

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2957 of 2020

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M/s Nagarmal Ramprakash through its Proprietor Ram Prakash Rungta, Head Office- Naugachia, Bhagalpur, Branch Office- Durgapur Ward No. 33, Katihar

... .. Petitioner/s

Versus

1. The Union of India through General Manager (G.M.), North Frontier Railway, Maligaon
2. The Principal Chief Engineer North Frontier Railway, Maligaon
3. The Divisional Railway Manager (W) North Frontier Railway, Katihar
4. The Senior Divisional Engineer (Co.ord) North Frontier Railway, Katihar
5. The Divisional Engineer-II, North Frontier Railway, Katihar
6. The Sr. Den (Cord) North Frontier Railway, Katihar

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mrs. Sarita Bajaj, Advocate
For the Respondent/s	:	Mr. Ramadhar Shekhar (Add.Sc.Railway)

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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 : 18-04-2023

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

“(A) For issuance of an appropriate writ/writs to set aside the Contract Termination Notice dated 08-05-2018 (annexure-8) issued by the office of Divisional Railways Manager (W), Katihar through the Sr. Divisional Engineer/ Co-ord., N.F Railway, Katihar vide W/362/18/Multi Utility Vehicles/ADEN/NJP & DHR/IV/KIR/W-2 whereby and where- under the respondent authority, mechanically without giving reasonable opportunity of hearing to petitioner terminated the contract which was executed between parties through tender acceptance letter dated 07-



03-2018 against the Tender Notice No. 03-KIR-Engg-01-2018 dated 10-01-2018 and illegally forfeited the earnest money deposit (EMD) of Rs. 1,29,010 (One lac twenty nine thousand and ten) and further debarred the petitioner from participating in re-tendering for the work.

B. For a direction to the respondent authority to return the earnest money deposit (EMD) of Rs. 1,29,010/- and Tender Documentation Cost of Rs. 5,000/- along with interest, deposited by the petitioner through online Net Banking system against Tender Notice No 03-KIR-Engg-01-2018 dated 10-01- 2018 which is illegally forfeited in contravention of section 65 of the Indian Contract Act, 1872 which casts obligation upon the respondent authority to return the aforesaid EMD amount under void agreement, or contract that become void.

C. For a direction to the respondent authority to allow the petitioner to participate in re-tendering for the works keeping in view that the contract against the Tender Notice No. 03-KIR-Engg-01-2018 dated 10-01-2018 became void in view of Section 20 of the Indian Contract Act where both the parties were under a mistake of fact as to a matter essential to the agreement.

D. And for any other reliefs/reliefs for which the petitioner are found to be entitled under the provision of law involved in the present case.”

2. The petitioner was awarded some contract for hiring multi-utility vehicle (TATA 207 DI RX Mhindra Bolero Camper (Single Cabin) for track maintenance work for SSE/P, Way/Ics under ADEN/I/NJP, ADEN/II/NJP and ADEN/DHR under Katihar Division for three years. The petitioner has not executed the work resulted in issuing a notice stating that why action shall not be taken in terms of GCC. Thereafter, on 08.05.2018



the following communication was made while terminating the contract w.e.f. 05.05.2018, forfeiting the EMD and other dues and debarred the petitioner from participating in re-tendering for the works. Impugned communication reads as under:-

19/5/18

N.F. Railway

Reg. with A7D

Without prejudice
Office of the
Divisional Railway Manager (W)
Kathar
Dtd. 05.05.2018

No. W/362/18/Multi utility vehicles/ADEN/NJP & DHR/IV/KIR/W-2
To,
Nagarmal Ram Prakash,
C/o-Late Bhagawan Prasad Sah,
Durgapur, Ward No.33,
Post & Distt-Kathar
PIN- 854105

(CONTRACT TERMINATION NOTICE)

Sub:- Hiring of Multi-Utility vehicle (TATA 207 DI AX/ Mahindra Bolero Camper (Single Cabin) etc. for track maintenance work for SSE/P.Way/ICs under ADEN/I/NJP, ADEN/II/NJP & ADEN/DHR under Kathar Division for three years.

Ref: DRM/W/KIR's tender acceptance letter of even No. dated 07.03.2018 against Tender Notice No. KIR/Engg./01 of 2018(1am No.03) dtd.10/1/18

Dear Sir,

Above mentioned work was awarded in your favour to start the work immediately and to complete the same within 36 (Thirty six) months vide this office acceptance letter quoted under reference and in the meantime it was also requested to deposit PG money.

As per provision made in letter of acceptance and General condition of contract, you had to submit performance guarantee within 60 (sixty) days i.e. up to 05.05.18 with penal interest of 15% of the contract value per annum from the date of issue of acceptance letter beyond 30 days to 60 days. You have failed to deposit the PG money of ₹2,87,047/- within 60 (sixty) days with penal interest of 15% per annum. As per terms of acceptance letter and General conditions of contract, the contract shall be terminated duly forfeiting earnest money deposited and other dues, if any payable against that contract.

Hence the above contract stands terminated with effect from 05.05.18 duly forfeiting EMD and other dues if any payable against the contract. You are also debarred from participating in re-tendering for the works.

Thanking you.

Yours faithfully
(Rajveer Singh)
Sr. Divisional Engineer/Co-ord.
N.F. Railway, Kathar
(For & on behalf of President of India)

Copy to
1. GM (W)MLG - For kind information please.
2. Sr. DFM/KIR - For information and necessary action please.
3. ADEN/I/NJP, ADEN/II/NJP & ADEN/DHR]
4. SSE/ P.Way/S/NJP, N/NJP,TKG,SGU,KGN] For information and necessary action please.
5. Spare copy for execution case file (in office)

Sr. Divisional Engineer/Co-ord.
N.F. Railway, Kathar



3. The impugned aforementioned action is not in accordance with principle of natural justice like issuance of show cause notice as to why contract shall not be terminated, forfeiting of EMD and other dues and so also debarring the petitioner from participating in re-tendering for the works. Merely issuing show cause notice that action would be taken under GCC would not suffice in view of the principle laid by the Apex Court in the case of *UMC Technologies Pvt. Ltd. v. Food Corporation of India and Anr.*, reported in *(2021) 2 SCC 551*. Apex Court in number of judicial pronouncements taken note of following points insofar as cancellation of tender, forfeiting EMD and blacklisting and etc., arising out of contract.

(i) The order of blacklisting involving civil consequences cast slur. Such an action can be taken only on the basis of objectives satisfaction of the authority concerned. The fundamental of fair play require that the person concerned should be given an opportunity to present his case before he is put on blacklisting.

(ii) The notice of blacklisting must specifically spell out the intention of blacklisting.

(iii) The order of blacklisting must be speaking order supported with reasons.

(iv) Blacklisting cannot be for an indefinite period and



the period of blacklisting should be fixed based on doctrine of proportionality of the case.

4. The aforementioned principle is required to be taken note of by the concerned respondent and same is not forthcoming from the impugned action, accordingly, the petitioner has made out a *prima facie* case so as to interfere with the communication dated 08.05.2018 (Annexure-8) and it is set aside. Matter is remanded to the concerned respondent to proceed in accordance with law. The concerned respondent is hereby directed to take note of aforementioned judicial pronouncement of the subject matter. The above exercise shall be completed within a period of three months from the date of receipt of this order.

5. Accordingly, the writ petition stands allowed.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

Balmukund/
DKS/-

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

