

08.10.2021

Ct. No.13

Sl. No.29

akd

W.P.A. 13186 of 2021 [via video conference]

[M/s. Fabcon & Anr. -Vs- The Secretary, Ministry of Indian Railways & Ors.]

Mr. Mahendra Prasad Gupta

Mr. G. K. Singh

Mr. P. N. Singh

Mr. S. Chakraborty

... .. for the petitioners

Mr. Kusal Chatterjee

..... for respondent no.4

Mr. Kushi Prasun

Mr. Aveek Biswas

... .. for respondent nos.2 & 3

A unique set of facts has emerged in this writ application. The original contractor registered with the Railways is the writ petitioner no.1, which is a partnership concern.

By a request letter dated 9th June, 2020 and pursuant to a Memorandum of Understanding (MoU) dated 20th January, 2020, the writ petitioner no.1 communicated to the Railways that the respondent no.4 herein namely, M/s. Fabcon Manufacturers Private Limited is the new entity in place and stead of the writ petitioner. In furtherance of such communication, the Railways had issued a communication dated 8th July, 2021 to the writ petitioner no.1 stating that henceforth M/s. Fabcon Manufacturers Private Limited, respondent no.4 herein shall be treated as the contractor who will effect supply under various contracts issued to and executable by the petitioner no.1.

Learned counsel appearing for the petitioners would challenge the aforesaid MoU and letters stating that his client has not issued the said letter or MoU.

Both the petitioner and the respondent no.4 claim the benefit of payment of supplies already made by them to the Railways. It is further submitted that certain supplies under fresh orders are ready for being made to the Railways by both the petitioner as well as the respondent no.4 herein. It appears to this court that the Railways have been unfortunately dragged into a private dispute between the writ petitioner no.1 and the respondent no.4 herein.

In that view of the matter, the writ petitioner no.1 and the respondent no.4 may thrash out their differences and disputes before a civil forum. Until receipt of an appropriate order from the civil court or even prior thereto at the exclusive discretion of the Railways namely, Chittaranjan Locomotive Works, the latter shall be entitled to receive supplies and goods from any person i.e. the writ petitioner no.1 or the respondent no.4 at their sole discretion or choice. The Railways shall be entitled to withhold all payments to the writ petitioner no.1 as well as the respondent no.4 until any decree or order of a civil court is received by them.

Needless to mention that the Railways also at their discretion be entitled to terminate any of the contracts and orders entered into with the writ petitioner no.1 and the respondent no.4 and place fresh orders on persons of their discretion and choice.

With the aforesaid observations, the writ petition shall stand disposed of.

Copy of the communications dated 9th June, 2020, 30th July, 2020, 29th August, 2020 and 28th October, 2020 respectively and Memorandum of Understanding dated 20th January, 2020 is taken on record.

There shall be no order as to costs.

All parties are to act on a server copy of this order duly downloaded from the official website of this court.

(Rajasekhar Mantha, J.)