of the tender was Rs.52,50,750.84. One of the conditions, which had been put in Clause 4(ii) of the said tender notice, was that the tenderer should have completed from start to finish in the last three financial years (i.e. current year and three previous financial years), at least one similar single work for a minimum value of 35% of the advertised tender value of work. The petitioner is also aggrieved by condition 4(iii) of the tender notice that the total current amount received during the last three years as per current ITCC should be minimum of 150% of the advertised tender value of work.

The petitioner is a registered Co-operative Society which has engaged in doing contract work, mainly, of Railways with the help of its members. It is claimed that the petitioner had been engaged in handling contracts of goods and parcel at Katihar Division within the Northeast Frontier Railway Zone and had participated in several tenders floated by the said Division and completed the work satisfactorily and no complaint whatsoever was ever made in regard to the execution of the work order as placed to the petitioner and in lieu of the same payment for work was made to the petitioner. It is further stated that since the



financial year 2012-13 the respondent authorities had stopped issuing tender in regard to handling contract of goods and parcel at Katihar Railway Station till the issuance of the instant tender and were carrying out the said work on their own with the help of private persons. Thereafter on 9.3.2016 the tender notice was issued.

It is the stand of the petitioner that under the Rules of the Railways the eligibility criteria cannot be put in any tender, the value of which is less than Rs.50 lacs. With regard to the present tender also it is stated that the actual value of the tender would be to the extent of a little over Rs.40 lacs only but to enhance the same above Rs.50 lacs one item has been included at Serial No.3 in the schedule of work and rate to be performed at Katihar Railway Station, that is, transshipment of packages (loading and unloading) through parcel and luggage from BG to BG from vice-versa inclusive of all operations involved for the purpose and irrespective of distance and interval of time elapsing between different parts of operations to the extent of 3868.86 quintals to be handled by one per month with the schedule of rate of Rs.77.02 for 10 quintals (per tones) and as a result of which the amount of contract has been enhanced to above Rs.50 lacs; whereas according to the Circular dated 26.11.2015 (Annexure-6) issued



by the Sr.Divisional Commercial Manager, Northeast Frontier Railway, Katihar it is provided that as per Freight Marketing Circular 34 of 2005 issued by the Railway Board's letter dated 14th November, 2005 transshipment of parcel traffic is totally stopped at the division and parcel consignment should be loaded/unloaded only booked parcel packages from a particular station and to be delivered at the station. It is thus submitted by learned counsel for the petitioner that in the tender notice even though the transshipment of parcel traffic work has been stopped by the Railway Board's Circular of 2005, it has been forcibly included so that the overall value of the tender may extend to Rs.50 lacs, enabling the respondents to fix eligibility criteria in the manner so that the petitioner society is excluded. It is submitted that if that part of the tender is not included then the total estimated cost of the tender would be less than Rs.50 lacs and the respondents would not be entitled to fix the eligibility criteria for the tenderers and thereby the petitioner would be eligible for all purposes in doing the work under the contract and thus it is submitted that the inclusion of the said clause in the tender is contrary to the Circular of the Railway Board.

In the counter affidavit filed on behalf of the Railway it is stated that the amount shown for the work under Serial No.3 is



only for Rs.10,72,726/-; although the transshipment work has been stopped as per Railway Board's letter dated 12.6.2012 but it could not be stopped for administrative exigencies considering the emergency situations, like accident, flood/breach, natural calamity and therefore it was kept in the tender. It is further submitted that the same has been done on the basis of a report of the Committee.

On the last occasion when the matter was taken up and the said argument had been advanced, this Court had adjourned the matter to enable learned counsel for the Railway to produce the report of the Committee. However, learned counsel for the Railway today submits that he is not in a position to produce the report of the Committee.

In the aforesaid situation, I do not find that the Railway can justify in inclusion of transshipment work by showing the amount of the work at Serial No.3 of the tender notice and the contention of learned counsel for the petitioner that the same has been introduced for marking up the figures so that the estimated amount of contract is enhanced to above Rs.50 lacs and the eligibility criteria of the petitioner is ignored acquires substantial force. The failure of the respondents to justify the inclusion of the said clause in the tender, which has been admittedly prohibited by the Circular of the Railway Board, make the action of the



respondents appear to be malicious with the intention to exclude the petitioner from participating in the tender by ensuring that the eligibility criteria fixed in such a manner that it is not fulfilled by the petitioner, as otherwise the petitioner is eligible to participate in the tender process.

The writ application is allowed. The tender notice dated 9.3.2016 is quashed with liberty to the respondents to proceed in the matter in accordance with law.

(Ramesh Kumar Datta, J)

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