

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19033 of 2012

=====

M/s Shubham Enterprises through its Proprietor Diva Kant Chaudhary,
Punjabi Colony, Samastipur, P.S. and District-Samastipur

.... Petitioner

Versus

1. The Union of India through General Manager, E.C. Railway, Hazipur, Vaishali
2. The Divisional Railway Manager, East Central Railway, Samastipur
3. The Senior Divisional Telecommunication Engineer, East Central Railway, Samastipur
4. The Divisional and Telecom Engineer, East Central Railway, Samastipur

.... Respondents

=====

Appearance :

For the Petitioner : Mr. Satish Chandra Jha-3, Adv.
Mr. Tarun Kumar, Adv.

For the Respondents : Mr. Bindhyachal Singh, Adv.
Mr. Manish Prakash, Adv.

=====

CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 27-09-2016

Heard learned counsel for the petitioner and learned
counsel for the Respondents.

2. The present writ petition has been filed for quashing letter
No. N/16/19/STM1/S.P.J-DBG/11 dated 20.08.2012 (Annexure-1)
which has been issued by the Respondent No. 3, whereby the work
awarded to the petitioner pursuant to Tender No. SPJ/SWT/W/STM-
J/SPJ-DBG/11 has been terminated; for quashing the letter No.
N/16/19/STM1/DBG-SPJ/10-11P4-11 dated 03.09.2012 issued by the
Respondent No. 3 whereby the representation dated 28.08.2012 filed
by the petitioner for recall of the termination order dated 20.08.2012
has been rejected; and for directing the respondents to furnish drawing
for the work in question and also to revise the rate so that work in
question may be completed by the petitioner, and in the alternative, to

refund the security amount and performance guarantee along with suitable compensation to the petitioner.

3. Learned counsel for the petitioner makes a short submission in support of his contention that the impugned order dated 20.08.2012 is arbitrary and in violation of the principles of natural justice, namely that the pre-condition of issuance of a 7 days' notice and a 48-hours' notice was not fulfilled prior to the impugned order being passed. This aspect of the matter was specifically raised in the petitioner's representation dated 28.08.2012 but the same has been rejected mechanically and without assigning reasons in the impugned order dated 03.09.2012.

4. Learned counsel for the respondent-Railway relies on the counter affidavit to oppose the writ petition, submitting that the requisite 7-day and 48-hour notices respectively were duly issued to the petitioner and despatched by registered post (Annexures- E and F). It is therefore submitted that the impugned orders do not suffer from any infirmity and have been validly passed.

5. Having heard learned counsel for the parties and on careful consideration of the materials on record, this Court finds merit in the submissions of learned counsel for the petitioner. While the two notices are said to have been issued and despatched by registered post, the petitioner's specific plea that the same were not served has not been denied by the respondents in their counter affidavit nor has any material been brought on record before this Court to show that such

notices were indeed served prior to passing of the impugned orders. The impugned order dated 20.08.2012 itself does not also afford any reference to such notices having been issued or that the petitioner defaulted in that regard. Mere issuance of the notices without their being delivered to the petitioner thus remained an idle formality and cannot be considered as substantial compliance of the principles of natural justice, such notices being envisaged in the General Conditions of Contract as well before termination of the award of work.

6. In the above view of the matter, the impugned orders dated 20.08.2012 and 03.09.2012 (Annexures 1 and 2) are hereby set aside and the writ petition is allowed. It is however made clear that the present judgment shall not stand in the way of the respondents in issuing appropriate notices and proceeding afresh in accordance with law, if so deemed necessary.

7. As concerns the petitioner’s remaining prayers, namely for revision of rates for completion of the work and the alternative prayer for refund of the earnest money deposit and any other incidental matters, the petitioner shall be at liberty to represent before the Railway for appropriate relief in the matter.

(Vikash Jain, J)

Md. Ibrarul/BT

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	04.10.2016
Transmission Date	N.A.