



\$~64

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of Decision: 26.08.2025**

+ W.P.(C) 12997/2025, CM APPL. 53201/2025 & CM APPL.  
53202/2025

P. K. TECHNO PROJECTS PVT LTD.

.....Petitioner

Through: Ms. Nandita Rao, Sr. Adv. with Mr.  
Manish Raghav, Mr. Prakash  
Srivastava, Ms. Smriti Dubey,  
Advocates (M:9873645048)

versus

UNION OF INDIA AND ORS.

.....Respondents

Through: Mr. Nishant Gautam, CGSC with Mr.  
Vardhman Kaushik, Mr. Shaurya  
Mani Pandey, Mr. Prithvi Rajdey, Ms.  
Srijita Koli, Advocates for UOI (M:  
7754929547)

**CORAM:**

**HON'BLE MS. JUSTICE MINI PUSHKARNA**

**ORDER**

% **26.08.2025**

1. The present writ petition has been filed seeking directions for quashing the impugned communication dated 06<sup>th</sup> March, 2025, issued by respondent no. 3, whereby, the petitioner company has been temporarily de-listed from the list of approved vendors on account of non-conformity of Elastic Rail Clips ("ERC") samples manufactured by petitioner with the specified quality.
2. There is further prayer for directions to respondents to forthwith reinstate the petitioner in the list of approved vendors for ERC MK-III and ERC MK-V.



3. Learned Senior Counsel for the petitioner submits that the petitioner has duly completed the supplies relating to certain units of ERC, in accordance with the contractual specifications, which were subjected to multi-stage inspections.
4. It is submitted that the final inspection certificate dated 03<sup>rd</sup> October, 2022 and Consignment Receipt Note dated 07<sup>th</sup> November, 2022 confirmed full and defect-free receipt of the aforesaid supplies. Accordingly, vendor approval of the petitioner for ERC MK-III and MK-V was extended by respondent no. 3, until the next periodic quality audit scheduled for 31<sup>st</sup> July, 2026, *vide* letters dated 07<sup>th</sup> September, 2021 and 21<sup>st</sup> October, 2021, respectively.
5. It is further submitted that the contractual warranty expired on 07<sup>th</sup> May, 2024, in terms of Clause 12.4 of the Special Conditions of Tender for combined procurement, read with (ERC MK-III) Clause 5.9.1 of the General Conditions of Contract for Services, 2018.
6. It is submitted that no complaints or audit discrepancies arose during the contractual warranty period.
7. Learned Senior Counsel for the petitioner submits that without prior notice or intimation, the respondents collected samples from the field, i.e., BSB Yard, on or before 23<sup>rd</sup> December, 2024, without affording the petitioner the opportunity to remain present or to provide testing facilities, in breach of Clause 1300 of the Indian Railway Standard (“IRS”) Conditions of Contract, 2018. Thus, it is submitted that not only was the petitioner not present at the time when the samples were taken, but also, insufficient samples were taken by the respondents.
8. Attention of this Court has been drawn to the Show Cause Notice



dated 04<sup>th</sup> February, 2025, wherein, it is submitted that random samples were collected jointly from BSB Yard in presence of Research Designs & Standards Organization (“RDSO”) official and the concerned field unit official. However, it is submitted that there was no notice to the petitioner and there was no joint collection of the samples, as wrongly stated in the Show Cause Notice.

9. Learned Senior Counsel for the petitioner further draws the attention of this Court to the reply dated 24<sup>th</sup> February, 2025, submitted on behalf of the petitioner to the Show Cause Notice dated 04<sup>th</sup> February, 2025, and in particular, relies upon paragraphs 2 and 3 of the said reply, which are reproduced as under:

“xxx xxx xxx

2. At the outset, we wish to point out that Railways have failed to follow the due procedure prescribed in the testing of the samples. The said Samples were duly manufactured and passed in the testing process and they were supplied to the Consignee once they were passed the tests and thereafter, the payment was released to us. The warranty period of the said samples have also expired. The said material were inspected on 03.10.2022 and delivered by 31.10.2022 ( copy of inspection certificate and Receiving R note enclosed ) to the consignee. The guarantee for the said lot was for the 18 months from the date of delivery or 12 months from the placing in service whichever is earlier. The lot which is the subject matter of the present dispute was said to be tested by you on 24.12.2024 and the same was supplied on 31.10.2022. Therefore, the guarantee period is already over and the undersigned cannot be penalized for the same. The goods were in perfect condition when the same were supplied by us. It is humbly submitted that there are flaws in the testing and handling of samples on the part of Railways. The supplier can not be asked to compensate the purchaser for the goods for which the guarantee period is already over. It was further recorded in the agreement that the firm shall not be liable for the material which has been repaired / altered by the purchaser, or on his behalf in any way to affect the strength, performance or reliability or any defect to nay part due to misuse, negligence or accident. Copy of relevant



portion of purchase order is enclosed for ready reference. The relevant clause is reproduced for ready reference: -

*“12.3. The guarantee herein contained shall not apply to any material which shall have been repaired or altered by the purchaser, or on his behalf in any way so as to affect its strength, performance or reliability or any defect to any part due to misuse, negligence or accident.*

*“12.4. The guarantee herein contained shall expire in respect of each item of stores on the expiry of 18 months from the date of its delivery- or 12 months from the date of its placing in service whichever is earlier, except in respect of defects notified to the Contractor prior to the expiry of such date.”*

**3. We wish to further point out that the samples were collected in a very arbitrary manner. We wish to further point out that your officials have failed to follow the due procedure of testing rules as prescribed for the picking and testing of the already passed sleeper. It is specifically mentioned in the said guidelines that the firm's representative will be present at the time of picking of the samples at the consignee end. In the present matter, no intimation is provided to us in respect of the picking or testing of the samples. This major lapse clearly shows the violation of the rules on the part of Railways. We wish to humbly point out that your employees use the technique of hammering OF ERC CLIPS while picking up the samples AND also during installation of ER clips which affects the strength and quality of the samples/goods. This is general practice in all the Railway yards and is in violation of the rules. As per the rules, the field staff should use the mechanical or hydraulic applicator without causing harm to the supplied material while setting the ER clips in track and also points and crossings. However, that is not the practice in general. Therefore, as you have failed to adopt proper mechanism/applicators which resulted in harming the material, making the entire process of testing as void.**

xxx xxx xxx”

(Emphasis Supplied)

10. Attention of this Court has been drawn to the impugned order dated 06<sup>th</sup> March, 2025, wherein, again, as per learned Senior Counsel for the petitioner, it has wrongly been stated that the samples were collected jointly. She further submits that reply filed on behalf of the petitioner was not even



considered properly by the respondents and that the impugned order dated 06<sup>th</sup> March, 2025, is a cryptic and non-speaking order.

11. Learned Senior Counsel for the petitioner further draws the attention of this Court to the various Clauses of the Document No. Q0-D-8.1-11 issued by RDSO, and in particular to Clause 4.2.2, relating to temporary de-listing, which reads as under:

“

**4.2.2 TEMPORARY DELISTING**

Temporary delisting of vendors can be resorted to under the following conditions:

- a) Cases where repeated failures are noticed in the items supplied
- b) Direction from law enforcing agencies

xxx xxx xxx”

12. By referring to the aforesaid, learned Senior Counsel for the petitioner submits that it is only in the case of repeated failures, that temporary de-listing can be resorted to. However, in the present case, earlier two samples tested for the petitioner’s products, were found to be in order.

13. She submits that the impugned order of temporary de-listing has been issued on the basis of the third testing, for which samples have been collected behind the back of the petitioner.

14. Learned Senior Counsel for the petitioner further submits that the petitioner was enlisted separately for the products, i.e., ERC MK-III and ERC MK-V. She draws the attention of this Court to the letter dated 07<sup>th</sup> September, 2021, which pertains to enlistment of petitioner for the product ERC MK-III and letter dated 21<sup>st</sup> October, 2021, by which the petitioner was enlisted for the product ERC MK-V.

15. She further submits that the products of the petitioner have been found to be unsatisfactory only *qua* ERC MK-III. She, thus, submits that on the basis of a test report for the ERC MK-III products, the petitioner could



not have been temporarily de-listed even for the ERC MK-V products.

16. Issue notice. Notice is accepted by learned counsel for the respondents.

17. Learned counsel for the respondents submits that the petitioner has an efficacious alternate remedy of filing an appeal before the appellate authority of RDSO (Spl. DG/ Engg.) against the decision of temporary de-listing.

18. He submits that pursuant thereto, the petitioner has already filed an appeal before the appellate authority. Thus, he submits that the present writ petition would not be maintainable in light of the said appeal.

19. Responding to the aforesaid averment, learned Senior Counsel for the petitioner submits that the said appeal has been pending for a period of four months, and that on account of the same, the said alternate remedy has been rendered as nugatory.

20. She further relies upon the judgment dated 18<sup>th</sup> February, 2010 passed in the case of "*Chandana Kedia Versus Union of India & Anr.*", in *W.P.(C) 13002/2009*, and in particular, relies upon paragraphs 16, 25 and 27 of the said judgment.

21. By referring to the aforesaid judgment, learned Senior Counsel for the petitioner submits that in cases where the concerned authority fails to consider the relevant materials in arriving at an impugned decision, then, such a decision does not pass the test of reasonableness on the touchstone of Article 14 of the Constitution, and in such cases, a writ petition would be maintainable.

22. She, thus, submits that similarly, considering the facts and circumstances of the present case, wherein, the samples have been collected



only after the expiry of contractual warranty period and that too, behind the back of the petitioner, the present writ petition would be maintainable.

23. *Per contra*, learned counsel for the respondents submits that the appeal filed by the petitioner shall be considered and disposed of, within a period of four weeks, from today.

24. The aforesaid statement made by learned counsel for the respondents is taken note of and the respondents are held bound by the same.

25. Accordingly, it is directed that respondents shall consider and dispose of the appeal of the petitioner pending before the appellate authority, within a period of two weeks, from today.

26. At the time of considering the appeal of the petitioner, Principles of Natural Justice shall be duly followed and the petitioner shall be granted the opportunity of personal hearing, through its authorized representative.

27. A speaking order shall be passed by the respondents, within a period of two weeks, which shall be duly communicated to the petitioner.

28. In case, the petitioner is aggrieved by any order passed by the respondents, the petitioner shall be at liberty to seek its remedies, in accordance with law.

29. As regards the contention of the petitioner with respect to the fact that the products of the petitioner for only ERC MK-III were tested, on account of which, the petitioner has also been de-listed for ERC MK-V, the petitioner is granted liberty to file a representation with the competent authority, which shall also be decided, along with the appeal of the petitioner.

30. It is clarified that this Court has not expressed any opinion on the merits of the case.



2025:DHC:7428



31. All the rights and contentions of the parties are left open.
32. With the aforesaid directions, the present writ petition, along with pending applications, is disposed of.

**AUGUST 26, 2025/au**

**MINI PUSHKARNA, J**