

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.754 of 2019

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Calcutta Springs Limited registered company having its registered office at 18, R.N. Mukherjee Road, 4th Floor, Kolkata- 1 through its authorized representative namely Kamla Shanker Ojha (Male, aged about 42 years) Son of Shri Sadhu Sharan Ojha resident of Defense Colony, Shahpur, Danapur, Patna- 801502

... .. Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Railways, New Delhi
2. The General Manager, East Central Railway, Zonal Office Hazipur, Vaishali
3. The General Manager (Engineering) East Central Railway, Zonal Office Hazipur, Vaishali
4. The Deputy Chief Engineer/TSP, East Central Railway, Zonal Office Hazipur, Vaishali- 844101

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Gautam Kumar Kejriwal, Advocate Mr. Alok Kumar Jha, Advocate Mr. Mukund Kumar, Advocate
For the Respondent/s	:	Mr. Anshuman Singh, CGC Mr. Ranjay Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 21-04-2023

Heard learned counsels for respective parties.

2. In the instant petition, petitioner has prayed for
following reliefs:-

"(a) For issuance of a writ in the
nature of certiorari for quashing of the letter
of acceptance number W-7A/02/18/6426/SP
dated 14.12.2018 issued by the respondent
number 4 in connection with tender number
02186426 SP or

In the alternative;



(b) For holding and a declaration that the letter of acceptance number W-7A/02/18/6426/SP dated 14.12.2018 issued by the respondent number 4 in connection with tender number 02186426 SP is not binding upon the petitioner in its present form, scope and effect;

(c) For further holding and a declaration that letter of acceptance number W-7A/02/18/6426/SP dated 14.12.2018 issued by the respondent number 4 is in teeth of Section 13 of the Indian Contract Act, 1872 (hereinafter referred to as the Act for short);

(d) For issuance of a writ or order or direction upon the respondents to modify/ amend and issue fresh letter of acceptance in favour of the petitioner as against tender number 02186426 SP opened on 21.08.2018 in light clause 6.2.7 of the tender document keeping in view the additional condition offered by the petitioner through letter dated 02.11.2018 so as to ensure timely supply of material;

(e) For issuance of a writ order or direction restraining the respondents from taking any coercive action against the petitioner in light of clause 13.0 of the tender document;

(f) For issuance of a writ or order or direction restraining the respondents from imposing the condition of payment of security deposit in terms of clause 9 of the tender document if applicable to the case of the petitioner;

(g) For issuance of a writ or order or direction restraining the respondents from compelling the petitioner by any mode or method in the directly or in the alternative to supply any stock of material in terms of the letter of acceptance number W-7A/02/18/6426/SP dated 14.12.2018 issued by the respondent number 4 during the pendency of the present writ application;



(h) For further holding and a declaration that clause 6.2.7 of the tender document clearly covers the case of the petitioner and the respondents which condition of the tender document is specifically meant for its application to such a situation and therefore the respondents ought to have applied the same before issuance of the impugned letter of acceptance;

(i) For grant of any other relief or reliefs to which the petitioner is found entitled to in the facts and circumstances of the case."

3. During pendency of the present petition the petitioner has filed Interlocutory Application in which he has questioned the action of the respondent dated 10.01.2019 (Annexure-13). Petitioner was a successful bidder insofar as supply of Elastic Rail Clips to the extent of 42,80,934 numbers. Letter of acceptance was issued on 14.12.2018. In the meanwhile, petitioner had submitted communication to the concerned authority to the extent that he may be permitted to supply lesser quantity with reference to his capacity to produce and supply and in the alternative, he has expressed that he is willing to withdraw from the supply of Elastic Rail Clips pursuant to the fact that he was a successful bidder. There were no action on the petitioner's request either by accepting it or rejecting the same. On the other hand, they proposed to take action in terms of Annexure-13 dated 10.01.2019 to the extent



that the petitioner has to supply in terms of letter of acceptance. Further it is submitted that petitioner was not required to furnish EMD, therefore, question of invoking clause 8.8 is not warranted. As on today, respondents have not taken action for not executing the work insofar as supply of Elastic Rail Clips in terms of letter of acceptance. Therefore, the present petition is pre-mature. Accordingly, the present writ petition stands disposed of reserving liberty to the respective parties to complete the proceedings within a reasonable period of time of three months from the date of receipt of this order. In the event of passing any adverse order against the petitioner, he is at liberty to question the validity of such action taken by the concerned authority.

4. With the above observations, present petition stands disposed of.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

rakhi/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	28.04.2023
Transmission Date	N.A.

