

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Rai Chattopadhyay

WPA 22965 of 2022

With

CAN 1 of 2024

Rohini Enterprise & Anr.

Vs.

Union of India & Ors.

For the Petitioners

: Mr. Saptarshi Roy

: Ms. Kakali Das Chakraborty

For the Respondents

: Mr. Bhudeb Chatterjee

: Mr. Rajesh Kumar Shah

Judgment on

: 13.02.2026

Rai Chattopadhyay, J. :-

- 1.** The letter impugned dated September 19, 2022, of termination of contract and forfeiture of the earnest money deposit of the petitioner, to the tune of Rs.11,94,000/-, has been challenged by the petitioner in the instant writ petition, on the grounds inter-alia of arbitrariness, fraud by suppression of material facts to initiate the tender by the respondent authority and violation of the principles of natural justice in case of the petitioner, having not granted the proprietors of the firm an opportunity of hearing, before termination of the contract.

2. Relevant background facts are like this. The respondent No. 3/ the Senior Divisional Commercial Manager, Eastern Railway, Sealdah Division invited tender, for the purpose of awarding license for operation of composite parking lot No.SDAH at Sealdah railway station, for a period of three years. The closing date for submission of bid was July 4, 2022. The area in which the license holder shall commence the parking operation, would be comprising of 1890 square meters. According to the writ petitioner, it was incumbent upon the respondent/Railways to hand over to it, that is the successful bidder, an unencumbered possession of the demarcated stipulated area of land to start the operation, at the initiation of the contract. Instead, the Railways acted negligently and against the norms, by not handing over the unencumbered demarcated area of the land, in spite of, entering into an agreement with the petitioner and accepting the earnest money from it. Allegedly, the area map published at the time of publication of tender was not an up-to-date one and did not reveal the exact position of the land as on the date. That, allegedly since the map published with the tender was outdated, pertaining to the year 2014, no encroachment thereon could be comprehended from the said map as enclosed with the tender document, whereas practically 1000 square meter area from the total 1890 square meters, was actually encroached by the outsiders, rendering initiation of the operation under tender virtually impossible. That the petitioner's representations dated August 24 and September 5 of 2022, remained unattended whereas in spite of extending the time period of the bid of the petitioner by 45 days vide letter dated August 17, 2022, on the same date that is August 17, 2022, the respondent No.3 issued to the petitioner a '*letter of acceptance*', directing him to execute the license agreement on non-judicial stamp paper, within 15 days from the date of the said letter of acceptance.

3. The petitioner could never start the operation by executing a license agreement as sought for by the respondent. The reason it attributes to the failure on part of the respondent to create a conducive condition by performing the essential conditions, for the successful bidder to initiate the tender specified job. In this way according to the writ petitioner, paragraphs 1.2 and 1.3 of the Commercial Circular No.4 of 2014, published by the Director, Traffic Commercial (G), Railway Board, have been violated. Then comes the termination order issued against the petitioner dated September 19, 2022. The same not only terminate any contract of the petitioner with the respondent railway for the said specified job, but also directs for forfeiture of the earnest money deposited by the petitioner to the tune of Rs.11,94,000/- due to alleged non-performance of the contract. Thus the petitioner is aggrieved and files the instant writ petition through the proprietors.
4. Mr. Roy learned advocate has represented the writ petitioner. He has submitted firstly, that the letter issued by the respondent dated August 17, 2022, though has been referred to as the '*letter of acceptance*', is not of that nature having traits of a concluded contract, but should be considered only as an offer letter. He submits with reference to the said document as annexed in the instant writ petition that substantially the said letter does not culminate into a concluded contract but only stipulates that an agreement has to be executed between the parties within a stipulated period of time. According to Mr. Roy learned advocate, no formal agreement has been ever executed between the parties. Hence, there being no concluded contract at all between the parties, there would not be any question of non-performance of contractual terms by the petitioner as alleged and imposition of penal consequences on the petitioner, on such allegation, would be unfounded and baseless, he says.

5. Mr. Roy has further contended that, had there been a contract between the parties pursuant to the tender process, the validity thereof would have been existing for three years that is till August 18, 2022. After the same in terms of the tender document, a contract, even if it was there between the petitioner and the respondent, would have automatically terminated due to efflux of time. Mr. Roy learned advocate is reluctant to give any credence to the letter of the respondent dated August 17, 2022, by dint of which the bid was extended by 45 days. He says there was no extension of the time and the offer died its natural death after expiry of three years period, that is on August 18, 2022, on which date there was no validly executed concluded contract between the parties.
6. According to the petitioner, the respondent authority has failed to perform its obligation by not providing adequate unencumbered space as mentioned in the tender document over which parking operations ought to have been started by the petitioner, in spite of acceptance of the earnest money. The petitioner has raised objections as to the profound reliance of the respondent authority, on Clause-12 of the '*Instructions to Tenderers*', which he denies to be such a provision so as to extend any liberty to the authority, not to perform essential conditions for ensuring a conducive condition to initiate the works tendered for.
7. Mr. Roy has also expressed grievance of the petitioner that no opportunity of hearing has ever been extended before issuance of the impugned letter dated September 19, 2022, to the same, there by violating the principles of fairness and natural justice.

8. Hence, according to the petitioner, this is an arbitrary action of the respondent, of which the petitioner has been made subject to and due to the gross arbitrariness, such action is untenable in the eyes of law.
9. For all the reasons as discussed above, the petitioner seeks that the instant writ petition be allowed by quashing the impugned order dated September 19, 2022, that being in derogation of the Commercial Circular No.4 of 2014 and with direction upon the respondent/Railways to duly consider the petitioner's representation dated September 27, 2022; also, by directing the respondent to refund the earnest money deposited with the respondent to the tune of Rs. 11,94,000/-.
10. In support of various points raised in his argument, Mr.Roy learned advocate has relied on the following judgments:
 - i. ***Vidarba Irrigation Development Corporation & Others vs Anoj Kumar Agarwala & Others – (2020) 17 SCC 577***; it has been submitted that a tender notice contains some essential conditions of eligibility and some other ancilliary or subsidiary conditions to achieve the main objective together; while the authority may deviate from the strict literal compliance of the ancilliary conditions, but can in no circumstance enjoy any liberty to proceed without compliance with the essential conditions of tender or else the performance would be rendered as impossible; in this case the petitioner addresses the requirement for handing over free and unencumbered possession of the land area for due performance by the tenderer to be such an essential and unavoidable condition for the respondent authority, which allegedly they have failed to fulfil; thus allegedly the work under tender has become inexecutable

at the instance of the respondent, for which the petitioner cannot be held accountable or imposed with penal measures;

- ii. ***Om Prakash Sharma vs Ramesh Chandra Prasar & Others – (2016) 12 SCC 632***; the Supreme Court has held that it is open to the authority to deviate from and not to insist upon the strict literal compliance of the ancillary or subsidiary conditions, excepting which are most essential for the main object to be achieved;
- iii. ***Mahabir Auto Stores & Others vs Indian Oil Corporation & Others – (1990) 3 SCC 752***; the Supreme Court has held that administrative decision can be impeached on the ground that the decision is arbitrary or violative of Article 14 of the Constitution, on any of the grounds available in public law field; that even in the field of public law, the relevant persons concerned or to be affected, should be taken into confidence; that exercise of power cannot be dealt with by the State or its instrumentality without informing or taking into confidence, the party whose rights and powers are affected or sought to be affected.
- iv. ***The General Manager, Eastern Railway & Others vs Dileep Kumar Sah – MAT No.730 of 2020, order dated April 22, 2024***; the Division Bench of this Court has held that acceptance of bid would be completed only after the execution of the agreement; that if the acceptance is coupled with certain conditions or reasonably inferred that something more by both the parties to be performed, it is regarded as an offer and the acceptance cannot be presumed to take a character of a contract; that a mere acceptance of a bid does not constitute a

concluded contract as a further agreement was required to be executed that, a 'letter of intent' is construed as a 'letter of acceptance', but the intention has to be gathered or evidently found in the terms and conditions embodied therein; the Court has entertained the writ petition and granted relief of refund of the earnest money, to the petitioner there;

v. *Dileep Kumar Sah vs The General Manager, Eastern Railway & Others – W.P.No.26079(w) of 2017, order dated December 12, 2019;* the Court has held the position of law to be that it is upon acceptance of the terms and conditions specified in the tender document by the highest bidder and communication of such acceptance to the tender issuing authority that the tender agreement is executed between the parties;

vi. *The Senior Divisional Commercial Manager, Eastern Railway, Howrah Division and Another vs Manjee Yadav & Others – FMA 418 of 2024, order dated June 25, 2024;* with reference to a judgment of the Supreme Court [*Vedanta Limited vs M/s Emirates Trading Agency LLC reported in AIR 2017 SC 2035*] the Division Bench of this Court has found that unless the offer made by the bidder is accepted without any conditions or putting any rider to it shall partake a character of a contract, otherwise it would not be treated as a concluded contract.

11. According to the respondent/Railways, represented by Mr. Bhudeb Chatterjee, learned advocate, there is no sufficient or cogent ground in the writ petition filed by the present petitioner that to be maintained or

allowed by the Court. It has been stated by the respondent that, the prayer of the petitioner being in the nature of a money claim, is to be adjudicated not by the Court of equity in exercise of power under Article 226 of the Constitution of India but by a competent Civil Court. That way, the respondent has espoused the point of non-maintainability of the writ petition in its present form.

- 12.** According to the respondent/Railways, the '*Letter of Acceptance*' dated August 17, 2022 amounts to be a concluded contract the same having definitively expressed acceptance of tender of the petitioner by the respondent without any condition. Therefore, the clauses enumerated in the tender document (Instruction to tenderers) would be applicable in case of the petitioner, in case of violation of the conditions of acceptance. It is submitted that, the '*Letter of Acceptance*' dated August 17, 2022 has directed the tenderer/writ petitioner to submit security deposit amount including performance guarantee to the tune of Rs. 49,40,241/- (after adjustment of the earnest money deposit) and advance license fee to the tune of Rs. 63,89,834/- within a period of 15 days from the date of issuance of the said letter (LoA). The respondent says that evidently and even admittedly, the tenderer has failed to comply with the said directions which render it to be subject to the penal action in terms of Paragraph 10 of the 'Instructions to Tenderers'. Therefore, according to the respondent, steps have been taken against the writ petitioner by cancellation of its condition as well as forfeiture of earnest money was in terms of the contract only by which, they say, the petitioner is bound.
- 13.** The respondent/Railways submit that instead of performing the contract, the petitioner has sent letters dated August 24, 2022 and September 05, 2022 informing its unwillingness to participate and expressed intention to withdraw from the process. The respondent is aggrieved that in doing

so, the petitioner, allegedly without any base, has complained about the respondent having not handed over possession of the encumbered land in favour of the petitioner tenderer to commence the work under tender. In this regard, though the respondent has not denied that, the site map which has been uploaded with the tender notice pertains to the year 2014. However, simultaneously, the respondent has challenged any allegation of misrepresentation and concealment of material fact. By referring to Paragraph 12 of the 'Instruction to Tenderers' the respondent has indicated that, it was the bounden duty of the tenderer in terms of the said provision to satisfy itself about the current condition of the land by actual inspection of the site and locality of the parking lot before submitting the tender. It is submitted that, the right of inspection of the site before submission of tender has always been available to the petitioner/tenderer which it should have exercised and come to its own satisfaction as regards encumbrances, if any, over there as alleged. Given the power of inspection being in existence in Paragraph 12 of the '*Instruction to Tenderers*', it is presumed that, before submitting the tender, the present petitioner has duly exercised the same and satisfied itself about the availability of the encumbered land to be operated as the parking space. The respondent has also denied allegations of the petitioner of encroachment of the land and termed the same as baseless. The respondent has submitted that the earlier contractor operated over the site for the same purpose till August 29, 2022 which included the period for which his contract was even extended by the respondent. Since thereafter, the said earmarked parking space has been under operation of the Department. Hence, according to the respondent, petitioner's grievance regarding unauthorized encroachment at the earmarked area is only baseless and without substance.

- 14.** The respondent has also referred to Paragraph 15 of the '*Instruction to Tenderers*' to fortify the argument advanced that in case of failure of the tenderer to deposit license fee, security deposit and performance guarantee within the stipulated time, the tender is liable to be cancelled.
- 15.** Paragraph 5 of the '*Instructions to Tenderers*' has also been mentioned in support of the contention that the Railway administration has the right to forfeit the earnest money deposit in presence of the specific conditions as mentioned therein like, the tenderer failing to turn up for acceptance or forfeiture in terms of the contract. It is submitted that the awardee was supposed to deposit the advanced license fee and security money including performance guarantee as stated above within 15 days from the date of issuance of '*Letter of Acceptance*' and that handing over possession of the site, is subject to deposition of license fee and security money by the awardee. Since the petitioner has failed to comply with such conditions, therefore, according to the respondent/Railways, neither there is any question of handing over possession of the site to the petitioner nor has the respondent acted wrongly or in violation of any terms and conditions, by cancelling tender of the petitioner and forfeiting the earnest money amount deposited by it.
- 16.** It is submitted that, in view thereof, the writ petition contains not sufficient reason or ground for the Court to interfere into the action taken by the respondent Authority as impugned in this writ petition. The respondent, therefore, insist that the writ petition be dismissed.
- 17.** It appears that the tenderer and the awardee are bound by the terms of a concluded contract, which may not always be in the form of a duly executed agreement. A letter of acceptance issued by the tenderer may manifest that conclusiveness, provided that, intentions of the parties

could be gathered or evidently found in the terms and conditions as embodied therein to immediately bind themselves. The settled position of law is that, acceptance of offer made by the tenderer without any conditions or putting any rider to it and/or when the acceptance is communicated in a manner that demonstrates unequivocal intent to be bound, that only shall partake a character of a concluded contract, not otherwise. A letter of acceptance that is issued as a mere expression of intention or in anticipation of further formalities, without fulfilling essential contractual conditions, does not create legal obligations. When the acceptance is issued as a letter of intent that clearly indicates an intention to be bound immediately, it may amount to a concluded contract. The context and conduct of the parties, such as commencing work or executing parts of the contract, can sometimes imply that a binding contract exists despite the absence of formal documentation. To say in a concise manner, a letter of acceptance in tender process does not automatically create a binding contract if it is conditional, provisional, or dependent on further formalities such as signing of a formal agreement, issuance of contractual documents, or fulfillment of specific conditions. The intention of the parties, as evidenced by the language used and the context, plays a pivotal role in determining whether a binding contract has been concluded.

- 18.** Therefore, it is necessary to scrutinize the '*letter of acceptance*' in this case to find out whether actually it amounts to a concluded contract in accordance with law and as submitted on behalf of the respondent authority, thereby manifesting the intentions of the parties to be bound immediately. The language used in acceptance letter and the context of the tender process are critical in determining whether a binding contract has been formed. There are three important points noted in the said letter dated August 17, 2022. That the petitioner has to submit the

security deposit; that he has to remit the license fee and taxes; and that he has to execute an agreement; all within a period of 15 days from the date of the said letter. The authority has also mentioned that the offered rate is accepted for a stipulated annual license fee and a stipulated period. It has further been mentioned that the contract is subjected to fulfilment of the said conditions, as mentioned above. Most interestingly the authority has neither mentioned any date from when the petitioner is expected or bound to commence the work under tender, nor mentioned that the date of start of work was from the date of the said letter.

19. The language in the letter dated August 17, 2022, is sufficiently clear and definitive to indicate its contingent nature, as the contract's conclusiveness is made contingent upon the future fulfilment of the aforementioned criteria. Conversely, the contract would not be considered final and binding if the aforementioned conditions are not met within the next 15 days. Intention of the respondent not to give any immediate binding effect to the terms and conditions of tender is overtly evident from the very language of the letter itself. When acceptance is contingent upon conditions such as the signing of formal agreements, submission of security, or fulfilment of procedural requirements at a future date, the acceptance is not binding until those conditions are satisfied. The Supreme Court in ***Maharshi Dayanand University & Anr -versus- Anand Coop. L/C Society Ltd. & Anr reported at 2007 5 SCC 295***, has held that when parties during negotiations contemplate the execution of a formal agreement incorporating the terms of the bargain, so long as a formal agreement has not been entered into, it may be open to contend that there was no concluded contract between the parties. The Division Bench of this Court in ***Dileep Kumar Sah (supra)***, has also upheld the proposition as above. No less appropriate here to mention the judgment in ***Manjee Yadav & Others (supra)***, wherein the Division

Bench of this Court has upheld the proposition relying on a Supreme Court judgment in ***Vedanta Limited (supra)***.

20. On the basis of the discussions as made above, the Court finds no force in the submissions made on behalf of the respondent, that the letter dated August 17, 2022, by itself would amount to a concluded and binding contract between the parties. On the contrary, the language used therein clearly shows its contingent nature and maker's intent not to consider the same as conclusive, till the time of fulfilment of the conditions stipulated therein. In such circumstances the penal provisions of the 'Information to Tenderers' cannot be imposed against the writ petitioner, on the allegation of contravention of the provision thereof, those having no binding effect on the parties.
21. The petitioners other contention is that the tender/respondent railways, have not discharged the essential conditions which were unable for it, in order to facilitate due execution of the works under tender. That is with respect to providing the petitioner with the unencumbered and free access and possession of the piece of land. In this regard, allegations of misrepresentation of material, fact at the time of issuance of notice of tender has also been levelled against the respondent authorities. The main objective of the tender in question is for providing car parking space, within the vicinity of the railway station, that is, Sealdah Railway Station. The Supreme Court in ***Vidarbha Irrigation Development Corporation (supra)*** has held that a notice of tender contains some essential conditions of eligibility and some other ancillary or subsidiary conditions, to achieve the main objective together. There according to the Supreme Court, regarding ancillary conditions of tender, the authority may avail itself, some relaxation in terms of lenient literal compliance thereof, but it cannot do so with the most essential conditions of tender

or else the performance would be rendered as impossible. The proposition of law as envisaged in this case is the reproduction of the similar proposition earlier held by the same Court in the judgement of ***Om Prakash Sharma (supra)***.

22. An essential condition in a tender goes to the root of the contract. It is a condition without which the object of the tender cannot be achieved. In the case of a parking contract, the availability of an unencumbered vacant space is fundamental, because maintenance, management, and revenue generation from parking presuppose lawful and unhindered possession of the site.
23. The tender in question pertains to the maintenance and operation of a parking space. It appears that, admittedly an old area map of 2014, of the vacant space earmarked for the objective for which the tender was floated, was published with the notice of tender, for knowledge of the intending bidders, including the writ petitioner. The respondent however, has put much emphasis to Paragraph 12 of the '*Instructions to Tenderers*' by stating that, it was incumbent upon the prospective bidder to inspect the site for himself for satisfaction so that no hindrance in smooth operation of the parking lot crops up in future. The Court, finds Paragraph 12 of the '*Instructions to Tenderers*' to be contradictory with the site map uploaded by the Authority with the tender notice. The site map indicates a total of 1890 square meters of property designated for the contractor's operations, whereas the petitioner asserts that about 1000 square meter area is being encroached upon by unauthorized residents, which starkly contradicts the site plan. It effectively permits the bidder/contractor to operate on a diminished area of land, as specified in the tender notice and agreed upon by the parties, though the effective land area has been shown in the map to be greater.

- 24.** Permitting a tenderer to operate a parking contract without providing an unencumbered vacant space, would amount to dilution of the essential conditions of tender, which is impermissible in law. The comprehensive policy guideline (Commercial Circular No. 4 of 2014 dated February 12, 2014) has provided for allotment of well-demarcated, fenced and leveled surface site to the contractor by the Railway Authority for parking purpose including covered shelter as and when appropriate (As per Clause 1.3). Therefore, any relaxation as to the same would not only be arbitrary but also offend the principles of fairness, transparency and equality governing public procurement, particularly where the bidders are required to strictly comply with the tender conditions. Both, if considered together, should obviously give an impression that, encroachment over the site even if any, would be removed by the tenderer and ultimately the vacant possession of the land, unencumbered, free from all encroachments and third party claims, would be handed over to the successful bidder by the tenderer, in compliance with one of the essential conditions of tender, that is, providing the area of land to the highest bidder for operation.
- 25.** It cannot be construed to be a responsibility on part of the prospective bidders to be satisfied with the condition of the site of operation as free from all encumbrances, as put forth by the respondent/Railways; instead the Court finds that, the tender document having made both the old site map of 2014 and Clause 12 of the '*Instructions to Tenderers*' as part thereof, have created confusion and the terms of the tender are not, therefore, very well-defined. This definitely violates the level playing field in the entire process, in prejudice to the interests of the bidders. In

public law context, ambiguity in tender terms is construed against the authority, not bidders, this aligns with Article 14 (of the Constitution of India) jurisprudence. It thus, amounts to be irrational and arbitrary to do, on part of the respondent Authority. Instead, a stipulation for providing unencumbered and free possession should have been considered not as ancillary in nature but as an essential condition of the tender.

- 26.** It is a settled principle of law that, essential conditions of a tender are required to be strictly complied with as that go to the root of the contractual arrangement the very object of a parking contract – namely, lawful possession, unhindered operation and effective maintenance cannot be achieved unless the site is delivered in an unencumbered and vacant condition. Any deviation from this requirement would frustrate the purpose of the tender itself. The tenderer is, therefore, legally bound to comply with all essential conditions including providing for vacant possession and cannot subsequently seek relaxation or justification on the ground of existing encroachments, occupation by third parties or any other tender conditions.
- 27.** It is well-settled that, while minor or non-essential deviations may be condoned in appropriate cases, there should not be any relaxation as regards the essential conditions of tender. Any Award of Contract (though in this case, it is found that, there is no concluded contract between the parties) in violation of such conditions is liable to be interfered with, as it would vitiate the tender process itself.
- 28.** Therefore, for the reasons as discussed above, in the instant process, though bid has been submitted and accepted, neither a concluded

contract can be considered to have come into existence nor the tender process itself is liable to be upheld as a valid one, due to non-observance of the compulsory essential condition of tender by the tenderer/respondent, hence the entire process being arbitrary and irrational. This entitles the writ petitioner to be remitted back with the earnest money deposit to the tune of Rs. 11,94,000/- which it submitted at the time of submission of the bid.

- 29.** Hence, the writ petition No. WPA 22965 of 2022 is hereby allowed. Application, if any, pending therewith, is accordingly disposed of.
- 30.** The order passed by the respondent No. 3 dated September 19, 2022 is set aside. Let the earnest money deposit to the tune of Rs. 11,94,000/- be paid back immediately by the respondent Railway authority, to the writ petitioner, within a maximum period of four (04) weeks from the date of communication of copy of this judgment.
- 31.** Urgent certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Rai Chattopadhyay, J.)