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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.08.2021

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.NOS.17039, 17177 AND 17588 OF 2021

AND

W.M.P.NOS.18065, 18067, 18200, 18202,
18710 AND 18711 OF 2021

G.Bharathi

... Petitioner in
W.P.No.17039 of 2021

M/s.A.R.Caterers,
Rep. by Proprietor Mr.A.Ramesh
No.59, Shanthi Lavanya Nilaya Devasandra,
KR Puram,
Bangalore - 560 036.

... Petitioner in W.P.Nos.17177
and 17588 of 2021

.Vs.

1. The General Manager,
Head Quarters Office,
Southern Railway,
Park Town Office,
Chennai - 600 003.
2. The Principal Chief Commercial Manager,
Head Quarters Office,
Southern Railway,
Chennai - 600 003.
3. The Senior Divisional Commercial Manager,
Divisional Railway Manager Office,
Southern Railways, Salem Division,
Salem - 636 005.

... Respondents in all Wps

W.P.NO.17039 OF 2021:-

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records of the third respondent and quash the order dated 29.07.2021 bearing No. SA/C.79/SMU/15/06/MTP/165.



W.P.NO.17177 OF 2021:-

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records of the third respondent and quash the order dated 29.07.2021 bearing No.SA/C.79/42/SA/GMU/05/109.

W.P.NO.17588 OF 2021:-

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records of the third respondent and quash the order dated 29.07.2021 bearing No. SA/C.79/43/SA/GMU/05/419.

For Petitioners : Mr.V.S.Senthikumar
in all WPs

For Respondents : Mr.P.T.Ramkumar
in all WPs

COMMON ORDER

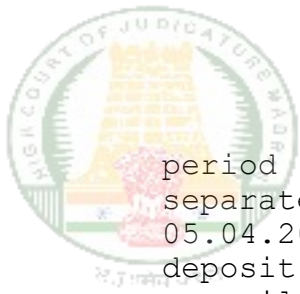
Challenging the orders dated 29.07.2021 passed by the third respondent, the present writ petitions have been filed by the petitioners.

2.The case in brief is as follows:

2.1 The petitioner in WP.No.17039 of 2021 participated in the tender dated 26.02.2020 for operating the catering stall on platform no.1 at 165 mts from Coimbatore end of Mettupalayam Railway Station for a period of five years; she was awarded the contract on 17.03.2021 at the rate of annual license fee of Rs.2,57,999/- under Scheduled Tribe quota; and she received the letter of award on 26.03.2021.

2.2 The petitioner in WP.Nos.17177 and 17588 of 2021 participated in the E-tender notice dated 12.02.2020 for operating the catering stall on platform no.5 at 109 mts and 419 mts respectively, from Jolarpet end of Salem junction for a period of five years; they were granted the letters of award at the annual licence fee of Rs.15,88,001/- and Rs.10,88,000/- excluding GST; and they received the letters of award on 05.04.2021.

2.3 As per the letters of award, the petitioners have to pay the security deposit and the annual licence fee within a



period of 15 days. Aggrieved over the same, they submitted separate representations dated 29.03.2021, 05.04.2021 and 05.04.2021, requesting the respondent to pay the security deposit and licence fee in quarterly basis, due to the prevailing pandemic situation. Without considering the same in a proper perspective, the third respondent passed the orders impugned in these writ petitions, thereby debarring the petitioners from participating in similar future contracts/licenses of all zonal Railways including IRCTC, for a period of 5 years duly forfeiting the earnest money deposits paid by the petitioners along with the tenders. Therefore, these writ petitions.

3. According to the learned counsel for the petitioners, due to the nationwide lockdown imposed to curb the spread of Covid-19 pandemic, the petitioners could not pay the security deposit and license fee, whereas the third respondent, instead of extending the time for payment of such charges, passed the impugned orders, debarring the petitioners from participating in further contract that may be floated by the respondent authorities, besides forfeiting the earnest money deposits made by them. Further, the said orders were passed without following the principles of natural justice. The learned counsel further submitted that based on the notification issued by the Ministry of Railways in August 2019, the respondents have extended certain concession in respect of similar contractors for payment of license fee once in three months. It is also submitted that in WP.Nos.3794 and 3802 of 2019 filed to quash the orders dated 20.12.2018 passed by the third respondent in respect of catering stall at Tambaram Railway Station, this court, by order dated 25.03.2019 disposed of those writ petitions, after having observed that 'debarring the petitioner for five years would certainly attract civil consequences and therefore, such punishment cannot be imposed without following the principles of natural justice'. For better appreciation, the relevant passage of the said order is extracted below:

"12. Needless to say that debarring the petitioner for five years would certainly attract civil consequences and therefore, such punishment cannot be imposed without following the principles of natural justice. Admittedly, except the last communication dated 20.11.2018, the petitioner was not issued with any further notice to show cause before debarring them. Therefore, this Court is convinced to set aside the impugned communications and remit the matter back to the respondents for reconsidering the matter once again and to pass fresh orders.



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13. Accordingly, these Writ Petitions are allowed and the impugned communications are set aside and the matter is remitted back to the respondents for reconsidering the whole issue, on merits and in accordance with law, as per the following terms and conditions:

a) The petitioner as well as the respondents shall treat the impugned communications dated 20.12.2018 as show cause notices for debarment.

b) The petitioner shall send his reply to the said notices within a period of two weeks from the date of receipt of a copy of this order.

c) On receipt of such reply, the 1st respondent shall pass fresh orders on merits and in accordance with law within a period of two weeks thereafter.

No costs. Consequently, connected miscellaneous petitions are closed."

Therefore, the learned counsel prayed for similar order in these writ petitions also.

4. On the above contentions, this Court heard the learned counsel appearing for the respondent railways, who submitted that the petitioner at the time of participating in the tender are fully aware of the fact that they have to remit the license fee annually, however, he failed to do so, citing pandemic situation. Therefore, the respondent authorities passed the impugned orders debarring the petitioners from participating in the future tender process for a period of five years and forfeiting the EMDs paid by them. However, the learned counsel fairly conceded the concessions granted to similar contractors in payment of the required charges in installments.

5. Heard both sides and perused the materials placed before this court.

6. Admittedly, the petitioners did not remit the security deposit and license fee, within the stipulated period, which resulted in the orders impugned herein.

7. According to the petitioners, due to pandemic situation, they are unable to pay the required fee for the contracts and hence, they submitted representations seeking extension of time and payment of fees in installments i.e., once in three months. However, the said representations were not considered by the respondent authorities and the orders impugned herein came to be



passed, debarring the petitioners from participating in the future tender process for a period of five years and forfeiting the EMDs paid by them, that too, without providing any opportunity of hearing to the petitioners, which in the opinion of this court, is in violation of the principles of natural justice.

8. In the order dated 25.03.2019 passed in WP.Nos.3794 and 3802 of 2019, as referred to above by the learned counsel for the petitioners, this court has set aside the similar orders passed by the third respondent and remanded the matter for fresh consideration. Further, the petitioner therein was directed to send its reply by treating the orders impugned herein as show cause notices. Since the issue involved herein is identical to that case, this court is inclined to apply the same to the present case as well.

9. Accordingly, all the three writ petitions are disposed of, by treating the orders impugned herein as show cause notices, to which, the petitioners are directed to submit their explanations with supportive materials, if any, within a period of two weeks from the date of receipt of a copy of this order. Upon receipt of such explanation, the third respondent shall consider the same and pass appropriate orders, on merits and in accordance with law, after affording due opportunity of hearing to the petitioners, within a period of two weeks thereafter. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

dhk

To

1. The General Manager,
Head Quarters Office,
Southern Railway,
Park Town Office,
Chennai - 600 003.
2. The Principal Chief Commercial Manager,
Head Quarters Office,
Southern Railway,
Chennai - 600 003.



3. The Senior Divisional Commercial Manager,
Divisional Railway Manager Office,
Southern Railways,
Salem Division,
Salem - 636 005.

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+3ccs to Mr.P.T.Ramkumar, Advocate, S.R.Nos.42369 to 42371

W.P.NOS.17039, 17177 AND
17588 OF 2021

CP (CO)
PBS/07/10/2021