

02.07.2021
Court No. 19
Item no.06
CP

WPA 10445 of 2021

Sri Dinesh Biwal
VS
Union of India & ors.

Mr. Debrup Bhattacharya
Ms. Saptamita Pramanik

....for the petitioner.

Mr. Sanajit Kumar Ghosh

....for the respondents.

This writ petition has been filed challenging the letter dated March 30, 2021, by which the letter of acceptance dated July 14, 2020 issued by the Assistant Commercial Manger, Howrah on behalf of the Senior Divisional Commercial Manager, Howrah was cancelled/withdrawn. The earnest money of Rs.1 lakh deposited by the petitioner at the time of participation in the tender was forfeited. Over and above, a harsh punishment of debarring the petitioner for two years from participating in any tender floated from Howrah Division was imposed.

The facts in the case are that the petitioner participated in an e-tender issued from the office of the Senior Divisional Commercial Manager, Eastern Railway, Howrah Division, inviting offers for taking on lease 4 tonnes space in FSLR-I by train no. 12345 Up Saraighat Express, Ex-Howrah (HWH) to

Guwahati (GHY) for a period of five years. The petitioner participated in the tender and deposited the earnest money of Rs.1 lakh. The petitioner was the highest bidder. The railway authorities issued the said letter of acceptance which was to be treated as the initiation of the contract between the railway authorities and the petitioner.

When the letter of acceptance was issued, the respondents came to know that in respect of the self-same space a writ petition had been filed before this court being W.P. 3164 (W) of 2020. It was directed by this court that any action that would be taken by the respondents in respect of the said leasing space in the Saraighat Express which is also the subject matter of the present tender, shall abide by the final result of the said writ petition. In the letter of acceptance, the order of the High Court was mentioned and the petitioner was required to accept the offer, pay up the entire bid money but the contract would be subject to the result of the writ petition.

The petitioner thus was hesitant to continue with the process by depositing Rs.31 lakhs. The railway authorities in view of the delay on the part of the petitioner in entering into the contract upon complying with the other formalities, issued several letters to the petitioner, warning the petitioner that the offer would be cancelled, the earnest money

would be forfeited and clause 20.2 of the leasing policy regarding debarment would be imposed. There are some correspondence between the parties. Strangely, although the petitioner by several letters intimated the railway authorities as to why the job could not be undertaken by the petitioner with the encumbrances as directed by this Hon'ble Court, the order of cancellation of the contract dated March 30, 2021 does not refer to such communication and reasons assigned by the petitioner.

It also appears that the railway authorities as a gesture of being customer friendly, by a letter dated February 10, 2021, desired to have a meeting with the petitioner pending the final decision in the matter. The petitioner categorically prayed before the railway authorities for refund of earnest money as the petitioner was not willing to continue with the contract which encumbered in a legal proceeding. It also appears from a letter dated August 3, 2020 that the train service was disrupted due to outbreak of the Novel Corona Virus. The respondents opined that acceptance was necessitated for further course of action. As the petitioner did not pay up Rs.31 lakhs and did not execute the contract, the order impugned was issued canceling the letter of acceptance as also forfeiting the earnest money. In addition to that, the petitioner was also debarred from participating in

any tender process under the Howrah Division for a period of two years.

The railway's leasing policy provides that in case of termination of lease contracts, an appeal would lie before the Principal Chief Commissioner of the Zonal Railway who shall decide the case as per his discretion and merits.

Under such circumstances, taking note of the fact situation of this case, an appeal shall be filed before the Principal Chief Commissioner of the Zonal Railway by the petitioner challenging the cancellation of the Letter of Acceptance and forfeiture of earnest money.

With regard to the debarring of the petitioner, it appears that although prior to imposition of clause 20.2 of the leasing policy, letters were written to the petitioner to initiate the work in respect of which the letter of acceptance was given, a proper hearing was not given to the petitioner. A penalty of debarring the petitioner for the next two years from participating in any tender to be floated by the Howrah Division was imposed. During the pandemic situation, when the train services of Saraighat Express had been disrupted as per the admission made by the Assistant Commercial Manager, Howrah in the letter dated August 3, 2020 and only some special trains were running, the debarring clause, in my opinion,

should not have been imposed in such a hurried manner without giving the petitioner an opportunity to place his case before the authority. The authority has all the right to debar an erring contractor who does not comply with the leasing policy or the terms and conditions of contract. However, this is a very harsh measure which should be adopted only when the railway authorities are satisfied that the non-performance was wilful and the contractor was negligent, corrupt or had intentionally violated the terms and conditions of the contract and such violation or mal-practice was to cheat the government by not paying the legitimate dues, revenue or freight charges. Such a harsh measure taken by an authority which is state under Article 12 of the Constitution of India, specially at a time when the country is going through partial nationwide lockdown and people are losing their jobs and livelihood, without a proper opportunity to the petitioner to represent his case, is perverse and illegal. The decision of blacklisting and debarring the petitioner for two years without hearing the petitioner is liable to be set aside.

Under such circumstances, the writ petition is disposed of with the following directions:

- a) With regard to the termination of the contract/cancellation and withdrawal of

the letter of acceptance and forfeiture of the earnest money, the petitioner shall prefer an appeal as per the leasing policy within a week from date.

- b) With regard to debarring the petitioner for the next two years from participating in any tender under the Howrah Division, that portion of the order dated March 30, 2021 is set aside. The railway authority shall be at liberty to proceed against the petitioner in accordance with law but grant him an opportunity of being heard before any decision to impose a bar from participating in any tender is taken.

This court has not gone into the merits of the claims and counter-claims of the parties. The appellate authority shall act and proceed in accordance with law.

If any appeal is filed as indicated above, the appellate authority shall consider and dispose of the same and pass a reasoned order upon hearing the petitioner. The order should be communicated to the petitioner. The entire exercise should be completed within four weeks from receipt of the appeal papers.

With the above observations, this writ petition is disposed of. There shall be no order as to costs.

Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)