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ORDER SHEET

WPO/519/2024
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

INDUS EDUTRAIN PRIVATE LIMITED AND ANR.
VS
EASTERN RAILWAY & ORS.

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date: 2nd July, 2024.

Appearance:

Mr. Biswaroop Bhattacharya, Adv.

Mr. Soumava Mukherjee, Adv.

Mr. Subhankar Chatterjee, Adv.

...For the Petitioners

Mr. Sanajit Kumar Ghosh, Adv.

Ms. Amrita Pandey, Adv.

... for the Respondents

The Court: The petitioner is a successful bidder, who was awarded the contract for converting unauthorized hawkers into skilled organized hawkers through skill development programs over Eastern Railway.

The petitioner contends that apart from the security deposit of Rs. 1.3 crore, advance license fee of Rs. 1.25 crore was deposited before the competent railway authority. Acceptance of such amount, grant of offer to the petitioner, are corroborated by the communication of the Chief Commercial Manager (Freight Marketing) dated 26th October, 2021, to the Director of the petitioner company. By the said communication, the petitioner was directed to pay the

first year's licence fee of Rs. 2.5 crore plus 18% GST. By the communication dated December 15, 2021, the same authority permitted the petitioner to organize camps for enrolment of Hawkers. By communication dated February 24, 2022, the Chief Commercial Manager (Freight Marketing) intimated the Senior Divisional Commercial Manager, Howrah, Sealdah, Asansol and Malda Town that the petitioner was the successful bidder and had submitted advance licence fee of Rs. 1.25 crore as also security deposit of Rs. 1.3 crore. As per the bid document, the service provider had to organize camps for enrolment of hawkers. For such act, permission had already been granted. The above communications indicate that the Chief Commercial Manager (Freight Marketing) acknowledged the petitioner to be the successful bidder, granted the offer letter, accepted advance license fee of Rs. 1.25 crore along with security deposit and permitted the petitioner to execute the work. It is on record that on the basis of such communication, petitioner commenced the work. It is specifically pleaded that the petitioner had collected around Rs. 14 lakhs by registering 500 hawkers. Such action of the petitioner was the first step towards accomplishing clause (a) of the main objectives under "Explanation of Scope of Work" which is quoted below:-

“(a) Identification of unauthorized Hawkers is to be done by appointed service provider in consultation with all registered trade unions so that genuine could be identified. Once identification of Hawkers is made, their medical examination and police verification is to be done by any registered doctor and local police officer. After medical examination and police verification, list of

identified Hawkers with concerned documents is to be submitted to office of Principal Chief Commercial Manager for issuing identity card which will be issued after verification of submitted related documents by Railway Medical officer and officer of Railway Protection force. The time frame will be decided by working group.”

Upon completion of the process of identification, registration, completion of the police verification and the medical check up, all details were forwarded to Principal Chief Commercial Manager for issuance of identity cards. It is alleged that the respondent no. 3 sat tight over the matter and neither executed the contract nor issued the identity card which in turn has put the agency in jeopardy. It is specifically pleaded that the trade unions are harassing the petitioner for not handing over identity cards to those registered hawkers. Representations have been made to General Manager, Eastern Railway, Kolkata. The said representation was also forwarded to the Principal Chief Commercial Manager, Eastern Railway and the Chief Commercial Manager (Freight Marketing), Eastern Railway for their consideration and necessary action.

Learned advocate for the respondent Eastern Railway submits that factum of payment of licence fee is yet to be ascertained. There were some security reasons, for which there has been delay in executing the contract. The issue raised by the petitioner in this regard, is covered by the arbitration clause.

First and foremost, without execution of the contract, arbitration clause cannot be invoked. Secondly, the fact that the petitioner has paid Rs. 1.25 crore as advance licence fee and Rs. 1.3 crore as security deposit, is available from the communication of the Chief Commercial Manager (Freight Marketing) to the Senior Divisional Commercial Managers at Howrah, Sealdah, Asansol and Malda Town. Annexure P-5 at page 80 to the writ petition is the relevant document. Annexure P-4 at page 72 to the writ petition is the permission granted to the petitioner to organize camps for enrolment of hawkers. The petitioner has approached the General Manager, Eastern Railway, Kolkata by filing two representations. He is the superior authority and this Court disposes of the writ petition directing the General Manager Eastern Railway, Kolkata, to dispose of the petitioner's representation upon granting a hearing to the petitioner. The petitioner will continue the work as per the permission given and it is expected that the execution of the contract takes place immediately after consideration of the issues raised by the petitioner. The remaining amount of the first instalment towards the licence fee, shall be paid only if the execution of the contract takes place. If the authority has very strong reasons not to execute the contract, such reasons shall be disclosed to the petitioner by a reasoned order. The contract was with regard to building a workforce by training unauthorized hawkers. Such training aimed at transforming such hawkers to skilled workers. This is a social welfare initiative of the Railways. This Court is of the view that such policy should be reached to its logical goal. Conversion of inexperienced and unemployable youth to skilled workers will

add to the national resource. The decision with regard to execution of the contract will be taken by the authority within a period of two months. The pending issue of non-issuance of identity card to the registered hawkers shall be decided within a fortnight from the date of communication of this order, pending the final disposal of the matter, by the General Manager, Eastern Railways.

All the parties are to act on the basis of the server copy of the order.

(SHAMPA SARKAR, J.)

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