

GAHC010180532023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/4693/2023

XTRA FREIGHT FORWARDER
A PARTNERSHIP FIRM,
REPRESENTED BY SRI ANIL BAREJA,
AGE 55, D- 246, GROUND FLOOR,
GALI NO. 10, NEAR METRO STATION,
LAXMI NAGAR, NEW DELHI- 110092.

VERSUS

THE UNION OF INDIA AND 6 ORS.
REPRESENTED BY THE SECRETARY,
MINISTRY OF RAILWAY, RAIL BHAWAN,
RAISINA ROAD, NEW DELHI- 110001.

2:THE PRINCIPAL CHIEF COMMERCIAL MANAGER
NORTHEAST FRONTIER RAILWAY
MALIGAON
GUWAHATI
KAMRUP(M)
PIN- 781011.

3:THE CHIEF COMMERCIAL MANAGER
NORTHEAST FRONTIER RAILWAY
MALIGAON
GUWAHATI
ASSAM.
PIN- 781011.

4:THE DIVISIONAL COMMERCIAL MANAGER
NORTHEAST FRONTIER RAILWAY
RANGIA
ASSAM
PIN- 781354.

5:THE RAILWAY BOARD
REPRESENTED BY THE EXECUTIVE DIRECTOR (FREIGHT MARKETING)
MALIGAON
GUWAHATI
ASSAM.
PIN- 781011.

6:THE SENIOR DIVISIONAL COMMERCIAL MANAGER
NORTH EAST FRONTIER RAILWAY
RANGIYA
ASSAM
PIN- 781354

Advocate for the Petitioner : MR P BHARDWAJ

Advocate for the Respondent : DY.S.G.I.

**BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

ORDER

Date : 29.01.2024

Heard Mr. M. K. Choudhury, learned Senior counsel, assisted by Mr. P. Bharadwaj, learned counsel for the petitioner. Also heard Mr. K. K. Parasar, learned CGC.

2. Pursuant to a bidding process initiated vide Tender no. C259RNYLEASINGPCET05, the petitioner on emerging successful, was issued a Letter of Acceptance [LoA] for tender viz. 'Leasing of Parcel Cargo Express Train [PCET] from Azara [AZA] to Tungalakabad [TKD] for a period of six years on round trip basis, consisting 15 LVPHs + 1 SLR [363.9 tons] for first six months and 20 LVPHs + 1 SLR [483.9] for remaining period' ['the Contract-Work', for short]. The LoA further mentioned that intermediate parcel handling stations would be at New Jalpaiguri Junction [NJP], Sankrail Goods Terminal [SGTY], Alam Nagar [AMU] and Rampur [RMU]. After compliance of necessary

formalities including deposit of Security Deposit required on the part of the petitioner, the petitioner was issued a Work Order on 06.10.2022 whereby the petitioner was allowed to commence the Contract-Work from 04.11.2022 without fail. Accordingly, the petitioner started the Contract-Work of running of AZA-TKD-AZA lease Parcel Cargo Express Train Ex AZA on round trip basis from 04.11.2022

3. It is projected that during the initial period, the petitioner faced a number of issues/difficulties in respect of loading and unloading goods at Tungalakabad [TKD] station, but in course of time, the issues got resolved. The petitioner had further faced difficulties in loading/unloading of goods at Sankrail Goods Terminal [SGTY] within the jurisdiction of Eastern Railway. The main difficulty faced by the petitioner at Sankrail Goods Terminal [SGTY] was that there was no shed at SGTY and as a result, substantial damages to goods occurred at the time of loading and unloading of SGTY. The petitioner made requests for changing of intermediate parcel handling station from Sankrail Goods Terminal [SGTY] to Chitpur Station [CP], which is also within the jurisdiction of Eastern Railway in terms of the 'Policy for leasing of Parcel Cargo Express Train [PCET]', more particularly, para 2.8 thereof, notified by FM Circular no. 04 of 2016 dated 15.06.2016 by the Railway Board, Ministry of Railways.

4. It is the case of the petitioner that despite repeated representations from the petitioner to change the intermediate parcel handling station from Sankrail Goods Terminal [SGTY] to Chitpur Station [CP], that too, after obtaining necessary permission from the Eastern Railway, the NF Railway authorities declined the said prayer through the respondent no. 4 vide its letter dated 27.06.2023. When an appeal was preferred by the petitioner, the appellate authority also rejected the prayer of the petitioner vide Final Intimation dated

26.07.2023. By the Final Intimation dated 26.07.2023, the petitioner was intimated that action would be initiated as per Clause 11 of the Contract Agreement and the Contract Agreement would be terminated. It was further observed that in case of termination, the security deposit would be forfeited and the petitioner would be debarred from fresh registration for a period of 5 [five] years.

5. Mr. Bhardwaj, learned counsel for the petitioner has contended that neither the letter dated 27.06.2023 [Annexure-21] nor the Final Intimation dated 26.07.2023 has disclosed any reason and as such, both the decisions contained therein have suffered from irrationality and arbitrariness. The petitioner was served with the Order of Termination dated 11.08.2023 [Annexure-27] whereby the Contract-Work which was for a period of 6 [six] years from 04.11.2022 to 03.11.2028, stood terminated with immediate effect. By the Order of Termination, it was further informed to the petitioner that he has been debarred from fresh registration for a period of 5 [five] years. The Order of Termination contains other penalties also.

6. Mr. Parasar, learned Central Government Counsel while raising the issue of maintainability, has contended that the petitioner ought to have resorted to arbitration. It is contended by him that there is also the remedy of appeal.

7. I have heard the learned counsels for the parties.

8. In the case of *Union of India and others -vs- Tania Construction Private Limited*, reported in (2011) 5 SCC 697, the Supreme Court has held that an alternative remedy is not an absolute bar to the invocation of the writ jurisdiction of the High Court.

9. The work order dated 08.09.2022, which is Annexure-1 to the writ petition

shows at Serial No. 25 that two months notice is required to be given by either the petitioner or the railway authorities, prior to terminating the contract between the parties. Clause 25 of the Work Order states as follows:-

“(25) Termination of contract – If it is not feasible to continue the contract due to any reason, either the lease operator or Railway administration can terminate the contract by giving two months notice. In such cases, 'Security deposits' shall not be forfeited.”

10. The agreement dated 25.11.2022 executed by the parties at Clause 27 provides that the respondent railways have the right to terminate the contract, without giving any notice at any time for whatever reasons as a punitive measure or breach of agreement by the lease holder, or in case of operational exigencies or it is necessary to do so in public interest. However, there is a subsequent condition to be fulfilled if the contract is terminated in terms of Clause 27 of the Agreement, inasmuch as, the railway administration has to issue a written intimation of breach of contract to the petitioner within three working days from the date of termination of the contract.

11. Clause 27 of the agreement dated 25.11.2022 is reproduced below:-

“27. Right to terminate the lease contract:

Railway reserves the right to terminate the contract without giving any notice at any time for whatsoever reason as a punitive measure or breach of agreement by the leaseholder or in case of operational exigencies or it is necessary to do so in public interest. Such instantaneous termination of contract by Railway Administration should be followed by a written intimation of breach of contract within 3 working days of termination. However in case of termination of contract on

operational exigencies or necessity under public interest a Security deposit will not forfeited.

Railway shall have the right to suspend the leasing contract whatsoever reason till the inquiry of any discrepancy or any legal action pertaining to lease is pending/require clearance from concerned authorities.

Leaseholder shall also have the right to terminate the agreement after serving two months advance notice to railway administration.

If it is not feasible to continue the contract due to any reason, either the Signature of the tenderer:’

12. It is not denied by the parties that no prior notice was issued to the petitioner before the railway authority terminated the contract between the parties. Further, while the railway authorities have the right to terminate a contract without giving any notice in terms of Clause 27 of the Agreement dated 25.11.2022, the railway authorities would have to provide reasons in writing within three days of the termination, intimating the breach of contract on the part of the petitioner. However, the same has also not been done in the present case.

13. Without going into the merits of the other issues raised by the petitioner, this Court is of the view that the termination of the petitioner’s contract, vide order dated 11.08.2023, being in violation of the work order and the agreement is unsustainable and the same is accordingly set aside. However, there would be no bar on the part of the respondent, to take action for termination of the contract in terms of the conditions stipulated in the work order and the contract agreement executed by the parties, if there are reasons to do so as per the

conditions stipulated therein.

14. The petitioner may continue with the works, subject to the condition that no further action is taken by the respondents for terminating the petitioner's contract.

15. This writ petition is accordingly disposed of.

JUDGE

Comparing Assistant