



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **15.10.2019**

CORAM:

THE HONOURABLE **MR. JUSTICE M. SUNDAR**

WEB COPY

W.P(MD)No.18373 of 2019

and

W.M.P. (MD) Nos.14786, 14788 and 14789 of 2019

A.Muthammal

... Petitioner

Vs.

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

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Manadamus to call for the records relating to the impugned Tender Notice in Tender No:40-Catering stall-GMUAB, dated 08.07.2019 on the file of the respondent and quash the same and further directing the respondent to issue the Letter of Award to the petitioner in respective of Stall S-11 of Vilupuram Railway Station in accordance to the tender process initiated by the respondent in Tender Notice NO.21-TPJ Division-GMU/2018, dated 19.11.2018.

For Petitioner : Mr.K.Jeyamohan

For Respondent : Mr.S.Manohar
Special Counsel

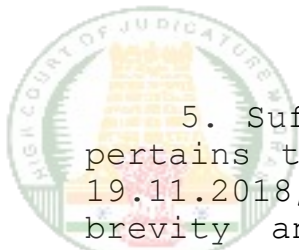
ORDER

Mr.K.Jeyamohan, learned Counsel representing Counsel on record for writ petitioner and Mr. S.Manohar, learned Special Counsel for Railways on behalf of sole respondent are before this Court.

2. With consent of learned counsel on both sides, main writ petition is taken up, heard out and is being disposed of.

3. At the outset, even before setting out the central controversy in this writ petition, it is made clear that this is a consent order, wherein both sides have consented for this order.

4. In the light of this being a consent order, short facts shorn of elaboration / details will suffice.



5. Suffice to say that subject matter of instant writ petition pertains to a 'Notice Inviting Tender' ('NIT' for brevity), dated 19.11.2018, which shall hereinafter be referred to as 'NIT - I' for brevity and clarity. Writ petitioner responded to NIT-I and submitted her bid. The bid that forms subject matter of instant writ petition is a bid to run a catering unit in Villupuram Railway Station in Trichirappalli division for a period of five (5) years from the date of award of contract on annual licence fee basis. This Court is informed that the category of stall we are concerned with in instant writ petition ie., S-11 is 'GMU', which stands for 'General Minor Unit'.

6. It is the case of writ petitioner that she submitted her tender for this stall (to be noted S-11 stall shall hereinafter be referred to as 'said stall' for the sake of convenience and clarity). It is also the case of the writ petitioner that she had made a bid for Rs.6,65,432/- (Rupees Six Lakhs Sixty Five Thousand Four Hundred and Thirty Two only) per annum.

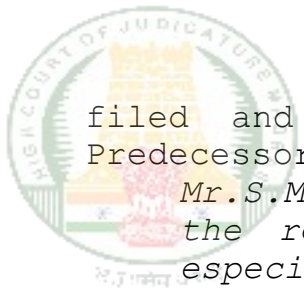
7. Counter affidavit has been filed and relevant files have been placed before this Court by the Railways. Learned Special Counsel for Railways is instructed by the official concerned, who is present in Court. From the files and submissions, it comes to light that bid of the writ petitioner has been rejected on the grounds of not-fulfilling essential tender conditions and eligibility criteria. Most important ground is that FSSAI certificate (to be noted this Court is informed that 'FSSAI' stands for 'Food Safety and Standards Authority of India') submitted by writ petitioner was found to be not genuine.

8. It is also not disputed that writ petitioner was a lone bidder *qua* aforesaid tender for the said stall. Therefore, it follows as a sequitur that, but for the rejection of writ petitioner's bid and consequent discharge of tender itself, the writ petitioner would have been awarded the contract.

9. It also comes to light that writ petitioner has sent a representation dated 06.07.2019, which has been received by the respondent on 11.07.2019 and there is no dispute that this representation has not evoked any reply or response from respondent Railways. It is also not in dispute that a specific rejection order was not communicated to writ petitioner.

10. Therefore, writ petitioner did not know the ground of rejection until counter affidavit in the instant writ petition was filed.

11. When things stood as above, respondent had floated another NIT on 08.07.2019 (hereinafter NIT-II for the sake of convenience and clarity), wherein bid had been invited for said stall also ie.,



filed and an interim order came to be passed by Honourable Predecessor Judge on 26.08.2019, which reads as follows:

Mr.S.Manohar, learned standing counsel takes notice for the respondent. He seeks time to get instructions, especially, with regard to the fate of the earlier tender called for, for the very same purpose on 19.11.2018 by the respondent, where the petitioner and other tenderers participated and the petitioner paid a sum of Rs.59,490/- as EMD. Therefore, without verifying the fate of the earlier tender, as the same has not been sanctioned explicitly to the knowledge of the petitioner/tenderers, the present tender notification has been called for. Therefore, questioning the same, this present writ petition has been filed.

2.In view of the same, post the matter on 04.09.2019. Status quo, as on to day, shall be maintained.'

12. The aforesaid interim order is operating.

13. Notwithstanding the averments in the affidavit filed in support of writ petition and averments in the counter affidavit, this Court refrains itself from expressing any view or opinion on the merits of the matter, as this is a consent order.

14. The details of the operative part of this order is adumbrated infra and the same is as follows:

'(a) NIT-II, dated 08.07.2019 will be scrapped and fresh NIT will be issued at the earliest;

(b) It is open to writ petitioner to participate in the fresh NIT;

(c) If writ petitioner participates in the fresh NIT it shall be subject to evaluation of writ petitioner's bid in accordance with the bid requirements.'

15. Though obvious, it is made clear that this order pertains to said stall alone viz., S-11 in Villupuram Railway Station in Trichirappalli Division.

16. For the purpose of clarity and capturing the trajectory of this hearing comprehensively, it is made clear that this catering stalls are for passenger utility and consent order was argued to by both sides and came to be passed to avoid further delays, considering the aforementioned interim order that is operating.



17. Instant Writ Petition is disposed of on above terms. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS-III)

WEB COPY/TRUE COPY/

Sub Assistant Registrar

SSL

To

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

+1 CC to M/s.G.PRABHU RAJADURAI, Advocate (SR-92094[F] dated
16/10/2019)

+1 CC to M/s.S.MANO HAR, Advocate (SR-92411[F] dated 17/10/2019)

W.P(MD)No.18373 of 2019
15.10.2019

JM/25.10.2019/4P/4C