



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2021

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.Nos.26973 and 26974 of 2021

M/s.Hyfa Catering ... Petitioner in both petitions
Vs.

- 1.The General Manager,
Head Quarters Office,
Southern Railway, Park Town Office,
Chennai 600 003.
- 2.The Principle Chief Commercial Manager,
Head Quarters Office, Southern Railways,
Chennai 600 003.
- 3.The Senior Divisional Commercial Manager,
Southern Railways, Salem Division,
Salem. ... Respondents in both petitions

Common Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records of the 3rd respondent of re-tender in Tender No.SA/C.79/MPS/TUP/02/504 and Tender No.SA/C.79/MPS/CBE/3 and 4/322 dated 15.11.2021 as illegal and quash the same.

For Petitioner in both petitions : Mr.Om Prakash,
Senior Counsel
Mr.T.M.Naidu and Co

For Respondent in both petitions : Mr.P.T.Ravikumar
Standing Counsel
for Railways

C O M M O N O R D E R

The petitioner has filed these writ petitions seeking issuance of Writ of Certiorarified Mandamus to call for the records resulting in the Impugned orders of the 3rd respondent dated 22.03.2021 in debaring the petitioner and forfeiting the EMD and quash the same and consequently direct the 3rd respondent to grant extension of time and implement the allotment orders of MSP stall to the Petitioner.



2. Mr.P.T.Ravikumar, learned Standing Counsel takes notice for the respondents. Since the issue involved in the present round of litigation is one and the same and on the consent expressed by the Learned counsel appearing for either side, these petitions are taken up for final disposal.

3. The case of the petitioner is that they had participated in tender ref.nos. SAC79 / 08 / CBE / MPS / 3 and 4 / 322 by quoting 48% for Coimbatore stall and in tender ref.No. SAC79 / 12 / TUP / MPS / 02/504, by quoting 67% for Tiruppur Stall and they were successful bidder vide award dated 19.03.2020, on condition that the security deposit for license for the awarded stall shall be deposited within 15 days from the date of receipt of the Letter of Award (LOA). While on the performance of LOA, from 24.03.2020, a sudden nation-wide lockdown was imposed by the Government due to COVID-19 pandemic and further while the COVID 19 infections were at its peak, the train services not been resumed in full, as on 23.12.2020. While being so, the 3rd respondent had issued a letter to remit the first year annual license fee and security deposit in compliance with the LOA and the petitioner vide reply dated 08.01.2021, requested the respondents to consider the prevailing extra-ordinary situation and to grant further time for compliance, since the petitioner was not able to meet the contractual conditions due to pandemic situation. However, the 3rd respondent vide letter dated 22.03.2021, rejected the request of the petitioner and had arbitrarily 'debarred' the petitioner and his firm from participating in similar future contracts / license of all zonal railways including IRCTC for a period of five years till 18.03.2026 and forfeiting the EMD paid along with tender. Aggrieved by the same, the petitioner had written to the 3rd respondent dated 31.03.2021 to relax the said order and thereafter, vide a reply dated 28.07.2021, the 3rd respondent had 'regrettably informed' that the petitioners' request is not considered. Furthermore, the petitioner had issued a clarificatory letters dated 29.07.2021 and 13.08.2021, for which no response was received till date. While awaiting a reply, the petitioner came to know about the writ petition in W.P.Nos.17039, 17177 and 17588 of 2021 pending before this Court, wherein the case of the petitioners therein are of similar grievances as that of the present petitioner and in the above said case, this Court on 24.08.2021 was pleased to grant relief to the writ petitioners therein, by treating the orders impugned as show cause notices and the petitioners therein were directed to submit their explanation with supportive material within a period of two weeks. Pursuant to the order, a fresh tender was uploaded on 15.11.2021 for the petitioner awarded shops, with closing date of the tender as 16.12.2021. Since the petitioner is debarred from participating in any tender, they were unable to participate in the said tender. Therefore, in the



light of the judgment of this Court, once again a representation was made to the respondents to consider the petitioner's request, for which no response was received. Hence, the petitioner left with no other option, is constrained to approach this Court by filing these Writ Petitions praying to quash the re-tender notification for the petitioners' awarded stalls.

4. The learned Senior counsel appearing for the petitioner submits that the 3rd respondent without considering the extraordinary situation prevailing during the COVID 19 pandemic, and further the fact that the regular train services not have been resumed, had passed the orders dated 22.03.2021, debarring the petitioner from participating in similar future contracts / licenses of all zonal railways for a period of 5 years, which itself is illegal and arbitrary and in clear violation of principles of natural justice, as the same was issued without affording an opportunity. In such situation, issuing re-tender notification and call for other persons for the very same stalls is not sustainable. However, the learned Senior Counsel on instructions submitted that the petitioner is ready to pay the entire amount of first year annual license fee and security deposit, as demanded vide proceedings dated 23.12.2020, within a period of 15 days and therefore, this Court may set aside the re-tender notification dated 15.11.2021 and may direct the respondents to accept the petitioners' payment and grant license to the petitioner for running the stalls.

5. The learned Standing Counsel appearing for the respondent also acceded to the undertaking given by the petitioner and further submitted that if the petitioner fails to remit the amount within the time as undertaken by him, no more indulgence could be shown to the petitioner.

6. This Court has carefully considered the rival submissions and also perused the materials placed on record.

7. The facts in the present case is not in dispute that the petitioner was awarded license to run two catering stalls at Coimbatore and Tiruppur Railway Station. It is true that one of the terms of the conditions stipulated in tender notification entitles the railway to debar the highest bidder for five years from participating in all catering contracts over Indian Railways including IRCTC, if he or she withdraw or fails to take up or to start the contract. It is also true that the letter of award issued to the petitioner dated 19.03.2020 reiterated such conditions stipulated in the tender notification. The fact remains that the petitioner has not paid the security deposit within the time originally granted and then extended by the respondents. However, due to the COVID 19 situation, the petitioner was not able to comply with the contractual



conditions. Since, the petitioner has not paid both the license fee and security deposit within the time stipulated, the orders debarring the petitioner from participating in the tender for the five years have been passed. Thereafter, a fresh tender was uploaded on 15.11.2021 for the petitioner awarded shops. It is the claim of the petitioner that since the petitioner was debarred from participating in the fresh tender, he approached this Court by way of this Writ Petition.

8. Considering the above facts and circumstances, this Court is of the view that admittedly, the petitioner has filed writ petitions in W.P.Nos.26968 and 26971 of 2021, challenging the proceeding of the 3rd respondent dated 22.03.2021, in debarring him from participating in similar future contracts / licenses of all zonal railways for a period of 5 years and this Court vide order dated 16.12.2021, had quashed the said proceedings and directed the petitioner to treat the communications dated 22.03.2021 as show cause notices for debarment and to send his reply to the said notices within a period of two weeks.

9. In view of the above and further taking into consideration the genuine request / undertaking of the petitioner to pay the annual license fee and security deposit, this Court is inclined to grant relief to the petitioner. Hence, the petitioner is directed to clear entire dues before the respondents on or before 30.12.2021. On receipt of such amount, the 3rd respondent shall pass appropriate orders to commence operation of those stalls. If the petitioner fails to remit the amount as undertaken by him, liberty is granted to the respondents to proceed further with the impugned order in the manner known to law.

11. Accordingly, these writ petitions are disposed of. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To
1.The General Manager,
Head Quarters Office,
Southern Railway, Park Town Office,
Chennai 600 003.



2.The Principle Chief Commercial Manager,
Head Quarters Office, Southern Railways,
Chennai 600 003.

3.The Senior Divisional Commercial Manager,
Southern Railways, Salem Division,
Salem.

+2cc to Mr.Tim.Naidu and Co., Advocate, S.R.No.67431, 67430
+1cc to Mr.P.T.Ram Kumar, Advocate, S.R.No.67730

W.P.Nos.26973 and 26974 of 2021

KM(17/12/2021)