

05.10.2020
D/L No.07
Court No.10
s.biswas

WPA 6155 of 2020

M/s Cais Engineering Services Private Limited
Vs.
The Union of India & Ors.

(Through Video Conference)

Mr. Jishnu Chowdhury
Mr. Syed Nurul Arefin

... .. for the petitioner

Mr. Prithu Dudhoria
Mr. Saptarshi Bhattacharjee
Mr. Subhankar Chakraborty

... .. for the respondents

This is a matter in respect of railway contract where the petitioner alleges that after issuance of work order, the old tender has been cancelled and a new tender has been initiated to which the petitioner has not participated.

The contention of the writ petitioner is that due to Force Majeure situation it was not possible for the petitioner to furnish Performance Guarantee and on the ground of non-submission of Performance Guarantee, work order has been cancelled by a letter issued by the respondent Railway authority dated 8th July, 2020.

From the letter dated 8th July, 2020 it is found that the Performance Guarantee was required to be given by 60 days from the Letter of Acceptance (LoA) which is the outer limit. But the petitioner failed to deposit the Performance Guarantee.

The petitioner by relying upon a circular of Railway Board dated 22nd April, 2020 (at page 54 of the writ application), submits that not depositing Performance Guarantee cannot be a ground for cancellation of the work order in view of the letter of Railway Board dated 22nd April, 2020.

This letter dated 22nd April, 2020 does not help the petitioner at all because this letter of Railway Board says about non-charging of any penal interest for delay in submission of Performance Guarantee. There is no question of delaying of submission of Performance Guarantee.

Therefor, I do not find any merit in this matter to interfere with the letter of cancellation of the work order dated 8th July, 2020 because Letter of Acceptance (at page 21 of the writ application) was issued to the petitioner on 30th April, 2020 and the outer limit of 60 days has expired on 29th June, 2020. The work order has been cancelled by the letter dated 8th July, 2020 and the petitioner cannot take advantage of the existence of Force Majeure situation for not submitting the Performance Guarantee. No such advantage was given either by the Railway authority or by the Railway Board to the petitioner.

In this view of the matter, the writ application being WPA 6155 of 2020 is dismissed.

A report in the form of an affidavit affirmed on 14th September, 2020 has been filed by the learned advocate

for the Railways today at the time of hearing which is kept on record.

(Abhijit Gangopadhyay, J.)