IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23/01/2020

DATED : 10.02.2020

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No.21055 of 2019
And
W.M.P.No. 20240 of 2019

Jai Bharathi Constructions
Rep. by its Proprietor Mr.Surender Reddy
H.No. 8-12-28, Plot No.121, Street No.8
Brundavan Nagar, Habsiguda
Hyderabad, Telangana - 500 007. .. Petitioner

Versus

1. The Executive Director (Signal Projects)
Railway Board, Rail Bhavan, New Delhi - 110 001.

2. The Chief Signal and Telecommunication Engineer
Signal and Telecommunication Branch, Head Quarters Office
Southern Railway, Park Town, Chennai -3.

3. The Deputy Chief Signal and Telecommunication Engineer
(Projects),
Southern Railway, Podanur, Coimbatore.

... Respondents

PRAYER:Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus calling for the records of the first respondent in Order No. 2016/Sig/Ban/Jai Bharathi dated 09.03.2018 and quash the same and consequently direct the respondents to permit the petitioner to participate in all their future tenders.

For Petitioner :: Mr. Amalraj S. Penikilapatti

For Respondents :: Mr. P.T.Ramkumar
Standing Counsel for Railway

ORDER

The Writ Petition had been filed by Jai Bharathi Constructions represented by its Proprietor Mr.Surender Reddy, in the nature of a Writ of Certiorarified Mandamus to quash the orders of the first respondent, Executive Director (Signal

Projects), Railway Board, Rail Bhavan, New Delhi, in Order No. 2016/Sig/Ban/Jai Bharathi dated 09.03.2018 and consequently, to direct the respondents to permit the petitioner to participate in future tenders.

2. The petitioner claims to be a contractor carrying on business of executing 'Signal and Telecommunications' Contracts/Projects with various Departments of the Indian Railways. He claims to have successfully completed several contracts. The respondents, by Tender Notice No. SG/Proj/2011/09(OT) dated 25/08/2011, dated 25.08.2011 had called for open tenders for the following work:-

> "Signalling Arrangements in connection with the proposed Thokkur bye-pass and year works and station building with new panel at Panambur-Phase-II".

3. The petitioner participated in the tender on 29.09.2011 and after negotiations, the Railway Tender Committee recommended that the contract work can be awarded to the petitioner. The respondents, by Letter of Acceptance dated 24.02.2012 awarded the contract for a sum of Rs.1,57,29,116/- and an agreement dated 09.08.2012 was also executed. It is stated that the contract was also successfully completed before 25.06.2013 and a certificate was also issued on 09.04.2014.

4. It is also stated that on 21.03.2012 the Railway Deputy Chief Signal and Telecom Engineer, Mr.Nithin Prakash, who had issued the Letter of Acceptance deposited Rs.98,000/- into his personal bank account at Punjab National Bank, Gandhipuram Branch, Coimbatore. It was found that 15 of the notes of Rs.1,000/- each were counterfeit. A complaint was given to the Kattoor Police Station, Coimbatore. A criminal case was registered against the said Railway officer. In his explanation, he stated that the source of the funds was a loan of Rs.1,00,000/- which he had availed from the petitioner.

5. The investigation was handed over to the Central Bureau of Investigation, Anti Corruption Wing. They conducted investigation and finally found that there was no evidence to initiate prosecution. However, they filed a Final Report as follows:-

> "(a). Investigations has not revealed any violation or deviation in approving the Tender by A-1 (ie., the Railway Officer) in favour of A-2 (i.e. the Petitioner).
>
> (b). The Police had not recovered any money or pay-in-slips from the A-1 (i.e. the Railway Officer).
>
> (c) No 'prosecutable evidence'

> whatsoever is available on record to place before the Hon'ble CBI Court for taking cognizance of any of the charges against the two accused.”

Further they advised the Southern Railway to initiate department action against the said officer for misconduct under the Railway's Services Conduct Rules 1969 and to keep the petitioner under black-list.

6. Thereafter, the first respondent issued a memorandum on 27.12.2016 and also issued a statement of Imputation of Charges charging the petitioner with violating Clause 18(2) of the Railway's General Conditions of Contract which prohibits transactions between the Railway servant and Contractor. The petitioner submitted a detailed representation on 09.02.2017. However, an order was passed on 09.03.2018 banning the petitioner for a period of three years. It is under these circumstances, questioning that order, the present Writ Petition had been filed.

7. In the counter affidavit filed by the third respondent, it had been stated that the petitioner had been awarded contract for the work of 'Signalling arrangements in connection with proposed Thokkur byepass and yard works and station building with new panel at Panambur-Phase II' by Letter of Acceptance dated 24.02.2012. The then Railway Deputy Chief Signal and Telecom Engineer, Mr.Nitin Prakash, was the Tender Accepting Authority and approved the tender and issued the Letter of Acceptance to the petitioner. On 21.03.2012, the said officer had deposited Rs.98,000/- in his bank account at Punjab National Bank,Gandhipuram Branch, Coimbatore. Among the currency notes, 15 notes of Rs.1,000/- each were found to be counterfeit notes. A police complaint was lodged. The said Official disclosed that he had received Rs.1,00,000/- from the petitioner as loan on 12.03.2012. A First Information Report in Cr.No. 186 of 2012 at Kattoor Police Station for offence under Section 429(C) IPC was registered. The case was then handed over to the Central Bureau of Investigation. They registered a FIR on 18.04.2012 in RC.MA1.2012.A.0018. After investigation, the CBI filed a Final Report on 05.09.2012 and stated that departmental action has to be initiated against the said official Nithin Prakash under the Railways Service (Conduct) Rules, 1966 for his official misconduct and that the petitioner must be kept under black-list. Thereafter, the Vigilance Commission of Railway Board referred the matter to the Central Vigilance Commission seeking advise. The Central Vigilance Commission on 14.11.2014 advised the Railway Board to initiate major penalty proceedings against Nithin Prakash and to black-list the petitioner. It is further stated that on the advise of the Central Vigilance Commission, a show cause notice dated 27.12.2016 was issued to the petitioner along with statement of Imputation of Charges. This was issued under General Conditions

of Contract, 2011, paragraph 18.(2) which stipulated that a contractor shall not lend money to any employee of the Railways. The petitioner submitted a detailed reply on 09.02.2017. This was considered and the first respondent passed an order on 09.03.2018 banning the business dealings of the petitioner firm for a period of three years with effect from 09.03.2018. It had been stated that sufficient reasons had been given for the said decision.

8. It had been stated in the counter affidavit that the Central Vigilance Commission had advised the Railway Board to initiate action for black-listing the petitioner firm and submit a report to the Commission about the action taken. It had been stated that the procedure adopted for black-listing had been followed and show cause notice was issued to the petitioner. It was also stated that the petitioner was given adequate and sufficient opportunity. It was stated that there was no violation of the Principles of Natural Justice. It was therefore stated that the Writ Petition should be dismissed.

9. Heard arguments advanced by Mr. Amalraj S. Penikilapatti, learned counsel for the petitioner and Mr.P.T.Ramkumar, learned Standing Counsel for the respondents.

10. During the course of hearing, Mr.P.T.Ramkumar had forward the recommendation of the Central Vigilance Commission by which the petitioner firm was directed to be kept under black-list by the Railway Board and also a letter from the Director of Vigilance (S & T) Railway Board, dated 24.11.2014 to the General Manager (Vigilance), Southern Railway, Chennai, wherein it was stated that the Central Vigilance Commission had advised that the petitioner firm may be kept under black-list and the General Manager, Vigilance Southern Railway was requested to send a draft imputation of charges to the Railway Board to initiate proceedings for black-listing the petitioner firm. A further letter dated 21.03.2012 issued by the Ministry of Railways (Railway Board) to the General Manager/ All Indian Railways that a draft show cause notice indicating the charges / misconduct should be prepared containing particulars was also produced.

11. After the said documents were produced before the Court, an additional affidavit had been filed by the petitioner, in which it had been stated that for banning of business of a contractor, the document clearly indicate that the facts have to be proved as distinct from allegations. In the affidavit, it was also stated that the petitioner firm had been granted further work orders on 06.08.2015, 12.09.2015 and 12.02.2016. It had been stated that the petitioner had completed all the works awarded and completion certificates were also been issued.

12. I have carefully considered the arguments advanced and the materials on record.

13. The petitioner is a contractor carrying on business among others of executing 'Signal and Telecommunications' Contracts/Projects with various Departments of the Indian Railways. The respondents, by Tender Notice No. SG/Proj/2011/09(OT) dated 25/08/2011, dated 25.08.2011 had called for open tenders for the following work:-

> "Signalling Arrangements in connection with the proposed Thokkur bye-pass and year works and station building with new panel at Panambur-Phase-II".

14. The petitioner had applied and was awarded the contract. An agreement was also entered into. The contract was also completed. The Railways had also given a credential certificate. The Letter of Acceptance with relation to the said contract was issued on 24.02.2012 by the then Railway Deputy Chief Signal and Telecom Engineer, Nithin Prakash. On 21.03.2012, the said Nithin Prakash deposited a sum of Rs.98,000/- in his personal account in Punjab National Bank, Gandhipuram Branch, Coimbatore. Out of the said amount, 15 currency notes of Rs.1,000/- each were found to be counterfeit. A police complaint was lodged and Cr.No. 186 of 2012 was registered by Kattoor Police Station, Coimbatore, for offence under Section 429(C) IPC. The case was subsequently handed over to the Anti Corruption Wing of the Central Bureau of Investigation. A First Information Report was registered on 18.04.2012 in RC.MA1.2012.A.0018. After conducting investigation, the CBI filed a final closure report before the Special Court for CBI cases, Coimbatore, under Section 173 Cr.P.C. In their Final Report, they have given the following conclusions:-

> "8. Investigation has not revealed that A-1 demanded an amount of Rs.1 lakh from A-2 and accepted the same as bribe.
>
> 9. It is submitted that the amount of Rs.83,000/- and pay-in-slips were not recovered from A-1 either by the Bank and Inspector of Police of Katoor Police Station.
>
> 10. Investigation disclosed that A-1 has taken a loan of Rs.1 lakh from A-2.
>
> 11. Investigation has not revealed any violation or deviation in approving the Tender by A-1 in favour of A-2.
>
> 12. Therefore, as discussed above, no prosecutable evidence on record to place before this Hon'ble Court for taking

cognizance on the charges made under Section 120-B IPC read with Section 13(2) read with 13(1)(d) of PC Act, 1988. In view of the above mentioned circumstances, the allegations against the accused persons are not substantiated, thus, it is proposed to close this case.

13. It is further submitted that the matter is being taken up with Southern Railways for initiation of departmental action against Shri Nitin Prakash (A-1) under Railways Services (Conduct) Rules, 1966 for his official misconduct and to keep Shri E.Surender Reddy (A-2) under black list. Since the allegations against the accused persons are not substantiated, it is proposed to close this case.

15. The Final Report submitted by CBI was forwarded to the Railway Board for further action. On examination of the report, the Vigilance Wing of the Railway Board referred it to the Central Vigilance Commission. The Central Vigilance Commissioner then issued the following advise to the Railway Board:-

"Central Vigilance Commission

The Commission has perused the investigation report along with relevant records of the case and the comments of the administrative authorities thereon would advise Railway Board the followings:

(i) 'Major penalty proceedings' against Shri Nitin Prakash, Dy. CSTE/P/HQ as recommended by GM/SR/Zonal Railway.

(ii) Thorough investigation of tender (s)/contract(s) awarded by Shri Nitin Prakash to Shri E.Surender Reddy which should inter-alia include examining whether the contract(s) had been awarded by Shri Nitin Prakash to E.Surender Reddy by following the procedures correctly or not. Railway Board may seek opinion of CBI for any prosecutable evidence surfaced out during the course of investigation.

(iii) Shri E.Surender Reddy and his firm M/s. Jai Bharathi Construction, Hyderabad to be kept under blacklist by the

Railway Board.

2. Action taken in pursuance of Commission's advice may please be intimated.

3. The Railway Board ID No. 2012/V3/S/Elect./9-CBI dated nil refers and its file is sent herewith.

(Nitish Kumar)"
Deputy Secretary

16. A letter was thereafter issued by the Director Vigilance (S&T) Railway Board, dated 24.11.2014 to the General Manager, (Vigilance), Southern Railway, Chennai, in which it had been stated as follows:-

" Ministry of Railways
(Railway Board)
No.2012/V3/S/Elect./9-CBI
The General Manager (Vig.,),
Southern Railway,
Chennai.

Sub: Investigation report - Gratification charges against Shri Nitin Prakash, the then Dy.CSTE/P/PTJ.

Ref: Southern Railway's letter No. VS/GS/SPE(MAS)/2012/06/214/SA dated 08.10.2012.

The CBI, ACB, Chennai's Investigation Report along with view of SDGM and GM/SR as received from Southern Railway vide above referred letter was examined by Railway Board Vigilance. Thereafter, the case was referred to CVC for 1st stage advice routing through Board (ML) and CRB. In agreement with the recommendation of GM/SR, the Commission vide its ID Note No. 124/RLY/012/265650 dated 14.11.2014 (copy enclosed) has advised initiation of Major Penalty proceedings against Shri Nitin Prakash, the then Dy. CSTE/P/PTJ.

2. The Commission has further advised that thorough investigation of tender (s)/ contract(s) awarded by Shri Nitin Prakash to Shri E.Surender Reddy which should inter-alia include examining whether the contract (s) had been awarded by Shri Nitin Prakash to E.Surender Reddy by following the procedures correctly or not. Railway Board may seek

opinion of CBI for any prosecutable evidence surfaced out during the course of the investigation.

3. The Commission has also advised that Shri E.Surender Reddy and his firm M/s. Jai Bharathi construction, Hyderabad to be kept under blacklist by the Railway Board.

4. The Railway may take further necessary action in pursuance of CVC's advice. A copy of chargesheet and NIP, as and when issued to the above official may be sent to this office for considering closure of the case. For compliance of Commission's advice in para 3 above, the Railway is advised to send draft imputation of charges along with RUDs to enable the Railway Board to initiate proceedings for black listing Shri E.Surender Reddy and his firm viz. M/s. Jai Bharti Construction.

(Ranjit Kumar)
Director Vigilance (S&T)
Railway Board”

17. Thereafter, the first respondent had issued a Memorandum and the statement of Imputation of Charges against the petitioner on 27.12.2016. In the Imputation of Charges for blacklisting, the first respondent stated as follows:-

> “Shri.E.Surender Reddy, Proprietor of M/s. Jai Bharathi Constructions, Hyderabad is engaged in installation of Signal and Telecommunication works in Railways. Shri. E. Surender Reddy, Proprietor of M/s. Jai Bharathi Constructions, Hyderabad was awarded the contract work “Signalling arrangements in connection with proposed Thokkur bye-pass and yard works and station building with new panel at Panambur – Phase II” vide contract agreement No.J/SG/Proj/Tender/PNMB dated 09.08.2012.
>
> During the course of CBI verification it was found that Shri. E.Surender Reddy, Proprietor of M/s. Jai Bharathi Constructions, Hyderabad has committed misconduct during the year 2012 in as much as “He lent Rs.1 lakh in cash to Shri Nitin Prakash, the then Dy.CSTE/Projects/Podanur/Southern Railway as loan with whom he had contractual

dealings and thereby violated General Conditions of Contract 2011 para 18(2)."

General conditions of Contract 2011 para 18(2) states that "The Contractor shall not lend or borrow from or have or enter into any monitory dealings or transactions either directly or indirectly with any employee of the Railway and if he shall do so, the Railway shall be entitled forthwith to rescind the contract and all other contracts with the Railway...."

Hence, Shri.E.Surender Reddy, Proprietor and his firm M/s. Jai Bharathi Cosntructions, H.No.8-12-28, Plot No.121, Street No.8, Brundavan Nagar, Habsiguda, Hyderabad - 500 007 have committed misconduct and is hereby called upon to show cause as to why they may not be blacklisted with Ministry of Railways."

18. The petitioner gave a reply / representation on 09.02.2017 in response to the said Imputation of Charges. They had stated that the Railways have not followed the dictum of paragraph 18(2) of the General Conditions of Contract. According to the petitioner, if there is any violation of the said condition, the Railways shall only rescinded the contract and all other contracts with railways. It was specifically stated that there was no provision for banning business dealings for a period of five years.

19. The first respondent issued a letter to the petitioner on 09.03.2018 in which they stated that the representation had been carefully considered and the Ministry of Railways, Railway Board, New Delhi had decided to ban business dealings for a period of three years with effect from 09.03.2018. The order is extracted below for better appreciation:-

" GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS
(RAILWAY BOARD)

No.2016/Sig/Ban/Jai Bharathi New Delhi, 09.03.2018

REASONED ORDER

Sub: Matter of Banning of Business dealings with M/s. Jai Bharathi Constructions, H.No.8-12-28, Plot No.121, Street No. 8, Brundavan Nagar, Habsiguda, Hyderabad - 500 007.

Ref: (i) This Minstry's Memorandum No. 2016/Sig/Ban/Jai Bharathi dated 7.12.2016.

(ii)M/s. Jai Bharathi Constructions's letter No. JBC/2017/01 dated 09.02.2017.

In the extant case of banning of Business dealings with the firm M/s. Jai Bharathi Constructions, H.No.8-12-28, Plot No. 121, Street No.8, Brundavan Nagar, Habsiguda, Hyderabad - 500 007, the CBI Report, Show Cause Notice issued to the firm and replies of the firm to the Show Cause Notice, were gone through in detail.

2. From the investigation it is amply obvious that Shri E.Surendar Reddy, Proprietor of firm M/s.Jai Bharathi Constructions, H.No.8-12-28, Plot No. 121, Street No.8, Brundavan Nagar, Habsigud, Hyderabad - 500 007 had lent Rs.1 lakh in cash to Shri Nitin Prakash, the then Dy. CSTE/Projects/PTJ, and therefore, has committed misconduct by violating the provisions of para 18(2) of the General conditions of Contract 2011. The firm in its reply to the show cause notice has completely avoided/ignored its reply to the main charge of offering money to a Railway Official and instead delved on other peripheral issues.

3. From the above, in the light of the detailed investigations on the imputations and allegations in the show cause notice, it is concluded that the firm viz., M/s. Jai Bharathi Constructions, H.No.8-12-28, Plot No. 121, Street No.8, Brundavan Nagar, Habsiguda, Hyderabad - 500 007 indulged in misconduct.

4. In view of the above, the competent authority has decided that Business dealings be banned with the firm for a period of 3 (three) years with effect from 09.03.2018."

20.This is the order impugned in the present Writ Petition.

21. Clause 18 of the General Conditions of Contract is extracted below:-

> "18(1) Illegal Gratification:- Any bribe, commission, gift or advantage given, promised or offered by or on behalf of the Contractor or his partner, agent or servant or anyone on his or on their behalf, to any officer or employee of the Railway, or to any person on his or on their behalf in relation to obtaining or the execution of this or any other contract with the Railway shall, in addition to any criminal liability which he may incur, subject the Contractor to the rescission of the contract and all other contracts with the Railway and to the payment of any loss or damage resulting from such rescission, and the Railway shall be entitled to deduct the amounts so payable from any moneys due to the Contractor under this contract or any other contracts with the Railway.
>
> (2) The Contractor shall not lend or borrow from or have or enter into any monetory dealings or transactions either directly or indirectly with any employee of the Railway and if he shall do so, the Railway shall be entitled forthwith to rescind the contract and all other contracts with the Railway. Any question or dispute as to the commission of any such offence or compensation payable to the Railway under this clause shall be settled by the General Manager of the Railway, in such a manner as he shall consider fit and sufficient and his decision shall be final and conclusive. In the event of rescission of the contract under this clause, the contractor will not be paid any compensation whatsoever except payments for the work done upto the date of rescission."

22. Th respondents rely on Clause 18(2) extracted above. Under Clause 18(2) extracted above, it is seen that if a contractor lends money or enters into dealings or transactions with any employee of the Railway, the Railway shall rescind the contract and all other contracts with the Railways. It is further provided that in the event of rescission of a contract, the contractor will not be paid any compensation except payment for the work done up to the date of recession.

23. In the instant case, the Railways have not rescinded any other contract with the petitioner. This is evident from the fact that the petitioner had been awarded three further contracts on 06.08.2015 for a value of Rs.2,33,89,271.80, on 12.09.2015 for a value of Rs.2,80,27,671/- and on 12.02.2016 for a value of Rs.5,07,36,207.42. Moreover

the impugned order is only repetition and reiteration of the punishment imposing black listing of the petitioner firm as stated by the Central Vigilance Commission. This effectively means that the decision to black list the petitioner firm had already been taken and had already been decided to be taken and that issuance of Show Cause Notice and statement of Imputation of Charges and conducting enquiry was only an attempt to complete the formalities for the sake of completing an enquiry. When any enquiry is conducted, it is expected that the Enquiry Officer would examine the materials on record, apply his mind to the contentions of both sides and on subjective satisfaction of the materials, pass an order. An Enquiry Officer is discharging a quasi judicial function. While discharging a quasi judicial function, he is expected to give reasons in the order. Conducting an enquiry after already deciding the punishment to be imposed would be a hollow procedure. It does not serve any purpose. To put it more brusquely, it is simply a waste of time. It is infact a deception carried on for the sake of a procedure to be exhibited on a piece of paper. It has no significance. The communication from the Railway Board, only spoke about the advise that the petitioner firm may be kept under black list by the Railway Board. They had also stated that the Railway Board may seek the opinion of the CBI.

24. The CBI in their investigation in First Information Report No. RC.MA1.2012.A.0018 registered under Sections 120(b) IPC read with Section 13(2) read with Section 13 (1)(d) of Prevention of Corruption Act 1988 against first accused, Nithin Prakash, the Railway Official and the second accused, E.Surendar Reddy, the Proprietor of the petitioner firm had very specifically stated that the Tender Committee had met on three occasions to seek reduction of the rate quoted by the petitioner. It is only after that, the Tender Committee had recommended award of tender to the petitioner. It was also found that Nithin Prakash, who was the Accepting Authority, had accepted the recommendation of the Tender Committee and had issued the Letter of Acceptance. Very specifically it was stated that the amount of Rs.83,000/- said to have been deposited by Nithin Prakash and the pay in slips were not recovered from him either by the Bank or by the Inspector of Police, Kattoor Police Station. It was also stated that Nithin Prakash had taken a loan of Rs.1/- lakh from E.Surendar Reddy. However, it was stated that no profitable evidence had surfaced for taking cognizance of the charges.

25. The CBI also proposed that the petitioner may be blacklisted. However, while taking a decision to blacklist the petitioner, opportunity must be given. In this case Show Cause Notice was issued. But opportunity must be true and effective opportunity and a fair hearing must be conducted. When a fair hearing is conducted, statements made must be appreciated independent of any recommendation by any external agency. The Enquiry Officer should not be prejudiced with the recommendation already given regarding the decision to be taken. The Railway

Borad had already decided the punishment to be imposed. These principles are directly against the Principles of Natural Justice. The imposition of punishment of blacklisting the petitioner firm have already been taken even before the show cause notice was issued. The enquiry was thus an empty formality.

26. I hold that the impugned order has to be set aside. There was no independent application of mind. There was no subjective satisfaction of the materials placed before the Enquiry Officer. The Enquiry Officer had already pre-judged the punishment. The conclusion was never in doubt. It was already decided. The enquiry was only a ritual to complete formalities. There was never any honest intention of examining the statements put up by the petitioner. There cannot be any better example of prejudged, prejudiced enquiry, I have no hesitation in setting aside the same.

27. In (1987) 4 SCC 431 [K.I.Shephard and Others Vs. Union of India and Others], it had been observed as follows:-

> "16. ......We do not think that would meet the ends of justice. They have already been thrown out of employment and having been deprived of livelihood they must be facing serious difficulties. There is no justification to throw them out of employment and then given them an opportunity of representation when the requirement is that they should have the opportunity referred to above as a condition precedent to action. It is common experience that once a decision has been taken, there is a tendency to uphold it and a representation may not really yield any fruitful purpose."

28. In (2006) 11 SCC 42 [V.C., Banaras Hindu University and Others Vs. Shrikant], it had been held as follows:-

> "48. The Vice Chancellor appears to have made up his mind to impose the punishment of dismissal on the Respondent herein. A post decisional hearing given by the High Court was illusory in this case.

29. In (2006) 12 SCC 33 [Siemens Limited., Vs. State of Maharashtra and others], it had been held as follows:-

> "Although ordinarily a writ court may not exercise its discretionary jurisdiction in entertaining a writ petition questioning a notice to show cause unless the same inter alia appears to have been without jurisdiction as has been held by this Court in some decisions including State of Uttar Pradesh v. Brahm Datt Sharma and Anr. AIR 1987 SC 943, Special Director and Another v. Mohd. Ghulam

Ghouse and Another, (2004) 3 SCC 440 and Union of India and Another v. Kunisetty Satyanarayana, 2006 (12) SCALE 262], but the question herein has to be considered from a different angle, viz, when a notice is issued with pre-meditation, a writ petition would be maintainable. In such an event, even if the courts directs the statutory authority to hear the matter afresh, ordinarily such hearing would not yield any fruitful purpose [See K.I. Shephard and Others v. Union of India and Others (1987) 4 SCC 431 : AIR 1988 SC 686]. It is evident in the instant case that the respondent has clearly made up its mind. It explicitly said so both in the counter affidavit as also in its purported show cause. ”

30. The Writ Petition is allowed and the impugned order passed by the first respondent in Order No. 2016/Sig/Ban/Jai Bharathi dated 09.03.2018 is set aside. However, it is seen that in the impugned order it is stated that the petitioner had not directly addressed the charge of lending money to Nithin Prakash. The CBI in their report have found that charge to be established. It would only be therefore just and proper that the petitioner is granted one more opportunity to answer the Show Cause Notice and during enquiry, the Enquiry Officer may also issue, if deemed appropriate, notice to Nithin Prakash also, hear him on this charge and then give a finding on merits. The petitioner may also be heard on the punishment proposed if the charge is held proved.

31. With the above observation, the Writ Petition is allowed granting opportunity to the Railways to hold fresh enquiry. In view of the fact that the petitioner had a contractual relationship with the respondents, costs are not imposed.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

vsg

To

1. The Executive Director (Signal Projects)
Railway Board,
Rail Bhavan,
New Delhi – 110 001.

2. The Chief Signal and Telecommunication Engineer
Signal and Telecommunication Branch, Head Quarters Office
Southern Railway, Park Town, Chennai -3.

3. The Deputy Chief Signal and Telecommunication Engineer
(Projects),
Southern Railway, Podanur, Coimbatore.

+1cc to Mr.Amalraj, Advocate, S.R.No. 10769
+1cc to Mr.Ram Kumar, Advocate, S.R.No. 10577

W.P.No.21055 of 2019
And
W.M.P.No. 20240 of 2019

MG(CO)
GN(03/03/2020)