

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.09.2015

CORAM

THE HONOURABLE MR.JUSTICE M.M. SUNDRESH

W.P.Nos.30111 and 30112 of 2015
and
M.P.Nos.1 and 2 of 2015

W.P.No.30111 of 2015

J.Shobana

...Petitioner

- Vs -

1. The Chairman,
Railway Board,
Ministry of Railways,
New Delhi.
2. The Divisional Railway Manager,
(Commercial), Chennai Division,
Southern Railway, D.R.M. (C)'s office,
Chennai-600 003.
3. The Chief Commercial Manager,
Southern Railway, D.R.M.(C)'s office,
Chennai-600 003.
4. The Senior Divisional Commercial Manager,
Southern Railway, D.R.M.(C)'s Office,
Chennai-600 003.
5. The Divisional Commercial Manager-1,
Southern Railway, D.R.M.(C)'s Office,
Chennai-600 003.

...Respondents

Prayer :

Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorarified Mandamus, to call for records pertaining to the Impugned communication dated 03.07.2015 Ref. No.M/C.14/Telephones/TBM issued by the 5th Respondent and quash the same and consequently direct the Respondent Authorities to permit the petitioner to operate her STD/ISD/PCO/FAX/INTERNET Booth in Tambaram Railway upon discharging all her obligations as per her undertaking dated 03.07.2015, until the Respondents calls for and finalizes Fresh Tender for Operating Telephone Booth in Tambaram Railway Station.

W.P.No.30112 of 2015

J.Shobana

...Petitioner

- Vs -

1. The Chairman,
Railway Board,
Ministry of Railways, New Delhi.
2. The Divisional Railway Manager,
(Commercial), Chennai Division,
Southern Railway, D.R.M. (C)'s office,
Chennai-600 003.
3. The Chief Commercial Manager,
Southern Railway, D.R.M. (C)'s office,
Chennai-600 003.
4. The Senior Divisional Commercial Manager,
Southern Railway, D.R.M. (C)'s Office,
Chennai-600 003.
5. The Divisional Commercial Manager-1,
Southern Railway, D.R.M. (C)'s Office,
Chennai-600 003.

...Respondents

Prayer :

Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorarified Mandamus, directing the respondents to issue Tender inviting Open bids for operating STD/ISD/PCO/ FAX/Internet Booth in Tambaram Railway Station forthwith in consonance with STD/ISD/ PCO Booth Policy and clause 13.7 of the General Conditions of Tender.

For Petitioner : Mr.R.Sundara Kamesh

For Respondents : Mr.P.T.Ramkumar (R1 to R5)

C O M M O N O R D E R

By consent, these Writ Petitions are taken up for final disposal.

2. Heard both sides.

3. The petitioner was the licensee of the respondent. Initially the licence was given to the petitioner to run the booth for a period of five years. The contract was extended for a further period of five years which admittedly expired on 31.05.2015.

3. The petitioner gave a representation that as per the policy, a fresh auction has to take place. Therefore till such time the petitioner will have to be permitted to operate the booth. By the impugned order, dated 03.07.2015, the petitioner's request was rejected with the direction to remove the structure within a period of fifteen days from the date of receipt of the said order. Challenging the said order dated 03.07.2015 and seeking a further direction to permit the petitioner to operate the booth until tenders have been called for and finalised, Writ Petition in W.P.No.30111 of 2015 has been filed and seeking a direction to the respondents to issue Tender inviting open bids for operating STD/ISD/PCO/FAX/Internet Booth in Tambaram Railway Station forthwith in consonance with STD/ISD/PCO Booth Policy and Clause 13.7 of the General Conditions of Tender, the Writ Petition in W.P.No.30112 of 2015 has been filed.

4. The learned counsel for the petitioner submitted that as per the policy, a fresh tender will have to be called for. Till such time, the petitioner can be allowed to continue. The petitioner has made a reliance upon the proceedings of the first respondent dated 07.06.2005 in support of the said contention.

5. The learned counsel appearing for the respondents submitted that the said communication dated 07.06.2005 does not have any application since admittedly the petitioner was a licensee for a period of ten years. As per the policy guidelines stipulated in clause 8.7, there is no power that lies with the respondents to extend the period of contract any further. The booth is to be used for a different purpose and therefore, there is no justification to call for tender. Therefore, no interference is required.

6. The petitioner cannot as a matter of right seek a direction to the respondents to call for tenders as the property admittedly belongs to the respondents and it is for them to call for tenders or not in the manner known to law. It is the case of the respondents that the property would be used for other better purpose instead of calling fresh tenders. This Court cannot direct the respondents to make use of the property for a particular purpose and in such a manner as sought for by the petitioner. Clause 8.7 of the policy guidelines stipulated is as under:

"8.7. The period of contract would be for a period of five years. This would be extended for another five years, by the competent authority on recommendations of Divisional Commercial Manager/Senior Divisional Commercial Manager with finance concurrence provided the performance of the booth operator is satisfactory and full license fee is regularly deposited during the tenure. License will be for a maximum period of 10 years only including extension period and no further extension shall be permitted. Railways should take timely action to call fresh bids well in advance (preferably six months in advance) and not renew any of the contracts after

the expiry of contractual period of 10 years including extension."

7. Thus, as per the said clause, the petitioner having been licensee for a period of ten years does not have a legal right. The letter dated 07.06.2005 relied upon also is on a factually different situation and cannot be pressed into service. Moreso, clause 8.7 non-suits the petitioner. There is no legal right corresponding to a duty between the petitioner and the respondents. Thus, no case is made out in favour of the petitioner. Hence, these Writ Petitions are dismissed. No costs. Consequently, connected Miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

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To

1. The Chairman,
Railway Board, Ministry of Railways,
New Delhi.
2. The Divisional Railway Manager,
(Commercial), Chennai Division,
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Chennai-600 003.

1 CC to Mr.P.T.Ramkumar, Advocate SR.No. 52408

W.P.Nos.30111 and 30112 of 2015
and
M.P.Nos.1 and 2 of 2015

MP (CO)
PSI (28.10.2015)



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