

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

WRIT PETITION NO. 7568 OF 2021

Seema Chandrakant Chaudhari,
Age : Major, Occu. Business,
R/o : Dindayal Nagar, Jamner Rd,
Bhusawal, Dist. Jalgaon.

... PETITIONER

VERSUS

- 1] Union of India,
Through Secretary,
Ministry of Railway,
(Railway Board)
New Delhi.
- 2] The General Manager,
Central Railway,
Mumbai.
- 3] Divisional Railway Manager (Commercial)
Office of Sr. DCM,
Bhusawal Division,
Central Railway Bhusawal.
- 4] The Chief Commercial Manager
(Claims & Catering)
Central Railways C.S.M.T.
Mumbai-400001.
- 5] Divisional Commercial Manager,
Office of DRM (C) Central Railways,
Bhusawal Division, Bhusawal.

... RESPONDENTS

...
Mr. Swapnil S. Patil, Advocate for petitioner.

Mr. M. N. Navandar, Advocate for Respondent Nos.1 to 5.

...

CORAM : **S. V. GANGAPURWALA &
R. N. LADDHA, JJ.**

DATE : 21st August, 2021.

ORAL JUDGMENT: (Per S. V. Gangapurwala, J.)

. Rule. Rule made returnable forthwith. With the consent of the parties, taken up for final hearing.

2 The petitioner pursuant to the tender notice, participated in the tender process for the catering stall on Platform No.4 near the Coach Indicator No.18 at Nashik Road Railway Station from General (Women) category. The tender of the petitioner was accepted. The petitioner was issued letter of acceptance by respondent No.3. The petitioner was required to deposit Earnest Money Deposit of Rs.48,200/-. Under the letter of acceptance dated 20th March, 2020, the petitioner was expected to deposit license fees and security deposit and start operation of the catering stall at the given location. The petitioner did not abide by the conditions of security deposit and license fees. The respondents on or about 18th February, 2021 informed the petitioner that the contract stands terminated, her earnest money deposit stands forfeited and the petitioner is further

debarred in all catering contracts/licenses of any Zonal Railway/IRCTC for a period of five years.

3 Mr. Patil, learned counsel for petitioner submits that the petitioner was issued with the letter of acceptance on 20th March, 2020 and on 23rd March, 2020 nationwide lockdown was declared because of Covid-19 pandemic. Because of lockdown, the trains were not operated. The petitioner was not in a position to perform her part of contract. The same was beyond her control. In view of that, the petitioner cannot be faulted with and debarred for a period of five years from entering into contract with the railways. The learned counsel submits that the petitioner is not agitating the issue of forfeiture of the earnest money deposit, however, has restricted the petition to the extent that the petitioner may not be debarred for five years.

4 Mr. Navandar, learned counsel for respondents submits that as per clause 3.5.6 of the tender document, if the highest bidder withdraws or fails to take up or to start the contract, his earnest money shall be forfeited and he shall also be debarred by Railway for further participation in all catering contracts/licenses of any Zonal Railway/IRCTC for a period of five years. The respondents have not

committed any error in resorting to clause 3.5.6. It was for the petitioner to perform her part of promise. Failure to perform her part of promise, attracts consequences under the tender.

5 We have considered the submissions canvassed by the learned counsel for parties. The petitioner indeed was awarded the work of catering as has been narrated above. It is a fact that the petitioner could not deposit the license fees and security deposit nor could further run a catering stall at the given location. The Court can take a judicial notice of the fact that on or about 23rd March, 2020, nationwide lockdown was declared in the country because of Covid-19 pandemic. The entire country was facing a torrid time. The means of communication, transportation came to a standstill. The railways also were not operated. The citizens in this period of complete lockdown were not even permitted to travel on the streets. In such a scenario, it cannot be expected of the petitioner and the respondents to proceed ahead with the contract.

6 The circumstances were beyond the control of a normal human being. Because of the supervening circumstances and the circumstances beyond the control of a normal human being, the contract could not be performed further. It is after the contract was

entered into the supervening circumstances came into existence. The act, after the contract was made became impossible of performance on 23rd March, 2020, at that point of time, the contract become void. The petitioner, in view of the complete lockdown and the notifications issued by the Government under the provisions of the Disaster Management Act, became unlawful of performance. If the petitioner would have commenced her catering stall at the given location, the same would have been unlawful in view of the notifications issued by the Government under the Disaster Management Act. As the railways has stopped running, the doing of business also would have become impossible.

7 As the contract had become impossible and unlawful of performance after the contract was entered into, at that point of time, the contract became void.

8 The petitioner cannot be faulted for the non-performance of her part of the contract. No reciprocal rights and obligations remained to be performed by the parties.

9 In light of the above, the order debarring the petitioner from participating in all catering contracts/licenses of any Zonal

Railway/IRCTC for a period of five years, cannot be sustained and is quashed and set aside.

10 We have restricted this order to the extent of debarring the petitioner for five years as the petitioner did not agitate as against the forfeiture of earnest money deposit.

11 Rule is accordingly made absolute. No costs.

[R. N. LADDHA, J.]

[S. V. GANGAPURWALA, J.]

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