

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12347 of 2024

PEW Engineering Pvt. Limited through Prasun Samadder (M) aged about 33 years, son of Pranab Samadder, Senior Executive Registered Office at 40/107, Pioneer, Joy Bibi Road, Ghusuri, Howrah-711107, West Bengal.

... .. Petitioner/s

Versus

1. The Union of India India.
2. The Chairman, East Central Railway, Hajipur.
3. The General Manager, East Central Railway, Hajipur.
4. The Chief Workshop Engineer, East Central Railway, Hajipur.
5. The Divisional Railway Manager, East Central Railway, Samastipur.
6. The CWM/SPJ/Workshop, East Central Railway, Samastipur.
7. The Braithwaite and Co. Limited (A Govt. of India undertaking), through its Chairman, and Managing Director registered corporate office at 5 Hide Road Kolkata 700043, West Bengal.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Mrigank Mauli, Sr. Advocate Mr.Asif Kalim, Advocate
For the Respondent/s	:	Dr. Krishna Nandan Singh (ASG) Mr. Devansh Shankar Singh JC to ASG Mr. Bindhyachal Sing, Advocate Mr. Harsh Ajay Singh, Advocate

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

Date : 27-08-2024

The petitioner had applied under a tender produced as Annexure-P/1. In fact the general conditions of contract specifically indicated by Clause-1(ii) that in case of any



deviation from the requirement of tender specifications, and instructions to tender or general & special Conditions of Contract the same should be brought out by the tenderer in Annexure-A. The petitioner has specified the deviations which the petitioner required as per Annexure-P/4.

2. After the technical evaluation bid, two tenderers qualified. On financial bid being opened the petitioner had quoted a rate below 5.58 per cent whereas the 7th respondent had quoted a rate below 0.31 per cent. The petitioner thus was L1 in the tender proceeding and he was called for a negotiation with respect to the special note concerning the deviations he required, which is at Annexure-P/4. Specifically negotiation was called for, regarding serial nos. 3, 4, 5 and 7 in Annexure-P/4.

3. After negotiation Annexure-P/7 communication was issued by the petitioner agreeing to withdraw the deviations suggested at serial nos. 3, 4 and 7 but insisting on the deviation at serial no. 5.

4. The petitioner was then placed with the situation of the 7th respondent being awarded the contract; which it is contended is without any notice to L1. It is also contended that the 7th respondent has entered into a sub-contract without complying with the terms of the tender documents specifically



Clause-10(b)(iii) of Annexure-P/1 which requires a specific agreement to be drawn up in the event of a sub-contractor being engaged; which agreement has to be at the time of filing of the tender documents.

5. The petitioner had submitted deviations as required under the general conditions of contract. The condition only prescribed deviations to be placed before the authority; leaving with the authority the discretion to agree to such deviation or not. Obviously a negotiation was also conducted with L1 in which the petitioner had withdrawn the deviations at serial nos. 3, 4 and 7 at Annexure-P/4. However, there was an insistence for continuing with serial no. 5 and obviously the authority thought it fit to grant the contract to the second person, for which, we are of the opinion that there is no requirement to issue notice to L1. L1 has obviously sought for deviations and despite negotiations had not agreed to withdraw from one of the deviations suggested, in which circumstance, the petitioner is out of the race and there is no question of challenging the Award to the 7th respondent.

6. If at all the 7th respondent has not complied with the conditions of the contract it is for the Railways to look into it and decide as to whether the same should be continued or not;



on which we pass no opinion.

7. The petitioner has a contention also with respect to the return of the Earnest Money Deposit (EMD) which the Railways would consider in accordance with the terms of the NIT.

8. The writ petition, however, is dismissed *in limine*.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

ranjan/-

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

