

(2010) 10 CAL CK 0038

In the Calcutta High Court

Case No : Writ Petition No. 8916 (W) of 2009

VIP Co-operative Labour Contract and Construction Society
Limited and Another

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 05-10-2010

Acts Referred:

Citation : (2010) 10 CAL CK 0038

Hon'ble Judges : Syamal Kanti Chakrabarti, J

Bench : Single Bench

Advocate : P.C. Das and Soma Bandhu, for the Appellant; A.K. Gayen, for the Respondent

Judgement

Syamal Kanti Chakrabarti, J.—The present writ petition has been filed challenging the propriety and legality of a notice of show-cause dated 05.12.2008 and subsequent order dated 22.04.2009 passed by the Senior Divisional Commercial Manager, Eastern Railway, Howrah blacklisting the writ petitioner namely, VIP Cooperative Labour Contract and Construction Society Limited and Anr.

2. It is contended by the writ petitioner that they are a registered cooperative society and adept in performing job on contract basis like cycle stand/ car parking and cleaning loco trip shed for a long time. It is contended that though the writ petitioners have discharged their duties faithfully in the past and participated in different tender processes but the respondent authorities had always tried to show step-motherly attitude towards them without any reasonable cause for which even after acceptance of their bids they had to approach this Hon'ble Court in M. A. T. No. 167 of 2007 and W. P. No. 2943(W) of 2008 for settlement of their disputes.

3. It is further contended that the respondent No. 5 floated a tender notice being No. ELS/How/10/413 in which they participated and the date of opening was 29.07.2008 in respect of cleaning of electric loco shed and electric loco trip shed at Bamungachi, Howrah for period of three years. Though they were the lowest

bidder they could not accept the offer due to their blacklisting by the respondents by order dated 28.02.2008. The said order was challenged before this Hon''ble Court in a writ petition being W. P. No. 21460(W) of 2008 which was set aside by this Hon''ble Court by order dated 11.09.2008 since the same was issued without giving any opportunity of being heard. Thereafter the petitioners were participated in tender but suddenly they received a show-cause notice dated 05.12.2008 for their blacklisting. They had given a reply on 29.12.2008. During pendency of such matter another tender notice was floated being ELS/How/10/413 whose opening date was fixed on 29.07.2008 for which they submitted tender documents with the earnest money by demand draft dated 28.07.2008 with all particulars. But instead of deciding the tender matter the respondent authorities extended the period of existing assignment of mechanised cleaning of electric loco shed and electric trip loco shed from time to time under their orders dated 30.09.2008, 27.10.2008 and 04.03.2009 without issuing any word order to the lowest bidder. On the contrary they issued a retender notice being No. ELS/How/10/413 fixing 28.04.2009 for opening the same. The present writ petitioners challenged such retender notice before this Hon''ble Court by filing a writ petition being W. P. No. 7691 (W) of 2009 on 20.04.2009. Immediately thereafter, the respondent authorities issued their order being No. COM./Dev-CYL/PCY/Black List/07 by way of retaliation which is absolutely illegal and unethical because there was no fault or laches on the part of the writ petitioners. In the said order, which is now challenged, the respondents have identified the writ petitioner as habitual defaulter in paying the dues of the railways after acceptance of their lowest bids in several tenders floated in the past. They ran the business but did not pay the subsequent railway dues after making the initial deposit and failed to execute any agreement with the railway authorities for performing such contractual obligation for the stipulated period.

4. In course of hearing learner lawyer for the writ petitioners has submitted that in the above context they are now ascertaining their claims regarding acceptance of their bids in maintaining cycle stand of Srirampur Railway Station which has been retained by them but they have already surrendered their claim in respect of other bids for Chuchura, Howrah etc.

5. In their affidavit-in-opposition the respondent Nos. 1, 2, 3, 4 and 5 have claimed that the writ petitioners were awarded contract for running cycle stand at Chuchura, Srirampur, Jirat and Kamargachi stations by following normal rules of tenders. But they failed to make payment of license fees from the 2nd quarter onwards and execution of license agreement as stipulated in the terms and conditions of tender process after payment of quarterly license fee for the 1st quarter and security deposit required to start the business of cycle stand at the aforesaid places despite several reminders issued to them for which they were vacated from Chuchura and Jirat station on 06.04.2007 and 29.07.2007. It is not agreed that the petitioner was lowest bidder in respect of the tender floated for cleaning electric loco shed at Howrah station which was opened on 29.07.2008. The estimated cost offered by them was Rs. 15,48,000/- which was 3.55 per

cent higher than the estimated cost of work of Rs. 14,94,822/-. In fact they issued notice to show-cause by blacklisting the petitioner on the ground of their failure to pay the outstanding license fees from the 2nd quarter and non-execution of license agreement with respect to running cycle stands in Chuchura and Jirat station for which the petitioners were vacated on 06.04.2007 and 29.10.2007 respectively. In fact as per order of the Hon'ble Court in W. P. No. 2943(W) of 2008 the writ petitioners deposited an amount of Rs. 1,11,105/- with outstanding license fee in the open Court on account of Sriramupr station only for the period from 07.10.2007 to 06.01.2008. But they have failed to pay the arrears in respect of Jirat and Chuchura stations which is their legal liability and as such the outstanding amount in respect of Chuchura was Rs. 1,23,450/- and in respect of Jirat it was Rs. 33,600/-. Therefore, there was no illegality or impropriety in blacklisting the writ petitioners for non-payment of railway dues for a long time.

6. In their affidavit-in-reply to such affidavit-in-opposition the writ petitioners have further claimed that they were not in fact vacated from the Jirat station on 29.07.2007 as claimed by the railway authorities. But they have surrendered their possession with effect from 01.06.2007 (paragraph 7). So far as Chuchura railway station cycle stand is concerned, it is contended that after assignment of the contract in their favour initially there was no existence of covered and fenced operative cycle stand measuring an area of 2,250/- square feet as per tender notice which was awarded to them under letter dated 22.06.2005. But as a token of acceptance of the offer they deposited the security money through bank guarantee which was acknowledged by the railway authorities on 29.06.2005. Therefore, the question of depositing the 2nd quarterly license fee does not arise at all. It is further claimed that on good faith they deposited 1st quarterly license fee on 01.03.2006 subject to availability of the sketched plan of the site prepared by the railway administration with demarcation of the premises but the same was not given to them and the condition of the open space without fencing and cover prevailed for a long time. After receipt of the sketch plan on 19.06.2006 and completion of fencing and covering of the earmarked area of the cycle stand at Chuchura station the same could be operative in July, 2006 and accordingly they assured to sign the agreement thereafter which ultimately did not materialise (paragraph 8). In their letter dated 29.08.2006 (annexure R-9) they have intimated the railway authorities that at their own cost they have reconditioned the dilapidated shade and unfenced area for the cycle stand at Chuchura as per sketch plan handed over to them and converted the same to workable condition with the information that they shall start operating the cycle stand with effect from 01.09.2006. Therefore, the question of payment of 2nd installment does not arise at all. According to them they ran the business for about 7 months without getting any positive response from the railway authorities and actual dues may be for a period of 4 months from December, 2006 to March, 2007 at the rate of Rs. 12,345/-X 6, i.e., Rs. 49,380/- without adjusting their claim for reimbursement of the expenses incurred for reconditioning of the structure for

which they spent Rs. 80,000/- to complete the renovation work.

7. So far as Jirat station is concerned they found that it was a maiden cycle stand without any infrastructure like fencing, cover etc. which was not done by the railway authorities and outside vendors were unauthorisedly operative there which could seriously affect their business. Therefore, they had to undertake dressing, leveling and erecting structure with covering shade over it and fencing around the area with the provision of gate and locking etc. and intimated the railway authorities in their letter dated 15.01.2007 (annexure R-1) to commence the operation of the cycle stand with effect from 1st September, 2007 but due to activities of unauthorised vendors in front of their cycle stand they ultimately found it not profitable to run such business and accordingly decided to surrender the same with effect from 01.06.2007 and in their letter (annexure R-2) agreed to pay the license fee for one month due for May, 2007. They have already incurred expenditure amounting to Rs. 40,000/- for making the cycle stand at Jirat in workable condition by developing infrastructures. Therefore, they have further contended that it is incumbent or obligation for the owner of a property or premises to make construction or develop infrastructural facilities being essential requirements or principal requisites for granting any lease or license to the tenants for running any business and they are bound to provide such minimum infrastructural facilities at their own cost and this is the bone of contention involved in the dispute between the licensor and the licensee in the given case which was unilaterally decided by them and by blacklisting them without any reasonable ground.

8. From the arguments advanced by both the contending parties it, therefore, appears to me that the writ petitioners have raised certain questions of fact which cannot be decided by this Writ Court without evidence regarding actual dues payable to the railway authorities for their occupation of cycle stand at Chuchura and Jirat as a licensee.

9. Learned lawyer for the contesting respondents has drawn my attention to their commercial circular No. 39 of 2004 dated 29.10.2004 regarding the tender procedure to be followed for allotment of parking space and means and ways of augmenting railway revenue through various means. In item No. (v) of their decisions it is decided as follows:

V. For small interim periods, at "A", "B" & "C" category stations where parking contractors have left the contract midway or the contract has been terminated and fixing alternative agency through the tender is likely to take time, the DRM/ Sr. DCM/ DCM may award the contracts with the concurrence of finance on quotation basis with quotations obtained from reputed contractors for a maximum period of three months. The contractor who has abandoned the contract midway should be blacklisted and no further work should be awarded to hi. The particulars of all blacklisted contractors should also be circulated to all Zonal Railways.

Therefore, according to such policy decision the present writ petitioners have been blacklisted after issue of due notice to show cause which has already been admitted and they have been failed to offer satisfactory explanation for their failure to pay the contractual dues after abandoning the contract midway.

10. Therefore, I do not find any illegality or impropriety in issuing the said notice for blacklisting dated 05.12.2008 (annexure P-9).

11. Similarly I find from the reasoned order, passed by the respondent authorities dated 22.04.2009 blacklisting the present writ petitioners along with others, that such preventive measures have been taken by the respondent authorities for realisation of their arrear dues as per their policy decision referred to above and the same is intended not for permanent deprivation of the present writ petitioners from taking part in the tender process. Even after blacklisting, the writ petitioners were advised to clear outstanding license fee amounting to Rs. 1,57,050/- for Chuchura and Jirat Station within ten days of issue of the letter failing which the respondents will be at liberty to take appropriate action against them. But till date no further action has been taken by the railway authorities for recovery of such dues. Therefore, option is still left open for the writ petitioners to settle the dues of the respondent authorities as claimed above which is a condition precedent to reconsider all their claim for participating in future tender process of the respondents after revocation of the impugned order.

12. I also find from the relevant documents that tender was invited from intending contractors to run the cycle stand as per their draft agreement and the draft agreement is intended to grant a license to occupy land measuring certain square feet of area for the purpose of such cycle stand. There was no undertaking on the part of the licensor that they will provide adequate infrastructure for running such business at their own cost. Therefore, the participants opted to be inducted as a licensee after considering all the existing circumstances and existing condition of the sites referred to in the tender notice at their own risk and responsibility. After acceptance of their bid they cannot impose new condition to the licensor for taking possession of the sites after initial deposits and payment of security money. The very tender of such amount following acceptance of their offer constitutes a valid contract for performance of duties and obligations by and between the parties to the contract, the breach of which shall give rise to enforce the same through the Courts of competent jurisdiction and no remedy is available from the Writ Court to adjudicate the dues and claims and counterclaims of the parties without adequate evidence required for adjudication.

13. Subject to above observation I hold, that there is no merit in this writ application which is accordingly dismissed.

14. I make no order as to costs.

15. Urgent photostat certified copy of this order, if applied for, be supplied to the respective parties, upon compliance of all necessary formalities.