

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.183 of 2023

=====

Kundan Kumar, S/o Sri Suresh Prasad Yadav, R/o- Village - Hajipur, Khagaria, Ward No. - 12, P.O. - Khagaria, P.S. - Khagaria, District - Khagaria (Bihar), Pin Code - 851204.

... .. Petitioner/s

Versus

1. The Union of India through the Secretary of the Government of India, New Delhi.
2. The Chief Commercial Manager, East Central Railway, Hajipur.
3. The Divisional Railway Manager (Commercial), East Central Railway, Sonpur.
4. The Chief Commercial Inspector/Commercial Superintendent, Khagaria Junction, Khagaria, P.S.+District- Khagaria.
5. The Senior Divisional Commercial Manager, Sonpur, P.S. - Sonpur, Distt. - Saran.
6. Bhagavan Yadav, Son of Shri Dashrath Yadav, resident of Chandpur Post Gogri, Police Station Gogri, Near K.D.S. College, Gogri, District Khagaria 851202

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Dr. Chandra Shekhar Azad, Advocate Mr. Sadashiv Tiwari, Advocate
For the Respondent/s	:	Dr. K.N. Singh, Additional Solicitor General

=====

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 27-06-2023

The writ petition is placed before us since there is an interim order passed by a Division Bench; despite the fact that the roster belongs to the learned Single Judge.

2. We are informed by the Registry that originally the roster was of the learned Single Judge but later on it was changed to that of the Division Bench in which circumstance the matter was posted before the Division Bench upon which the



interim order was also passed. However, now the roster has again been conceded to the learned Single Judge. Though we informed the parties that the writ petition could be sent to the learned Single Judge, especially in the circumstance of there being a remedy of appeal, if it is heard by a learned Single Bench, the learned counsel unanimously requested that the matter be heard by the Division Bench itself for a quietus to the issue. Hence, we proceed to hear the matter.

3. The petitioner has filed the above writ petition seeking differential amount, proportionate to the rate fixed in the agreement for awarding a parking contract to the petitioner; which he was unable to operate during the Covid period and the Railways themselves had reduced the area conceded for parking, as per the agreement. The petitioner has also sought for a direction to the respondents not to give effect to E-Auction Notice No. SEE-PKG-01-23 issued by the Divisional Railway Manager (Commercial), East Central Railway, Sonpur in respect of Khagaria Circulating Area.

4. Learned counsel for the petitioner specifically takes us to the agreement produced as Annexure-1 wherein he was granted licence to occupy a land for the purpose of Parking Stand at Khagaria Railway Station premises of Sonpur Division.



The specific area conceded to him as per the contract was 900 square metres. However, the Railways themselves by order dated 23.06.2022 took away 146 sq. meters for the purpose of erecting the National Flag. Then Covid struck, lock-down was imposed and there was no operation of trains and there was no parking in the area, for which the petitioner had taken a contract to run the Parking Stand. The petitioner hence suffered heavy losses and in that circumstance he prays for the return of security deposit and proportionate reduction in so far as the losses suffered by him by way of Covid as also the 146 sq. metres area being reduced from the total contracted area.

5. Learned Additional Solicitor General, who appears for the Railways points out that these are issues which could be raised in an arbitration proceeding; which is provided for under the contract. It is also pointed out that in any event, the petitioner has no claim against the E-Auction notice published in the year 2023. It is pointed out that the petitioner's contract would have normally ended by 29.11.2022 but, however, considering the representation of the petitioner it was extended to 27.02.2023. Anticipating the expiry of the contract on 27.02.2023, the Railways had proceeded with the new notification in December of the previous year and the tenders



were opened on 13.01.2023. The petitioner had participated in the tender proceedings and his offer was around Rs. 81 lacs against which the successful bidder offered more than one crore. The successful bidder has also not been made a party in the above writ petition. However, they came on record with an Intervention Application. It is the submission of the learned Additional Solicitor General that according to his instruction, the petitioner had been continuing but however, the same has to be verified from the appropriate authority. In any event, the work order to the successful bidder has not been granted.

Re: I.A. No. 03 of 2023

6. Interlocutory Application No. 03 of 2023 filed by the successful bidder is allowed. Registry is directed to implead the successful bidder Bhagavan Yadav as Respondent No. 6 in the array of parties.

Re: CWJC No. 183 of 2023

7. Learned counsel for the successful bidder was also heard and he adopts the arguments of the learned Additional Solicitor General.

8. We have seen the contract as executed by the petitioner and the Railways at Annexure-1, which has conceded 900 sq. metres for the purpose of running a Parking Stand.



Obviously, the tender was submitted by the petitioner based on the area specified and also the period conceded to him. It is admitted that by Annexure-4, 146 sq. metres was set apart for the purpose of erecting the National Flag in which circumstance the said area could not be used for parking vehicles; which definitely would have resulted in revenue loss to the petitioner. It is also pertinent that Covid intervened in the year 2020 and there was also a National Lock-down for about 1½ months. We are of the opinion that these factors cannot be questioned in arbitration. However, the petitioner could file a representation before the concerned authority of the Railways who will consider it after hearing him.

9. In so far as the subsequent notification, the work has been awarded to the additional 6th Respondent but no work order has been issued, merely because of the interim orders issued by this Court. A Division Bench of this Court has by order dated 30.01.2023 directed that the tender process may be carried out but shall not be finalized without the leave of the Court. We are of the definite opinion that the petitioner has absolutely no case against the non-tender, for reason of the revenue loss caused in the earlier contract awarded to the petitioner. These are two different issues which have to be



considered independently. Admittedly, the petitioner participated in the tender proceedings and failed to be successful. The additional 6th Respondent offered far more than the petitioner offered in his tender. He can have absolutely no claim over the Parking Area for the period for which the notification was issued in 2023. There is no clarity as to whether the petitioner is continuing or has vacated the premises as of now, which fact has to be verified and ascertained by the Station Master of the particular Railway Station. In this context, we notice that if the petitioner has been continuing in the parking area and collecting revenue even after 27.02.2023, the same shall be set off against any claim of differential reduction, raised by the petitioner. This could be considered at the time of consideration of representation of the petitioner by the appropriate authority of the Railways.

10. Learned counsel for the petitioner refers to a letter dated 26.02.2023 by which the petitioner was directed to vacate the area by the Commercial Inspector of East Central Railway, Khagaria and asserts that with the help of the Railway Police Force the petitioner was evicted from the premises. Definitely, the same shall be considered by the authority at the time of consideration of the representation.



11. On the above reasoning, we issue the following directions:-

(i) The petitioner shall immediately vacate the premises, if not already done and the respondent Railways shall be free to issue the work order to the Additional 6th Respondent.

(ii) If the petitioner does not vacate the premises, the respondent Railways would be at liberty to seek police help to get the vacant possession of the parking space.

(iii). The petitioner shall file a representation before the appropriate authority of the Railways and the appropriate authority of the Railways after also hearing the Station Master of the Khagaria Railway Station, shall pass reasoned orders on the representation of the petitioner in accordance with law.

(iv). We make it clear that there should be some element of indulgence shown on the petitioner at least during the lock-down period when there were no vehicles lying in the parking space.

(v). If a representation is filed within a period of one month, the Appropriate Authority shall issue a notice of hearing and consider the same at least within two months from the date of hearing.



12. The writ petition would stand disposed of with the
above directions.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

P.K.P./Anushka

AFR/NAFR	
CAV DATE	
Uploading Date	28.06.2023
Transmission Date	

