



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.S. SUNDAR

W.P.(MD).No.18047 of 2018

and W.M.P.(MD).Nos.15932 and 15933 of 2018

WEB COPY

Smt.M.Sulthana Laila
Sole Proprietrix,
Nile Catering No.137/18,
St. Paul's Complex, A Block,
Bharathiar Salai, Cantonment,
Tiruchirappalli.

.. Petitioner

Vs.

1.The Divisional Railway Manager (Commercial)
Southern Railway Division,
Tiruchirappalli.

2.The Senior Divisional Commercial Manager,
Southern Railway Division,
Divisional Office,
Commercial Branch, Tiruchirappalli.

3.The General Manager,
Head Quarters Office,
Southern Railway, Park Town,
Chennai.

4.The Secretary,
Railway Board,
Ministry of Railway,
Railway Bhavan, New Delhi.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent herein bearing No.T/C.79/Catering Tender/Minor Static Unit/2018, dated 06.08.2018 and quash the same and direct the respondents 1 and 2 herein to award the license for running the units S1/TPJ, S4/TJ and S13/TJ to the petitioner.

For Petitioner : Mr.A.R.L.Sundaresan, Senior counsel for
Mr.AL.Gandhimathi

For Respondents: Mr.S.Manohar for R1 to R4

ORDER

This writ petition has been filed by the petitioner for issuing a Certiorarified Mandamus, calling for the records of the 2nd respondent herein bearing No.T/C.79/Catering Tender/Minor Static Unit/2018, dated 06.08.2018 and quash the same and direct the respondents 1 and 2 herein to award the license for running the units S1/TPJ, S4/TJ and S13/TJ to the petitioner.



2.It is stated that the first respondent had invited tender for grant of licence to run catering units over Tiruchirappalli Division. The essential conditions and the eligible criteria have been prescribed in the tender. The tender was floated on 02.04.2018. The petitioner participated in the tender and it is stated that the petitioner is the highest bidder in respect of some of the statutory minor units S1/TPJ, S4/TJ and S13/TJ. Stating that the petitioner has suppressed certain facts and submitted forged documents, the petitioner was de-bared from participating in any tender issued by the southern railway for a period of five years from 03.07.2018 to 02.07.2023 by the impugned order. The earnest money deposits were also forfeited.

3.It is not in dispute that the impugned order is an order de-barring the petitioner for a period of five years from participating in any tender floated by the respondent. It is also admitted that the petitioner was not given notice before passing the impugned order. The order itself is not clear as to the irregularity or fraudulent practice except referring to the tender terms and the meaning given to the word fraudulent practice in the tender documents. It is well settled that before black listing, notice should be given to the Contractor specifically calling upon the contractor to respond to the specific allegation which makes him ineligible or the fraudulent practice for which action is required to black list him. It is also settled that black listing will have serious Civil consequences result in civil death of a contractor in commercial contracts.

4.In such circumstances, this Court following precedents of the Honourable Supreme Court and this Court, in several cases, is unable to sustain the order which is in violation of principles of natural justice. Hence, the impugned order, dated 06.08.2018 is quashed. However, it is open to the respondents to take appropriate action after issuing show cause notice and giving the petitioner sufficient opportunity to put forth his case.

5.The learned counsel for the petitioner submitted that the petitioner's tender has been accepted in different areas, even though the petitioner has submitted same set of documents to show his experience. Since the impugned order, dated 06.08.2018 is quashed by this Court, the petitioner is eligible to participate in any tender till such time final order is passed against the petitioner dis-qualifying him or black listing him for valid reasons.

6.The learned counsel for the petitioner also submitted that in respect of Coimbatore and Sattur, though necessary licence fee was collected from the petitioner, she is not allowed to commence catering service in view of the impugned order. In so far as Kumbakonam, it is stated that the petitioner is doing catering services in Coimbatore and Sattur in reference to the impugned order, dated 06.08.2018.



7. In view of the fact that the petitioner is put to serious prejudice on account of the impugned order, the respondents are directed to pass final orders, after hearing the petitioner and giving full opportunity to him, within a period of four weeks from the date of receipt of a copy of this order. The petitioner is also entitled to make his submissions on merits along with the documents, treating the impugned order as a show cause notice within a period of two weeks from the date of receipt of a copy of this order. The second respondent also shall give a personal hearing before passing the order.

8. With the above directions, this writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

TM
TO

1. The Divisional Railway Manager (Commercial)
Southern Railway Division,
Tiruchirappalli.
2. The Senior Divisional Commercial Manager,
Southern Railway Division,
Divisional Office,
Commercial Branch, Tiruchirappalli.
3. The General Manager,
Head Quarters Office,
Southern Railway, Park Town,
Chennai.
4. The Secretary,
Railway Board,
Ministry of Railway,
Railway Bhavan, New Delhi.

+1 CC to M/s.S.MANO HAR, Advocate (SR-1381[F] dated 10/01/2020)

W.P.(MD).No.18047 of 2018

09.01.2020

SMA/24/01/2020/3P/6C