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IN THE HIGH COURT OF DELHI AT NEW DELHI

Pronounced on: 14.01.2009

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W.P. (C) 210/2009, C.M No.423/2009

R.K.ASSOCIATES

..... Petitioner

Through: Mr. Jayant Bhushan, Sr. Advocate
with Mr. G. Prakash, Advocate.

versus

THE MANAGING DIRECTOR, IRCTC & ANR.

..... Respondents

Through: Mr. Gourab Banerji, Sr. Advocate
with Mr. Saurav Agrawal and Mr. D. Kumar,
Advocates.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

S.RAVINDRA BHAT, J. (ORAL)

% The petitioner challenges the order dated 5.1.2009, whereby the license awarded by the respondents (hereafter called IRCTC) on 7.5.2008 for the business of catering service in the "Golden Temple Mail" was cancelled. The order also debars the petitioner from participating in future tender processes for a period of two years effective from that date.

2. It is contended by the petitioner that the order is unsustainable and arbitrary as it is premised on assumptions. Learned counsel relied upon the averments as well as the reply to the show cause notice issued by the respondent, IRCTC on 12.12.2008. Counsel contended that each of the allegations were effectively refuted – in the reply to show cause,- and that the impugned order nevertheless was issued by IRCTC without holding proper enquiry and on the basis of assumptions.

3. Learned Sr. counsel further contended that the show cause notice issued by the respondents, proposing action against the petitioner, nowhere sought the latter's response on the point that the concern would be debarred from future tender processes in the event of an adverse determination, on the show cause notice. This, according to him, is unsustainable in law. Counsel relied upon the decision of the Supreme Court, reported as *Erusian Equipment & Chemicals –vs- State of West Bengal* (1975 (1) SCC 70).

4. Learned counsel for the respondents contended that the disputes cannot be the subject matter of writ proceedings as this does not pertain to any pre-contract administrative decision but concerns the working out of the contract duly awarded. It was also contended that Clause 7.12 of the Terms and Conditions, governing the contract clearly stipulates that in the event of successful tenderer/contractor violating any term or condition, leading to unsatisfactory service or

poor quality of articles etc. not only the license could be terminated but that the licensee would be debarred from participating in future projects.

5. It is evident from the above that the petitioner is seeking intervention of the Court under Article 226 in respect of what are essentially contractual disputes. As held by the Supreme Court in the decision **State of U.P. and Ors. v. Maharaja Dharmander Prasad Singh and Ors.** (1989 (2) SCC 505), **National Highways Authority of India v. Ganga Enterprises** (2003 (7) SCC 410), **Verigamto Naveen v. Government of A.P.** (2001 (8) SCC 344) , such disputes cannot be adjudicated by the High Court under Article 226, as they involve a disputed questions of fact requiring the parties to lead evidence. In such cases, it would be appropriate for the aggrieved party to approach the Civil Court or seek recourse to arbitration, if they have agreed to such mechanism.

6. The observations above are not dispositive of the petition; there is one area where the petitioner's grievance appears to be well founded. The show cause notice issued to it nowhere reflects the IRCTC's thinking that the petitioner's transgressions are such as to its being debarred for any, much less a period of two years. In the circumstances, the impugned order to the extent it debars the

petitioner is unsustainable in law. Before taking such action which virtually spells civil death on the concerned party, principles of natural justice which include issuance of notice, grant of reasonable and adequate opportunity by the concerned agency have to be mandatorily followed. This is the law declared in *Erusian Equipment (supra)*; it has been unwaveringly followed and applied in applied in later judgments. In *Grosos Pharmaceuticals (P) Ltd. v. State of U.P.*, (2001) 8 SCC 604 it was held that:

“It is true that an order blacklisting an approved contractor results in civil consequences and in such a situation in the absence of statutory rules, the only requirement of law while passing such an order was to observe the principle of audi alteram partem which is one of the facets of the principles of natural justice.”

This view has again been reiterated in *B.S.N. Joshi & Sons Ltd. v. Nair Coal Services Ltd.*, (2006) 11 SCC 548.

7. The IRCTC relies on the Clause 7.12 which is in the following terms: -

“In the event of unsatisfactory service, poor quality of articles, persistent complaints from passengers, and service below the standard or any failure or default at any time on the part of the Licensee to carry out the terms and provisions of the agreement to the satisfaction of the IRCTC (who will be sole judge and whose decision shall be final) it shall be optional to the IRCTC to make any substitute arrangement it may deem necessary at the cost and risk of the Licensee or to forthwith terminate this agreement without any previous notice to the Licensee and in case of such termination the Security Deposit be forfeited by the

IRCTC and the Licensee shall have no claim what so ever against IRCTC or any of the officials in consequence of such termination of the agreement. No refund of proportionate Licensee Fee shall be admissible in case of Termination under this clause. The Licensee agrees to make good all cost and expenses, if any incurred by the IRC TC for making the substitute arrangements referred to above. The License shall be also be debarred from participating in the future projects of IRCTC for a period of two year."

8. The above condition no doubt stipulates that the licensee has to be debarred from participating in future projects in the event of unsatisfactory service, poor quality of articles etc. Nevertheless, in such circumstances also there is authority (*D. K. Yadav v. J. M. A. Industries Ltd.* (1993) 3 SCC 259 and *Uptron India Ltd., -vs-. Shammi Bhan* 1998-(6)-SCC -538 to say that show cause notice and principles of natural justice have to be followed, even where the authority or agency prescribes "automatic" application of a norm, as a consequence for the occurrence of some event. Therefore, IRCTC has to perforce issue a show cause notice, in such cases, and, after granting opportunity to the contractor, exercise its discretion whether to blacklist the concern and if so to what extent. This procedure is part of the non-derogable principle of fairness, mandated by Article 14 of the Constitution of India.

9. In the circumstances, the impugned order to the extent it debars the petitioner for a period of two years from participating in

future projects, is hereby quashed. All rights and contentions of the parties are hereby reserved including the petitioner's right to challenge the correctness of the impugned order cancelling the contract before the Civil Court.

**S. RAVINDRA BHAT
(JUDGE)**

JANUARY 14, 2009
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