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29.08.2023
Ct. No.10
b.das

WPA 15131 of 2023

Samim Ikbal Khan
Vs.
Union of India & Ors.

Mr. Saptarshi Roy
Mr. Arkadipta Sengupta
Ms. Kakali Das Chakraborty ...for the petitioner.

Mr. Kalyan Kr. Chakraborty ...for the respondents.

Exception used by the petitioner to the report in the form of affidavit submitted on behalf of the respondents is taken on record.

Heard learned counsels for the parties.

The petitioner is aggrieved by termination of the contract by the respondents even before the petitioner commenced operation in terms thereof.

Upon the petitioner being the highest bidder and depositing security amount to the tune of Rs.1,08,644/-, the contract was executed for a period of 2 years commencing from 5th July, 2023.

The petitioner received a message from the respondents on 16th June, 2023 stating that the contract had been cancelled by the authority. A fresh tender notice was published by the authority in respect of the same parcel van on 19th June, 2023.

Learned counsel for the petitioner submits that the contract was terminated without giving the petitioner an

opportunity of being heard in terms of clause 17.2 of the Freight Marketing Circular no.11 of 2022.

The respondents have alleged that on perusal of the documents of the petitioner, it was found that the petitioner had submitted requisite documents in the name of one Samim Ikbāl Khan instead of SI Express, Howrah, which is contrary to the policy of the Freight Marketing Circular no.11 of 2022.

The petitioner takes this Court to the definition of the word “Proprietary” as laid down in “Supreme Court on Words and Phrases” by R. P. Shetty, which demonstrates that proprietor is one who has the legal right of the exclusive title to anything which is synonymous with the owner.

According to the petitioner, the petitioner is the proprietor of the proprietorship firm SI Express and all the relevant documents including the registration certificate of the firm names the petitioner, Samim Ikbāl Khan as the proprietor of the firm. Therefore, the question of filing false or misleading documents before the authority does not arise.

In refuting the contention of the petitioner, learned counsel for the respondents submits that the contract was terminated in terms of clause 17.2 of the Freight Marketing Circular no.11 of 2022 since the documents filed by the petitioner were found to be contrary to the policy.

The documents submitted on behalf of the petitioner unanimously demonstrate that the petitioner is the proprietor of the SI Express which is a proprietary firm and such fact has also not been denied or disputed by the respondents.

The respondents have placed reliance on clause 17.2 of the Freight Marketing Circular no.11 of 2022 which mandates service of one month's notice prior to termination of a contract/agreement by the railway administration.

The respondents have failed to produce a scrap of paper to demonstrate that such notice was issued upon the petitioner in terms of the Circular.

The report in the form of affidavit submitted on behalf of the respondents is also silent as to on what basis the documents submitted by the petitioner were held to be false, misleading or malafide.

In fact, the documents appended to the exception submitted by the petitioner prima facie do not suggest any malafide practised by the petitioner or any dispute with regard to the identity of the petitioner.

It also transpires from the documents annexed to the exception that the petitioner has been operating in respect of two other contracts with the railway authority on the anvil of the same documents as used by him in connection with the present contract.

Besides one SMS sent by the railway authority stating that the contract has been cancelled by the Kharagpur Division-Commercial, no other communication was admittedly made to the petitioner prior to or even after termination of the contract.

A fresh tender has been floated by the authority with regard to the same parcel van on 19th June, 2023.

Upon consideration of the submission made on behalf of the parties and material on record, this Court is inclined to hold that since the contract of the petitioner has been terminated by the railway authorities without service of notice upon him, the termination order falls foul of clause 17.2 of the Freight Marketing Circular no.11 of 2022. Also, the respondents have failed to substantiate such termination in terms of clause 1.4 of the Circular. The order of termination having been passed in violation of the rules in place, is therefore, set aside/quashed. As a consequence, the tender notice issued by the authority on 19th June, 2023 is also set aside/quashed.

The writ petition is accordingly disposed of directing the concerned authority, being the 4th respondent herein, to revisit the issue in the light of the observation made in the body of this order and considering resumption of the contract in favour of the petitioner within six weeks from the date of communication of this order upon affording

reasonable opportunity of hearing to all the stakeholders including the petitioner, in accordance with law.

The decision taken by the authority shall be communicated to the petitioner within a week thereafter.

With the above observations and directions the writ petition being WPA 15131 of 2023 is disposed of.

However, there shall be no order as to costs.

Since no affidavit is invited, the allegations contained in the petition are deemed not to be admitted.

Urgent certified website copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Suvra Ghosh, J.)