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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 280/2014 & CM APPL. 548/2014

MADHUR COURIER SERVICE

..... Petitioner

Through: Mr. Ashish Mohan, Advocate with
Mr. Mohit Kumar, Advocate.

versus

UNION OF INDIA AND ORS

..... Respondents

Through: None.

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Date of Decision : 03rd December, 2015

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. Present writ petition has been filed with the following prayers:-

“1. Allow the present Writ Petition.

2. Issue a Writ, order or direction in the nature of Certiorari quashing Paragraph (II) Sub para 1.3 of the Comprehensive Leasing Policy (as amended vide Freight Marketing Circular no.11/2007 dated 12.04.2007) framed by the Railway Board.

3. Issue a consequential order quashing clause 82 of the Agreement executed between the Parties.

4. Issue a Writ, order or direction in the nature of Certiorari quashing the impugned order dated 16.12.2013 issued by Respondent No.3.

5. *Pass any other order(s) as may be deemed fit in interest of justice.”*

2. Mr. Ashish Mohan, learned counsel for petitioner states that the show cause notice is vague and bereft of any reason. According to him, the petitioner has been deprived of an opportunity to present its case. Consequently, he submits that the impugned order is in violation of principles of natural justice.

3. Even at the pass over stage, learned counsel for respondent-Railways is not present. However, this Court may mention that at lunch time, the counsel for Railways had mentioned the matter stating that if this Court is inclined to allow the writ petition, the Railways should be given an opportunity to issue another show cause notice.

4. This Court has perused the show cause notice at page 150 of the paper book and is of the opinion that the same is non-reasoned.

5. The Supreme Court in ***Commissioner of C.Ex.,Bangalore Vs. Brindavan Beverages (P) Ltd., 2007 (213) E.L.T. 487 (S.C.)*** has held as under:-

“9. We find that in the show cause notice there was nothing specific as to the role of the respondents, if any. The arrangements as alleged have not been shown to be within the knowledge or at the behest or with the connivance of the respondents. Independent arrangements were entered into by the respondents with the franchise holder. On a perusal of the show cause notice the stand of the respondents clearly gets established.

10. There is no allegation of the respondents being parties to any arrangement. In any event, no material in that regard was placed on record. The show cause notice is the foundation on which the department has to build up its case. If the allegations

in the show cause notice are not specific and are on the contrary vague, lack details and/or unintelligible that is sufficient to hold that the notice was not given proper opportunity to meet the allegations indicated in the show cause notice. In the instant case, what the appellant has tried to highlight is the alleged connection between the various concerns. That is not sufficient to proceed against the respondents unless it is shown that they were parties to the arrangements, if any. As no sufficient material much less any material has been placed on record to substantiate the stand of the appellant, the conclusions of the Commissioner as affirmed by the CEGAT cannot be faulted.”

6. In view thereof, the present writ petition and application are allowed and the impugned order dated 16th December, 2013 issued by respondent No.3 is quashed.

7. However, the Senior Divisional Commercial Manager/Freight Northern Railway, New Delhi, is given another opportunity to issue fresh show cause notice stating all the material facts as well as the grounds and material on which cancellation of existing contracts and forfeiture of security deposit and registration fee as well as black-listing is proposed.

MANMOHAN, J

DECEMBER 03, 2015

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