

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 06.03.2015

CORAM

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

W.P. No.3942 of 2015 &
M.P.Nos.1 & 2 of 2015

M/s Hotel Royal
Model Stall rep., by its
Managing Partner, K.P.Shafique ... Petitioner

Vs.

1. The General Manger
Southern Railway
Park Town, Chennai 600 003.
2. The Senior Divisional Commercial Manager
Divisional Office, Southern Railway,
Commercial Branch, Park Town,
Chennai 600 003.
3. The Asst. Divisional Commercial Manager
Divisional Office, Southern Railway,
Commercial Branch, Park Town,
Chennai 600 003.

.... Respondents

PRAYER : Petition filed Under Article 226 of the Constitution of India praying to issue Writ of certiorarified mandamus to call for the records relating to the proceedings bearing No.M/C.79, Model Stall/Hotel Royal dated 27.10.2014 of the 2nd respondent herein in respect of the Model Stall of the petitioner situate at Platform NO.8/9 of Chennai Central Railway Station, Chennai-3 and quash the same and permit the petitioner herein to run the said Stall during the licence period and thereafter, till finalization of new contracts is made by the Railways department.

For Petitioner : Mr.A.R.L.Sundaresan, Sr.Counsel
for Ms.AL.Ganthimathi

For Respondents : Mr.V.G.Sureshkumar
Standing Counsel

O R D E R

By consent of the learned counsel on either side, the writ petition is taken up for final disposal.

2.Heard Mr.AR.L.Sundaresan, learned Senior Counsel appearing for the petitioner, Mr.V.G.Sureshkumar, learned Standing Counsel appearing for the respondents.

3.The petitioner has come forward with this Writ Petition for quashing the proceedings of the second respondent dated 27.10.2014 and to permit the petitioner to run the Stall during the licence period and thereafter, till finalization of new contracts is made by the Railways department.

4.The petitioner is a Model Stall Contractor, who has been granted permission to establish a Stall in the Central Railway Station, Chennai. By the impugned proceedings, the petitioner's licence to run model stall at Platform No.8/9, at Chennai Central Station has been cancelled.

5.On a perusal of the impugned order, it is seen that the second respondent has referred to the 16 earlier instances, where the petitioner has been fined for overcharging and other complaints and there is also reference to a show cause notice dated 24.3.2014, for which a reply was given by the petitioner on 10.4.2014 that they have changed the previous staff and inducted new staff in the Stall and also changed one of their Manager. It is further observed that inspite of such assertion made in the reply dated 10.4.2014, during the subsequent inspection, it was found that the allegation of overcharging was continuing. Further, there is reference to a complaint received from a Senior Police official over phone on 11.7.2014, stating that when he bought one packed dinner said to be Chappathi and egg curry from the petitioner Stall for Rs.35/- and when he opened the food packet, he found that there was no egg, no curry and only some colored water supposed to be the gravy. Based on these allegations/issues and taking into consideration the past conduct of the petitioner where there was more than 20 of such overcharging, the licence was terminated and even before that the Stall was closed on 1.7.2014.

6. The learned counsel appearing for the respondents raised a preliminary objection as regards the maintainability of the writ petition and submitted that as per clause 23 of the agreement, where there was a provision that if the petitioner has to resort to arbitration proceedings, if he is aggrieved by the order of termination.

7. On this issue it has to be pointed out that existence of an alternate remedy is not always a bar to exercise the jurisdiction under Article 226 of the Constitution, it is more so when the petitioner is able to substantiate before the Court that there has been violation of principles of natural justice or when the proceedings itself was wholly without jurisdiction. The impugned order has been challenged primarily on the ground that it is in violation of the principles of natural justice and that the petitioner was not afforded an opportunity prior to the order being passed. It is further stated that the allegations against the petitioner earlier had culminated in a 'warning' and therefore that could not have been a basis for terminating the licence. Further, it is stated that without notice, the shop was sealed on 11.7.2014 and though the petitioner submitted a representation on 12.7.2014, without conducting any enquiry, the impugned order has been passed. Further, it is submitted that the petitioner is running a vegetarian stall and they have not sold any non-vegetarian items viz. chicken and egg curry and the said allegations have not been established. It is further submitted that though there is a proceeding dated 23.9.2011, stating that enquiries were made, but, no enquiry was conducted in the presence of the petitioner.

8. The learned Standing Counsel appearing for the Railways submitted that the conduct of the petitioner was far from satisfactory and the past conduct clearly shows that the petitioner had no regard for the orders passed by the Railway Administration and he continued the act of overcharging and unauthorisedly functioning, violating the terms and conditions of a Model Stall which is a benchmark stall with structural specifications and fixed tenure and to be wound up after Railways set up the General Minor Units and Special Minor Units as per catering Policy. Therefore, it is submitted that the petitioner should be directed to resort to arbitration proceedings in terms of clause 23 of the agreement and the Writ Petition has to be dismissed.

9. The first issue to be considered is with regard to the maintainability of the writ petition. It is seen that the impugned order has been passed based on a telephonic complaint from the Senior Police Official. It is stated by the respondent that pursuant to the telephonic complaint a surprise check was conducted by

Platform Inspector and found that the petitioner was overcharging. It is to be noted that the complaint given by the Senior Police Officer, was regarding the quality of food which was supplied and the petitioner's explanation was to the effect that they were running only 'Vegetarian Stall' and they have not sold 'non-vegetarian' items. However, the surprise inspection conducted by the Platform Inspector states that the petitioner was vending other products also.

That apart, the past conduct of the petitioner has also been referred to be the basis for the punishment. However, before terminating the agreement, no show cause notice was issued to the petitioner that the past conduct would be referred to. In such circumstances, when there is violation of principles of natural justice, though there is existence of an alternate remedy, the same is not an absolute bar for invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. The Hon'ble Supreme Court in *Harbanslal Sahnia And Anr. vs Indian Oil Corpn. Ltd. And Ors.* [2003 (1) CTC 189], while considering the contingencies under which this Court can exercise jurisdiction under Article 226 of the Constitution of India in spite of availability of alternative remedy and held as under:-

"7..... In an appropriate case in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks enforcement of any of the Fundamental Rights; (ii) where there is failure of principles of natural justice or, (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act and is challenged [See *Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and Ors.*, (1998) 8 SCC 11. The present case attracts applicability of first two contingencies. Moreover, as noted, the petitioners' dealership, which is their bread and butter came to be terminated for an irrelevant and non-existent cause. In such circumstances, we feel that the appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings. "

In the light of the above factual discussion and applying the decision of the Hon'ble Supreme Court referred above, the Writ Petition is held to be maintainable.

10. Next, coming to the contention raised by the petitioner that after the punishment of 'warning' has been imposed by order dated 3.6.2014, there is no justification for the respondents to refer to the earlier lapses. This submission deserves to be rejected for the simple reason that the respondent Department earlier have not taken any stringent action, but, considering the explanation

submitted by the petitioner, only imposed the punishment 'warning'. In fact, 'warning' itself amounts to be a minor penalty. Further, it is to be noted that in the proceedings dated 3.6.2014, the petitioner was warned that if any remark was noticed in future, that would be viewed very seriously. Therefore, the Railway Administration was fully justified in referring to the past conduct of the petitioner as one of the reasons for taking action. However, the procedure adopted by the respondents before passing the impugned order is faulted, because the petitioner was not issued with any show cause notice precisely on the allegations of overcharging and supply of other items, such as non-vegetarian etc., which were the basis for the punishment. Hence, this Court is fully convinced that there was procedural irregularity and the decision making process does not satisfy the principles of natural justice. Hence, on that ground alone, the impugned order has to be interfered with and it is made clear that this Court has not gone into the merits of the allegations made against the petitioner in the present complaint or in respect of the punishment imposed in the which could be dealt with by the respondents after issuance of show cause notice.

11. In the result, the Writ Petition is allowed and the impugned order is quashed. The respondents are directed to issue show cause notice to the petitioner within a period of fifteen days from the date of receipt of a copy of this order. Thereafter, the petitioner is entitled to submit his reply within a period ten days from the date of receipt of show cause notice and after conducting an enquiry, the respondents shall pass orders on merits and in accordance with law. Till enquiry is completed and orders are passed, the petitioner is entitled to run the Stall strictly in accordance with the conditions originally prescribed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Asst. Registrar

/true copy/

Sub Asst. Registrar.

Rpa

To

1. The General Manger
Southern Railway
Park Town, Chennai 600 003.
2. The Senior Divisional Commercial Manager
Divisional Office, Southern Railway,
Commercial Branch, Park Town, Chennai 600 003.
3. The Asst. Divisional Commercial Manager
Divisional Office, Southern Railway,
Commercial Branch, Park Town, Chennai 600 003.

+1cc to Mr.A.L.Ganthimathi, Advocate, S.R.No.12880
+1cc to Mr.V.G.Suresh Kumar, Advocate, S.R.No.12963

JSV(CO)
CA(12/03/2015)

W.P. No.3942 of 2015



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