

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.03.2019

CORAM

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.Nos.3794 & 3802 of 2019

and

W.M.P.Nos.4205, 4208, 4218, 4219 of 2019

M/s.SANRAJ Hospitality Pvt. Ltd.,
Rep. by its Manager,
No.H-58, Lower Ground Floor,
Kalkaji, New Delhi - 110 019.

... Petitioner in both W.Ps.

Vs

1.The Senior Divisional Commercial Manager,
Southern Railway,
Chennai Division, Divisional Office,
Commercial Branch, Chennai - 600 003.

2.The Senior Divisional Finance Manager,
Southern Railway,
Chennai Division, Divisional Office,
Commercial Branch, Chennai - 600 003.

... Respondents in both W.Ps.

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records relating to the impugned orders dated 20.12.2018 in No.M/C.79/GMU-65/TBM and dated 20.12.2018 in No.M/C.79/GMU-24/TBM of the 1st respondent in respect of Catering Stall GMU-65 and Catering Stall GMU-24 at Tambaram Railway Station, respectively and quash the same.

For Petitioner : Ms.AL.Ganthimathi
in both W.Ps.

For Respondents: Mr.P.T.Ram Kumar, Standing Counsel
in both W.Ps.

COMMON ORDER

Both these writ petitions are filed challenging the proceedings of the first respondent dated 20.12.2018, wherein and whereby, the petitioner was debarred from participating in any bids issued by the Indian Railways by IRCTC for a period of 5 years from 20.12.2018 to 19.12.2023, also by forfeiting the earnest money deposit.

2. The petitioner in both the writ petitions is one and the same. The issue involved in both the writ petitions is also one and the same. Hence, both the writ petitions are taken up together and decided by this Common Order.

3. The case of the petitioner is as follows:

The Southern Railway issued notification dated 14.03.2018 inviting tenders for 42 general minor units (catering stalls) in various places. The petitioner participated in the tender process in respect of two catering stalls viz., GMU 24 (Platform No.1 & 2) Tambaram Railway Station A- Category and GMU 65 (Platform No.3 & 4) Tambaram Railway Station A- Category at Tambaram Railway Station. The petitioner was declared as successful bidder in respect of the aforesaid two catering stalls. The petitioner was issued with a letter of award on 27.09.2018 for a period of five years. The petitioner was called upon to pay the annual license fee and security deposit for each stall within 15 days from the date of receipt of the letter of approval. However, due to some unavoidable circumstances, the petitioner was not able to pay the security deposit and license fee within the time stipulated. A notice was issued to the petitioner on 20.11.2018 to remit the license fee and security deposit on or before 28.11.2018, which was further extended up to 15.12.2018. In the mean time, the petitioner deposited annual license fee on 04.12.2018 in respect of Stall No.65 on 04.12.2018 and on 30.11.2018 in respect of Stall No.24. The petitioner, thus, prayed for further time to pay the security deposit in respect of those two stalls. However, the 1st respondent issued the impugned order debarring the petitioner from participating in the bids for a period of five years from 20.12.2018 by citing the condition No.3.5.6.

4. A common counter affidavit is filed by the respondents, wherein it is stated as follows:

As per Clause 6 and 7 of the Letter of Acceptance dated 27.09.2018, the petitioner has to pay the License Fee and Security Deposit within 15 days from the date of issue of Letter of Acceptance i.e. on or before 12.10.2018. After taking extension of time on many occasions, the petitioner had paid the

License Fee after 65 days of issuance of Letter of Acceptance and not paid the Security Deposit till impugned order dated 20.12.2018 was issued. As per para 4.2.C of SBD, any selected bidder shall pay the License Fee within 15 days on receipt of the Letter of Acceptance. As per Article 5.1, the Security Deposit has to be paid within 15 days from the date of issuance of Letter of Acceptance. It is also further stated that as per para 3.5.6 of evaluation criteria mentioned in the tender document, if the highest bidder (H1) withdraws or fails to take up or to start the contract, he shall be debarred by Railway for further participation in all catering contracts over Indian Railways including IRCTC for a period of five (5) years. Clause 2 of Letter of Acceptance dated 27.09.2018 issued to the petitioner in both the contracts is as follows:

"If you refuse to accept the LOA or fail to take up or to start the contract, Earnest Money of the Stall shall be forfeited and you shall also be debarred from participating in the bidding process for all catering contracts over Indian Railways including IRCTC for a period of five years."

5. The learned counsel appearing for the petitioner submitted that since blacklisting the petitioner for five years is having civil consequences, the same cannot be done without issuing specific show cause notice to the petitioner to that effect, even though a condition is stipulated in the notice inviting tender as stated supra. She further pointed out that even as per the communication issued by the 1st respondent dated 20.11.2018, it was only indicated therein that punitive measures will be initiated as per the tender conditions and therefore, the respondents are duty bound to first issue show cause notice as an initiation of the punitive measures.

6. On the other hand, the learned Standing Counsel appearing for the respondents after reiterating the contentions raised in the counter affidavit submitted that the petitioner is fully aware of the terms of the tender conditions, out of which, condition No.3.5.6 indicates that the petitioner will be debarred for five years, if he fails to take up the work or withdraws or to start the contract. He also invited this Court's attention to the letter of award issued to the petitioner dated 21.12.2018 indicating that if the petitioner refuses to accept the letter of award or fails to take up the work or withdraws or to start the contract, the petitioner will be debarred from participation in all the catering contracts for a period of five years. The learned Standing Counsel further contended that though the petitioner was given sufficient time for paying the license fee and security deposit, however, they have not utilized the same, when admittedly, the fact remains that even as on today, the security deposit has not at all been

paid. Therefore, he contended that the respondents, cannot be faulted in passing the impugned order, debarring the petitioner.

7. Heard both sides and perused the materials placed before this Court.

8. The petitioner was awarded license to run two catering stalls at Tambaram Railway Station. It is true that one of the terms of the conditions stipulated in tender notification entitles the railway to debar the highest bidder for five years from participating in all catering contracts over Indian Railways including IRCTC, if he or she withdraw or fails to take up or to start the contract. It is also true that the letter of award issued to the petitioner dated 27.09.2018 reiterated such conditions stipulated in the tender notification. The fact remains that the petitioner has not paid the security deposit within the time originally granted and then extended by the respondents. However, on 04.12.2018, the license fee paid by the petitioner was accepted by the respondents i.e., well before the extended date viz., 15.12.2018. Since, the petitioner has not paid both the license fee and security deposit within the time stipulated, the present impugned orders debarring the petitioner from participating in the tender for the five years have been passed.

9. There is no doubt that the respondents are having power and right to impose such punishment on the petitioner as per the terms and conditions. However, the question that arises for consideration in this case is as to whether such power was exercised by following the principles of natural justice by putting the petitioner on notice before imposing such punishment. The learned Standing Counsel for the Railways submitted that the very condition imposed in the letter of award issued to the petitioner itself clearly indicates that such debarment will take place, if the petitioner fails to take up or to start the contract. At this juncture, it is pertinent to note the letter issued by the respondents dated 20.11.2018 to the petitioner, which reads as follows:

"Failing to remit the above indicated amount, the LOA issued will be cancelled and punitive measures as indicated in para (2) of LOA will be initiated as per the tender conditions."

10. Perusal of the said communication, which was the last one issued by the respondents, before passing the impugned order, would show that the respondents have clearly indicated the petitioner that failure to remit the amount indicated in the said communication would result in two consequences viz., (a) that the letter of award issued to the petitioner will be

cancelled and (b) that punitive measures as indicated in Paragraph No.2 of letter of award will be initiated as per the tender condition.

11. Therefore, it is evident from the above said communication dated 20.11.2018 that failure on the part of the petitioner in effecting the payment within the time stipulated would automatically result in cancelling the letter of award. At the same time, it cannot be said that the punishment viz., the debarment for five years as per Paragraph No.2 of letter of award is also automatic, since even as per the above said communication, the respondents have only indicated that punitive measures will be initiated against the petitioner as per the tender conditions. Needless to say that initiation of punitive measure has to commence from issuance of the show cause notice. It is also to be borne in mind that the above indication made in letter dated 20.11.2018, itself would show that the said communication itself is not a show cause notice for debarring the petitioner for five years.

12. Needless to say that debarring the petitioner for five years would certainly attract civil consequences and therefore, such punishment cannot be imposed without following the principles of natural justice. Admittedly, except the last communication dated 20.11.2018, the petitioner was not issued with any further notice to show cause before debarring them. Therefore, this Court is convinced to set aside the impugned communications and remit the matter back to the respondents for reconsidering the matter once again and to pass fresh orders.

13. Accordingly, these Writ Petitions are allowed and the impugned communications are set aside and the matter is remitted back to the respondents for reconsidering the whole issue, on merits and in accordance with law, as per the following terms and conditions:

a) The petitioner as well as the respondents shall treat the impugned communications dated 20.12.2018 as show cause notices for debarment.

b) The petitioner shall send his reply to the said notices within a period of two weeks from the date of receipt of a copy of this order.

c) On receipt of such reply, the 1st respondent shall pass fresh orders on merits and in accordance with law within a period of two weeks thereafter.

No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

gsi/vsi

To

1.The Senior Divisional Commercial Manager,
Southern Railway,
Chennai Division, Divisional Office,
Commercial Branch, Chennai - 600 003.

2.The Senior Divisional Finance Manager,
Southern Railway,
Chennai Division, Divisional Office,
Commercial Branch, Chennai - 600 003.

+1cc to Mrs.A.L.Ganthimathi, Advocate Sr.28329

+1cc to Mr.P.T.Ramkumar, Advocate Sr.27967

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ev[co]
srg 02/05/2019

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