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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 9531/2016 & CM APPL. 38124/2016

M/S SINGH CATERERS & VENDORS & ANR Petitioners

Through: Mr. Ramesh Singh, Advocate with
Mr. Rohit Kumar, Advocate.

versus

INDIAN RAILWAYS CATERING AND
TOURISM CORPORATION LTD. Respondent

Through: Mr. Rajat Malhotra, Advocate with
Mr. Sunil Malhotra, Advocate for
respondent No.1.-IRCTC.

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Date of Decision: 20th March, 2017

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. Present writ petition has been filed challenging the termination letter dated 26th September, 2016 passed by respondent-IRCTC terminating the temporary license awarded to the petitioners for management of On Board Catering Services in Train No. 22477-78, JP-JUSF Express on the ground that petitioners had failed to accept the award of temporary license and had not paid the security deposit and license fee within the stipulated time.

2. Respondent in terms of Clause 4.8 of the tender document also debarred the petitioners from participating in future projects of respondent-

IRCTC for a period of one year and forfeited Standing Earnest Money Deposit (SEMD) of Rs.3 lakhs.

3. Mr. Ramesh Singh, learned counsel for petitioners states that in accordance with Clause 4.3 of the terms and conditions of tender and Note 3 of Annexure 'C', no overwriting/cutting/insertion in the bid document is permitted and as there was cutting/insertion/overwriting in the bid amount quoted by the petitioners, the bid should have been rejected as non-responsive.

4. He further states that on receipt of the letter of award, petitioners sent a letter on 17th September, 2016 requesting the respondent to review/withdraw the letter of acceptance of award as there was overwriting/cutting in the financial bid and there was likelihood of legal/vigilance complication in future.

5. Mr. Ramesh Singh states that the petitioners were willing to go-ahead with the contract provided the respondent gave an indemnity to the petitioner that the catering contract would not be cancelled midstream and if any consequences arose, they would be borne by the respondent-IRCTC.

6. Mr. Ramesh Singh lastly states that the punishment imposed on the petitioner is grossly disproportionate as the agreement in question was valid for a period of six months and the petitioners are at the moment successfully servicing a train with On Board Catering Services.

7. On the other hand, Mr. Rajat Malhotra, learned counsel for respondent-IRCTC states that there is no ambiguity in the bid amount written subsequently by the petitioners. He has produced in Court the Minutes of Opening of Quotations of the Award in question. The said

minutes not only mention the amounts bid by each of the bidders, but the same is also counter-signed by the representatives of the bidders.

8. Consequently, according to him, despite the cutting/overwriting in the bid document, there was no ambiguity/doubt with regard to the bid furnished by the petitioners.

9. In any event, he states that Clause 4.3 of the terms and conditions of the tender had been incorporated for the benefit of the respondent and if the said respondent was willing to accept the tender, then the petitioners could not have refused to pay security deposit and license fee within the stipulated time.

10. Having heard learned counsel for the parties, this Court is of the view that cutting/overwriting in the present case is not a violation of a mandatory condition and is not material inasmuch as there is no ambiguity or discrepancy in the bid amount.

11. With the assistance of both the learned counsel, this Court has perused the record and finds that the petitioners bid despite cutting/overwriting clearly mentions the revised bid amount. In fact, the revised bid amount has been mentioned clearly both in figures and in words.

12. It is settled law that for every minor irregularity, a tender is not to be cancelled. The Supreme Court in ***Poddar Steel Corporation Vs. Ganesh Engineering Works and Others, (1991) 3 SCC 273*** has held as under:-

“6. It is true that in submitting its tender accompanied by a cheque of the Union Bank of India and not of the State Bank clause 6 of the tender notice was not obeyed literally, but the question is as to whether the said non-compliance deprived the Diesel Locomotive Works of the authority to accept the bid. As a matter of general proposition it cannot be held that an authority inviting tenders is bound to give effect to every term mentioned in

the notice in meticulous detail, and is not entitled to waive even a technical irregularity of little or no significance. The requirements in a tender notice can be classified into two categories — those which lay down the essential conditions of eligibility and the others which are merely ancillary or subsidiary with the main object to be achieved by the condition. In the first case the authority issuing the tender may be required to enforce them rigidly. In the other cases it must be open to the authority to deviate from and not to insist upon the strict literal compliance of the condition in appropriate cases. This aspect was examined by this Court in C.J. Fernandez v. State of Karnataka [(1990) 2 SCC 488] a case dealing with tenders. Although not in an entirely identical situation as the present one, the observations in the judgment support our view. The High Court has, in the impugned decision, relied upon Ramana Dayaram Shetty v. International Airport Authority of India [(1979) 3 SCC 489] but has failed to appreciate that the reported case belonged to the first category where the strict compliance of the condition could be insisted upon. The authority in that case, by not insisting upon the requirement in the tender notice which was an essential condition of eligibility, bestowed a favour on one of the bidders, which amounted to illegal discrimination. The judgment indicates that the court closely examined the nature of the condition which had been relaxed and its impact before answering the question whether it could have validly condoned the shortcoming in the tender in question. This part of the judgment demonstrates the difference between the two categories of the conditions discussed above. However it remains to be seen as to which of the two clauses, the present case belongs.”

13. Moreover, this Court is of the view that the petitioners cannot make a virtue out of their own mistake. Consequently, the petitioners’ argument on merits is rejected.

14. However, this Court is in agreement with the learned counsel for the petitioners that the punishment of debarment for a period of one year is not

proportionate, especially keeping in view the fact that the petitioners have been an empanelled contractor/caterer with the Railways and is at the moment serving another train by way of On Board Catering Services.

15. The concept of proportionality of punishment is not unknown to law. The Supreme Court in ***Kulja Industries Limited vs. Chief General Manager, Western Telecom Project Bharat Sanchar Nigam Limited & Ors., (2014) 14 SCC 731*** has held as under:-

“26. In the case at hand according to the respondent BSNL, the appellant had fraudulently withdrawn a huge amount of money which was not due to it in collusion and conspiracy with the officials of the respondent Corporation. Even so permanent debarment from future contracts for all times to come may sound too harsh and heavy a punishment to be considered reasonable especially when (a) the appellant is supplying bulk of its manufactured products to the respondent BSNL, and (b) the excess amount received by it has already been paid back.”

16. A Coordinate Bench of this Court in ***M/s. Sai Consulting Engineers Pvt. Ltd. Vs. Rail Vikas Nigam Ltd. & Ors., 198 (2013) DLT 507*** has held as under:-

"32. As far as ban of 5 years on the basis of second show-cause notice is concerned, this court is of the view that the same is imposed for larger period in view of peculiar facts of the present case and particularly earlier ban on the basis of first show-cause for only one year and the same was already spent by the petitioner. Considering the overall facts and circumstances of the present case, I reduce the period of ban from five years to two years with effect from 30th June, 2011."

17. Consequently, the punishment of debarment of the petitioners in the peculiar facts of the present case is reduced to nine months w.e.f. 26th

September, 2016.

18. With the aforesaid directions and conclusions, present writ petition and application stand disposed of.

MANMOHAN, J

MARCH 20, 2017

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