

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.01.2017

CORAM:

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No.801 of 2013

K.Kalaivani

... Petitioner

vs.

1.The General Manager,
Southern Railway,
Chennai - 600 003.

2.The Divisional Railway Manager,
Southern Railway,
Chennai Division,
Chennai - 600 003.

3.The Senior Divisional
Commercial Manager,
Southern Railway,
Chennai Division,
Chennai - 600 003.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order passed by the third respondent dt. 12.11.2012 in M/S.79/SWS/MSB/Transfer, with regard to the Soda Water Stall Platform No.1/2, Madras Beach Railway Station and Quash the same and permit her to return the business.

For petitioner : Mr.Prof.M.Udaya Bhanu

For respondents : Mr.P.T.Ramkumar,
Standing Counsel

ORDER

The petitioner has filed this Writ Petition seeking to quash the impugned order passed by the third respondent dated 12.11.2012 in M/C.79/SWS/MSB/Transfer, with regard to the Soda Water Stall Platform No.1/2, Madras Beach Railway Station and to permit her to return the business.

2. The petitioner's father, G.Kandaswamy was granted licence to run a Soda Water Stall (SWS) in Platform No.1/2 in Chennai Beach Railway Station. The petitioner's father died on 17.12.1995. After the demise of G.Kandaswamy, the licence was transferred to the name of Mrs.Vasantha in the year 1997 as per extant policy so as to enable her to carry on the business for the unexpired portion of the licence period. Subsequently, the licence granted to Mrs.Vasantha, mother of the petitioner, was extended periodically from 1996 onwards on executing necessary Agreement and payment of Licence Fee fixed by Railways. In the mean time, Mrs.Vasantha expired on 6.3.2012. After the demise of Mrs.K.Vasanth, the petitioner herein gave a representation to transfer the licence to her name and permit her to run the Soda Water Stall. Since her representation was rejected by the third respondent, the petitioner has filed this Writ Petition seeking for the relief stated above.

3. Assailing the averments made in the affidavit filed by the petitioner, the third respondent has filed a counter affidavit refuting the allegations made in the affidavit. In the counter affidavit, it is stated that as per Para 21 of Commercial Circular No.03/2012 dated 12.1.2012, "Transfer of licence to the spouse/legal heir would be allowed only in the event of death of the original licensee. The licence can be transferred in the name of spouse/legal heir for the unexpired period of the Agreement only, with personal approval of the Chief Commercial Manager/Divisional Railway Manager/MD, IRCTC as the case may be. Nomination of the legal heir should be obtained from the licence holder at the time of entering into contract". In the case of the petitioner, since the licence was already transferred once from G.Kandaswamy, the original licensee to Mrs.K.Vasantha, who was the wife and legal heir of the original licensee, G.Kandaswamy, the petitioner's representation seeking to transfer the licence to her name and to permit her to run the stall cannot be considered.

4. Subsequently, the third respondent has also filed additional affidavit stating that the Chennai Beach Railway Station is a "C" category Station and the catering stall which is the subject matter of this Writ Petition has been categorized as a General Minor Unit. The allotment procedure of all catering units is dealt under Clause 14 of the Catering Policy 2010, Clause 14.1.1 of the Catering Policy and as per this procedure, allotments of all major units and of the General Units at "A, B and C" category stations will be done through open, competitive, two packet tendering system duly following all the procedures / instructions issued by Government of India/Railway Board from time to time. Accordingly, by Tender

Notice dated 15.4.2016, the Railway Administration invited Tender for the stall. However, the petitioner has not participated in the Tender. As such, the Writ Petition is liable to be dismissed.

5. The learned counsel for the petitioner submitted that the tender process will take some more months and the petitioner may be permitted to continue her Stall in the mean time and the petitioner is ready to give an undertaking by way of an affidavit stating that the petitioner will vacate the Stall as soon as the petitioner is informed to vacate the premises on the ground of allotment of Stall by way of tender.

6. Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents.

7. It is an admitted fact that originally, the licence was granted to the petitioner's father and on the ground of death of the petitioner's father, the licence was transferred to the petitioner's mother name. As petitioner's mother died, the petitioner seeks the respondents to transfer the licence to her name. However, as per the Commercial Circular mentioned above, the original licence can be transferred only once. Therefore, the petitioner is not entitled for transfer of the licence. More over, the Stall of the petitioner can be allotted only by way of tender as per norms of the Railway Administration. As tender had already been invited, and the petitioner had not participated in the tender, the petitioner is not entitled for any relief as prayed in the Writ Petition.

8. Hence, the Writ Petition fails and the same is dismissed. No costs.

9. At this stage, the learned counsel for the petitioner made his submission that the petitioner may be permitted to make a fresh representation before the third respondent seeking to permit her to continue the Stall till the Stall is allotted to some one by way of tender and the petitioner has also agreed to offer an affidavit of undertaking stating that she would vacate the Stall as soon as she is asked to vacate the premises after allotment of Stall to some one by way of tender. It is open to the petitioner to make a representation along with such an affidavit of undertaking within a period of one week from the date of receipt of a copy of this order.

10. If any such representation is made, it is for the third respondent to consider the same in accordance with law.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

asvm
To

1.The General Manager,
Southern Railway,
Chennai - 600 003.

2.The Divisional Railway Manager,
Southern Railway,
Chennai Division,
Chennai - 600 003.

3.The Senior Divisional
Commercial Manager,
Southern Railway,
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Chennai - 600 003.

+1cc to Mr.P.T.Ramkumar, Advocate Sr.980
+1cc to Mr.M.UdhayaBhanu, Advocate Sr.872

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W.P.No.801 of 2013

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