

(2022) 09 TEL CK 0070
In the Telangana High Court
Case No : Writ Petition No. 29528 Of 2022

N.Anjamma

APPELLANT

Vs

South Central Railway

RESPONDENT

Date of Decision : 28-09-2022

Acts Referred:

Constitution Of India, 1950 — Article 226, 226(2)

Citation : (2022) 09 TEL CK 0070

Hon'ble Judges : K.Lakshman, J

Bench : Single Bench

Advocate : C Ramachandra Raju, L Pranathi Reddy

Final Decision : Dismissed

Judgement

1. This Writ Petition is filed to declare the action of respondent Nos. 2 and 3 in not accepting the tender of the petitioner which is highest one, for granting licence for running multipurpose stall on Plat Form Nos.4 and 5 of Vijayawada Railway Station and in issuing letter of acceptance to 4th respondent, whose tender is second one, for running the stall, vide proceedings dated 06.06.2022 issued by 2nd respondent, as illegal and consequently direct the respondent Nos.1 to 3 to accept the tender of the petitioner.

2. Heard Sri C.Rama Chandra Raju, learned counsel for the petitioner, and Mr. T.Surya Karan Reddy, learned Additional Solicitor General of India, representing Smt. L.Pranathi Reddy, learned Senior Government Standing counsel for respondent Nos.1 to 3. There is no representation for respondent No.4. Perused the record.

3. Tender notification dated 10.02.2022 was issued by 2nd respondent calling tenders for grant of licence for running multipurpose stall on Plot Form Nos.4 and 5 of Vijayawada Railway Station. The petitioner herein had submitted his tender. The petitioner stood as L1 and even then they have disqualified the tender submitted by the petitioner on the ground that the petitioner herein had not

uploaded a copy of the Aadhaar Card along with the tender document.

4. Learned counsel for the petitioner would submit that the petitioner herein had mentioned Aadhaar card number and due to inadvertence, she has not uploaded a copy of the Aadhaar Card. He would submit that the petitioner herein was also successful tenderer in respect of a contract in Railway Station, Ongole, along with the tender in respect of the said Ongole Railway Station, the petitioner herein had already uploaded Adhar Card. Therefore, the respondents are having her Aadhaar Card with them. Even then, the respondents have rejected the tender submitted by the petitioner herein. Therefore, the action of the respondents is arbitrary.

5. Whereas, Sri T.Surya Karan Reddy, learned Additional Solicitor General of India, would submit that as per the tender document, uploading a copy of the Aadhaar Card of the tenders is mandatory and the petitioner herein has not uploaded the same. Therefore, the respondents have rejected the tender submitted by the petitioner herein. He would further submit that there is no cause of action much less part of cause of action within the territorial jurisdiction of this Court. Therefore, the present writ petition is not maintainable. The subject tender is in respect of Vijayawada Railway Station. 2nd respondent had issued the said tender notification and therefore, there is no cause of action within the territorial jurisdiction of this Court.

6. 1st respondent is only a General Manager and he has no role in the entire tender process. He would further submit that in respect of the tender of the Railway Station, Ongole, the petitioner herein was L2 and L1's tender was rejected on the ground of non-submission of certain documents which is mandatory. The petitioner herein is beneficiary of the said action of respondent. Even then, the petitioner herein has filed the aforesaid writ petition.

7. Before deciding the issues involved in the matter, it is trite to discuss the relevant principles dealing with the exercise of jurisdiction in tender matters under Article 226 of the Constitution of India.

8. The apex Court In Tata Cellular v. Union of India (1994) 6 SCC 651 it was held as follows:-

94. The principles deducible from the above are:

- (1) The modern trend points to judicial restraint in administrative action.
- (2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.
- (3) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.
- (4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking,

the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.

(5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.

(6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.

Similar view was taken by the Hon'ble Apex Court in *Uflex Ltd. v. Govt. of T.N.* 2021 SCC OnLine SC 738.

9. The Apex Court in *National High Speed Rail Corporation Vs. Montecarlo Limited* 2022 6 SCC 401 held that the High Court while exercising judicial review under Article 226 of the Constitution of India has to consider whether the process adopted or decision made by the authority is mala fide or intended to favour someone; or whether the process adopted or decision made is arbitrary and irrational that the court can say that the decision is such that no responsible authority acting reasonably and in accordance with relevant law would have reached and whether the public interest is affected, the Courts will be justified in interfering such decision in exercise of powers under Article 226 of the Constitution of India, otherwise not.

10. In view of the aforesaid authoritative principles laid down by the Apex Court, coming to the case on hand, 2nd respondent had issued tender Notification/ Notice No.B/C/.79/Cata/MPS/ 02/2022, dated 10.02.2022 calling tenders for awarding of licence for installation and operation of multipurpose stalls at four locations in three stations for a period of five years over Vijayawada Division. Clause 3.4 of the said document says about certain additional mandatory requirements. Clause 3.4.1 of the said tender Notice says, Aadhaar Card of the sole proprietor/partner/Director, as the case may be mandatory. Therefore, the petitioner has to necessarily upload or submit a copy of the Aadhaar Card along with the tender document which the petitioner herein failed to do so.

11. It is also relevant to note that Clause No.3 of the said Notice, deals with Bid document and Clause 3-a. says that the interested Bidders may download the bid document from e-tender portal. However, the bidder has to upload the annexures-1 to 4, enlisted in Section-B of the tender document, duly furnishing the relevant information in annexures. The bidder need not upload the tender document/agreement, but uploading of all annexures is essential. Thus, submission of Aadhaar Card is mandatory. Therefore, the petitioner herein cannot now contend that due to inadvertence, she has not submitted or uploaded the said Aadhaar Card along with the tender document. The petitioner also

cannot claim that the respondents have not called for the aforesaid documents. It is the obligation of the petitioner to upload/submit the said document along with the tender document itself. The petitioner now cannot also contend that her Aadhaar card is available with the respondents as she has submitted the same along with the tender document submitted in respect of the Railway Station, Ongole. Both are independent tender notifications and therefore, the petitioner herein has to necessarily upload/submit a copy of the Aadhaar Card along with the tender document in respect of the subject tender notice date 10.02.2022 issued by 2nd respondent. Therefore, viewed from any angle, the present case is not falling in any of the aforesaid conditions mentioned by the Apex Court to exercise judicial review of this Court under Article 226 of the Constitution of India.

12. The relevant legal position with regard to the cause of action and maintainability of the writ petition, The Apex Court in Union of India (UOI) vs. Adani Exports Ltd. MANU/SC/0696/2001 - AIR2002SC126, it was held as follows:-

17. It is seen from the above that in order to confer jurisdiction on a High Court to entertain a writ petition or a special civil application as in this case, the High Court must be satisfied from the entire facts pleaded in support of the cause of action that those facts do constitute a cause so as to empower to court to decide a dispute which has, at least in-part, arisen within its jurisdiction. It is clear for the above judgment that each and every fact pleaded by the respondents in their application does not ipso facto lead to the conclusion that those facts give rise to a cause of action within the court's territorial jurisdiction unless those facts pleaded are such which have a nexus or relevance with the lis that is involved in the case. Facts which have no bearing with the lis or the dispute involved in the case, do not give rise to a cause of action so as to confer territorial jurisdiction on the court concerned.

12.1. The Apex Court in N. Kumara Swamy vs. UCO Bank MANU/AP/0590/2012, it was held as follows:-

24. Considering the legal position as settled by the decisions aforesaid, it is already noticed that there are no pleadings on the part of the petitioner, as to how any part of cause of action arises within the territorial jurisdiction of this Court. On the contrary, taking the averments, as noted above, no part of cause of action arises within the territorial jurisdiction of this Court inasmuch as on the date of service of show cause notices, which were originally impugned at the time of filing of the writ petition and when the charge memos were sought to be served on the petitioner, he was working at head office at Kolkata. It is not only essential for the petitioner to show that a part of cause of action has arisen within the jurisdiction of this Court but he must also show that the said cause of action is an integral part having nexus to the substantial cause of action. The mere residence of the petitioner at Hyderabad after his retirement and merely because the charges relate to the alleged omissions and commissions of the branch of the respondent bank at Hyderabad, in my view, has no nexus with the

cause of action relating to initiation of disciplinary proceedings against the petitioner. In a given case, the charges may relate to any event happening in any branch in any part of India but the situs with respect to initiation of disciplinary proceedings cannot be said to have any integral nexus with the omissions and commissions at all/any of such branches. The show cause notices as well as the charge memos in the present case incidentally refer to omissions and commissions at Banjara Hills branch at Hyderabad, but even if it could have been at some other branch in Karnataka or Kerala, it would not be permissible, under Article 226(2) of the Constitution of India, for the petitioner to invoke the territorial jurisdiction of the High Court within whose territorial limits, such branch is situated. The preliminary objection raised by the learned senior counsel for the respondents has, therefore, to be held as well founded and sustainable and consequently, the writ petition is liable to be dismissed on this ground alone.

12.2. the Apex Court in *Navinchandra N. Majithia vs. State of Maharashtra* MANU/AP/0590/2012, it was held as follows:-

40. Even in the context of Article 226(2) of the Constitution this Court adopted the same interpretation to the expression "cause of action wholly or in part arises" vide *State of Rajasthan v. Swaika Properties* MANU/SC/0304/1985 : [1985]3SCR598 . A three Judge Bench of this Court in *Oil and Natural Gas Commission v. Utpal Kumar Basu and Anr.* MANU/SC/0759/1994 : (1994)4SCC711 observed that it is well settled that the expression 'cause of action' means that bundle of facts which the petitioner must prove, if traversed to entitle him to a judgment in his favour. Having given such a wide interpretation to the expression Ahmadi, J. (as the learned Chief Justice then was) speaking for M.N. Venkatachalliah, C.J. and B.P. Jeevan Reddy, J., utilised the opportunity to caution the High Courts against transgressing into the jurisdiction of the other High Courts merely on the ground of some insignificance event connected with the cause of action taking place within the territorial limits of the High Court to which the litigant approaches at his own choice or convenience. The following are such observations:

If an impression gains ground that even in cases which fall outside the territorial jurisdiction of the Court, certain members of the Court would be willing to exercise jurisdiction on the plea that some event, however, trivial and unconnected with the cause of action had occurred within the jurisdiction of the said Court, litigants would seek to abuse the process by carrying the cause before such members giving rise to avoidable suspicion. That would "lower the dignity of the institution and put the entire system to ridicule. We are greatly pained to say so but if we do not strongly depreciable the growing tendency we will, we are afraid, be failing in our duty to the institution and the system of administration of justice. We do hope that we will not have another occasion to deal with such a situation.

12.3. The Apex Court in *Kusum Ingots and Alloys Ltd. vs. Union of India (UOI)* MANU/SC/0430/2004 - AIR 2004 SC 2321, it was held as follows:-

30. We must, however, remind ourselves that even if a small part of cause of action arises within the territorial jurisdiction of the High Court, the same by itself may not be considered to be a determinative factor compelling the High Court to decide the matter on merit. In appropriate cases, the Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum conveniens. (See Bhagar Singh Bagga v. Dewan JagbirSawhany, AIR 1941 Cal; Mandal Jalan v. Madanlal,; Bharat Coking Coal Limited v. Jharia Talkies & Cold Storage Pvt. Ltd.; S.S. Jain & Co. and Anr. v. Union of India and Ors. (1994) CHN 445; New Horizon Ltd. v. Union of India, MANU/DE/0014/1994 : AIR1994Delhi126).

13. As discussed supra, 2nd respondent had issued subject tender notification for awarding of license for installation and operation of multipurpose stalls at four locations in three stations for a period of five years over Vijaywada Division. 2nd respondent is stationed at Vijayawada. 1st respondent has no role at all in the entire tender process. Therefore, there is no cause of action much less part of cause of action within the territorial jurisdiction of this Court. Therefore this Court is not having jurisdiction to entertain this writ petition. Viewed from any angle, this writ petition is liable to be dismissed.

14. In the result, writ petition is dismissed.

Consequently, miscellaneous Petitions, if any, pending, shall also stand closed.