

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Original Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

WPO No. 2085 of 2022

**Blue Max Enterprise
Vs.
Union of India and others**

For the petitioner	:	Mr. Mukteswar Maity, Adv. Ms. Nupur Chaudhuri, Adv.
For the respondents	:	Mr. D.N. Ray, Adv. Mr. Sourav Halder, Adv. Mr. Rajesh Kr. Shah, Adv.
Hearing concluded on	:	12.07.2023
Judgment on	:	18.07.2023

The Court:-

1. The petitioner was successful in a tender called by the Railway Authorities and supplied certain materials pursuant thereto.
2. Learned counsel for the petitioner argues that, at the time of supplying such materials, a guarantee of six months was given by the petitioner. The manufacturers' guarantee for such period was also annexed and uploaded, along with the bid document, and was accepted by the respondent-Authorities.
3. However, after the supply and acceptance of the same as well as payment of the dues of the petitioner, the respondent-Authorities made a money claim from the petitioner on the allegation that the samples which were tested were found defective.

4. The petitioner argues that the sample testing was done by the Railway Authorities, admittedly, after the guarantee period of six months from supply. As such, it is argued that the claim of the respondent-Authorities is required to be set aside.
5. Learned counsel appearing for the respondent-Authorities places reliance on the relevant clause of the General Conditions of Contract (GCC), which provides for a general warranty/guarantee of 30 months after delivery.
6. It is submitted that the said clause overrides any document which might have been submitted by the petitioner. That apart, it is argued that the respondent-Authorities accepted the bid documents without agreeing in any manner to the guarantee being limited to six months.
7. A perusal of the documents annexed to the pleadings indicates that the petitioner's bid documents included a mention to the effect that the validity of 30 days SVC was applicable and the manufacturer's test-cum-guarantee certificate for six months would accompany supply.
8. Such enumeration finds place under the caption "Deviation Details", below the heading 'Commercial Deviation' of the relevant document annexed at page 29 of the writ petition dated May 2, 2020.
9. However, in the very next page, there is a clause in the bid document whereby the petitioner/bidder accepts that the petitioner had not quoted any deviation in any uploaded document and the purchaser may, at his discretion, ignore any such deviation, if quoted, while issuing the contract.

10. Hence, from a composite reading of the said documents, it is seen that that although the petitioner had produced a certificate of guarantee for six months issued by the manufacturer of the goods, there was no counter-offer made by the petitioner to the effect that the guarantee as stipulated in the General Conditions of Contract would be curtailed and limited to six months. Hence, there arises no question of acceptance by the respondent-Authorities of any such counter-offer.
11. In the Advance Acceptance document dated July 3, 2019, issued by the respondent-Authorities, there is nothing to indicate that the stipulated guarantee period as per the GCC was agreed to be deviated from in any manner.
12. In fact, in “Other terms and Conditions”, it was mentioned that standard governing conditions would be the IRS conditions of contract and that the contract shall be governed by the latest version of IRS conditions of contract and all other terms and conditions incorporated in the tender documents.
13. Thus, there is nothing on record to indicate that there was any deviation from the General Conditions of the Contract or the tender document.
14. The General Conditions of the Contract was admittedly a part of the contract between the parties, even in terms of the documents annexed by the petitioner. Clause 3202 thereof specifies that the contractor also guarantees that the goods/stores/articles would continue to conform to the description and quality as aforesaid, *for a period of 30 months after their delivery ...* and the warranty shall survive

notwithstanding that fact that the goods/stores/articles may have been inspected, accepted and payment thereof made by the purchaser.

15. Although the sample tests in the present case were taken beyond six months, such tests took place well within the warranty period of 30 months, as stipulated in Clause 3202. Hence, there does not arise any occasion on the part of the respondent Authorities to have committed any breach of contract in undertaking such sample tests within the guarantee period as stipulated in the GCC.
16. Hence, the impugned communications dated October 11, 2021 and February 23, 2022, made by the respondent-Authorities, which allege that the sample fails in breaking strength test as per specification mentioned in PO, cannot be faulted. In such view of the matter, the respondents have claimed an amount of Rs.1,52,125/- or equivalent, paid against supply of 601kgs quantity from any outstanding bill of the petitioner. In view of the terms of the contract as discussed above, no arbitrariness, *mala fides* or illegality can be attributed to such claim, to necessitate interference in the writ jurisdiction.
17. Accordingly, WPO No.2085 of 2022 is dismissed on contest without any order as to costs.
18. Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)