OCD 26

ORDER SHEET
AP-COM/546/2025
IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

M/S THARU AND SONS
VS
THE UNION OF INDIA AND ORS

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date: 24th July, 2025.

Appearance:
Mr. Nilanjan Bhattacharjee, Adv.
Mr. Arpan Guha, Adv.
Mr. Akash Adak, Adv.
. . .for the petitioner.

Mr. Shib Chandra Prasad, Adv.
Mr. Srikumar Chakraborty, Adv.
. . .for the respondent.

The Court:

1. The supplementary affidavit shall be filed in Court within the course of the day, although the contents of the supplementary have been perused by the Court during arguments.
2. This is an application filed by the existing contractor under Section 9 of the Arbitration and Conciliation Act, 1996 (said Act) for interim protection and an order of injunction, restraining the Railway Authorities from giving effect to the tender notice dated June 25, 2024 and from proceeding further in terms of the said notice.

3. The petitioner is the existing contractor who was allotted the work of cleaning and upkeepment of the Carriage and Wagon Workshop at Liluah, by the Eastern Railways. The petitioner was the successful bidder in the bidding process. The letter of acceptance was issued to the petitioner on June 15, 2024. The tender value was Rs.13,51,79,735.40. An agreement to that effect was entered into between the parties on October 24, 2025. The agreement provided that the terms and conditions of the General Conditions of Contract of Service 2018 (GCC) and (MSOP) 2018 would be applicable. The GCC contains an arbitration clause.
4. The petitioner contends to have executed the contract as per the terms and conditions of the agreement by procuring machinery and deploying labourers as per the directions of the railway authorities from time to time. On June 6, 2025, the Deputy Chief Mechanical Engineer/BGB, Eastern Railway, Liluah issued one performance notice to the petitioner. The notice stated that the petitioner had failed to achieve the desirable standard of service. The notice was issued upon invocation of Section 7.4 of the GCC. The petitioner was asked to make good the default, failing which further action was reserved to be taken. In the said notice, reference was made to the letters dated July 24, 2024, August 7, 2024, November 13, 2024, December 10, 2024, February 5, 2025, May 16, 2025 and June 3, 2025. According to the petitioner, all the issues raised by the respondent, vide the letters mentioned hereinabove, were rectified. The petitioner contends that the Deputy Chief Mechanical

Engineer/BGB, Eastern Railway, Liluah did not have the authority to issue the notice.

5. Thereafter, petitioner was shocked to find that the Ministry of Eastern Railways had issued a tender notice on June 25, 2025 for the same work which was allotted to the petitioner. The contract was floated for a period of two years and it is submitted that the technical bid has already been opened. This application has been filed for interim reliefs and injunction.

6. Mr. Bhattacharyya, learned advocate for the petitioner, submits that this is a fit case for an injunction restraining the respondents from proceeding further with the tendering process. According to Mr. Bhattacharyya, the petitioner is an existing contractor. The contract is due to expire sometime in 2027. The petitioner had rectified the defects, upon receipt of the performance notice. The respondents were duty bound to verify within seven days from receipt of the letter of the petitioner, whether the deficiencies which had been pointed out in the performance notice dated June 6, 2025 had been rectified or not. If the petitioner failed to comply with the directions of the respondents as stated in the performance notice, could the second tender be floated.

7. Mr. Prasad, learned advocate for the respondents submits that innumerable letters had been issued to the petitioner asking the petitioner to improve the quality of service, deploy adequate machinery, deploy adequate manpower, but the contractor failed to execute the work in the way it was specified under the contract. There were serious

lapses and as such, the respondents had no other option, but to issue the performance notice and proceed with the second tender.

8. Considered the rival contentions of the parties. Mr. Prasad has handed over a bunch of documents in justification of the submission that several notices and reminders were issued to the petitioner to correct the mode and manner of execution of the work. Paragraph 15 of the application filed by the petitioner also acknowledges receipt of these notices and reminders. Moreover, the notice dated June 6, 2025 also elaborates why the performance notice was issued upon invocation of Section 7.4.1 of the GCC. The question of grant of injunction in a tender process will arise only if the petitioner can prove a strong prima facie case in support of the prayer for injunction. The question is whether the respondent had acted in breach of the contract and whether the petitioner was required to be protected on an urgent basis. In other words, whether the petitioner will suffer irreparable loss and injury if the injunction is not granted is the moot issue.

9. The fact that there are disputes between the parties is available from the records. These disputes have to be resolved upon appreciation of evidence. This Court, at the stage of injunction, is required to assess the prima facie case, balance of convenience and inconvenience and irreparable loss and injury.

10. With regard to the prima facie case, this Court finds that at this stage, the petitioner has not been able to establish that the respondent had acted either in breach of the contract or contrary to the provisions

thereof, meaning thereby, the terms and conditions. agreed between the parties had not been violated. Section 7.4.1(a) of the GCC provides that in the event of violation of any of the terms and conditions of Section 7.4, a performance notice can be issued by the Manager on behalf of the Railways upon the contractor, in writing, asking the contractor to make good the default. The section provides for initiation of a bidding process for the balance service. Thus, the railway authorities were within their right under the agreed terms of the contract to proceed for a bidding process upon issuing a performance notice to the petitioner. The notice was issued on June 6, 2025. Section 7.4.1(b) reserves the right to the railways to float a new tender and invite bids for delivery of services, and to replace the contractor put on notice, from the date on which the notice was served. The service of the notice and receipt thereof by the contractor are not in dispute. The said provision permits the railways to proceed for a second bid. The existing contractor should not be allowed to participate in the second bid as per the terms. However, if the existing contractor improves his service or performance to the satisfaction of the manager, the railways can terminate the subsequent bid at any stage of the said process. Section 7.4.1(c) provides that notwithstanding initiation of a bidding process, the financial bid shall be opened only after termination of the subject contract. Clause 7.4.1(d) provides that after issuance of the notice, the performance of the contractor shall be assessed on a weekly basis by the manager. If the manager is satisfied with the improvement in the performance of the contractor, the manager may revoke the performance notice. If the performance is found to be unsatisfactory after the first week or thereafter, then railways will be at liberty to issue seven days' notice which will be governed by Section 7.4.2. Section 7.4.2 provides that after delivery of the performance notice to the contractor, if the contractor does not proceed to make good the default and carry on the services or comply with such directions as directed by the railways to the entire satisfaction of the manager, railways will be entitled to serve a seven days' notice in writing directing improvement in the quality of service to the prescribed standard. Failure to do so, shall entail termination. Section 7.4.3 deals with issuance of termination notice.

11. Upon a conjoint reading of the aforementioned sections the following facts surface (a) Section 7.4 of the GCC provides the obligations of the contractor. (b) Section 7.4.1 enables the manager to issue a performance notice in writing to the contractor if the contractor fails to fulfil its obligations under Section 7.4. (c) The notice should be writing and the contractor should be given a chance to make good the default. (d) Simultaneously, with the issuance of the said notice, the respondents are entitled to initiate a bidding process for completion of the remaining work which the existing contractor failed to complete or execute. (e) The contractor is sufficiently protected to the extent that the contractor gets an opportunity to rectify and make good the default and continue with the work until termination. (f) The railway authorities are obliged to inspect the premises in question to ascertain whether the

defects had been removed or the quality of service had improved and (g) Thereafter take a decision whether to proceed with the financial bid upon termination of the contract or revoke the second bidding process upon being satisfied that the contractor had rectified the defects and improved the quality of service.

12. In this case, only the bidding process had been initiated on June 25, 2025. After the second tender was floated, the petitioner issued a letter stating that cleaning of the workshop at Howrah had been completed. Such letter was issued on June 26, 2025.

13. Thereafter on June 27, 2025 another letter was issued. It is the specific submission Mr. Prasad on instruction from the Senior Section Engineer that, after receipt of the petitioner's letter dated June 26, 2025 and June 27, 2025 inspection was made.

14. In any event, the terms and conditions of the contract prohibit the respondents from proceeding with the financial bid till they come to a decision with regard to the petitioner's performance and either revoke the bidding process on being satisfied with the petitioner's service or terminate the contract of the petitioner upon giving adequate reasons as to why the contract should be terminated and financial bid of the second bidding process should be opened.

15. Neither the seven days' notice under Section 7.4.2 nor the termination notice under 7.4.3 have yet been contemplated. The petitioner stands sufficiently protected at this stage. The petitioner's remedy will be to invoke arbitration immediately for settlement of the

disputes which have been enumerated hereinabove, and rectify the defects as pointed out by the authorities. There is no immediate threat of termination and opportunities have been given to the petitioner to correct the mistakes and upgrade the service.

16. Under such circumstances, the application being AP-COM 546 of 2025 is dismissed at this stage.

(SHAMPA SARKAR, J.)

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