

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

HEARD ON: 05.07.2024

DELIVERED ON: 05.07.2024

CORAM:

**THE HON'BLE MR. CHIEF JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA**

M.A.T. 1343 of 2024

With

IA No. CAN 1 of 2024

**M/s. Araha Hospitality Private Limited
Versus
Indian Railway Catering and Tourism
Corporation Limited & Ors.**

Appearance:-

Mr. Sakya Sen, Ld. Sr. Adv.

Mr. Priyankar Saha

Ms Srijani Mukherjee

Mr. Lalratan Mondal

.....For the Appellant

Mr. Tushar Mehta, Ld. Solicitor General of India

Mr. Sorosij Dasgupta

Mr. S. Agarwal

Mr. Anshuman Chowdhury

Ms. Afreen Begum

Mr. Steven S. Biswas

.....For the respondent no. 1

Mr. Joydip Kar, Ld. Sr. Adv.

Mr. Ratnanko Banerji, Ld. Sr. Adv.

Mr. Aniruddha Chatterjee

Mr. Dyutiman Banerjee

Mr. Rishav Singh

Mr. Sagar Mishra

Mr. Anurag Sharda

.....For the Respondent No. 2

JUDGMENT

(Judgment of the Court was delivered by T.S. SIVAGNANAM, C.J.)

1. This intra-Court appeal by the unsuccessful writ petitioner is directed against the order dated 2nd July, 2024 in W.P.A. 16635 of 2024. The admitted facts are the appellant/writ petitioner participated in a tender invited by the IRCTC for provision of on board catering services in trains for a period of five years further extendable upto two years.
2. The appellant/petitioner having participated in the tender process by submitting their bid, they approached this Court and filed the writ petition praying for issuance of a writ of mandamus to quash the letter of award dated 4th April, 2024 in respect of the e-open tender invited by the IRCTC, which has been awarded in favour of the respondent no. 2.
3. The grounds of challenge in the writ petition are quite different from the submissions made by Mr. Sen, learned senior advocate appearing for the appellant before us.
4. It appears, the primary and the sole ground of challenge is that the Integrity Pact, as mentioned in annexure-G to the Notice Inviting Tender is not in consonance with the circular issued by the Central Vigilance Commission dated 14th June, 2023. It is submitted that in terms of the said circular, the Integrity Pact should also contain a clause that the transgression(s), for which cognizance was taken even before the said period of three years, but are pending conclusion, shall also be reported by the bidders should have been included in annexure-G of the Integrity Pact forming part of the Notice Inviting Tender.
5. It is submitted that by omitting to mention to such a clause, tender inviting authority has not only violated the circular of the Central Vigilance

Commission but the conditions tantamount to diluting the essential requirements, which, according to the appellant, is to favour the private respondents and it is stated that such exercise is a *mala fide* exercise.

6. Before we examine the other issues, we need to point out that the plea of *mala fide* is a faint plea raised in the writ petition and we find there is no adequate pleadings and there cannot be a vague allegation of *mala fides* against the world at large for the appellant/writ petitioner to request this Court to adjudicate on this point. Therefore, said submission stands rejected.
7. The most important embargo, which the appellant has to overcome, is as to whether it will be entitled to challenge the award of the tender at this stage of the proceedings. Admittedly, the appellant was fully aware of the terms and conditions, as stipulated in the bid documents. The appellant with the eyes wide open participated in the tender process and having come to know that the award has been made in favour of the 2nd respondent, had sought to challenge the award of the tender and in course of argument before us, the challenge is based upon the Integrity Pact in annexure-G alleging that it is not in consonance with the circular issued by the Central Vigilance Commission. We find that there is no challenge to annexure-G of the Integrity Pact in the writ petition and the prayers sought for was to set aside the award of the tender in favour of the 2nd respondent.
8. The learned Single Bench after having elaborately heard the learned advocate for the appellant/writ petitioner and the learned Solicitor General appearing for IRCTC and the learned senior advocate appearing for the successful tenderer, has examined in detail the various clauses in the tender document. The learned Single Bench has rightly noted that the tendering authority viz.,

IRCTC has categorically expressed a view by interpreting the clauses of the tender document. The tendering authority interprets the Integrity Pact as the requirement for disclosure of corruption cases registered against a bidder in respect of any other company or the public sector undertaking in the last three years. The learned Single Bench was right in holding that the authors of the document in their wisdom have laid down certain clauses, which a bidder is required to fulfill to be successful in any tendering process and that the author has the domain knowledge.

9. The interpretation, which was given by the IRCTC to section 2 (g) read with section 5(1) of the Integrity Pact, has been rightly noted by the learned Single Bench and has expressed a word of caution that the writ Court sitting in judicial review should not attempt to interpret the clause by giving them a meaning, which the authors did not intend to do. We fully agree and subscribe to the said finding rendered by the learned Single Bench. That apart, the learned Single Bench has also noted the law on the issue by referring to the decision of the Hon'ble Supreme Court in **Jagdish Mandal v. State of Orissa**, reported in **(2007) 14 SCC 517**, wherein the Hon'ble Supreme Court held that *"A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor*

with a grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted”.

10. The learned Single Bench also took note of the decision in the case of **Maa Binda Express Carrier v. North East Frontier Railway**, reported in **(2014) 3 SCC 760**, wherein the Hon’ble Supreme Court held that *“terms subject to which tenders are invited are not open to the judicial scrutiny unless it is found that the same have been tailor-made to benefit any particular tenderer or class of tenderers.”*
11. We find that nothing has been made out in this regard by the appellant/writ petitioner in this writ petition. That apart, on an examination of the factual position, the learned writ Court rightly came to the conclusion that the appellant/writ petitioner has not been able to satisfy that the action of the authorities suffers from arbitrariness, perversity or favouritism.
12. Even assuming for a moment, we consider the case as projected before us by the appellant/writ petitioner, the so-called disclosure, which, according to the appellant, which ought to have been made in sync. with the circular of CVC, is, with regard to a criminal case registered by the Central Bureau of Investigation, Anti Corruption Bureau, New Delhi in an F.I.R. dated 14th October, 2015, which, according to the appellant, concerns a scam relating to supply of ‘Rail Neer’. Admittedly, this matter is a tender process, which has been invited by IRCTC. Therefore, it is not as if that IRCTC was not aware of such proceedings.

13. We are informed by the learned senior advocate appearing for the 2nd respondent, successful tenderer that the proceedings have been stayed by the Hon'ble Supreme Court and the matter is pending before the Hon'ble Supreme Court.
14. Section 2 of the Integrity Pact, as found in annexure-G has various clauses and in clause (g), it has been mentioned that the bidders/contractors to disclose any transgression with any other company that may impinge on the anti corruption principle. Section 5 of the Integrity Pact deals with previous transgression and contains two sub-clauses. Sub-clause (1) states that the bidder declares that no previous transgression occurred in the last three years with any other company in any country confirming to the anti corruption approach or any public sector enterprise in India that could justify his exclusion from the tender process.
15. Admittedly, the appellant/writ petitioner has not been able to bring the challenge to the award of the tender in favour of the 2nd respondent as being contrary either to section 2(g) or section 5(1) of the Integrity Pact, as found in annexure-G.
16. Thus, we find that the reasons assigned by the learned Single Bench are perfectly justified and does not call for any interference.
17. The learned advocate appearing for the appellant submitted that the appellant has also been non-suited on the jurisdictional ground that the writ petition could not have been filed before this Court. Since we are satisfied on merits that the appellant has not made out any case for interference with the order passed by the learned Single Bench, we find no necessity to go into the issue with regard to jurisdiction.

18. For the above reasons, the appeal and the connected application (I.A.No. CAN 1 of 2024) are dismissed.

19. No costs.

20. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

I agree.

(HIRANMAY BHATTACHARYYA, J.)