

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.809 of 2023

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M/s Hytronics Enterprises B1, Electronic Complex, III Floor, Sai Ratna Complex, Kushaiguda, Hyderabad- 500062, through Mr. Anil Kishore @ Mr. Anil Kishore Munipalle @ Mr. Munipalle Anil Kishore, aged about 66 years, Gender- Male S/o Late M.B. Raju, Designation- Managing Partner.

... .. Petitioner/s

Versus

1. The East Central Railway Through the Principal Chief Materials Manager (PCMM), Hajipur Headquarters, Old G.M. Building, Hajipur, Bihar- 844101.
2. The Centre for Railway Information Systems (CRIS), Chanakyapuri, New Delhi- 110021.
3. The National Small Industries Corporation Limited, NSIC Bhawan, Okhla Industrial Estate, New Delhi- 110020.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Vishwajeet Kumar Mishra, Advocate
For the Respondent/s	:	Mr. Kumar Sachin, (C.G.C.)
For the ECR	:	Mr. Pradeep Kumar, Sr. Panel Counsel

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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 : 19-04-2023

In the instant writ petition, petitioner has prayed for the following relief(s):-

“1. That this application is being filed praying for issuance of an appropriate writ / order / direction commanding the Respondent No.1 to refund the illegally recovered amount of Rs.31,53,196/- from the Petitioner as per impugned letter dated 22 03.2021.

1/A. That the Petitioner further prays to direct the Respondent No.1 to revoke the cancellation - cum - recovery notice of both the



Tenders bearing Nos 6195053 and 6195419 as mentioned in Letter dated 24.12.2020 and also complete the contract without submitting the Security Deposit as well as the Earnest Money.

1/B. That the Petitioner further prays to direct the Respondent No.3 to ensure that for MSMEs there are no requirements of security money, earnest money, turnover requirement etc, and the same be complied as per its policy.

1/C. That the Petitioner further pray for issuance of any other appropriate writ/order/direction to which he is found entitled to.”

02. The petitioner was successful bidder insofar as supply of Relay plug in type style AC LED all aspects AC lamp proving relay unit with inbuilt current transformer type slow to release neutral line Relay 4F, 4B contacts front and back contacts metal to carbon, which is suitable for working with 110V AC LED signal lamp proving rates at 15W conforming to RDSO with specification. Further, the process was not proceeded by the respondents-Railway Authority on the score that the petitioner failed to comply the Instructions to Bidders dated 15.04.2019 (Annexure-R1/B) vide the counter affidavit filed by the respondents to the extent of non-depositing of security deposit vide Clause 1.26.2 (a) & (b) of IBD, which requires 10% of the contract value of security deposit is required



to be deposited by the petitioner. Further, respondents-Railway Authority have proceeded to issue cancellation-cum-recovery notice(s) and two notices were issued on 24.12.2020. For both the notices, petitioner had submitted his explanation on 13.01.2021 and on --/01/2021. Thereafter, respondents-Railway Authority proceeded to recover a sum of Rs. 31,53,196/- on 22.03.2021 from the petitioner. Hence, the present writ petition.

03. Learned counsel for the petitioner submitted that once the petitioner's bid was accepted and he has also indicated that he will not furnish a security deposit and the same was accepted on 27.05.2019 vide Annexure-6 series to the writ petition, abruptly, the respondents cannot insist for depositing of security deposit of 10% in terms of Annexure-R1/B to the counter affidavit. It is further submitted that notice(s) relating to Cancellation-cum-Recovery notice(s) are not specific so as to meet the necessary requirement of the respondents. He is relying on Paragraph No.4 of his reply to the show-cause.

04. *Per contra*, learned counsel for the respondents submitted that there is no infirmity in the impugned action of Cancellation-cum-Recovery notice(s) in not depositing the security deposit in terms of instructions to the bidders dated 15.04.2019 (Annexure-R1/B). There is not infirmity in taking



action. Learned counsel for the respondents also pointed out Paragraph No.3 of reply of the petitioner at Annexure-17 to the writ petition.

05. Heard the learned counsels for the respective parties.

06. Merely acceptance of tender of the petitioner by the respondents vide acceptance letter dated 05.08.2019, they don't lose the rights in scrutinizing the conditions stipulated. The petitioner being MSME supplier was exempted only for the purpose of depositing Earnest Money Deposit (EMD). Insofar as security deposit is concerned, there is no exemption. In this regard, it is necessary to reproduce Clause 1.26.2 (a) & (b) of Instruction to Bidders for E-Tenders (IBET) dated 15.04.2019 read with Notice Inviting Tender dated 03.05.2019. Clause 1.26.2 of IBD relates to Security Deposit, relevant portion of which reads as under:-

1.26.2 Security Deposit (SD)

(a) SD shall be taken from all successful bidders for contracts above Rs. 1 Lakh subject to the following exemptions:

- (i) If such exemption is defined in the tender documentary.*
- (ii) Other Railways and Government departments*
- (iii) Indian Ordinance Factories*
- (iv) PSU (Public Sector Undertakings) owned by*



Ministry of Railways and PSUs for the group of items that are manufactured by them.

(b) The amount of SD to be taken, wherever applicable, will be 10% of the contract value subject to maximum of Rs. 5 Crores, rounded off to nearest higher Rs10 (ten). There shall, however, be no ceiling on SD in Global tenders for procurement of stores.

(c).....”

07. In the light of aforementioned clause, the petitioner was required to deposit 10% of the contract value towards security deposit. Merely, making a statement that he need not furnish security deposit that does not waive off the aforementioned clause. Therefore, there is no infirmity insofar as action taken in cancellation of contract.

08. Insofar as cancellation-cum-recovery notice(s) and order of recovery are concerned, perusal of notice(s) dated 24.12.2020 (two notices), it is bereft of material information. Therefore, concerned-respondent is hereby directed to issue a detailed show-cause notice and on receipt of petitioner's explanation, proceed to pass final speaking recovery order. The above exercise shall be completed within a period of three months from the date of receipt of this order.

09. In the meanwhile, the respondent-Railway Authority is hereby directed to not to give effect to the Recovery



of Rs. 31,53,196/- from the petitioner vide Annexure-2 dated 22.03.2021 to the writ petition till afresh recovery is order, if any.

10. Accordingly, the writ petition stands allowed in part.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

Ashish/-
Himanshu/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24.04.2023
Transmission Date	NA

