

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 13 of 2024**

- M/s Calcutta Springs Limited Through Authorized Representative Registered Office At 18, R.N. Mukherjee Road, Kolkata - 700001 (West Bengal), And Also Branch Office At Village Pendari, Tehsil Sakri, District Bilaspur - 495003 (Chhattisgarh)

---- Petitioner**Versus**

- South East Central Railway Through The Principal Chief Material Manager / Office Of The Controller Of Store, G.M. Building, Bilaspur (Chhattisgarh) - 495004

---- Respondent**WPC No. 100 of 2024**

- M/s Calcutta Springs Limited, Through Authorized Representaive Registered Office At 18, R.N. Mukherjee Road, Kolkata - 700001 (West Bengal) And Also Branch Office At Village Pendari, Tehsil Sakri, District Bilaspur - 495003 (Chhattisgarh)

---- Petitioner**Versus**

- South East Central Railway Through The Principal Chief Material Manager / Office Of The Controller Of Stores, G.M. Building, Bilaspur, Chhattisgarh - 495004.

---- Respondent

(Cause-title taken from Case Information System)

For Petitioner : Mr. Uday Gupta and Mr. Sanjeev Kumar Sahu, Advocates.

For Respondent/ Railways : Mr. Ramakant Mishra, Deputy Solicitor General.

Hon'ble Shri Ramesh Sinha, Chief Justice**Hon'ble Shri Ravindra Kumar Agrawal, Judge**

Judgment on Board**Per Ramesh Sinha, Chief Justice****18.01.2024**

1. Heard Mr. Uday Gupta and Mr. Sanjeev Kumar Sahu, learned counsel for the petitioner as well as Mr. Ramakant Mishra, learned Deputy Solicitor General for the respondent-Railways.
2. The present writ petition is being preferred against illegal, arbitrary and discriminatory action on the part of the Respondent - South East Central Railways against the petitioner inasmuch as the Technical Bid submitted by the Petitioner Company qua Tender No. 062357818 {in WPC No. 13 of 2024} and Tender No. 06235783A {in WPC No. 100 of 2024} for manufacturing and supply of special Pre-Stressed Concrete Sleepers (*for short, PSC Sleepers*) (Level Crossing, Bridge Straight, Bridge Approach, SEJ & Sharp Curve) has been wrongly rejected by the South East Central Railway vide impugned communications dated 16.11.2023 {in WPC No. 13 of 2024} and 06.12.2023 {in WPC No. 100 of 2024} without affording any reasons for such rejection.
3. Since the facts and issue involved in both the aforesaid writ petitions are similar, they are being considered and decided by this common order. WPC No. 13 of 2024 is taken as the lead case.
4. The petitioner {in WPC No. 13/2024} has sought for the following reliefs:

“10.1 That this Hon'ble Court may kindly be pleased to call for the records pertaining to the present case from the Respondent South East Central Railway.

10.2 That this Hon'ble Court may kindly be pleased to issue an appropriate writ, thereby quashing the impugned communication dated 16.11.2023 (ANNEXURE P/4) issued by the Respondent - South East Central Railway.

10.3 That this Hon'ble Court may kindly be pleased to issue an appropriate writ, thereby directing the Respondent - South East Central Railway to treat the Technical Bid submitted by the Petitioner Company as valid and subsisting for all intents and purposes and also direct the Respondent South East Central Railway to permit the Petitioner Company to participate in the competitive price bid mechanism after opening of the price bid submitted by the Petitioner – Company;

10.4 To kindly grant any other relief which may be deem fit in the given facts and circumstances of the instant case.”

5. In WPC No. 100/2024, the petitioner seeks quashing of the impugned communication dated 06.12.2023 (Annexure P/4).
6. The facts, in brief, as projected by the petitioner is that the Government of India, Ministry of Railways (Railway Board) issued instructions regarding Revised Policy for concrete sleeper plants in Indian Railways. These instructions are dated 19.02.2021. On behalf of Hon'ble the President of India, the respondent-South East Central Railway invited E-Tenders on 16.10.2023 against Tender Document No. 062357818 with closing date being 07.11.2023 (10:30 hours). Along with Tender Document No. 06235781B, the respondent South East Central Railway also issued instructions to the respective bidders / tenderers which would be read along with the Tender Document No. 06235781B. The General Conditions of Contract also to be read qua Tender Document No. 06235781B. The petitioner-Company submitted its bid with respect to E-tender No. 062357818 vide its communication reference No. CSL/SECR-SLPR-23/151 dated 07.11.2023. The respondent-South East Central Railway has issued impugned communication dated 16.11.2023 vide e-mail addressed to the petitioner-Company rejecting the Technical Bid of the petitioner without affording any reasons whatsoever.

- 7.** According to the petitioner, the impugned communication is completely silent and no reasons worth the mention have been stated in the communication. The expressions used in the impugned communication are, "not eligible for any order"; "as considered technically unsuitable". These expressions, "not eligible for any order" has been used in the impugned communication by the respondent - South East Central Railway which by itself fails to disclose any reasons whatsoever to reject the Technical Bid. Therefore, the expressions used in the impugned communication are without any basis and in any case without any supporting reasons. In one line, the respondent has rejected the technical bid of the petitioner. Being aggrieved by the issuance of the impugned communication dated 16.11.2023, the petitioner-company issued its communication dated 22.11.2023 challenging the rejection of the technical bid by the respondent South East Central Railway.
- 8.** Mr. Uday Gupta, learned counsel alongwith Mr. Sanjeev Kumar Sahu, learned counsel for the petitioner submits that the impugned communication dated 16.11.2023 has been issued by the respondent - SEC Railways without affording any reasons whatsoever or laying down any basis for rejecting the Technical Bid submitted by the petitioner-Company against Tender No. 06235781B. The decision taken by the respondent-Railways for rejection of the Technical Bid is so arbitrary and irrational that no responsible authority acting reasonably and in accordance with relevant law could have reached.
- 9.** Mr. Gupta further submits that other important aspect of the matter is that as per the revised policy for concrete sleeper plants dated 19.02.2021, the Government of India, Ministry of Railways (Railway Board) has taken a firm decision to obtain the most competitive rates of PSC sleepers and to have a wider vendor base. In this regard, the Government of India has reviewed the policy of PSC sleeper procurement thoroughly with the aim of increasing transparency and competition with quality products. Ease of doing business

in a fair, transparent and competitive manner has been considered by the Government of India to be a very important aspect in procurement of PSC sleepers. Therefore, when the impugned communication dated 16.11.2023 is considered by this Hon'ble Court on the touchstone of the policy decision dated 19.02.2021 taken by the Government of India, Ministry of Railways (Railway Board), it would come to light that the impugned communication dated 16.11.2023 is violative of the basic thread underlying the Revised Policy dated 19.02.2021. The basic thread underlying the Revised Policy is, "transparency" and "competitiveness". Both the concepts have been rendered otiose by the Respondent South East Central Railway while issuing the impugned communication dated 16.11.2023 which is completely silent on any valid or plausible reason to reject the technical bid of the Petitioner - Company.

10. It is further submitted by Mr. Gupta that the genesis of the revised policy lies in the fact that "public interest" should be served and not get affected in any manner whatsoever. However, the manner in which the respondent-Railways has rejected the technical bid submitted by the petitioner-Company, it is a direct attack on the public interest which could have been served much better if the petitioner-Company would have been allowed to be the part of the competitive price bid mechanism since it fulfills all the eligibility conditions laid down by the respondent-Railways. It is pertinent to point out that as per the revised policy for concrete sleeper plants in Indian Railways dated 19.02.2021, any firm with eligibility can apply on Research Designs and Standards Organization (*for short, the RDSO*) portal for setting up a concrete sleeper plant and post RDSO certification obtains status of a developmental plant and all such developmental plants shall be eligible to bid in Indian Railways concrete sleeper tenders (clause 1.0). Similarly, the petitioner-Company would rely upon clause 1.2.2 and clause 1.2.6 of the revised policy. In terms of the instructions to tenderers issued by the

respondent-Railways, the petitioner-Company fulfills the qualifying requirements as laid down in the instructions to tenderers published by the respondent-Railways. Clause 6.1 of the said document states that Concrete Sleeper Plants certified by RDSO will be considered eligible for placement of orders against Tender No. 06235781B. At the time of submitting the bid against Tender Document No. 06235781B, the petitioner-Company had submitted that it had all the necessary qualifications and fulfilled the eligibility criteria so laid down in the tender document along with the instructions circulated by the respondent-Railways. The impugned communication dated 16.11.2023 wrongly rejects the technical bid submitted by the petitioner-Company without affording any reasons and explaining under what circumstances the petitioner-Company is not qualified to participate in the tender process. The expressions used in the impugned communication are "Not Eligible for Any Order" and "As considered technically unsuitable". Therefore, the expressions used in the impugned communication are without any basis and in any case without any supporting reasons. In one line, the respondent-Railways has rejected the technical bid of the petitioner-Company. Even though the acceptance / rejection of technical bid could be said to be within the scope and ambit of procedure, the courts of law have maintained a consistent legal position.

11. In support of his contentions, Mr. Gupta relies on the decisions of the Supreme Court in ***Collector, Land Acquisition, Anantnag and Another v. Mst. Katiji and Others*** {(AIR 1987 SC 1353}, ***Zolba v. Keshao and Ors.*** {AIR 2008 SC 2099}, ***Shaikh Salim Haji Abdul Khayumsab v. Kumar and Ors.***, {AIR 2006 SC 396}, ***State of Punjab v. V. K. Khanna and Others***, {(2001) 2 SCC 330}, ***Man Singh v. State of Haryana and Ors.*** {(2008) 12 SCC 331}, ***Dr. Rash Lal Yadav v. State of Bihar and Others***, {(1994) 5 SCC 267}, ***Kumari Shrilekha Vidyarthi and Ors. v. State of U.P. and Ors.***, {(1991) 1 SCC 212}, ***Sirsi Municipality by its***

President, Sirsi Vs. Cecelia Kom Francis Tellis, {(1973) 1 SCC 409}, ***Navjyoti Coop. Group Housing Society v. Union of India*** {(1992) 4 SCC 477}, ***Food Corpn. of India v. Kamdhenu Cattle Feed Industries*** {(1993) 1 SCC 71}, ***Satya Pal Anand Vs. State of M.P.***, {(2015) 15 SCC 263}, ***Director of Settlements, A. P. and others Vs M. R. Apparao and another***, {(2002) 4 SCC 638}. Mr. Gupta further relies on the decisions in ***R v. The Chancellor of Cambridge*** {(1723) 1 Stra 557}, ***Cooper v. The Board of Works for Wandsworth District*** {(1863) 14 C.B. [N.S.] 180}, ***R. v. IRC, ex p Preston*** {(1985) 2 ALL ER 385}, ***Council of Civil Service Unions v. Minister for the Civil Service*** {(1984) 3 ALL ER 935} and ***Halsbury's Laws of England***, 4th Edn. (Reissue), Vol. 1(1).

12. On the other hand, Mr. Ramakant Mishra, learned Deputy Solicitor General appearing for the respondent/Railways submit that the NIT bearing No. 06235781B was floated by the respondent authority published on 16.10.2023 inviting bids for manufacturing and supply of special PSC sleepers (Level crossing, bridge straight, bridge approach, Switch Expansion Joint (SEJ) and sharp curve). The tender was floated with eligibility criteria with qualifying requirement as mentioned in SECR tender schedule (Para 6.0 to 6.5 Qualifying Requirements for tenderers) which must be fulfilled. As per para 6.1, the tenderer should be a concrete sleeper plant approved/certified by RDSO for undertaking production of mainline sleepers or any other category PSC sleepers for "Indian Railway. The petitioner-Company had applied for the same from their Pendari plant, Bilaspur, Chhattisgarh. In above mentioned tender, the 1st packet bids i.e. techno commercial was finalized on 16.11.2023 by the Tender Committee. In the 1st packet bids, the petitioner was disqualified for the reason that the petitioner made offer from their 'Pendari Plant, Bilaspur' which is not in the approval/certification list of RDSO, Lucknow for Indian Railways. The petitioner company specifically made offer to supply from their Concrete

Sleeper Plant (CSP) 'Pendari Plant, Bilaspur C.G. but the petitioner did not offer to supply from their approved Plant i.e. Surla Road Plant, Odisha. During technical evaluation, the petitioner-Company was found technically not suitable in terms of clause 6.1 of Invitation and instructions to tenderers which states below "Concrete Sleeper Plants (CSPs) certified by RDSO for undertaking production of PSC Main Line sleeper or any other category PSC sleepers for IR will be considered eligible for placement of orders (regular or development as per status of RDSO approval/ certification) against this tender." Thereafter a clarification was sought from RDSO, Lucknow vide letter dated 28.11.2023 that whether CSP M/s Calcutta Springs Ltd. Pendari, Sakri, Bilaspur is eligible for supply in Indian Railway though they are captive plant for IRCON International Ltd. The RDSO clarified vide letter dated 30.11.2023 that the petitioner-company was developed by RDSO for manufacture and supply of wider sleepers for East West Rail Corridor and East Rail Corridor II of Chhattisgarh Railways Project Railway under IRCON. The petitioner company has some deficiencies like lack of provision of Railway siding and non-compliance of STR-2022. Further it was clarified by RDSO that the petitioner company was being setup for IRCON International Ltd., exclusively for use on East West Rail Corridor and East Rail Corridor- II of Chhattisgarh Railways Project Railway and not for Zonal Railways. Therefore, Railway Board Policy will not be applicable.

- 13.** Mr. Mishra further submits that the result of the tender committee after finalization of 1st bid is communicated to all the participating firms once the recommendations of the tender committee were accepted by the Competent Authority on 16.11.2023. The result is communicated to firms electronically by IREPS (Indian Railways E-Procurement System). After the finalization of 1st bid, the petitioner made representation regarding their disqualification. Before finalizing 2nd financial bids of qualified firms; the 1st bid evaluation, in the representation of the petitioner, was referred to RDSO, Lucknow the

approving agency for CSP by the technical department through letter dated 28.11.2023. The RDSO vide letter dated 30.11.2023 has furnished the reply stating that "the concrete Sleeper Plant (CSP)-M/s Calcutta Springs Ltd.) was being setup for IRCON exclusively for use on East-west Rail corridor and East Rail corridor project of Chattishgarh Railway and not for Zonal Railways, therefore, Railway Board policy will not be applicable.". The 2nd packet financial bids were finalized after Tender Committee Recommendations (TCRs) were accepted by the Competent Authority on 07.12.2023 and finalized on 08.12.2023.

14. Mr. Mishra lastly submits that the tender has been finalized and all the supply contracts/ Purchase Orders (POs) have been issued to all the qualified firms. Tender has been awarded to the successful bidders, namely (i) Orissa Concrete and Allied Industries, Kapa Raipur: Level Crossing Sleeper and Sharp Curve Sleeper; (ii) Univabs Sleepers Private Ltd. Durg, C.G.: Level Crossing Sleeper, Bridge Straight Sleeper and Switch Expansion Joint sleeper; (iii) OCP India Private Ltd. Bhubaneswar, Odisha: Bridge Approach Sleeper, (iv) Orissa Concrete and Allied Industries, Bhanpuri, Raipur; G: Bridge Straight Sleeper, Bridge Approach Sleeper, Switch Expansion Joint Sleeper, and (v) Patil Rail Infrastructure Pvt. Ltd. Hyderabad: Sharp Curve Sleeper. As such, the petitions filed by the petitioner have become infructuous. Mr. Mishra further submits that the authority who issues the tender is the best person to evaluate any bid. Further, as observed in a catena of decisions that the Courts should exercise a lot of restraint while exercising their power of judicial review in contractual or commercial matters. The Courts should be even more reluctant because it does not have the necessary expertise to adjudicate upon technical issues beyond their domain and the Courts should give way to the opinion of experts unless the decision is totally arbitrary or unreasonable, which is not the case in the present petitions. In support of his contentions, Mr. Mishra relies on the

decision rendered by the Supreme Court in ***Silppi Constructions Contractors v. Union of India & another*** {(2020) 16 SCC 489} and ***Balaji Ventures Pvt. Ltd. v. Maharashtra State Power Generation Company Ltd. & Another***, {2022 SCC OnLine SC 1967}.

15. Relying on the rejoinder-affidavit filed, Mr. Gupta submits that the core issue which has been raised by the petitioner-Company in both the writ petitions is that the impugned communication dated 16.11.2023 (in WPC No. 13/2024 at page 93) and 06.12.2023 (in WPC No. 100/2024 at page 92), whereby, the technical bid submitted by the petitioner-Company has been rejected are both non-speaking and unreasoned orders/communications issued by the respondent-Railways. In one line it has been recorded in both the communications / orders, "not eligible for any order; as considered technically unsuitable". The respondent-Railways has still not offered any reasoning at all in its reply affidavit for passing non-speaking / unreasoned orders as aforesaid. The justification for rejecting the technical bid of the petitioner-Company which is now being offered belatedly is without any factual or legal basis. This is for the reason that after the petitioner-Company had challenged the rejection of its technical bid by filing a representation dated 22.11.2023 (Annexure P-5 in WPC No. 13/2024), the respondent-Railways issued letter dated 28.11.2023 (Annexure R-3 of the reply affidavit) to the RDSO seeking a clarification as to whether the petitioner-Company is eligible for supply in Indian Railway though they are captive plant for IRCON International Ltd. Vide communication dated 30.11.2023 (Annexure R-4 of the Reply - Affidavit), the RDSO has not stated that the petitioner-Company is either technically unsuitable or ineligible to participate in the tender process in question. In fact, IRCON is a Government of India undertaking under the Ministry of Railways itself which was established in 1976 by the Indian Railways under the Companies Act, 1956. It is a wholly owned entity of the Indian Railways and hence any manufacturing of PSC Sleepers done

by the petitioner- company for IRCON, is actually done for the Indian Railways itself. It is equally relevant to point out the circular dated 19.02.2021 which is the revised policy for concrete sleeper plants in India and which has not been denied by the respondent in its reply affidavit. Insofar as the case of the petitioner-Company is concerned, clauses 1.0; 1.2.2, 1.2.6 and 1.7 of the instructions are relevant. Accordingly, as per the circular dated 19.02.2021 there is absolutely no bar on the eligibility of the petitioner-Company to participate in the tender process of Indian Railways. The letters dated 25.01.2023 and 02.03.2023 which are enclosures to the communication dated 30.11.2023 also do not lay down any contrary or any fact prejudicial to the interest of the petitioner-Company. A perusal of Annexure R-5 (1st packet bid finalization) to the reply affidavit to WPC No. 100 of 2024 are extremely relevant for the purposes of the present dispute and would reveal the following:

- (a) In the tender committee, the following were the members namely Shaashi Prakash Dwivedi, CMM-III as convenor, Sandeep Maheshwari, FA&CAO/Con, as Finance Member and Ankush Gupta, CTE/SECR as Technical Member.
- (b) A discussion had taken place on the 06 bids received and the offer made by the Petitioner - Company was found to be technically suitable by the Technical Member.
- (c) All the 06 bids received including that of the Petitioner Company were found to be Technically Suitable. It is pertinent to point out that it is the own case of the Respondent that all the 06 Bids were evaluated in terms of clause 6.1 of Invitation and Instructions to Tenderers.
- (d) After finding the Petitioner - Company to be Technically Suitable, it has been stated that, "It has also been gathered from reliable sources that M/s Calcutta Springs Limited Kolkata Bid Id: 15953257] is a captive plant for IRCON International Ltd. with already very heavy supply

schedule of 50,000 sleepers per month. Also, the firm's name is not mentioned in RDSO letter No. CT/SRC/Policy dated 02.11.2023.

Considering the above facts it is requested to change the status of M/s Calcutta Springs Limited Kolkata [Bid Id: 15953257] as Technically not Suitable for tender mentioned under reference.

(e) The expression used "reliable sources" above signifies that some competitors acting against the interest of the Petitioner - Company have contacted the officials of the Respondent to mislead and twist the facts to suit their bids and to their advantage by getting the Technical Bid of the petitioner-Company ousted. As far as the RDSO letter dated 02.11.2023 is concerned, the same is not an exhaustive list. It is an internal communication which has not been marked to any vendor much less the Petitioner Company. If copy thereof had been provided to the Petitioner Company, it would have raised serious objections to such a list. In any event, the said list cannot override the Revised Policy for concrete sleeper plants on Indian Railways dated 19.02.2021. The Revised Policy is supreme in all respects.

(f) In the Reply Affidavit, the final recommendations are contained in para 5.0 and 5.1. Even in the said recommendations, the bid of the Petitioner - Company is found Technically Suitable and para 5.1 reads as under.-

"5.1.06 firms have participated in this tender and as per Technical scrutiny, all 06 firms are suitable for placement of bulk order subject to outcome of e RA. At the time of tender floating list of approved plants was as per RDSO letter No. QA/CT/SRC Policy dated 01.03.2021 (Copy kept at bottom of the TCR) and at the time of tender opening and TC meeting RDSO's letter No. CT/SRC/Policy dated 02.11.2023 (Copy kept at bottom of the TCR) becomes applicable. As per latest letter also all the offered firms are appearing in the

approved plants list. Out of the 06 offers received 02 are from NON-MSE sources are remaining 04 are from MSE sources. All firms have submitted CA certificate with 100% local content certificate complying to Mil condition. This tender has been floated for procurement of 05 types of Special Sleepers on fixed qty basis."

(g) That after the aforesaid recommendations, the petitioner-Company was declared technically unsuitable.

The aforesaid would therefore show that the respondent has acted in the most irrational, unreasonable and biased manner against the Petitioner Company.

(h) A perusal of the 2 packet bid finalization placed on record as Annexure R 6 to the reply-affidavit filed by the respondent would show that the representation dated 22.11.2023 filed by the petitioner-Company was considered by the respondent and finds reference in paragraph 5.2. The further irrationality, unreasonableness and bias in the conduct of the Respondent can be seen from the fact that the view of the Technical Member after receipt of the response dated 30.11.2023 from the RDSO has not even been recorded in full in the document. In this very document after quoting the response dated 30.11.2023 issued by the RDSO, the document records as follows, "In view of the above clarification by RDSO, Technical Member stated that the Technical Suitability done earlier. Hence, the view of the Technical Member has not even been recorded completely in the document produced by the Respondent and yet, the technical bid of the petitioner-Company was rejected by the Respondent.

(i) There has been gross procedural impropriety by the respondent which can also be seen from the manner in which the petitioner-Company has been declared technically suitable and then by placing

reliance upon reliable sources", the petitioner-Company has been declared technically unsuitable; whereas, in the final recommendations the petitioner-Company is found to be suitable again and after receiving the clarification from RDSO. The view of the Technical Member has not even been recorded in full by the respondent.

All the above factors lead to an irresistible conclusion that the entire process of rejection of the technical bid is based on invalid considerations and the decision to reject the technical bid of the petitioner-Company is completely irrational, unreasonable and reflective of biased and procedural impropriety on the part of the officials of the respondent.

- 16.** There is no denial by the respondent-Railways *qua* the fact that the petitioner-Company is RDSO certified. Vide communication No. QA/CT/SRC/INSP/IRCON/CSL dated 25.07.2023 the RDSO after successful developmental inspection, has granted the necessary certificate to the petitioner-Company for manufacturing, testing and inspection of PSC wide sleepers. In this regard, the relevant part of the communication dated 25.07.2023 reads as under:

"After successful developmental inspections, the production process is considered to be stabilized. The Concrete Sleeper Plant has developed all necessary infrastructure facilities for manufacturing, testing and inspection of PSC wider sleepers to Drg No RT 8527 using M-60 grade of concrete through Stress bench method. The production technique of PSC Sleeper of concrete sleeper plant M/s Calcutta Springs Ltd., Bilaspur under IRCON is considered capable to manufacture and supply of PSC Mono Block BG line sleepers for to Drg. No. RT-8527. Further inspection of sleepers may be under taken by IRCON officials attached to the concrete sleepers plant at along with maintaining necessary records/ register."

- 17.** The petitioner - Company has a plant at Surla Road, Odisha but the distance between Surla Road to Bilaspur is approximately 700 KMs and it is financially unfeasible for the petitioner-Company to transport PSC Sleepers manufactured at Surla Road to Bilaspur due to the freight charges involved. Hence, the bid was placed for the Bilaspur Plant which is also RDSO certified to manufacture PSC Sleepers. IRCON had issued communication dated 20.12.2022 addressed to the Executive Director (M&MC), Railway Board, New Delhi seeking approval of work in favour of the petitioner-Company involving setting up of new dedicated concrete sleeper plant. The Railway Board issued response dated 04.01.2023 to the aforesaid communication dated 20.12.2022 clearly stating that no approval is required from the Railway Board in terms of the Guidelines dated 19.02.2021 already referred to herein above by the petitioner-Company. This fact once again substantiates the stand taken by the petitioner-Company that in order to obtain the most competitive rates of PSC Sleepers and to have a wide vendor base the policy of PSC Sleeper Procurement had been reviewed by the Railway Board and all developmental plants shall be eligible to bid in Indian Railways concrete sleeper tenders. Accordingly, in terms of the guidelines dated 19.02.2021, the petitioner-Company was eligible to bid in Indian Railway concrete sleeper plants and it is patently false and baseless that the petitioner-Company for any reason whatsoever was ineligible to participate in the tender process. The tender document also does not specify or lay down any bar that in case the CSPs is manufacturing sleepers for IRCON, such plant is prohibited from bidding / participating in the tender process. Despite the representation dated 22.11.2023 submitted by the petitioner-Company challenging the illegal rejection of Technical Bids, the representation was never decided by the respondent-Railways. Once the RDSO had not prohibited the petitioner-Company from participating in the tender process nor found any illegality in such participation, the respondent was duty bound to decide the representation dated 22.11.2023 vide a

reasoned order in accordance with principles of natural justice. However, the respondent-Railways, for reasons best known expedited the tender process and within 11 days from the communication dated 30.11.2023 issued by the RDSO awarded the tender via Purchase Orders dated 11.12.2023 to the competitors of the petitioner-Company. The action in awarding the work has been done with great haste to cause extreme prejudice to the petitioner – Company.

- 18.** Mr. Gupta also lastly submits that in view of the facts and circumstances as stated above, the entire tender process is liable to be scrapped by this Hon'ble Court in the interest of justice and fair play. The technical bid submitted by the petitioner-Company should be held to be valid by this Hon'ble Court in the facts and circumstances of the present case. The respondent-Railways should be restrained from taking any further steps and the parties to whom the work has been awarded can be impleaded by this Hon'ble Court to adjudicate the matter. The petitioner-Company has been associated with the respondent-Railways for a long time in the past and it does not wish to linger on the litigation and cause any kind of hurdle in completion of the projects of the respondent-Railways.
- 19.** Alternatively, Mr. Gupta prays that even if the award of work in the present case is not interfered with by this Hon'ble Court, for all successive tenders issued by the respondent, it should be declared that the petitioner-Company and more particularly its plant at Bilaspur is eligible to participate in successive tenders issued by Indian Railways since petitioner-Company is duly certified by RDSO and the communications dated 16.11.2023 (Annexure P-4 in WPC No. 13/2024) and 06.12.2023 (Annexure P-4 in WPC No. 100/2024) should be quashed by this Hon'ble Court.
- 20.** We have heard learned counsel for the parties, perused the pleadings and documents appended thereto.
- 21.** From perusal of the pleadings of the parties, it is evident that the tender

process has been finalised and the contract has been awarded/purchase orders have been placed to the five firms as stated at paragraph 14 of this judgment. Further, there is no quarrel with regard to the legal position as has been laid down by the Apex Court in the cases cited by both the parties. Even if the petitions are considered and decided on merits, no fruitful result would be obtained. The impugned communications were issued on 16.11.2023 and 06.12.2023 and these two petitions were filed on 23.12.2023. The purchase orders were placed to the five firms on 20.12.2023 i.e. even before filing of the writ petitions. Any project of the respondent-Railways is of extreme urgency and any kind of interference with those projects would cause undue delay in its completion ultimately leading to more burden on the State exchequer. Hence, without going into the merits of the case, we **dispose of** these petitions leaving the issues raised herein open to be decided in an appropriate case, if occasion so arises.

- 22.** So far as the prayer of the petitioner that the reason assigned for rejection of the technical bid in these two petitions should not be adopted by the respondent-Railways in their future tender so as to reject the bids of the petitioner is concerned, this Court cannot pass a blanket order or adjudicate an issue which may or may not arise in future. Needless to state that it shall always be open for the petitioner to approach the competent Court of law at an appropriate stage, in case occasion arises in future.

Sd/-

(Ravindra Kumar Agrawal)
JUDGE

Sd/-

(Ramesh Sinha)
CHIEF JUSTICE