

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.1666 OF 2018

Zenith Ooh Private Ltd.

..Petitioner

Versus

The Union of India and others

..Respondents

Mr. Vivek Kantawala a/w Mr. Amey Patil I/by M/s. Vivek Kantawala and Company, Advocate for the Petitioner.

Ms. Neeta Vinay Masurkar a/w Mr. S. G. Thakur & Ms. Nieyaati Masurkar, Advocate for the Respondents.

CORAM : B. R. GAVAI &

M. S. KARNIK, JJ.

DATE : 4th SEPTEMBER, 2018

P.C.

1] The Petitioner has approached this Court being aggrieved by the communication dated 28th May 2018, vide which the Petitioner was informed about cancellation of allotment for displaying of advertisement on hoardings at Mahalaxmi Station in RPF colony.

2] Heard Mr. Kantawala, learned counsel for the Petitioner and Ms. Masurkar, learned counsel for the Respondents.

3] It appears that the Respondents – Railway Authorities had invited bids for giving right to display advertisement on hoardings at Mahalaxmi Station in RPF Colony. The same was for a period of three months. The bids were invited. The Petitioner had submitted its quotation. The Petitioner was called on 16th May 2018. Accordingly, the Petitioner was issued a allotment letter on 25th May 2018. Immediately, on 28th May 2018, the Petitioner was informed about the cancellation of allotment. Being aggrieved thereby, the present Petition.

4] Mr. Kantawala, learned counsel appearing on behalf of the Petitioner submits that once a tender was allotted in favour of the Petitioner, the arbitrary and irrational action on behalf of the Respondents – Railway Authorities is not sustainable in law. He relies on the judgment of the Hon'ble Apex Court in the case of Sunil Pannalal Banthia and others Vs. City & Industrial Development Corporation of Maharashtra Ltd. And another¹. He further submits that apart from the loss caused to the Petitioner on account of illogical decision of the Railway Authorities, the Respondents – Railways Authorities are required to bear the loss of

¹ (2007) 10 SCC 674.

substantial amount.

5] Ms. Masurkar, learned counsel appearing on behalf of the Respondents submits that immediately after the letter of allotment was issued to the Petitioner, the Railway Authorities came across the communication from Head Quarter dated 17th May 2018, wherein it was directed to follow the open tender process for allotment of the advertisement rights. It is submitted that immediately on the next working day i.e. on 28th May 2018 the impugned letter came to be issued. She therefore submits that there is no merit in the Petition and same is liable to be dismissed.

6] Perusal of the material placed on record would reveal that immediately after the letter of allotment was issued to the Petitioner on 25th May 2018, Respondents - Railway Authorities realized that a mistake was committed by them by issuing said letter of allotment, on the next working day i.e. on 28th May 2018, impugned cancellation of allotment letter was issued. Neither work order was issued in favour of the Petitioner nor agreement was entered into between the Petitioner and the Respondents - Railway Authorities.

7] Normally, this Court would be slow in interfering with the termination of the contract and would leave the party to the ordinary remedies available in civil law. No doubt that the Hon'ble Apex Court in the case of Tata Cellular Vs. Union of India² and in the case of ABL International Ltd. And another Vs. Export Credit Guarantee Corporation of India Ltd. and others³ has held that if the decision making process of authorities is found to be arbitrary, irrational and illegal, this Court while exercising its power under Article 226 of the Constitution of India would be entitled to interfere with the same.

8] In so far as the judgment of the Hon'ble Apex Court cited by Mr. Kantawala in the case of *Sunil Pannalal Banthia's (supra)* is concerned, the said judgment basically is on the principles of promissory estoppel. It is the settled principle of law that right from the judgment of the Apex Court in the case of Union of India Vs. Indo-Afghan Agencies Ltd.⁴ when State makes a promise to a person and makes such a person to change his position to his detriment, then the State or its instrumentality cannot be permitted

² (1994) 6 SCC 651.

³ (2004) 3 SCC 553.

⁴ AIR 1968 SC 718.

to resile from the promise so made.

9] However, in the present case, it could be found that the Railway Authorities had overlooked the directions of the Superior Authorities that the contract was to be awarded by following open tender process. The Hon'ble Apex Court in the catena of cases has held that while parting with its right, the State should normally follow either the open tender process or auction process. Following such a procedure rather conforms to the mandate of Article 14.

10] In that view of the matter, we do not find that any error could be noticed with the approach adopted by the Respondents – Railway Authorities in order to show that on the basis of the communication dated 25th May 2018, the Petitioner had acted in pursuance thereof, on the contrary immediately on the next working day, the Petitioner has been informed about the cancellation of allotment letter. In that view of the matter, the said judgment would be of no assistance to the Petitioner. The Petition is therefore dismissed.

11] Ms. Masurkar, learned counsel for the Respondents

states that immediately after the Petitioner approaches the Respondents authorities, the Respondents authorities would hand over the Demand Draft to the Petitioner, of the amount paid by them.

Balaji
Govindrao
Panchal

Digitally signed by
Balaji Govindrao
Panchal
Date: 2018.09.10
10:57:55 +0530

[M. S. KARNIK, J.]

[B. R. GAVAI, J.]