

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.25129 of 2019

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M/s Omega Elevators, having its local office at House No. 5, Road No. 25, Sri Krishna Nagar, Patna-800001 and having its registered office at 11, Sanjeev Baug Society, New Sharda Mandir Road, Paldi, Ahmedabad, Gujarat-380007, represented by its Authorized Signatory Shri Raja Gupta, Son of Shri Kamal Sah, aged about 28 years, Gender-Male, resident of P.O. and P.S. Sheohar, Dist-Sheohar.

... .. Petitioner/s

Versus

1. THE UNION OF INDIA through the Secretary, Ministry of Railways, Government of India, New Delhi.
2. The Chairman, Railways Board, Ministry of Railways, Government of India, New Delhi.
3. The General Manager, East Central Railway, having its office at Mahendru Ghat, 1st Floor, Patna-800 004.
4. The Senior Divisional Electrical Engineer/G (DEE/G), East Central Railway, Sonpur, Bihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Bhargav Hansukar, Advocate Mr. Nikhil Kumar Agrawal, Advocate Ms. Aditi Hansaria, Advocate
For the Respondent/s	:	Mr. Devendra Kumar Sinha, Sr. Advocate Mr. Anil Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL ORDER

2 19-12-2019 Heard Mr. Bhargav Hansukar, learned counsel

for the petitioner, assisted by Mr. Nikhil Kumar Agrawal,

learned Advocate and Mr. Devendra Kumar Sinha,

learned senior Advocate for the Railways, assisted by

Mr. Anil Singh, Advocate.

The petitioner, which is a manufacturer and

supplier of lifts / escalators and is a Class-A certified



Electrical Contractor with various Governments, has challenged the Notice Inviting Tender issued by Respondent No. 4 for supply, installation, commissioning and maintenance of 6 lifts at different places in Sonapur Division on the ground that such notice is restrictive of the brands, which is neither permissible nor desirable.

It has been shown to this Court that the subject NIT contains a condition which entitles only specified brands / manufacturers of Lifts, namely, Otis, Kone, Mitsubishi, Schindler and Johnson Lifts from participating in the tender process. Though not specified in the subject NIT but by way of implication as the NIT clearly states that in terms of Railway Board's letter dated 07.04.2015, only such makes / brands which are approved in Category-A list of buildings as defined in CPWD works Manual, 2014 would be acceptable for passengers lift at Railway Station, a restriction has been put to the indigenous manufacturers.

The aforesaid direction of the CPWD has been



done away with *vide* office Memorandum dated 10.01.2019 which clearly indicates the discontinuation of the enlistment of contractors in category-lifts (Class-A).

On the aforesaid ground, it has been submitted that with the insertion of the aforesaid clause in the NIT, not only its import becomes vague but is against the policy of the government in preventing a 100 % "Made In India" entity from participating in such tender.

It has also been urged that the Ministry of Railways has also come out with a Circular dated 19.12.2018 specifying that there should be no stipulation of any foreign make / brand or any restrictive conditions of such brands in any notice inviting tender as it will not only be violative of the procurement policy of the government but also of the general financial rules.

It appears that there is some oversight of Respondent No. 4 in issuing a tender with the aforesaid restrictive condition of allowing only listed brands to participate in the same.



A representation appears to have been made to respondent no. 4 by the petitioner on 7th of December, 2019 seeking consideration of the brand of the petitioner also, *viz.*, "Omega", for the aforesaid tender.

The aforesaid representation has not yet been adverted to.

Mr. D. K. Sinha, learned senior Advocate for the Railways, however, submits that the Railways do not intend limiting the participation to only foreign brands of lifts. It has further been stated that *vide* communication dated 13th of June, 2019, a conscious decision has been taken to consider the tender papers of Indian Manufacturers only.

If this be the stand of the respondents, perhaps, the petitioner would have no cause to grieve.

In any view of the matter, in order to provide the petitioner with a specific response of the Railways, this Court directs that the representation referred to above be disposed off and the petitioner be



communicated the decision.

The stand of the respondent/Railways doubly ensures that the petitioner's firm being an indigenous unit will not be non-suited only on account of its brand being autochthonous.

With the aforesaid observation / direction, this petition stands disposed off.

(Ashutosh Kumar, J)

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