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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.26968 and 26971 of 2021

M/s.Hyfa Catering ... Petitioner in both WPs  
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 WPs

Common Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus To call for the records resulting in the Impugned order of the 3rd respondent in File Nos. SR- SA0COMM (C79) / 60 & 61 / 2020-O/o CHOS / I / Sr. DCM /SA / SR dated 22.03.2021 debarring the petitioner and forfeiting the EMD, quash the same and consequently direct the 3rd respondent to grant extension of time and implement the allotment order of MSP stall vide LOA No. SAC79 / 08 / CBE / MPS / 3 and 4 / 322 and LOA No. SAC79 / 12 / TUP / MPS / 02/504, Dt. 19.03.2020 to the Petitioner.

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

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



## COMMON ORDER

The petitioner has filed these writ petitions seeking issuance of Writ of Certiorari and Mandamus to call for the records resulting in the Impugned orders of the 3<sup>rd</sup> respondent dated 22.03.2021 in debarring the petitioner and forfeiting the EMD and quash the same and consequently direct the 3<sup>rd</sup> 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 3<sup>rd</sup> 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 3<sup>rd</sup> 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 3<sup>rd</sup> respondent dated 31.03.2021 to relax the said order and thereafter, vide a reply dated 28.07.2021, the 3<sup>rd</sup> 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. 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.

4. The learned Senior counsel appearing for the petitioner submits that the 3<sup>rd</sup> 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 impugned order, which is illegal and arbitrary and therefore the impugned order is clear violation of principles of natural justice, as the same was issued without affording an opportunity and further debarring the petitioner from participating in similar future contracts / licenses of all zonal railways for a period of 5 years, is non est in the eye of law and hence prays for quashment of the debarred order dated 22.03.2021.

5. Further in similar situation, on an earlier occasion, this Court in W.P.Nos.17039, 17177 and 17588 of 2021, had passed an order, treating the impugned order as show cause notice and thereby the petitioners therein were given liberty to give explanation to the same within a period of two weeks. Since the issue involved therein is also similar to the present case on hand, the learned counsel prays for extension of same benefit to the petitioner herein also.

6. The learned Standing Counsel appearing for the respondent did not dispute the facts submitted by the learned counsel for the petitioner.

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

8. 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



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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 present impugned orders debaring the petitioner from participating in the tender for the five years have been passed.

9. There is no doubt that the respondents are having power and right to impose such punishment on the petitioner as per the terms and conditions. However, the question that arises for consideration in this case is as to whether such power was exercised by following the principles of natural justice by putting the petitioner on notice before imposing such punishment. The learned standing counsel for the railways submitted that the very condition imposed in the letter of award issued to the petitioner itself clearly indicates that such debarment will take place, if the petitioner fails to take up or to start the contract.

10. Needless to say that debaring 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 communication dated 23.12.2020, for remittance of license fee and security deposit, the petitioner was not issued with any further notice to show cause before debaring 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.

11. 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 directions:

a. The petitioner as well as the respondents shall treat the impugned communications dated 22.03.2021 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 3<sup>rd</sup> respondent shall pass fresh orders on merits and in accordance with law within a period of two weeks thereafter.

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Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

SK

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.

+1cc to Mr.T.M.Naidu & CO, Advocate, S.R.No. 67429

+1cc to Mr.P.T.Ramkumar, Advocate, S.R.No. 67729

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TE (17/12/2021)