

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 24.10.2019
CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU
W.P. No. 30115 of 2019
and

W.M.P. Nos. 30072, 30074 and 30078 of 2019

Paramount Tea Marketing (SI) Private Limited,
65/1A, Club Road, Coonoor,
The Nilgiris - 643 101.

Also at

Turya, 3rd Floor, Opposite IndusInd Bank,
NSR Road, Saibaba Colony,
Coimbatore-641 011.

... Petitioner

-vs-

Tea Board of India,
Represented by its Executive Director,
Ministry of Commerce and Industry,
Department of Commerce, Govt. of India,
'Shelwood' Club Road, PO Box No.6,
Coonoor - 643 101, The Nilgiris.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order bearing No.Ref.No.6(355)/TMCO/CNR/12/2300 dated 18.10.2019 issued by the Respondent and quashing the same and consequently directing the Respondent to permit the Petitioner to participate in the auction dated 22.10.2019 by re-activating the broker code of the Petitioner in e-auction portal of the Respondent hosted at www.teaauction.gov.in.

For Petitioner : Mr. P.S. Raman, Senior Counsel for
Mr. Anirudh Krishnan

For Respondent : Mr. Ravikumar Paul, Senior Counsel
assisted by Mr. D. Muthukumar for
M/s. Paul & Paul.

O R D E R

Heard Mr. P.S. Raman, Learned Senior Counsel assisted by Mr. Anirudh Krishnan, Learned Counsel appearing for the Petitioner, Mr. Ravikumar Paul, Learned Senior Counsel assisted

by Mr. D. Muthukumar, Learned Counsel appearing for the Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner, who is a tea broker empaneled by the Respondent, has filed this Writ Petition challenging the order Ref. No. 6(355)/ TMCO/CNR/12/2300 dated 18.10.2019 passed by the Respondent suspending the licence of the Petitioner and for consequential direction to the Respondent to permit the Petitioner to participate in the auction dated 22.10.2019 by re-activating the broker code of the Petitioner in e-auction portal of the Respondent hosted at www.teaauction.gov.in.

3. Learned Senior Counsel appearing for the Petitioner contends that inasmuch as hearing of the matter in the proceedings had taken place on 04.07.2019 before Mr. C.S. Hari Prakash D.D.T.D. and E.D. (i/c) of the Respondent, who had reserved the orders, but the impugned order bearing Ref. No. 6 (355)/TMCO/CNR/12/2300 dated 18.10.2019 suspending the licence of the Petitioner has been passed by the present incumbent of that post, viz., Mr. M. Balaji, the same is vitiated. In support of the said contention, reliance is placed on the decision of the Hon'ble Supreme Court of India in Gullapalli Nageswara Rao -vs- Andhra Pradesh State Road Transport Corporation (AIR 1959 SC 308). It is further highlighted by him that the primary liability for failure to follow the specifications/guidelines on the standard of the quality of tea to be maintained is on the manufacturer and that the Petitioner, who is only a 'broker' cannot be saddled with such responsibility.

4. Learned Senior Counsel appearing for the Respondent, while justifying the impugned order, contends that the order of suspension of licence has been inflicted on the Petitioner for having failed to perform the obligations to ensure the specifications/guidelines and in particular, Rule 22 of the PAN India Auction Rules and that the grant of personal hearing is not compulsory, especially when the notes made by the officer, who heard the matter, was available in the file for the officer, who has passed the order.

5. Before proceeding further it would be necessary to refer to Rule 19 of the Tea (Marketing) Control Order, 1984, under which the order of suspension of licence of the Petitioner, has been passed by the Respondent, and the same reads as follows:-

"Cancellation/Suspension of a Licence:- (1) The Licensing Authority may, after giving a licensee (organiser of tea auction/broker) an opportunity of being heard, cancel or suspend a licence on any one or more of the following grounds, namely :-

- (a) Closure of business by the broker;
- (b) Willful refusal to conduct any auction sale by the organiser of auction;
- (c) Misrepresentation of any material fact by the applicant at the time of obtaining licence or subsequently;
- (d) Violation by the Licensee of any of the provisions of the Act or of this Order;
- (e) Failure to carry out the direction of Licensing Authority with respect to the rules for conduct of auction within the period as specified by the Licensing Authority;
- (f) Failure to carry out the direction of Licensing Authority with respect to the rules and regulations of the auction organiser in relation to its membership, composition of governing body, election of members of governing body, voting procedure and voting rights of the members, financial and administrative matters etc.;
- (g) If the Licensing Authority has reason to believe that the building or equipment or manner of operation of any brokering firm is not of the standard conforming to the guidelines/norms stipulated by the Licensing Authority.

(2) Every Order suspending/cancelling a licence shall be in writing and shall specify the reasons for such suspension/cancellation and shall be communicated to the licensee forthwith or within seven working days of the passing of such Order."

It is evident on a bare perusal of the said Rule that an opportunity of being heard, has been expressly provided and as such, the contention on behalf of the Respondent that personal hearing was not compulsory, cannot be accepted.

6. Having regard to the rival contentions of the parties, the question as to whether the Petitioner as 'broker' has performed the obligations for ensuring the Tea offered for sale through e-auction has met the specifications/guidelines prescribed, is undoubtedly a factual dispute. The opportunity of the personal hearing afforded to the Petitioner is to enable the Petitioner to establish its contentions before the decision making authority so as to facilitate that authority to have subjective satisfaction on the culpability or otherwise of the charges of the violations of the specifications/guidelines made

against the Petitioner before taking any final decision entailing adverse civil consequence to the Petitioner. Such a mandatory obligation cast upon the Respondent, in order to be meaningful, has to be judiciously exercised in a pragmatic manner and cannot be treated as an empty formality rendering the statutory requirement nugatory defeating the avowed object of the principles of natural justice, in which the opportunity of prior hearing is a recognized facet, that it has to be ensured that justice is not only done, but also seen to be done. It has been held by the Hon'ble Supreme Court of India in Gullapalli Nageswara Rao -vs- Andhra Pradesh State Road Transport Corporation (AIR 1959 SC 308), cited by the Learned Senior Counsel for the Petitioner, as follows:-

"The second objection is that while the Act and the Rules framed thereunder impose a duty on the State Government to give a personal hearing, the procedure prescribed by the Rules impose a duty on the Secretary to hear and the Chief Minister to decide. This divided responsibility is destructive of the concept of judicial hearing. Such a procedure defeats the object of personal hearing. Personal hearing enables the authority concerned to watch the demeanour of the witnesses and clear-up his doubts during the course of the arguments, and the party- appearing to persuade the authority by reasoned argument to accept his point of view. If one person hears and another decides, then personal hearing becomes an empty formality. We therefore hold that the said procedure followed in this case also offends another basic principle of judicial procedure."

In the light of this unassailable legal position, coupled with the aforesaid reasons, it is not possible to sustain the impugned order and consequently, the same is set aside and the matter is remitted to the Respondent to be decided afresh following the relevant statutory provisions.

7. In order to expedite the proceedings, Learned Senior Counsel appearing for the Petitioner as well as the Respondent, on instructions from the respective parties, agree for conducting the enquiry at 11.30 a.m. on 01.11.2019 before the Respondent to provide opportunity of personal hearing to the Petitioner or its authorized representative, without awaiting issuance of any formal notice for the same and the said submissions made are placed on record.

8. The Respondent, after affording full opportunity of hearing to the Petitioner, shall consider each of the contentions raised, and shall pass reasoned orders on merits in

accordance with law, uninfluenced and uninhibited by the impugned order, which has been set aside, and shall communicate the decision taken to the Petitioner under written acknowledgment.

9. The Writ Petition is allowed on the aforesaid terms. Consequently, the connected Miscellaneous Petitions are closed. No costs.

sd/-
Asst.Registrar (Insp Cell)

/true copy/

Sub Asst. Registrar

To

The Executive Director,
Tea Board of India,
Ministry of Commerce and Industry,
Department of Commerce,
Government of India,
'Shelwood' Club Road,
Post Box No.6,
Coonoor - 643 101,
Nilgiris.

+1 cc to Mr.Anirudh krishnan Advocate sr89740

W.P. No. 30115 of 2019

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