



O.A.Nos.614, 615 & 616 of 2024

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RESERVED ON
12.09.2024

PRONOUNCED ON
23.10.2024

K. KUMARESH BABU, J.

These Applications have been filed to grant an order of ad interim injunction restraining the respondent from giving effect or implementing in any manner whatsoever the letter dated 22.02.2024 bearing No.SR-HQ/COMM (YSA)/1/2024 (E 422672) issued by the respondent.

2. The brief facts, out of which this dispute arise is that the respondent herein had floated a tender for providing catering services for six pair of Vandae Bharath Trains in which the applicant had been the successful bidder. A Letter of Acceptance dated 15.04.2024 had also been issued in favour of the applicant being the highest bidder and in furtherance to the said letter of acceptance, the applicant has also deposited a sum of Rs. 6,81,45,000/- towards the license fee payable towards the Letter of Acceptance. Pursuant to the payment of the said licence fees, three trains were handed over to the applicant on 12.07.2024 and the applicant had commenced his services. A third party who was a competitive bidder had moved this Court in W.P.No.21002 of 2024 seeking to quash the Letter of Acceptance and also sought for the direction to the Railway Board to take action against the



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applicant and its constituents by banning any business dealings of the applicant and also seeking for debarring and blacklisting of the applicant and its constituents from participating in future tenders for at least 5 years. The said Writ Petition was disposed of by giving a direction to the respondents to consider and dispose of the same within a period of one week, however after providing an opportunity to both the applicant and the said third party. Pursuant to the said order, the respondent had issued a letter to the applicant enclosing a copy of the order of the Writ Petition filed by the said third party and had called upon the applicant to furnish all facts and information.

3. It is pertinent to note that the said Writ Petition had been filed alleging that the applicant herein had suppressed the material facts of its involvement in a criminal offence which is supposed to be disclosed by the applicant while submitting its tender documents by asserting the same in an affidavit and that the applicant had averred in the said affidavit that there was no criminal case against it which would entitle the cancellation of the Award of contract and also blacklisting of the applicant for the future tenders. The said averment was supported by a fact namely the involvement of the applicant in a criminal case registered by CBI. Pursuant to the said show cause notice, the applicant had submitted his explanation indicating that it



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was not necessary for the applicant to disclose the events that had happened before 5 years. In view of the guidelines issued in the integrity pact of the circular dated 14.06.2023, which indicates that the bidder must disclose about any transgressions with any other public/government organization, only for the last three years to be reckoned from the date of bid submission. However, by a order dated 28.08.2024, the respondent had called upon the applicant to submit its explanation as it was prima facie of the view that there has been a suppression in the sworn affidavit. Thereafter, the applicant in response to the order dated 28.08.2024 sought to provide an opportunity before passing any orders. The present applications have been filed for the aforesaid reliefs.

3. Heard Mr.Sathish Parasaran, learned Senior Counsel appearing in O.A.No.614 of 2024, Mr.R.Sankara Narayanan, learned Senior Counsel appearing in O.A.No.615 of 2024, Mr.Aravind Pandian, learned Senior Counsel appearing in O.A.No.616 of 2024 on behalf of Mr.Pawan Jhabakh, learned counsel appearing for the applicant in all the applications and Mr.Ar.L.Sundaresan, learned Additional Solicitor General, assisted by Mr.V.Chandrasekaran, learned SPC, appearing on behalf of the respondent in all the applications.



(a) Submissions of Mr.Sathish Parasaran, learned Senior Counsel

appearing on behalf of the applicant in O.A.No.614 of 2024:-

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(i) The learned Senior Counsel would rely upon Article 17 of the YSA Model Agreement relating to the termination of contract and would contend that for providing a false information under the contract, termination have been envisaged. The termination could also be made and that on such an event, the security deposit would alone be forfeited. He would submit that the alleged criminal case was well within the knowledge of the Railway administration and therefore, the Railway administration cannot be said to have been prejudiced by the alleged suppression. He would further contend that the alleged conspiracy is said to have taken place in the year 2011 and even thereafter, the applicant had been providing catering services to various trains both under the direct management of the Indian Railways and also through one of its arm namely the IRCTC and there has been no complaint whatsoever on the services that had been provided by the applicant.

(ii) He would further contend that Clause 21 of the Model Agreement provides for a Dispute Resolution mechanism which includes the interpretation of the contract. When such a mechanism is available under the Model Agreement, without referring the dispute to Arbitration, the respondent



ought not to have issued a show cause notice.

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(iii) In that context, he would also rely upon of the judgment of the Hon'ble Apex Court in the case of ***Ravindra Kumar Vs State of Uttar Pradesh*** reported in ***(2024) 5 SCC 264*** and contend that every non-disclosure will not amount to disqualification. Each case depend on the facts and circumstances that prevail thereon and the Court will have to take a holistic view. Applying the ratio laid down by the a Hon'ble Apex Court in the aforesaid case to the present case, the learned Senior Counsel would contend that the suppression of this alleged facts which was well within the knowledge of the Railway administration would not cause any prejudice to the respondents, as the applicant had been Awarded with various contracts by the Railway administration as well as IRCTC, even subsequent to the alleged criminal complaint for more than a decade. In such circumstances, he would contend by applying the law laid down by the Hon'ble Apex Court, the respondent cannot initiate any action for the non-disclosure alleged to have been made by the applicant. Hence, he would seek an injunction as prayed for.

(ii) Submissions of Mr.R.Sankara Narayanan, learned Senior



Counsel appearing on behalf of the applicant in O.A.No.615 of 2024:-

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(i) He would submit that the respondent was estopped from contending that there has been a non-disclosure. He would submit that the respondent was aware of the alleged criminal complaint. He would also submit that for the complaint that had been registered by the CBI, the Railway administration on the advice of the CVC had withheld the sanction to be granted for prosecuting its employees who were named by the CBI in its FIR. Thereafter, the Railway administration granted a sanction which came to be challenged by the employees of the Railways and the Hon'ble Delhi High Court had quashed the sanction and also the cognizance taken by the criminal Court and remanded the matter back to the Railway administration to pass orders afresh on the issue of sanction. Again, thereafter, after detailed deliberations, the Railway administration had taken a decision not to grant sanction. He would contend that the offences that had been charged against the applicant and the others was for an offence under Section 420 read with 120 B of IPC and the provisions of Prevention of Corruption Act. He would submit that when no sanction had been accorded to by the Railway administration, the entire FIR would have to fall as the CBI cannot proceed alone against the applicant. He would further contend that there has been no false affidavit filed by the applicant. He would submit that the tender conditions stipulates that an



affidavit had to be submitted by the applicant particularly under Clause 5 which stipulate that the tenderer should affirm on oath that he had not been convicted in a criminal case or there is no case pending for criminal activity in any Court of law.

(ii) In that context, he would submit that there is no criminal case in any Court of law as no cognizance has been taken yet by any criminal Court. The challenge to the said complaint is now pending before the Hon'ble Apex Court in which an interim stay of further proceedings have been granted by the Hon'ble Apex Court which would tantamount that there is no criminal case pending for adjudication.

(iii) He would also draw attention to the judgment of the Hon'ble Division Bench of the Calcutta High Court in a similar claim made by the third party against the applicant himself on the very same ground and the learned Solicitor General had by relying upon the integrity pact have submitted that what was expected to be disclosed by the prospective tenders for criminal case that was pending within a period of three years on the date of notification of tender and not the cases relating to the earlier period. Recording the said submissions, the Hon'ble Single Judge of the Calcutta



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High Court had rejected the petition filed by a similarly placed complainant and the Hon'ble Division Bench had also upheld such rejection. Unfortunately, the learned Single Judge without even ordering notice to the applicant, even at the admission stage, had directed the respondent to consider the claim of the third party. Without appreciating the circumstances, namely the judgment of the Calcutta High Court, a show cause notice was issued to the applicant and the applicant had submitted his detailed submissions. But, however, the respondent who was directed to consider the claim of the third party had taken a decision that there has been a suppression of material facts and a false affidavit had been filed and having concluded that the contract is liable to be terminated with forfeiture of security deposit and blacklisting the applicant for a period of 5 years, had formally issued a notice which would be in the nature of hood-winking the principles of natural justice.

(iv) He would also supplant the arguments of Mr.Sathish Parasaran, learned Senior Counsel that when the disputes could only be resolved by way of Arbitration, which also involves interpreting the terms and conditions of the model agreement and the tender document, the respondent cannot unilaterally on administrative side seek to undo the terms of contract



prejudicing the rights of the applicant. He would also rely upon the judgement of the Hon'ble Apex Court in the case of ***J.G.Engineers Pvt. Ltd Vs Union of India and another***, reported in ***2011 5 SCC 758***, and in the case of ***Institute of Chartered Accountants of India Vs L.K.Ratna and others***, reported in ***1996 4 SCC 537***. Hence, he would seek this Court to pass orders.

(c) Submissions of Mr.Aravind Pandian, learned Senior Counsel appearing on behalf of the applicant in O.A.No.615 of 2024:-

(i) He would submit that factually the railway administration itself had taken a decision that there was no criminality as alleged by the CBI in its FIR which does not warrants any sanction for prosecution of its officers. He would submit that the entire allegation in the FIR is that the various contractors including the applicant had supplied packaged drinking water other than 'Rail Neer' provided by the Railway administration leading to the loss of the Railway administration. The Railway administration while refusing to grant sanction had recorded a factual basis, firstly there is no loss to the Railway administration and that there has been shortage of supply of 'Rail Neer' for which the contractors have been granted permission, to supplement the shortage of packaged drinking water by procuring same in the



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open market and therefore, there is no criminality in the conduct of the applicant. He would submit that such a pending criminal case was well within the knowledge of the railway administration and therefore, not stating in the affidavit will not amount to suppression of facts disentitling the applicant from participating in the tender or disqualifying the applicant from the tender process. He would further submit that tender condition do not stipulates such suppression of material facts or involvement in a Criminal case would disqualify a person in participating in the tender. He would further submit that an action at the instance of a third party who was an unsuccessful bidder having lost to the applicant, would have to be dealt carefully by the respondent. He would submit that there has been no complaint of deficiency of service at the hands of the applicant in almost 2 decades of his contract with the Railway administration and therefore, he would submit that pending an arbitration proceedings no action could be initiated against the applicant only on interpretation of the terms and conditions of the contract by an arbitrator. The respondent should not be permitted to interpret the terms to its whims and fancies and therefore, he would seek the interim injunction as prayed for.

(d) Common arguments of Mr.Ar.L.Sundaresan, learned Additional

Solicitor General in all applications:-



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(i) At the outset, he would submit that the Section 9 petition itself is not maintainable as according to him, the agreement itself had not been entered between the parties and only a Letter of Acceptance had been issued. Therefore, according to him there is no clause for arbitration or arbitration agreement that had been entered between the parties for the applicant to invoke the provisions of Section 9 of the Arbitration and Conciliation Act, 1996.

(ii) He would draw attention of this Court to the terms and conditions of the tender document which in extenso implies a person seeking for the tender to disclose an affidavit, details of conviction or a pending criminal case. He would submit that the applicant had given a statement that he had not been convicted or that he had not been acquitted against which an appeal is pending, but he had not disclosed the pendency of a criminal investigation against him in an FIR filed by the CBI in which the SLP against the order of refusal of discharge is pending. Therefore, dependency of a SLP according to him would amount to a pendency of a case relating to criminal activity in a Court of law and therefore, he would submit that such suppression of material facts would lead to filing of a false affidavit as required under the tender



conditions for which the contract of the applicant is liable to be terminated, apart from forfeiture of security deposit and barring the applicant and subsidiaries from participating in any future tenders for a period of 5 years.

(iii) He would further submit that the present procedure had been adopted pursuant to the directions issued by the Hon'ble Single Judge of this court and any injunction order passed by this court will tantamount to granting a stay of Mandamus granted by the learned Single Judge of this Court and therefore, the injunction applications ought to be dismissed by this Court. Only after any order is passed by the Authority, namely the respondent, a cause of action to the applicant to approach the Court in the manner known to law would be available. He would reiterate the submissions that the applicant would not be entitled to challenge this show cause notice and prevent the lawful authority vested with the respondent under the terms and conditions of the tender.

(iv) He would further contend that the respondents being the author of the tender documents only has a right to interpret the terms and conditions stipulated by it and the court should be slow in interpreting such terms and conditions. He would also rely upon the judgement of the Hon'ble Apex



Court in the case of *State of Madhya Pradesh and another Vs Uttar Pradesh*

State Bridge Corporation Ltd and another reported in **2022 16 SCC 633** and

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contend that the H'on'ble Apex Court had held that the criminal offence even though acquitted, has to be disclosed as required under the tender conditions and further interference in such contractual matters by the court would have to be restricted as they fall into the realm of commercial contracts. He had also produced the order of the Hon'ble Delhi High Court, wherein the claim of the applicant to quash the FIR had been negated by holding that there has been a loss to the Railway administration due to the conduct of the parties.

(v) He would further submit that the integrity pact cannot be applied to the tender conditions to the present case and therefore, he would submit that the reliance placed upon by the applicant with regard to the judgement of the Hon'ble Calcutta High Court cannot be applicable to the present facts of this case. According to him one of the tender conditions is that if there has been a misrepresentation or suppression of facts disclosure of incomplete affidavit statement of forged or documents, then the same would amount to fraudulent tactics which would entitle the forfeiture of security deposit apart from debarring the bidder or license from participating in any future bids for



a period of 5 years and would also entitle the railway administration to cancel the lease. In that context, he had relied upon the meaning of corrupt and fraudulent practice that had been envisaged in the tender notice and submitted that the Railway Administration had powers to take appropriate action. In such an event, he would therefore seek dismissal of these applications and also seek permission of this court for the respondent to proceed further pursuant to the direction issued by this court in WP.No.21002 of 2024.

5. I have considered the submissions made by the learned Senior Counsels appearing for the respective parties and had perused the materials available on record.

6. The issue involved in these applications is mainly with regard to the allegations of suppression of material facts of involvement of the applicant in a criminal case. I have read the tender documents as also the model agreement which is to be signed by the successful bidder on completion of terms and conditions of the letter of acceptance. Various parameters have been prescribed including an affidavit to be filed by the bidder as given in the Annexure-VII to the tender documents. A perusal of Annexure-VII, which is the format of affidavit to be submitted by the bidder particularly Clause 5



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implies that the bidder should affirm in the affidavit that the bidder had not been convicted in a criminal case or that there is no case pending for criminal activity in any Court of law. The term '*pending in a criminal Court of law*' had been argued at length by the learner senior counsels for the applicant, would only mean a case in which the court had taken cognizance and is pending adjudication in its file and not a case which is at a stage of FIR and no cognizance is taken by the Court.

7. On the other hand, it is the case of the learned Additional Solicited General that against the FIR in a court of law there is a challenge to the FIR and therefore there is a case pending in a court of law which ought to have been disclosed by them. Further Clause 22 of the very same affidavit contains that the bidder has to affirm that if the contents of the affidavit is found to be false it could lead to the termination of the contract, forfeiture of security deposit and banning of the business dealings with the bidder.

8. Article 6 of the model agreement which forms part of the tender document deals with the representation and warranties of the service provider. A reading of the said representation and warranties prima facie satisfies this Court that what is so to be represented by the bidder should not



have a material adverse effect or its ability to perform its obligation under the agreement.

9. It is the case of the applicant that there will be no prejudice that would be caused to the respondent in not disclosing the said fact in the affidavit and the fact of the pending of a criminal case which was registered in the year 2015 for acts that had been committed in the year 2011 was well within the knowledge of the Railway administration as because the Railway administration itself while refusing to grant sanction had held that there is no loss to the Railway Department or that there is no conspiracy between its Officers and the contractors including the applicant, as there was a shortage of supply of packaged drinking water by the Railway administration . This Court will have to be restrain itself from even making any comment on the said averments made by the respective parties as the issue is pending consideration.

10. It is also to be noted that the applicant have been extending its similar services even after filing of the FIR to the very same Railway administration through itself and its arm namely IRCTC for the preceding years that too satisfactorily. I am of the view that no prejudice will be caused



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to the respondent in allowing the applicant to continue in providing the services till an Arbitrator decides the issue of interpreting the Clauses of the tender document and the Model agreement in respect of the extent of disclosure that is to be made by the intending bidder or the successful bidder by interpreting the tender documents and the model agreement as a whole. I am also not entering upon to interpret such documents at this preliminary stage and it is to be left open to the parties to agitate their claim in the manner known to law.

11. It is true that the author of the documents has a right to interpret and the Courts will have to go by such interpretation. However, I am of the view that the interpretation that is sought to be given by the Railway administration by reading Clause 5,22 and 23 of the affidavit in conjunction with Section 3 of the tender document without reading the same in conjunction with Article 6 of the document is right or wrong would have to be decided by the Arbitrator after hearing the parties as even the interpretation of the terms of tender documents also has be vested with the sole arbitrator. A petition under Section 9 is only to preserve the subject matter of the arbitration and not to resolve the issue out of which the application arise.



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12. It is true that this Court had granted a Mandamus, directing the respondent to dispose of the representation given by the third party/ unsuccessful bidder and that in pursuant to the Mandamus, this notice had been issued by the respondent. A reading of the order of Mandamus would indicate that the respondent was bound to dispose of the same within a period of one week. Eventhough, an initial notice had been given on 28.08.2024, the respondent has not complied with the time line. A subsequent notice had been issued by the authority who had not been issued with the Mandamus. A reading of the said communication dated 28.08.2024 would indicate that the respondent has already precluded the issue based upon their own interpretation. Since, this Court's feels that Clause for Arbitration includes interpretation of the terms of the documents, it would be better for the respondent to refer the matter for Arbitration for interpreting the terms of the agreement and then proceed to initiate appropriate action as per the said terms of interpretations by an Arbitrator and it is safe for the administration to not to proceed based on their own interpretation that too when the interpretation had been challenged by the applicant herein. If the respondents are allowed to comply with the Mandamus issued by this Court, I am of the view that the same if interpreted otherwise by the Arbitrator in a subsequent proceedings, it would cause irreparable loss and damages to the applicant and it is the



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respondent who would have to quantify such loss and damages by way of compensating the applicant which would also prejudice the respondent and the public exchequer. As the income of the applicant is from providing services to the general public and the subsidy provided by the Central Government. However, if the interpretation goes against the applicant, the administration can also initiate appropriate action against the applicant. Till such time, the applicant can be allowed to continue to provide services as per the letter of Acceptance, since there is no deficiency of similar services that had been rendered by the applicant atleast for the past two decades.

13. In such view of the reasonings and findings, I am of the view that for the present the respondents shall not proceed any further, pursuant to the notice dated 28.08.2024 till the learned Arbitrator enters upon the dispute and interpretation of the tender conditions and Model Agreement appended to the tender documents are made. The parties are requested to make an endeavour to appoint an Arbitrator to resolve the dispute at the earliest.

14. In terms of the above order, these applications are disposed of.

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Index : Yes/ No
Speaking/ Non-speaking order
Neutral Citation : Yes/ No



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