

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :18.09.2018

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.28421 & 30001 of 2017

and

W.M.P.Nos.32237, 32302,36343, 30526,30527,32524 to 32526 of
2017

W.P.No.28421 of 2017

Bharathi Cabs Pvt. Ltd.,
Rep.by its Director Mr.Lenin Santhaseelan
No.151/34, Sri Ranga Complex,
Mambalam High Road,
Near Duraisamy Subway,
T.Nagar,
Chennai - 600 017. ..Petitioner

vs

1.The Divisional Railway Manager,
(Commercial)
Southern Railways,
Chennai Division, Park Town,
Chennai - 600 003.

2.Ani Technologies Pvt. Ltd.,
By its Director,
Regent Insignia,
414, 3rd Floor, 4th Block,
17th Main 100 feet road,
Koramangala,
Bangalore - 560 034. .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the 1st respondent in tender Notification No.M/C.300/Call Taxi stand/Tenders/09/2017 of 02.08.2017 for parking and operation of call taxi stand at Moore Market complex/Chennai Central and quash the same and consequently direct the 1st respondent to call for fresh tender for parking and operation of call taxi stand at Moore Market complex/Chennai Central.

W.P.No.30001 of 2017
Fast Track Pvt. Ltd.,
Rep.by its Managing Director
Mr.C.Ambigapathy
New No.234/236, Arcot Road,
Kodambakkam, Chennai - 600 024.

..Petitioner

vs

1.The Senior Divisional Railway Manager,
(Commercial)
Southern Railways,
Chennai Division, Park Town,
Chennai - 600 003.

2.Ani Technologies Pvt. Ltd.,
By its Director,
Regent Insignia,
414, 3rd Floor, 4th Block,
17th Main 100 feet road,
Koramangala,
Bangalore - 560 034.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the 1st respondent in tender Notification No.M/C.300/Call Taxi stand/Tenders/09/2017 of 02.08.2017 for parking and operation of call taxi stand at Moore Market complex/Chennai Central and the consequential letter dated 26.10.2017 in No.M/C.300/Call Taxi/MMC/MAS for submission of documents before taking up of the contract issued by the first respondent to the second respondent and quash the same and direct the 1st respondent to call for fresh tender for parking and operation of call taxi stand at Moore Market complex/Chennai Central.

For Petitioners:Mr.J.Ravindran (in W.P.No.28421/2017)
Mr.A.Selvendran (in W.P.No.30001/2017)

For Respondents: Mr.P.T.Ramkumar, Standing Counsel
for Railways for R1(in both W.Ps)

Mr.AR.L.Sundaresan, Senior counsel
for M/s.BFS Legal For R2(in both W.Ps)

C O M M O N O R D E R

The Tender Notification issued by the Southern Railways in proceedings dated 02.08.2017 for parking and operation of call taxi stand at Moore Market complex/Chennai Central is sought to be quashed and further, a direction is sought for to direct the 1st respondent to call for fresh tender for parking and operation of call taxi stand at Moore Market complex/Chennai Central.

2. W.P.No.30001 of 2017 also is filed, challenging the very same Tender Notification dated 02.08.2017.

3.The petitioner in W.P.No.28421 of 2017 is Bharathi Cabs Private Limited. The petitioner in W.P.No.30001 of 2017 is Fast Track Private Limited.

4.The learned counsel appearing on behalf of the writ petitioner in W.P.No.28421 of 2017 states that the Tender Notification was issued by the respondents in proceedings dated 02.08.2017. As per the Tender Notification, the Reserve Price fixed was Rs.2,17,89,945/- (Rupees Two Crores, Seventeen Lakh, Eighty Nine Thousand, Nine Hundred and Forty Five only) (Exclusive of GST). The period of contract is one year. The cost of Tender Notification form is Rs.12,000/- (Rupees Twelve Thousand only). The Earnest Money Deposit is Rs.4,35,800/- (Four Lakh, Thirty Five Thousand and Eight Hundred only). The area prescribed is 153.6 Sq.m.

5.The grievances of the writ petitioners are that the Tender was finalized in favour of the 2nd respondent / Ani Technologies Private Limited, for the price of Rs.60,00,000/- originally and subsequently, the Railways have enhanced the same as Rs.70,00,000/- by way of negotiations.

6.At the outset, the price quoted by the 2nd respondent / Ani Technologies Private Limited was Rs.60,00,000/- and only by way of negotiations, further sum of Rs.10,00,000/- was added and the Tender was finalized as Rs.70,00,000/-.

7.Accordingly, the acceptance certificate was issued by the Southern Railways on 26.10.2017 in favour of the 2nd respondent. However, the 2nd respondent was unable to operate the Taxi Services on account of the interim order of Status Quo granted by this Court in the present writ petition.

8. The learned counsel for the writ petitioner states that though the writ petitioner had not participated in the Tender, he has got every right to raise objections. The 1st respondent / Railways have finalized the Tender far below the reserve price quoted/mentioned in the Tender Notification. The writ petitioners are ready and willing to quote more price than that of the rate finalized in the Tender. In support of the said contention, the learned counsel for the petitioner cited the judgments of the Hon'ble Supreme Court of India in the case of Ramana Dayaram Shetty Vs. International Airport Authority of India and others reported in 1979 3 SCC 489 and the paragraph 9 of the judgment is extracted hereunder:

"9. That takes us to the next question whether the acceptance of the tender of Respondents 4 was invalid and liable to be set aside at the instance of the appellant. It was contended on behalf of Respondents 1 and 4 that the appellant had no locus to maintain the writ petition since no tender was submitted by him and he was a mere stranger. The argument was that if the appellant did not enter the field of competition by submitting a tender, what did it matter to him whose tender was accepted; what grievance could he have if the tender of Respondents 4 was wrongly accepted. A person whose tender was rejected might very well complain that the tender of someone else was wrongly accepted, but, it was submitted, how could a person who never tendered and who was at no time in the field, put forward such a complaint? This argument, in our opinion, is misconceived and cannot be sustained for a moment. The grievance of the appellant, it may be noted, was not that his tender was rejected as a result of improper acceptance of the tender of Respondents 4, but that he was differentially treated and denied equality of opportunity with Respondents 4 in submitting a tender. His complaint was that if it were known that non-fulfilment of the condition of eligibility would be no bar to consideration of a tender, he also would have submitted a tender and competed for obtaining a contract. But he was precluded from submitting a tender and entering the field of consideration by reason of the condition of eligibility, while so far as Respondents 4 were concerned, their tender was entertained and accepted even though they did not satisfy the

condition of eligibility and this resulted in inequality of treatment which was constitutionally impermissible. This was the grievance made by the appellant in the writ petition and there can be no doubt that if this grievance was well founded, the appellant would be entitled to maintain the writ petition. The question is whether this grievance was justified in law and the acceptance of the tender of Respondents 4 was vitiated by any legal infirmity."

9. In the case of Ram Kishun Vs. State of U.P., reported in 2012 11 SCC 511, the Hon'ble Supreme Court also observed about violations and the Reserve price in Paragraphs 18 and 19 and the same are extracted hereunder:

"Valuation and reserve price

18. The word "value" means intrinsic worth or cost or price for sale of a thing/property. (Vide Union of India v. Bombay Tyre International Ltd. [(1984) 1 SCC 467 : 1984 SCC (Tax) 17] and Gurbachan Singh v. Shivalak Rubber Industries [(1996) 2 SCC 626 : AIR 1996 SC 3057] .)

19. In State of U.P. v. Shiv Charan Sharma [1981 Supp SCC 85 : AIR 1981 SC 1722] this Court explained the meaning of "reserve price" explaining that it is the price with which the public auction starts and the auction bidders are not permitted to give bids below the said price i.e. the minimum bid at auction."

10. Relying on the said judgments, the learned counsel for the petitioner states that the writ petitioner has got every locus standi to challenge the Tender Notification in the event of any Revenue loss. This apart, it is contended that after issuance of the Tender Notification, the 1st respondent / Railways have changed certain conditions, which is impermissible under the provisions of the Tender Transparency Act. For all these reasons, it is contended that the petitioners have got locus standi to challenge the Tender Notification.

11. The learned counsel appearing on behalf of the Fast Track Private Limited in W.P.No.30001 of 2017 contended that the petitioner had participated in the Tender process and his bid was rejected on a meager margin and the decision for rejecting the bid of the writ petitioner was taken on flimsy grounds. The writ petitioner was operating

the Cab Services in Tambaram Railway Station. Though the Services were not terminated, the 1st respondent has taken an erroneous stand that the services of the writ petitioner was terminated by the Southern Railways. On that ground, the 1st respondent cannot disqualify the writ petitioner from participating in the Tender Bid.

12.The learned senior counsel appearing on behalf of the 2nd respondent / Ani Technologies Private Limited contends that the Tender process was conducted in accordance with the procedures as contemplated and there was no irregularity or infirmity in the process of selection, which was concluded. The 2nd respondent / Ani Technologies Private Limited was the successful bidder and paid the deposit amount as per the Notifications issued. The Certificate of acceptance was issued in favour of the 2nd respondent on 26.10.2017 itself. The 2nd respondent / Ani Technologies Private Limited was unable to operate the Cab services on account of the interim order of Status Quo granted by this Court in the present writ petition. Thus, the 2nd respondent cannot be penalized on account of the litigations now filed before this Court by a person, who had not participated in the Tender process and by another person, who was declared as not eligible by the Tender Committee. This apart, the learned Senior Counsel states that the petitioners in W.P.Nos.28421 & 30001 of 2017 are belong to the same Group of companies. However, the said contention is disputed by the learned counsel appearing on behalf of the writ petitioners.

13.The learned counsel appearing on behalf of the Southern Railways informed this Court that they have followed the procedures as contemplated under the Rules and Regulations for conducting Tenders. The Tender Committee has scrutinized the applications submitted by the Tenderers and taken a decision by following the procedures as contemplated and thereafter, declared that the 2nd respondent / Ani Technologies Private Limited is the successful bidder. Accordingly, the acceptance Certificate was also issued in favour of the 2nd respondent / Ani Technologies Private Limited on 26.10.2017.

14.Considering the submissions made on behalf of the respective parties to the lis on hand, this Court is of an opinion that the period of Tender as per the Notification dated 02.08.2017 is for one year. Taking note of the fact that the acceptance Certificate was issued in favour of the 2nd respondent / Ani Technologies Private Limited on

26.10.2017 and the period of one year will lapse on 26.10.2018. Thus, hardly two months are left and therefore, this Court is of an opinion that a practical and pragmatic approach is to be adopted in the interest of public at large. In the event of allowing the 2nd respondent / Ani Technologies Private Limited to continue for a further period of one year, from today undoubtedly, there will be a huge financial loss to the Southern Railways. Every year, there may be change of circumstances and the Reserve price also will certainly increase on account of the escalation of costs and other aspects. Thus, the price fixed in the year 2017 need not be of the same, during the next year or in the year 2020. However, the 2nd respondent / Ani Technologies Private Limited has not operated as per the acceptance Certificate issued on 26.10.2017. Already 10 months lapsed. Under these circumstances, this Court has to adopt a pragmatic approach, so as to maintain a balancing approach to protect the public interest, public revenue and the interest of the successful bidder.

15. The 2nd respondent was selected as a successful bidder and the acceptance certificate also had been issued in favour of the 2nd respondent. The 2nd respondent had already fulfilled the conditions as per the Tender Notification. Thus, the principles of legitimate expectation is to be applied on the facts and circumstances of the present case. The successful bidder after selection and the issuance of acceptance certificate, would acquire the right of legitimate expectations that he will be permitted to operate the Cab services in Central Station. However, on account of the interim order granted by this Court, the 2nd respondent was unable to operate the Cab services, which affected the public at large to some extent. On account of the non operation, the people at large are also unable to utilize the services of Cabs to reach their destinations. Inadequate and insufficient services will lead to exploitations on the part of the other operators, including the Auto operators. In the absence of adequate service in Central Station, one can imagine that there would be large scale of exploitations by these Auto drivers and other Cab operators with the passengers. Already, there are allegations against these operators, more specifically, in Chennai Central Railway Station area. Under these circumstances, increasing of the Cab operations are certainly imminent and to be provided in the interests of the passengers and the public at large. Thus, further continuance of the interim order is certainly not preferable. Thus, the facts and circumstances of the

present case on hand, certainly require an application of the legal principle of legitimate expectations, more specifically, in favour of the 2nd respondent, who is the successful bidder in the Tender. Accordingly, this Court is of an opinion that the 2nd respondent must be allowed to operate the Cab services as per the terms and conditions stipulated in the Tender Notification. However, the question arises, how long the 2nd respondent can be allowed to operate in the Central Station, which is to be considered by this Court. Allowing the 2nd respondent for a further period of one year will also cause financial loss to the Southern Railways. Entirely preventing the 2nd respondent from operating the Cabs as per the selection will also cause prejudice to the 2nd respondent. Thus, in the interest of all concerned, a balancing approach is required, to protect the revenue of the Southern Railways as well as to honor the process of Tender already conducted and in respect of the selection of the 2nd respondent as successful bidder.

16. In respect of W.P.No.28421 of 2017, the petitioner/Bharathi Cabs Private Limited had not even participated in the Tender process. In respect of W.P.No.30001 of 2017, the Fast Track Private Limited/the petitioner, participated and not selected on the ground of ineligibility. Thus, this Court has to consider the plight of all these petitioners as well as the 2nd respondent / Ani Technologies Private Limited and also the public interests involved.

17. It is brought to the notice of this Court that the none of the Cab operators are operating in Central Railway Station, wherein large population is moving day-in and day-out. Thus, the services of Call Taxi is of paramount importance and the passengers, who all are arriving in Chennai Central Station are suffering and longing to avail better services from the Cab operators. Under these circumstances, the following orders are passed:

(1) The relief as such sought for in the writ petitions stand rejected. (2) The 2nd respondent / Ani Technologies Private Limited is permitted to operate the Cab services for a period of six months from 24.09.2018 to 23.03.2019.

(3) The 1st respondent / Southern Railways is directed not to give any further extension to the 2nd respondent / Ani Technologies Private Limited to continue the operation beyond 23.03.2019.

(4) The 1st respondent / Southern Railways is directed to issue a modified proceedings, fixing the licence fee of Rs.40,00,000/- for a period of six months to be paid by the

2nd respondent / Ani Technologies Private Limited.

(5) The 2nd respondent / Ani Technologies Private Limited is directed to pay the enhanced licence fee of Rs.40,00,000/- within a period of two weeks from the date of receipt of a copy of this order.

(6) The 1st respondent / Southern Railway is directed to Call for a fresh Tender by taking all necessary steps and accordingly, proceed with the fresh Tender Notification by providing an opportunity to all the eligible persons including the petitioners in both the writ petitions.

(7) The 1st respondent / Southern Railways is directed to finalize the Tender before the Expiry of the six months period i.e., 23.03.2019, enabling the new successful tenderer to continue the operations without any break.

18. With these directions, both the writ petitions stand disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

To

1. The Divisional Railway Manager, (Commercial)
Southern Railways,
Chennai Division, Park Town, Chennai - 600 003.

2. Ani Technologies Pvt. Ltd.,
By its Director, Regent Insignia,
414, 3rd Floor, 4th Block,
17th Main 100 feet road,
Koramangala, Bangalore - 560 034.

3. The Senior Divisional Railway Manager,
(Commercial)
Southern Railways,
Chennai Division, Park Town, Chennai - 600 003.

+1cc to Mr.P.T.RAM KUMAR , Advocate SR.No. 64821

+2cc to M/S.BFS LEGAL , Advocate SR.No. 64861&64862

W.P.Nos.28421 & 30001 of 2017

ASK(19/09/2018)