

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.01.2016

CORAM

THE HONOURABLE MR. JUSTICE M.M.SUNDRESH

W.P. Nos.198 & 199 of 2016

&

W.M.P.Nos.99 to 103 of 2016

M/s.Arenco Catering,
Rep.by its Partner, K.P.Shafique
Babu Complex, Treasury Building,
Feroke, Calicut - 673 631.
State of Kerala

... Petitioner
[in W.P.No.198 of 2016]

M/s.Hotel Royal,
Rep.by its Partner, K.P.Shafique
Hotel Everest Complex,
No.533, Oyitt Road, Calicut.
State of Kerala

... Petitioner
[in W.P.No.199 of 2016]

Vs.

1. Southern Railway,
Rep.by its Deputy Chief
Commercial Manager/PS-II/
Chief Commercial Manager,
Headquarters Office,
Commercial Branch,
Chennai - 600 003.
2. The Indian Railway Catering &
Tourism Corporation Ltd. [IRCTC],
Having its Registered Office at
9th Floor, Bank of Baroda Building,
Parliament Street,
New Delhi.
3. The South Indian Bank Ltd.,
G1, Shruthi Apartments,
II Main Road, Gandhi Nagar,
Adyar, Chennai - 600 020.

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4. The Catholic Syrian Bank Ltd.,
Das India Towers,
second Line Beach,
Chennai - 600 001.

... Respondents
[in both W.Ps.]

PRAYER in W.P.No.198 of 2016 : Writ petition has been filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the first respondent herein in No.C86/PC/16337-38/ERS-Okha Express dated 22.12.2015 and quash the same and forbear the first respondent herein from, in any manner, invoking the Bank Guarantees towards Security Deposits available with the first respondent in respect of other Mobile Contracts entered into between the petitioner and the first respondent herein.

PRAYER in W.P.No.199 of 2016 : Writ petition has been filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the first respondent herein in No.C86/PC/16337-38/ERS-Okha Express dated 22.12.2015 and quash the same and consequently direct the respondents 1 and 2 herein to refund/adjust the Security Deposit made by the petitioner at the inception of the contract in respect of Train No.12617/12618 - Mangala Lakshadweep Express Train and forbear the first respondent herein from, in any manner, invoking the Bank Guarantees towards Security Deposits available with the first respondent in respect of other Mobile Contracts between M/s.Arengo Catering Services and the first respondent herein.

For Petitioner : Mr.AR.L.Sundaresan
[in both W.Ps.] Senior Counsel
for M/s.AL.Ganthimathi

For Respondent No.1 : Mr.R.Thiagarajan
[in both W.Ps.] Senior Counsel
for Mr.P.T.Ramkumar

For Respondent No.2 : Mr.V.G.Sureshkumar
[in both W.Ps.]

C O M M O N O R D E R

Petitioners had entered into On Board Catering Service and Stationary Unit Catering Service contracts with the first respondent / Southern Railway. By the impugned order dated 22.12.2015, the first respondent has asked the petitioners to pay the balance amount towards licence fee along with interest.

2. When the matter is taken up for hearing, the learned Senior Counsel appearing for the first respondent submitted that the Security Deposit that is lying with the second respondent with respect to the petitioners would be adjusted on getting the details from the said authority. After appropriation of the said amount by the first respondent, the remaining amount payable by the petitioners would be intimated. Thereafter, the petitioners will have to pay the balance amount to be intimated by the first respondent, within a further period of two weeks. Till such time, the Bank Guarantee offered by the petitioners with respect to the other contracts would not be invoked.

3. Learned Senior Counsel appearing for the petitioners also submitted that the petitioners would comply with the same. However, if there is any dispute with respect to the fresh demand notice to be issued by the first respondent, liberty may be given to invoke the arbitration clause.

4. In view of the submissions made, these Writ Petitions stand disposed of, giving liberty to the first respondent to raise a fresh demand after appropriation of the Security Deposit made by the petitioners lying with the second respondent. After receipt of the same, the petitioners are at liberty to pay the amounts mentioned in the fresh demand notice to be made, within a period of two weeks from their receipts. If the petitioners are of the view that the said amount cannot be adjusted on facts and law, then it is well open to them to invoke the arbitration clause.

5. Till the aforesaid period of two weeks from the date of receipt of demand notice to be raised by the first respondent after deducting the Security Deposit lying with the second respondent by the first respondent, the Bank Guarantee with respect to the contracts, which is the subject matter of the case shall not be invoked. It is also made clear that in so far as the Security Deposit lying with the second respondent pertaining to the petitioners are concerned, it is well open to

the said authority to deduct any dues and thereafter, permit the first respondent to appropriate the remaining amounts based upon which the proposed demand notice would be issued.

6.It is further made clear that it is well open to the petitioners to move the Arbitrator for further orders including seeking appropriate orders against the invocation of Bank Guarantee, if so advised, apart from approaching this Court by filing a petition under Section 9 of the Arbitration Act.

Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Deputy Chief
Commercial Manager/PS-II/
Chief Commercial Manager,
Southern Railway,
Headquarters Office,
Commercial Branch,
Chennai - 600 003.
2. The Indian Railway Catering &
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Having its Registered Office at
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4. The Catholic Syrian Bank Ltd.,
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second Line Beach, Chennai - 600 001.

+1cc to M/s.AL.Ganthimathi, Advocate, S.R.No.2007

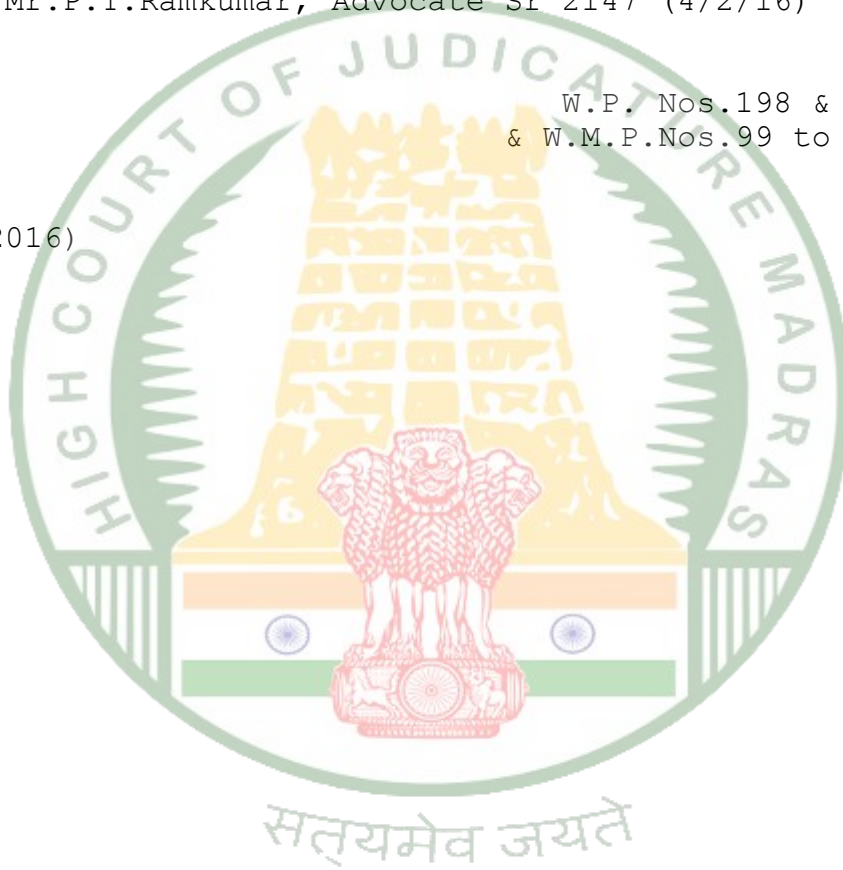
+1cc to Mr.V.G.Sureshkumar, Advocate, S.R.No.1578

+ 1 cc to M/s.AL.Ganthimathi, Advocate Sr 2006 (12/1/16)

+ 1 cc to Mr.P.T.Ramkumar, Advocate Sr 2147 (4/2/16)

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SV(CO)
CA(11/01/2016)



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