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**(2010) 11 MAD CK 0181**

**In the Madras High Court**

**Case No :** Writ Petition No. 10712 of 2010 and M.P. No. 1 of 2010

Travel Citi

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

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**Date of Decision :** 26-11-2010

**Acts Referred:**

**Citation :** (2010) 11 MAD CK 0181

**Hon'ble Judges :** K.B.K. Vasuki, J

**Bench :** Single Bench

**Advocate :** M.L. Ramesh, for the Appellant; Suresh Kumar, for the Respondent

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**Judgement**

K.B.K. Vasuki, J.—The writ petition is filed to quash the order of the Respondent dated 13.1.2010 in M/C580/RTSA/Travel City/10 and to direct the Respondent to issue Reservation Tickets to the Petitioner's travel City.

2. The brief facts which are relevant for consideration herein are as follows:

The Petitioner is an authorized licensee as Rail Travelers Service Agent of the Government for purchase of railway tickets and securing reservation on behalf of the passengers. For the said purpose, the Petitioner entered into an agreement with the Respondent and the latest agreement during the relevant period is dated 29.8.2006 for the period from 1.9.2006 to 31.8.2009 subject to certain terms and conditions. While so, some surprise check was conducted by the vigilance in the office of the Petitioner and the same was followed by the notice dated 8.12.2009 pointing out 2 irregularities as if the Petitioner's staff demanded excess amount as service charge in addition to permissible service charge from two passengers for the journey from Coimbatore and Madurai and the Petitioner failed to maintain the register indicating certain particulars as per Clause 10 of the agreement. The notice was issued as to why the agreement should not be terminated for breach of the terms of the agreement. The same was also followed by the final order dated 13.1.2010 in and under which the agreement was terminated with immediate effect and the Petitioner has been

directed to surrender ID card of the staff who are in charge of purchasing tickets on behalf of the passengers. Thereafter, the Petitioner has on 23.1.2010 sent his explanation with regard to 2 irregularities referred to in the notice dated 8.12.2009 with further request to withdraw both the notice dated 8.12.2009 and order dated 13.1.2010 and finding no response from the Respondent, the Petitioner has approached this Court by way of the present writ petition questioning the propriety, validity and enforceability of the final order dated 13.1.2010 passed by the Respondent.

3. According to the learned Counsel for the Petitioner, the action of the Respondent is vindictive in nature for the failure of the Petitioner's agent to depose in support of the vigilance department in the enquiry against other agent and there was no excess collection of service charges from the passengers and the Petitioner has been duly maintaining register for the relevant period and there was no inspection in his premises by the vigilance cell and the Petitioner did not receive the notice and the final order is passed without duly giving him an opportunity to make his explanation and without any enquiry and the same is hence, arbitrary unfair, biased and illegal.

4. Per contra, the learned Counsel for the Respondent has contended that the licensee was in the habit of collecting excess charges from the passengers and the breach of agreement conditions which is the basis for termination of license are found in the course of decoy check held and the surprise check conducted by the vigilance department and the letters issued by the Respondent are duly received by the Petitioner's Manager and the final order is passed only after thorough enquiry into the irregularities regarding collection of excess fair and non maintenance of register and the order of termination is hence, lawful and valid.

5. I have heard the rival submissions made on both sides.

6. The irregularities leveled against the Petitioner are collection of excess service charge and non-maintenance of register. Though the counter statement proceeds as if the Petitioner is in the habit of collecting excess charges from the passengers in violation of terms and conditions of the agreement and during the earlier checks conducted on 7.2.2006 and 3.8.2009 by the administration, gross irregularities in terms of the working conditions of the license amounting to misuse of license and exploitation of the passengers were detected, no records are produced in support of the contention regarding breach of agreement conditions on early occasion. The Respondent having renewed the license and the agreement from 1.9.2009 to 31.8.2012 which is much after the dates referred to above, cannot be now permitted to say that the licensee was the habitual wrong doer.

7. Regarding the irregularities referred to above resulting in termination of license and black listing the Petitioner's agency, the Petitioner was intimated about the same in the notice dated 8.12.2009 enclosed at page 10 of the typed

set of papers filed by the Petitioner herein. The reference column in the notice dated 8-12-2009 referred to the vigilance office letter dated 13.11.2009 and the notice began by saying that during the course of check conducted by vigilance in the premises of the Petitioner, the following irregularities were noticed. The irregularities mentioned are collection of excess service charge from two individual passengers bound to Coimbatore and Madurai respectively and non-maintenance of register. However, the notice does not reveal the contents of the vigilance office letter dated 13.11.2009.

8. The Respondent has in para 6 at page 2 of the counter affidavit after referring to the complaint stated that decoy check and the surprise check in the office premises of the Petitioner were held in the course of verification of allegations contained in one complaint received by the administration during June 2008 against the Petitioner regarding serious violation of terms and conditions of the agreement, which was according to the Respondent forwarded to the vigilance department. Whereas, no reference at all is made about the complaint in the vigilance office letter dated 13.11.2009 the copy of which is produced herein. The copy of the complaint is also not intimated to the Petitioner to enable him to have his objections raised. It is also not made available before this Court to know the contents of the same. The vigilance office letter dated 13.11.2009 made available before this Court only in the course of argument proceeded to say that irregularities were noticed in the working of M/s. Travel city in the course of above departmental check and the vigilance letter ended with recommendation to terminate the contract and to black list the Petitioner agency for getting RTSA contract in future.

9. The department has produced the file regarding decoy check and surprise check on 13.11.2009 conducted in the office premises of the Petitioner in the course of which, irregularities regarding excess collection of service charges and failure to enter 42 tickets in the register were said to be found out. One of the records enclosed along with the same is the copy of the letter dated 13.10.2008 purported to be written by S. Srinivasan, Secretary of the Petitioner travels admitting non entry of particulars about 42 tickets in the register. The proceedings purported to be drawn on 10.10.2008 and 13.10.2008 explained in detail about the decoy check and surprise check made by the vigilance department. However, neither the copy of the complaint dated June 2008 nor the vigilance office report dated 13.11.2009 are made available to the Petitioner to raise his objections if any about the same.

10. In so far as the notice dated 8.12.2009 is concerned, the same is, as rightly pointed out by the learned Counsel for the Petitioner, not in the form of show cause notice calling the Petitioner to submit his explanation for the irregularities alleged, but it is only in the form of second show cause notice regarding the proposed punishment of termination of agreement and the same is followed by the final order which is impugned herein. It is repeatedly argued by the learned Counsel for the Respondent that the letter of the vigilance department is

confidential in nature and the same is hence not made available to the Petitioner. Such contention raised on the side of the Respondent is in my view, legally untenable. Having referred to the letter in the show cause notice the copy of the same ought to have been made available to the Petitioner.

11. Even assuming it to be true that the notice dated 8.12.2009 is treated as show cause notice, failure to submit explanation for the same by the Petitioner, will not vest the authority to pass consequential final order of termination of agreement. The department concerned, before terminating the contract and black listing the Petitioner agency, is required to hold an enquiry by examining the author of the complaint dated June 2008 and by giving due opportunity to the Petitioner to cross examine such complainant and the persons who participated in the decoy check etc. and the finding so rendered without doing so, is biased and arbitrary. Regarding non maintenance of register, two different stands were taken by the department when the show cause notice and the final order say that the register is not maintained, the proceedings drawn shows that the register is made available, but the particulars of 42 tickets are not entered therein, but the register without relevant entry is not made available. Failure to make the copies of the records made available to the Petitioner and failure to issue any show cause notice calling the Petitioner to submit his explanation for the allegation and the issuance of show cause notice dated 8.12.2009 for the proposed punishment and the issuance of final order without holding any enquiry as seriously argued by the learned Counsel for the Petitioner, is per se illegal, irregular and without jurisdiction and contrary to the legal procedure and in violation of the principles of natural justice which renders the entire proceedings resulting in termination of contract and black listing the Petitioner for future contract, grossly vitiated.

12. The learned Counsel for the Petitioner has seriously argued against the validity of the impugned order by relying upon the judgment reported in (2009) 2 MLJ 577 in V.S.O. Bal Krishnan and Anr. v. District collector, Tiruvallur, wherein, the writ petition is filed against the order of the District Collector, levying huge amount for making pits and illicit quarrying and the High Court has after detailed analysis found that the order was issued without proper enquiry and without any opportunity to the Petitioner therein for being heard. In para 12 of the judgment, it is observed that though the proceedings are initiated on the basis of the complaint from Lorry owners" Association, the complainant was not examined and there was no personal hearing and there was no enquiry and the copy of the inspection report on the basis of which show cause notice was issued was not furnished to the Petitioner and the authority who issued the show cause notice has in the same show cause notice pre determined that the Petitioner involved in illicit quarrying and thus, there were two patent errors in the decision making process i.e. (i) show cause notice with pre-determination and without furnishing copy of the inspection report and (ii) impugned order is passed without any inquiry in the manner known to law. The High court has thereafter, following the earlier judgment of the Supreme court laid down the ratio decidendi as follows:

When there has been no proper enquiry conducted or no personal hearing was conducted or no materials were produced to show that the Petitioners were involved in illicit quarrying , there is violation of the principles of natural justice and the orders imposing penal liability on the Petitioners are not justified. In such a case, the availability of alternative remedy is not a bar for maintaining the writ petition.

In my considered view, the observation of the High court as referred to above is squarely applicable to the facts of the present case where the facts involved are identical.

13. It is repeatedly laid down that any action of the administrative or quasi judicial authority resulting in serious civil consequence and deprivation of livelihood, shall be free from bias, arbitrariness, unfair and should be in consonance with the principles of natural justice. The entire proceedings initiated against the Petitioner resulting in the order impugned herein do not satisfy the requirements as referred to above and cannot be hence legally sustained.

14. In the result, the impugned order of the Respondent dated 13.1.2010 is quashed, however with liberty given to the Respondent to hold fresh enquiry into the irregularities alleged against the Petitioner by giving him due notice with copy of the relevant documents and due opportunity to submit his detailed explanation and for being personally heard as per law.

15. The writ petition is accordingly ordered. No costs. Consequently, connected Miscellaneous Petition is closed.