

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

W.P.NO.14015 OF 2019

ORDER

The case of the petitioner is that pursuant to the tender notification 2018-19/3, dated 27.10.2018, issued by the respondent – Railways inviting tenders for leasing of parcel space in SLRs, by train No.17230 – Sabari Express from Hyderabad to Trivendram Central, he participated in the tender process and deposited EMD amount of Rs.1,00,000/- (Rupees one lakh only). The further case of the petitioner is that he is the registered lease holder of the respondents vide certification of registration for lease holders dated 08.01.2014 valid for a period of five years from 08.01.2014 to 07.01.2019. It appears that only two persons participated ie., the petitioner and the 4th respondent. The grievance of the petitioner is that though he is the highest bidder, the respondent No.3 awarded the contract to the 4th respondent vide Lr.No.C/C/37/RSLRI/17230/2018-19 dated 1.2.2019, who is the lowest bidder. After the award of the contract, the petitioner was orally informed by the commercial staff of the respondents that he was not awarded contract, as he was debarred. The case of the petitioner is that no such debarment proceedings or any notice, not to participate in the lease of SLR tenders, has been issued to him. Therefore, aggrieved by the action of the respondents in awarding contract to 4th respondent, though he is the lowest bidder, the present writ petition is filed.

The 3rd respondent – South Central Railway, represented by its Senior Divisional Commercial Manager, filed counter affidavit. In the counter affidavit it is stated that petitioner was the highest bidder, but he does not fulfill the eligibility criteria stipulated in the tender general conditions 1 to 3. As per General condition No.1 of the tender, the participant must be a registered lease holder at the concerned Division/Zonal Railways Head Quarters, where tender is floated and that only the registered lease holders shall be eligible to participate in the tenders. In the present case, the Secunderabad Division has floated the tenders

and the tenderers must be registered lease holders of Secunderabad Division. It is stated that along with the tender documents, the petitioner has enclosed registration certificate bearing No.00148 dated 08.01.2014, which is valid from 08.01.2014 to 07.01.2019, but the registration fee of Rs.25,000/- was forfeited and the said registration stood cancelled prematurely by the Railway Administration as a punitive measure vide letter No. C/C/37/12720/RSLR-I/Shoukat/2013/VI, dated 30.12.2014, for the reason that the petitioner, who was the leaseholder, failed to pay the leased freight and load the leased compartments from 04.08.2014 onwards without giving any notice, thus violated tender general condition No.36-C of the tender documents signed by the petitioner. As per the then prevailing policy and contractual clause 7.6., *"the leaseholder shall have the right to terminate the agreement after serving 60 days notice to Railway Administration. However, the lease holder shall not be allowed to terminate the contract before one year in case of any contract whether it is on short term or long term. In case he does so, his security deposit and registration fee shall be forfeited and he shall be debarred from entering into any tender for one year. But he shall be allowed to operate existing tender of other trains, if any."* In view of the violation of under general condition No.36-C, invoking clause 7.6, the registration amount was forfeited and registration was cancelled. In view of these circumstances, as the registration of the petitioner was cancelled, his tender was not accepted.

With regard to averment of the petitioner that he was not intimated by the Railways of the debarment or served with any notice / letter, it is stated in the counter affidavit that petitioner is fully aware of the tender conditions (General Condition of tender clause No.36-C), which he has signed while submitting his bid, and further the letter dated 30.12.2014 was addressed to him. With these averments, the writ petition was sought to be dismissed.

Petitioner filed reply affidavit and denied that he was served with any letter No. C/C/37/12720/RSLR-I/Shoukat/2013/VI, dated 30.12.2014 canceling his registration and also the allegation of violation of general condition No.36-C

Heard the learned counsel for the petitioner and Sri T.S.Venkata Ramana, learned Standing Counsel for Railways.

From the above averments, it could be seen that as per General Condition No.1 of the tender document, the participant shall be a registered lease holder at the concerned Division/Zonal Railway Head Quarters, where the tender is floated. In the present case though the petitioner claims that he is registered lease holder bearing No.00148 dated 08.01.2014, which is valid from 08.01.2014 to 07.01.2018, the 3rd respondent in the counter affidavit, has categorically stated that the ground on which the case of the petitioner was not considered for awarding tender, is that he is not a registered lease holder, as his registration stood cancelled vide letter No. C/C/37/12720/RSLR-I/Shoukat/2013/VI, dated 30.12.2014. The ground for cancellation of registration and forfeiture of registration fee is that, the petitioner, who was earlier awarded contract, failed to pay the leased freight and load the leased compartment from 04.08.2014 onwards, without giving any notice and thus violated the general condition No.36-C of the tender document, which was admittedly signed by him. The petitioner in the reply affidavit disputed the receipt of the cancellation letter dated 30.12.2014, and the violations alleged by the 3rd respondent under General Condition No.36-C of the tender document, but even after filing counter affidavit, said proceedings are not challenged. This court under the writ jurisdiction, in the matters pertaining to tender, cannot sit in appeal or conduct roving enquiry and record a finding with regard to truth or otherwise of the allegations of the parties. The fact remains that registration of the petitioner was cancelled, and hence he was ineligible to participate, and accordingly his tender was not considered. The validity or otherwise of the cancellation proceedings dated 30.12.2014, cannot be gone into in this writ petition, as the same is not challenged. Moreover, the

tender was awarded to the 4th respondent in the month of February, 2019, but the present writ petition is filed in the month of July, 2019, which goes to show that it is only an after thought. Petitioner says he is a regular contractor and that he paid registration fee subsequently and contract was awarded by respondents, which goes to show that he is aware of earlier proceedings dated 30.12.2014.

Learned counsel for the petitioner submits that the petitioner has deposited EMD amount of Rs.1,00,000/- and though the tender was not awarded, the amount is not being refunded.

Sri T.S.Venkatarama, learned counsel submits that the 3rd respondent will return the EMD amount as per rules.

Having regard to the above facts and circumstances, I do not find any merit in the writ petition and the same is accordingly dismissed.

It is needless to observe that respondent No.3 shall return the EMD amount of Rs.1,00,000/- to the petitioner forthwith.

Interlocutory applications pending, if any, shall stand closed. No order as to costs.

A.RAJASHEKER REDDY,J

DATE:07—08—2019
AVS