



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE **D.KRISHNAKUMAR**

W.P.(MD)No.16920 of 2019

and

W.M.P(MD).No.13505 of 2019

S.Rabik Raja

... Petitioner

Vs.

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

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the respondent to issue the letter of award in respect of the license to run Catering Stall S-21 (Platform 4, 5) in Villupuram Railway Station, in view of the petitioner being the successful bidder.

For Petitioner : Mr.G.Prabhu Rajadurai

For Respondents : Mr.Manohar
Standing Counsel

ORDER

This writ petition is filed to direct the respondent to issue the letter of award, in respect of the license to run Catering Stall S-21 (Platform 4, 5) in Villupuram Railway Station, in view of the petitioner being the successful bidder.

2.The writ petitioner has participated in the tender process, based on the tender notification dated 16.08.2018, called for by the Southern Railway Department. Only two members have participated in the said tender and the aforesaid tender was opened on 24.09.2018 and the petitioner's evaluation bid was accepted and the application of one Mohammed Yunus was rejected on the ground that he did not have sufficient eligibility to run the catering stall. Therefore, the petitioner is expected to issue a letter of award to him to run the said stall.



3.The petitioner has not received any communication from the respondent. The petitioner submitted his tenders to run catering stalls in 5 Railway Stations. Therefore, on 20.11.2018, the respondent issued a letter of award, but he did not make the payment. Due to non-payment, the respondent has passed an order dated 14.02.2019, debarring the petitioner from participating the tender process for a period of 5 years. Therefore, the petitioner has filed a writ petition in W.P.(MD).No.5292 of 2019 before this Court to quash the said blacklisting, wherein, this Court remitted the matter back to the first respondent to pass orders afresh. Pursuant to which, the respondent by letter dated 29.05.2019 called upon the petitioner to attend a counseling on 03.06.2019. The petitioner also attended the said counseling. Without considering the petitioner's genuine reason and without issuing any notice, the first respondent has passed an order to interdict the petitioner from participating in any future tenders for a period of five years.

4.Aggrieved over the same, the petitioner has filed another writ petition before this Court in W.P(MD).No.16314 of 2019 and the same was also remanded back for fresh consideration. Further, the Senior Divisional Commercial Manager of Southern Railway, Chennai Division, called for tenders, by notification in March 2018 and the petitioner has also submitted his tender on 09.03.2018 and he was declared as the highest bidder and letter of award were issued on 27.09.2018. Due to non-payment of EMI, the Southern Railway, Chennai Division, debarred the petitioner from participating in any bids.

5.Challenging the same, the petitioner has filed another writ petition in W.P(MD).No.7798 of 2019 before this Court to quash the blacklist order dated 20.12.2018 and the writ petition was remanded back to the first respondent for fresh consideration. While that being so, the present tender notification was issued by the respondent on 25.09.2018, which is prior to the first order of blacklisting, dated 20.12.2018. Therefore, the respondent cannot reject the petitioner's application on the aforesaid ground.

6.Further, in Paragraph No.10 of the affidavit filed by the petitioner, wherein it has been stated that the petitioner was a successful bidder in the aforesaid tender and he was shocked to know that the respondent issued a notice for inviting the tender for the same Stall of S-21 in Vilupuram Railway Station. Therefore, the petitioner has filed the present writ petition.

7.The learned Standing Counsel appearing for the respondent has brought to the notice of this Court by relying upon the document that the respondent has opened the technical bid only and



the price bid was not opened. During the opening of the technical bid, the Evaluation Committee has found that the petitioner was not eligible for awarding tender. Hence, the respondent Department has rejected the petitioner's tender application for further evaluation. Further, it is submitted that fresh notification was issued calling for tender, dated 25.05.2019 and the same was not challenged before this Court by the petitioner. Therefore, the prayer as sought for in the writ petition is not maintainable and the same is liable to be dismissed.

8. Heard the rival submissions of the counsel for the parties and perused the materials on record.

9. The writ petitioner and one Mohammed Yunus have participated in the tender notification, dated 25.09.2018 and both the applications were considered and rejected for further evaluation for granting of license to the petitioner as well as one Mohammed Yunus. Based on the aforesaid rejection, fresh tender notification was called for on 25.05.2019 by inviting tender for the aforesaid Stall in S-21 in Vilupuram Railway Station. But the petitioner has not challenged the said notification and made an averment in the affidavit that the petitioner was a successful bidder in the tender notification, dated 25.05.2019.

10. In the light of the averments made in paragraph No.10 of the affidavit, this Court is of the view that the petitioner has approached this Court without disclosing the material facts. Further, the statement made in the aforesaid paragraph that the petitioner was a successful bidder is also contrary to the fact. In fact, the aforesaid fact is incorrect since the petitioner's application was rejected by the Evaluation Committee for further evaluation. Therefore, the statement made by the petitioner in the affidavit is false and misleading the Court.

11. In the judgment of the Hon'ble Supreme Court in the case of ***S.P.Chengalvaraya Naidu vs. Jagannath***, reported in ***AIR 1994 SC 53 = 1994(1) SCC 21 = 1994-1-L.W.21***, it has been stated that one who comes to the Court, must come with clean hands. In the present case, the petitioner has approached this Court with unclean hands and therefore, the prayer as sought for by the petitioner is not maintainable and the same is liable to be dismissed.

12. Considering the facts and circumstances of the case and the judgment of the Hon'ble Supreme Court cited supra, there is no merit to entertain this writ petition and the same is liable to be dismissed. Hence, this Writ Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.



13. For the false statement made before this Court, this Court is inclined to impose a cost on the petitioner. Accordingly, the petitioner shall pay a sum of Rs.5,000/- (Rupees Five Thousand only) to the Mediation and Conciliation Centre attached to this Bench, within a period of two weeks from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar(CS)

// True Copy //

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Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

Copy to

1. The Registrar (Judicial)
Madurai Bench of Madras High Court,
Madurai.

2. The Officer Incharge,
Mediation and Conciliation Centre,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.G. PRABHU RAJADURAI, Advocate (SR-17806[F] dated 23/09/2020)

+1 CC to M/s.S. MANOHAR, Advocate (SR-17808[F] dated 23/09/2020)

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SVN(CO)

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