



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD) No.5292 of 2019

and

W.M.P. (MD) No.4226 of 2019

S.Rabik Raja

... Petitioner

Vs

The Senior Divisional Commercial Manager,
Southern Railway, Trichy Division,
Tiruchirappalli.

... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records relating to the proceedings of the Impugned Order in No: T/C.79/Catering Stall/S-1(GMU)/VRI/2018 on the file of the respondent dated 14.02.2019 and quash the same and further directing the respondent to issue the Letter of Award in respect of the license to run Catering Stall S-18 and S-25 in Villupuram Station in view of the petitioner being highest bidder.

For Petitioner : Mr.G.Prabhu Rajadurai

For Respondents : Mr.S.Manohar

ORDER

The writ petitioner is a railway contractor. He had participated in the bid for securing license for running catering stall at Vridhachalam Station. Eventhough, the contract was awarded, the petitioner failed to remit the License fee as well as the Security deposit. Therefore, the respondent issued notice dated 07.01.2019, calling upon the petitioner to remit the said amounts immediately. It was made clear that if he fails to do so, his contract will be terminated and the EMD will be forfeited and the petitioner will be debarred from participating in future tenders called by Railway for a period of five years. The petitioner did not comply with the demand made in the said notice dated 07.01.2019. Hence, the impugned order dated 14.02.2019 came to be passed. By the impugned order not only the EMD paid by the petitioner have been forfeited but he had also been debarred for a period of five years from 14.02.2019 to 13.02.2024. This order is under challenge in this writ petition.



2.The respondents have filed their counter affidavit. The learned standing counsel reiterated the contentions set out therein.

3.The learned Standing Counsel pointed out that the writ petitioner had been specifically put on notice that he would be debarred if he fails to pay the License fee as well as the Security deposit. Therefore, he wanted this Court to sustain the order impugned in this writ petition in toto. The learned Standing Counsel also drew my attention to the decision of the Hon'ble Supreme Court reported in **(2014) 9 SCC 105** in the case of **Gorkha Security Services Vs. Government (NCT of Delhi) and others**.

4.The order forfeiting the EMD does not warrant any interference. This is because admittedly, the petitioner failed to comply with the agreement terms and conditions. In fact, he was specifically informed and cautioned that if he fails to deposit the amount in question, his EMD would be forfeited. Since the petitioner did not comply with the said demand, the respondents are rightly forfeited the EMD. Therefore, the order impugned in this writ petition is sustained.

5.As regards blacklisting for a period of five years, I am of the view that it should have been preceded by a specific notice. It is true that the petitioner did not comply with the demand for payment of License fee and Security Deposit. It is quite possible that the petitioner has some good and convincing reason for not being able to make the said payment. Therefore, the respondent ought to have issued a separate proceeding in this regard. A composite notice could not have been issued. In this view of the matter, this Court interferes with the impugned order only to the extent it debars the writ petitioner from participating in any railway contracts for a period of five years.

6.The petitioner claims that he is the highest bidder so far as Stall Nos.18 and 25 in Villupuram Railway Station. In view of the impugned order, he was not awarded the contract.

7.I am of the view that since the matter has been remitted to the file of the respondent, the Stall Nos.18 and 25 in Villupuram Railway Station shall not be handed over to any other third party, till the decision is taken by the first respondent pursuant to these proceedings.

8.The matter is remitted to the file of the respondent to pass orders afresh and in accordance with law, after putting the petitioner specifically on notice.



9.This writ petition is partly allowed. No costs.
Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

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// True Copy //

Sub Assistant Registrar(CS)

To

1.The Senior Divisional Commercial Manager,
Southern Railway, Trichy Division,
Tiruchirappalli.

+1cc to Mr.S.Manohar,Advocate, SR.No.64094

+1cc to Mr.G.Prabhu Rajadurai,Advocate, SR.No.63910

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SP/03.05.2019/ 3P/4C