
(2012) 02 MAD CK 0101

In the Madras High Court

Case No : Writ Petition No's. 15241 and 15242 of 2007

C.R. Manikandan

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 06-02-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 35, 35(2), 35A, 35B
Constitution of India, 1950 — Article 14, 226

Citation : (2012) 02 MAD CK 0101

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : V.C. Janardhanan, for the Appellant; V. Haribabu, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Mr. Justice K. Chandru

1. These two writ petitions are filed by one and the same person. In W.P. No. 15241/2007, the petitioner seeks to challenge the tender

notification dated 27.03.2007, as published in Daily Thanthi newspaper dated 08.04.2007 and after setting aside the same, for a direction to the

respondents to abide by the Railway Board's policy and the earlier order passed by this Court in W.P. No. 21688 of 2004 dated 20.07.2005, to

maintain the existing contractors by six months extension till such time guidelines are framed for ""Clearing and Forwarding Agency on Parcel

Handling"" by proper authority. Writ petition in W.P. No. 15242/2007 was filed challenging the guidelines issued by the railways in respect of

parcel handling contract framed by respondents 1 to 4.

2. Both writ petitions were admitted on 25.04.2007. Pending the writ petitions, this Court granted the following interim order :-

3. Considering the facts and circumstances of the case, suffice it to pass the following order:

(i) the Railway authorities are directed to take appropriate decision for finalizing the guidelines for grant of clearing and forwarding agency for the

handling of parcels within four weeks from the date of receipt of copy of this order;

(ii) on such finalization of guidelines, appropriate orders shall be passed in the matter of issuance of license for clearing and forwarding agency in

Coimbatore Junction Railway Station, Palghat Division, Palghat within two weeks therefrom;

(iii) the extension of license granted to the petitioner in W.P. No. 21688 of 2004 by proceedings dated 18.4.2005 shall be subject to the decision

in Clauses (i) and (ii), referred to above; and

(iv) there shall be an order of status-quo till a final decision is taken as per clauses (i) to (iii), referred to above.

He further submitted that since the directions contained in Clause (ii) of the above said order has not been complied with by the Railway Board,

Status quo as ordered in Clause (iv) of the said order has to be maintained.

2. The said submission of the learned Senior Counsel prima facie appears to be acceptable. Hence, there shall be an order of interim stay and

interim injunction till 12.06.2007. Post on 9.6.2007.

3. Aggrieved by the grant of interim order, one B. Balasubramaniam filed an impleading application in W.P. No. 15241/2007. In the affidavit filed

in support of the writ petition, he had stated that in the State of Kerala two divisions were entrusted with handling the work of clearing and

forwarding parcel handling through tenderers. Thirussur, Alwaye, Ernakulam, Alappuzhai, Kollam and Thiruvananthauram stations come under

Thiruvananthauram Division. Coimbatore, Mangalore, Shoranur and Kozhikode come under the Palakkad division. One Ravindran, who was a

contractor entrusted with the work of parcel handling for a period of three years, approached the High Court of Kerala seeking for continuance of

his tender. In that writ petition, the said Balasubramaniam was also made as a party. The High Court of Kerala in W.P. (Civil) No. 5408/2007,

after hearing both the parties vacated the interim order obtained by the said Ravindran. It is the contention of Mr. Balasubramaniam that the writ

petitioner was fully aware of the order passed by the Kerala High Court. By obtaining interim orders, he was continuing for years together without

permitting the Railways from giving tenders pertaining to parcel handling which was to be given once in three years. The Railways have also not

shown any interest in vacating the interim order. The impleading petition is yet to be ordered.

4. The Railways after waking up from their deep slumber, filed two applications in M.P. Nos. 1/2012 and 2/2012, seeking to vacate the interim

order which was in force for the last five years. The application for vacating the interim stay was supported by a counter affidavit filed by the

Senior Divisional Commercial Manager, Southern Railway. In that the contentions raised by the petitioner in his two writ petitions were

controverted. They had also filed a typed set containing the letters issued by the railway Board including the guidelines and conditions for giving

parcel handling contract.

5. It must be noted that so far the petitioner has come to this Court with five writ petitions. The petitioner, in W.P. No. 21688 and 24345/2004,

challenged the tender notice published in Tamil Daily ""Dinakaran"" dated 19.03.2004 calling for tender for grant of license for clearing and

forwarding agency in the Coimbatore Junction Railway Station, Palakkad Division, Palakkad. In the connected writ petition in W.P. No.

24345/2004, it was his claim that in spite of submitting a lowest quotation, the contract was not awarded to him but was given to third parties in

respect of Coimbatore Junction Railway Station. He seeks to set aside the award of license. Both writ petitions were disposed of a by common

order dated 20.07.2005 by P.D. Dinakaran, J. (as he then was). In paragraph 3, it was observed as follows :-

3. Considering the facts and circumstances of the case, suffice it to pass the following order :-

(i) the Railway authorities are directed to take appropriate decision for finalizing the guidelines for grant of clearing and forwarding agency for the

handling of parcels within four weeks from the date of receipt of copy of this order;

(ii) on such finalization of guidelines, appropriate orders shall be passed in the matter of issuance of license for clearing and forwarding agency in

Coimbatore Junction Railway Station, Palghat Division, Palghat within two weeks therefrom;

(iii) the extension of license granted to the petitioner in W.P. No. 21688 of 2004 by proceedings dated 18.04.2005 shall be subject to the decision

in clauses (i) and (ii), referred to above; and

(iv) there shall be an order of status-quo till a final decision is taken as per clause (i) to (iii), referred to above.

(Emphasis added)

6. Thereafter, the petitioner filed another writ petition in W.P. No. 44394/2006. He had filed the writ in the nature of mandamus directing the

Railways to consider his extension request and till such time it was considered, the authorities are to be restrained from interfering with his

continuance of the parcel handling contract. That writ petition was disposed of by M.E.N.Patrudu, J., on 04.12.2006. The learned Judge refused

to accept the contention of the Railways that in a policy matter, the Court cannot interfere. In paragraph 8, the learned Judge gave the following

directions :

8..... In the Para 6 of the counter affidavit filed by the respondents, it is stated that as per the guidelines and policies, the respondents proposed to

clear the parcel handling at Coimbatore Junction Railway Station and once the decision is taken to implement the guidelines system of handling

parcels as per the new guidelines, the continuance of the petitioner does not arise. Thus it is clear that the decision is not taken to implement the

guidelines and system of handling parcels as per the new guidelines. As the new guidelines are not introduced, till such time, the petitioner is entitled

to enjoy the status-quo as per the Order stated supra with regard to earlier contract.

(Emphasis added).

7. Pursuant to the above order, the Divisional Officer, Southern Railways, by his communication dated 19.02.2007 extended the petitioner's

license till 16.07.2007. The petitioner, thereafter, sent a letter dated 24.02.2007 seeking for extension till guidelines are formulated and he also

relied upon the order passed by this Court in W.P. No. 21688/2004 dated 20.07.2005.

8. In the meanwhile, the Commercial Branch of the Southern Railway in their

Palakkad Division issued a tender notification calling for awarding contract for handling parcels at Coimbatore station. Approximate tender value was fixed at Rs. 24,62,561/-. The last date for submission of the tender was on 03.05.2007. Guidelines for conditions for parcel handling contract was also issued by the Railways. Challenging the notification as well as the guidelines issued, the present writ petitions came to be filed and as noted already, interim orders have been obtained.

9. Even during the pendency of these two writ petitions, the petitioner filed yet another writ petition in W.P. No. 23885/2010 seeking to challenge the tender notification dated 05.10.2010. In that writ petition, identical contentions were raised viz., that the railways were flouting the orders passed by this Court and they have not framed appropriate guidelines and that the petitioner was entitled for continuation of the contract.

K.Suguna, J. by an order dated 29.10.10 dismissed the writ petition. In paragraphs 5 and 6, the learned Judge observed as follows :-

5. The petitioner challenges the impugned tender notification only based on the orders dated 20.07.2005 and 04.12.2006 passed by this Court in

W.P. Nos. 21688 and 24345 of 2004 and W.P. No. 44394 of 2006 respectively which have been extracted above. Admittedly, these relate to

Coimbatore Stations, whereas, the impugned tender notification relates to 10 stations including Mangalore Station. Apart from this, the other stand

of the Learned Counsel for the petitioner is that without framing guidelines for the clearing and forwarding agency, fresh tenders should not be

called for and in view of the earlier interim order of status quo, he should be allowed to continue. As far as this stand of the Learned Counsel for

the petitioner is concerned, this Court cannot direct the respondents to compile fresh guidelines for clearing and forwarding agency and if the

authorities are under the impression that fresh guidelines for clearing and forwarding agency have to be framed, it is for them to take a decision and

this Court cannot insist upon to them to issue fresh guidelines. As far as the stand of the Learned Counsel for the petitioner that the petitioner is

doing the same work and only with a view to eliminate him, the impugned tender notification has been issued is concerned, I am not able to accept

this stand of the Learned Counsel for the petitioner. Admittedly, the contract entered into with the petitioner was already over in 2004 itself and

time extension was given to him and as rightly pointed out by the Learned Counsel for the respondents, by order dated 10.08.2010, the

petitioner's contract was temporarily extended up to 22.11.2010 or till the finalization of the fresh contract whichever is earlier. As such, now,

based on the orders passed by this Court which have been referred to above, the petitioner cannot claim that the impugned tender notification has

to be quashed and for ever, he should be allowed to carry out the contract awarded to him.

6. Consequently, I do not find any merit in the writ petition and it is liable to be dismissed. However, the petitioner is at liberty to participate in the

fresh tender selection process also and in the event of the petitioner not coming out as a successful bidder, the respondents are directed to permit

him to continue with his contract till 30.11.2010. This extension of time is granted to the petitioner, taking into account the submission made by the

Learned Counsel for the petitioner that the petitioner has engaged nearly 200 labourers for the execution of this work and all of a sudden, if they

are thrown out on the eve of the forthcoming festival, it will be a setback on them.

(emphasis added)

10. In normal circumstances, in view of the dismissal of the writ petition of the year 2010, the present two writ petitions filed in the year 2007 are

to be dismissed as infructuous. However, Mr.V.C.Janarthanan, Learned Counsel for the petitioner insisted that inasmuch the earlier order passed

by this Court was not complied with, he is entitled to maintain these two writ petitions. His limited prayer is not to challenge the tender notification

but the formulation of guidelines by an incompetent authority.

11. In the affidavit filed in support of the writ petition, vague allegations were made about the action of Railways and that it had caused loss of Rs.

15 lakhs in Coimbatore Railway Station alone. Loss will arise on account of the comparison with quantum of business done by the petitioner,

which was at Rs. 9 lakhs. But the tender was quoted for Rs. 24 lakhs. Similar percentage of loss are likely to be caused in all stations for which

tenders were called for. In essence, by projecting so called public interest, the petitioner had obtained interim orders to perpetuate his private

interest.

12. In the counter affidavit filed in support of the vacate stay application, it is stated that pursuant to the order passed by this Court, guidelines and conditions for parcel handling were framed and were issued. The Railway Board by their letter dated 18.10.2006 (a copy of the letter is also enclosed in the typed set filed by the railways at page 23) itself had stated that the Zonal Railways need not seek for the Railway Board's approval in such matters. Therefore, the guidelines were finalized by the respondents. It was only on the finalization of such guidelines, appropriate steps were taken up for calling tenders and consequential issuance of the licenses. Subsequently, the Ministry of Railways (through the Railway Board), took a policy decision and the same was communicated by a letter of the Railway Board dated 24.04.2009, (a copy of which is found enclosed at page 25 of the typed set of papers). The communication sent by the Railway Board which arises out of clarification sought for by the Southern Railway dated 24.04.2009 reads as follows:-

1. Railway Board have not issued any directives or policy guidelines for appointment, working, termination, extension and renewal of "Clearing & Forwarding Agents" at parcel offices;
2. During the year 2000, it was decided to streamline the activities of the "Clearing & Forwarding Agents" by formulating policy on it. As the formulation of policy was under consideration, it was advised to the zonal railways not to renew licences of Clearing & Forwarding Agents" beyond six months or till finalization of policy. Later on, it was decided by the Board, not to issue any policy for Clearing & Forwarding Agents" as they are not working on behalf of Railways.
3. Presently, Railways have introduced leasing of parcel space in the Assistant Guard's Cabins (AGCs)/Brakevans (SLRs)/Parcel Vans (Vps) which is on a periodical contract as such it is felt that there is no need for any Clearing & Forwarding Agents" in parcel services.

A copy of the said communication was forwarded to all the Chief Commercial Managers, Indian Railways.

13. In view of the stand taken by the respondents, the petitioner's contention cannot be countenanced by this Court. In the matter of notice inviting tender (NIT), unless the conditions are so arbitrary and violative of Article 14 of the Constitution of India, Court's power to interdict such a

decision in a writ petition under Article 226 of the Constitution of India is not legal and proper. The petitioner has been filing writ petitions

periodically right from the year 2004. Each time, he had put a obstacle on the respondents, in granting licenses to the parcel handling services. The

petitioner's allegation that there will be heavy loss to the railways is projected only to obtain interim orders from this Court. this Court is of the

view that no case is made out by the petitioner since decisions were taken at appropriate quarters in accordance with the rules and regulations.

14. The other allegation that the Railways had disobeyed orders passed by this Court made on 20.07.2005 is also not borne out by records.

Further, identical contentions have been projected before this Court in W.P. No. 22885/2010. In any event, this Court does not find any prima

facie case made out to interfere with the guidelines framed by the Railways or in its calling for tender for issuance of parcel handing work.

15. In the result, both the writ petitions are dismissed with costs. Consequently, M.P. Nos. 1 to of 2007, 1 and 2 of 2012 are also dismissed.

16. While CPC provides for cost to be imposed, it is the discretion of the Court to fix the quantum of costs. Section 35-A and B were introduced

by Act No. 104/1976 providing for compensation in respect of false or vexatious claims or defence and also cost for causing delay. The Supreme

Court very recently in its decision in Sanjeev Kumar Jain Vs. Raghubir Saran Charitable Trust and Others, , impressed upon the Courts in this

Country to keep in mind the amendments made to CPC in this regard. It will be worthwhile to reproduce the following passages found in

paragraphs 27, 28 and 31.

Strict enforcement of Section 35(2) CPC :-

27. The discretion vested in the courts in the matter of award of costs is subject to two conditions, as is evident from Section 35 of the Code:

(i) The discretion of the court is subject to such conditions and limitations as may be prescribed and to the provisions of law for the time being in

force [vide sub-section (1)].

(ii) Where the court does not direct that costs shall follow the event, it shall state the reasons in writing [vide sub-section (2)].

The mandate of sub-section (2) of Section 35 of the Code that ""where the court directs that any costs shall not follow the event, the court shall

state its reasons in writing"" is seldom followed in practice by courts. Many courts either do not make any order as to costs or direct the parties to

bear their respective costs without assigning or recording the reasons for giving such exemption from costs. Unless the courts develop the practice

of awarding costs in accordance with Section 35 (that is, costs following the event) and also give reasons where costs are not awarded, the object

of the provision for costs would be defeated. Prosecution and defence of cases is a time consuming and costly process. A

plaintiff/petitioner/appellant who is driven to the court, by the illegal acts of the defendant/respondent, or denial of a right to which he is entitled, if

he succeeds, to be reimbursed of his expenses in accordance with law. Similarly a defendant/respondent who is dragged to court unnecessarily or

vexatiously, if he succeeds, should be reimbursed of his expenses in accordance with law. Further, it is also well recognised that levy of costs and

compensatory costs is one of the effective ways of curbing false or vexatious litigations.

Section 35-A CPC - Exemplary costs :-

28. Section 35-A refers to compensatory costs in respect of false or vexatious claims or defences. The maximum amount that could be levied as

compensatory costs for false and vexatious claims used to be Rs. 1000. In the year 1977, this was amended and increased to Rs. 3000. At

present, the maximum amount that can be awarded as compensatory costs in regard to false and vexatious claims is Rs. 3000. Unless the

compensatory costs is brought to a realistic level, the present provision authorising levy of an absurdly small sum by the present day standards may,

instead of discouraging such litigation, encourage false and vexatious claims. At present courts have virtually given up awarding any compensatory

costs as award of such a small sum of Rs. 3000 would not make much difference. We are of the view that the ceiling in regard to compensatory

costs should be at least Rs. 1,00,000.

....

31. A time has come when at least in certain type of litigations, like commercial litigations, the costs should be commensurate with the time spent by

the courts. Arbitration matters, company matters, tax matters, for example, may involve huge amounts. There is no reason why a nominal fixed fee

should be collected in regard to such cases. While we are not advocating an ad valorem fee with reference to value in such matters, at least the

fixed fee should be sufficiently high to have some kind of quid pro quo to the cost involved. Be that as it may.

17. In the present case, the relief claimed by the petitioner is not only frivolous but it had reached finality by subsequent order passed by this Court

in W.P. No. 23885/2010 dated 29.10.2010. In the said facts and circumstances of the case, this Court imposes a cost of Rs. 50,000/- [Rupees

Fifty Thousand only] on the petitioner to be paid to the Railways. Since the writ petitions are dismissed, it is not necessary to implead a third party

(who himself was interested in participating in the tender process). Further, the railways have defended the circulars. Hence the miscellaneous

petition for impleadment is dismissed.