

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (C) No. 1016 of 2015

Mohammed Sohaib S/o Rafique Mohammd, aged about 26 years, R/o Bristol Chowk, House No. 8/8, Chhotapara Raipur, Civil and Revenue District Raipur, Chhattisgarh.

---- Petitioner

Versus

1. Union of India, through Divisional Railway Manager, South Eastern Central Railway, Raipur Division, Raipur, Chhattisgarh.
2. Senior Divisional Commercial Manager, South Eastern Central Railway, Raipur Division, Raipur, Chhattisgarh.

---- Respondents

For Petitioner	:	Shri Vinod Deshmukh, Advocate.
For Respondents	:	Shri Abhishek Sinha, Advocate.

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri P. Sam Koshy, J.

Order on Board

Per Navin Sinha, Chief Justice

18/06/2015

1. Heard Learned Counsel for the Petitioner and the Railways.
2. The Petitioner is aggrieved by order dated 8.6.2015 terminating the contract agreement executed between the parties with regard to the parking stand at Raipur Railway Station.
3. Learned Counsel for the Petitioner submits that the termination is arbitrary. The Respondents have made available lesser area for the parking area than that mentioned in the tender notice and in the subsequent agreement. The Petitioner had submitted his bid offer in accordance with the area for parking as mentioned in the Tender notice. It amounts to a breach by the Respondents causing serious prejudice to the Petitioner.
4. The Petitioner has requested for an Arbitration which has also not been

acceded to. It is denied that the Petitioner has not deposited licence fee after 17.1.2014. Licence fee has been deposited thereafter also. If there is any discrepancy in payment of the licence fee, the Respondents are first obliged to make available the parking stand area as mentioned in the tender and the contract agreement. It is next submitted that the Respondents on 26.5.2015 granted two days time to deposit arrears of licence fee failing which the contract would be terminated. But on the same date, without waiting for expiry of the time period, the Respondents published a fresh advertisement inviting bids for the parking stand. The conduct of the Respondents reflects manifest arbitrariness.

5. Learned Counsel for the Respondents submits, that earlier the Petitioner had come to the Court with the same grievance alleging non-availability of parking area in Writ Petition (C) No. 1373 of 2014. The writ petition was dismissed as withdrawn without reserving any liberty. The fresh writ petition for the same grievance is therefore not maintainable.

6. Without prejudice to the same, Learned Counsel further submits that whether the area of the parking stand as made available to the Petitioner is in accordance with the agreement or not is disputed question of fact in view of the assertion and denial. The writ Court cannot examine disputed questions of facts in a contractual matter. It will only examine the fairness in action of the Respondents in their decision making process to terminate the contract. The impugned order itself reflects that the grievance of the Petitioner was fully examined and a joint measurement carried out holding that in fact he was using approximately the same area as provided for in the agreement, rather he was using slightly in excess of the same. Furthermore, the tender itself provided that the Petitioner was required to examine and satisfy himself with regard to the area of the parking stand.

7. We have considered the submissions on behalf of the parties.

8. We find substance in the submission on behalf of the Respondents that in view of the withdrawal of Writ Petition (C) No. 1373 of 2014 unconditionally, filed with regard to the same grievance with regard to the area of the parking stand as made available to the Petitioner, the present writ petition is not maintainable.

9. Merely because the Respondents in pursuance of any request of the Petitioner may have carried out measurement in his presence and passed orders to that effect will not create a fresh cause of action which already stood extinguished in respect of the same issue on 15.9.2014 when the writ petition was withdrawn unconditionally.

10. The relationship between the parties was contractual. The Petitioner alleges breach of contract by the Respondents in not providing him the area of the parking stand as mentioned in the Tender notice and the agreement. This is a disputed question of fact in view of the assertion and denial. Further enquiry on this disputed question of fact is not possible in the writ jurisdiction. If the Petitioner is aggrieved by the order of termination, the appropriate remedy for him lies in a civil suit or under the arbitration clause contained in the agreement between the parties.

11. The writ application is dismissed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE