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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 9447/2018

M/S SHRI GANESH MANAGEMENT SERVICE Petitioner

Through: Mr Manjit Pathak, Advocate.

versus

UNION OF INDIA AND ORS. Respondents

Through: Mr Jagjit Singh, Sr. Standing Counsel
for Railways with Mr Preet Singh,
Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **10.09.2018**

1. The petitioner has filed the present petition, *inter alia*, praying as under:-

“(a) Issue a Writ in the nature of Mandamus quashing the letter dated 27.03.2018 issued by Divisional Commercial Manager/Fr, New Delhi and thereby restraining the railway authority from terminating the lease contract of the petitioner of Train No.12368.

(b) Issue a writ in the nature of Prohibition restraining the railway authorities from giving effect or further effect to the letter dated 27.03.2018.”

2. By a letter dated 27.03.2018 (which is impugned by the petitioner), respondent no.3 (Divisional Commercial Manager, Northern Railway) has terminated the agreement stated to have been entered into between the parties on 01.06.2017 (hereafter ‘the Agreement’). In terms of the said

agreement, the respondents leased a parcel space in RSLR (R-1) compartment in train no.12368 to the petitioner, for a period of 5 years.

3. On 17.01.2018, the petitioner was prevented from loading the goods in the said compartment. The petitioner was informed that the compartment in question had been changed from RLSR to LHB. This Court is informed that the said conversion entails conversion of a conventional railway wagon to an advanced wagon (referred to as LHB). It is further stated that LHB has lesser space than a conventional wagon.

4. The petitioner filed a representation dated 01.02.2018 with the railway authorities, *inter alia*, protesting against being prevented from loading goods on the train in question. Thereafter, respondent no.3 issued the letter dated 27.03.2018 (the impugned letter).

5. A plain reading of the agreement between the parties indicates that railway authorities have a unfettered the right to terminate the contract. Clause 23.2 of the said agreement is relevant and reads as under:-

“23.2 Railway shall have the right to terminate the contract/agreement for any reason whatsoever after serving one month’s notice to the lease holder. However, Railway shall reserve the right to terminate the contract as a punitive measure without any notice and at any time in case of breach of agreement or serious violation of any of the stipulation of policy/railway’s rules by the lease holder or in case of operational exigencies (as mentioned in Para 1.2). Railway has the right to terminate the agreement if the registration of the leaseholder expires within the contractual period and/or party fails to renew the registration before its expiry.

However, such instantaneous termination of contract by

railway administration would be followed by a written intimation of termination.”

6. Clause 1.2 of the Agreement also expressly indicates that the commitment of the railway administration to provide leased parcel space is subject to certain exigencies. One of such exigencies is the conversion of conventional rake into LHB. Clause 1.2 of the Agreement is set out below:-

“1.2 Railway administration shall give guarantee to provide leased parcel space of the Assistant Guard’s Cabin/Brakevan/Parcel Vans as per terms and conditions of the agreement. However, in case of Railway’s operational exigencies such as termination of train, short of destination or cancellation of service/train due to floods/foggy weather, derailment/accidents, breach of the, interruption of traffic, conversion of conventional rake into LHB, change in nomenclature of train or any other operational reason; Railway Administration shall not be held responsible for not providing the guaranteed service for the leased parcel space.” [emphasis provided]

7. The contention that the railway authorities were required to give one month’s prior notice for such termination is unmerited. A plain reading of Clause 23.2 of the Agreement indicates that the railway authorities had a right to terminate the contract in question for any reason by giving once month’s prior notice. However, in the case of exigencies indicated therein (as provided in Clause 1.2 of the Agreement), such termination could also be effected without such notice. Since the termination in the present case is on account of reason specified in Clause 1.2 of the Agreement, no such prior notice was required. However, the railway authorities were required to communicate the said termination in writing; they have met this requirement

by way of the impugned letter.

8. In view of the above, the petition is unmerited.

9. This Court has also pointed out to the learned counsel for the petitioner that the Agreement included an arbitration clause and the disputes could be referred to arbitration. He, nonetheless, insisted that this Court decides this issue. Given that the dispute in question concerned interpretation of a few clauses of the Agreement, and the Court's view that the dispute is insubstantial, this Court does not consider it apposite to relegate the parties to their contractual remedies. However, it is clarified that nothing stated in this petition would disentitle the petitioner for claiming refund of the amount already deposited. Needless to state that if the same are due to the petitioner, the concerned authorities shall refund the same.

10. The petition is dismissed with the above observations.

SEPTEMBER 10, 2018
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VIBHU BAKHRU, J