

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3137 of 2023

M/s Bhagat Engineering Works having its registered office at 72, Bekapur, P.O.-Bekapur, P.S.-Kotwali, Munger, Bihar-811201 through its partner namely Anand Kumar aged about 38 years S/o Mahavir Prasad Bhagat, resident of Flat No. 101, Venus Heritage Apartment, Bind Toli, Seikhpura, B.V. College, P.O.-G.P.O., P.S.-Sashtrinagar, Patna-800014, Bihar.

... .. Petitioner/s

Versus

1. The Chairman and Chief Executive Officer, Railway Board New Delhi.
2. The Member Traction and Rolling Stock, Railway Board, New Delhi.
3. The General Manager, East Central Railway, Hajipur.
4. The Principal Chief Electrical Engineer, East Central Railway, Hajipur.
5. The Senior Divisional Electrical Engineer/OP, East Central Railway, Sonpur Division.
6. The Divisional Electrical Engineer/GS (Convenor), East Central Railway, Sonpur Division.
7. The Divisional Electrical Engineer/IC/TRD/East Central Railway, Sonpur Division.
8. The Divisional Finance Manager, East Central Railway, Sonpur Division.
9. The Divisional Signal and Telecom Engineer, East Central Railway, Sonpur Division.
10. The SDGM/VIGILENGE, East Central Railway, Hajipur.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Ankur Apurv Singh, Adv.
	:	Mr. Abhinav Kumar Singh, Adv.
For Railways	:	Mr. Awadesh Kumar Pandey, Sr. CGC.
	:	Mr. Rakesh Kumar Sinha, CGC
For the Respondent/s	:	Mr. Additional Solicitor General

CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY
ORAL ORDER

10 12-12-2023

Heard the learned counsels for the parties.

The present writ petition has been filed for the following relief(s):-

“(a) For issuance of a writ in the nature of certiorari for quashing and setting aside the arbitrary discharge of tender number



GEM/2022/B/2743238 by the respondents as for the same scope of work, five tenders as tender bid number GEM/2021/B/1514436 dated 13.09.2021, GEM/2022/B/2005666 dated 03.03.2022, GEM/2022/B/2171277 dated 11.05.2022, GEM/2022/B/2211043 dated 26.05.2022 and GEM/2022/B/2240963 dated 06.06.2022 have been discharged earlier which is totally arbitrary as also it furnishes no reason for cancellation of the tender like the previous five tenders;

(b) For issuance of a writ in the nature mandamus for directing the respondent authorities to award the tender number 15.11-2022 GEM/2022/B/274238 to the successful bidder as per the law and also to disqualify the bidders who have not entered bid as per the Minimum wage criteria as prescribed;

(c) For issuance of a writ in the nature of mandamus for directing the respondent no. 10 to initiate enquiry against the arbitrary and unlawful discharge of tender by the respondent no. 5 and 7;'

(d) For any other relief(s) which the petitioner is deemed to be entitled in the facts and circumstances of this case."

3. Learned counsel for the petitioner has stated that the authorities concerned after floating the tenders have invited the bids from various participants and after the technical bid and financial bid was opened, they have unilaterally cancelled the same without assigning any reason. Learned counsel has stated that the act of the respondents in cancelling the tender without assigning any reason is not only an arbitrary exercise of power not vested with them but also colourable exercise of power. Learned counsel has therefore, prayed this Hon'ble Court to allow the present writ petition.

4. *Per contra*, the learned counsel appearing on behalf



of the respondents has vehemently opposed the very maintainability of the present writ petition and stated that the authorities have every right to cancel the tender and issue a fresh one prior to the issuance of any work order. Learned counsel has stated in this particular case that the work order was not issued to anybody and the authorities have decided to cancel the tender and go for a fresh tender. Learned counsel has therefore, prayed this Hon'ble Court to dismiss the present writ petition.

5. When queried by this Court as to whether any work has been issued to the petitioner pursuant to the opening of the technical and financial bid, the counsel for the petitioner has fairly stated that no work order has been issued to the petitioner. This Court as well as Hon'ble Supreme Court in a catena of cases has held that the authorities concerned have every right to cancel the tenders even after opening of the technical and financial bid but prior to issuance of any work order. Unless and until the work order is issued the participants in a tender, they will not acquire any right to challenge the cancellation of the tender. In this particular case also no work order has been issued therefore, the present writ petition filed challenging the cancellation of the tender is misconceived and misplaced. This



Court does not find any merit in the present writ petition which warrants any interference.

6. The present writ petition is accordingly dismissed.

(A. Abhishek Reddy, J)

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