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

+ **W.P.(C) 8661/2017**

GANESH KUMAR MANDAL

..... Petitioner

Through: Mr. Manjit Pathak, Adv.

versus

UNION OF INDIA AND ORS.

..... Respondents

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

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

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19.01.2018

CM No. 35602/2017 (for exemption)

Exemption allowed, subject to all just exceptions.

Application stands disposed of.

W.P.(C) 8661/2017

1. This petition has been filed by the petitioner with the following prayers:

“It is therefore, most respectfully prayed that the Hon’ble Court may kindly be pleased:

(a) *Issue a writ in the nature of Mandamus quashing the letter dated 15.10.2015 issued by Senior Divisional Commercial Manager/FR, New Delhi and thereby restraining the railway authority from debarring the petitioner from entering into tender for the time period mentioned in the letter,*

(b) *Issue a Writ in the nature of Mandamus directing the railway authorities to return the amount deposited in the form of FDR a/c. No. 915040029411767 drawn at Axis Bank,*

- (c) *Issue a writ in the nature of Prohibition restraining the railway authorities from giving effect or further effect to the letter dated 15.10.2015,*
- (d) *Pass such other or further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."*

2. It is the submission of the learned counsel for the petitioner that respondents had issued tender for leasing of space in Brake Vans having carrying capacity 14 Tons by Train No. 12488 for transportation of parcels from Anand Vihar Terminal to Jogbani for a period of three years. Petitioner emerged as the highest and successful bidder and deposited a sum of Rs.4,71,990/- in the form of FDR as security money. The petitioner and the respondents entered into an agreement dated July 22, 2015 in that regard. It is the case of the petitioner that in July, 2015, petitioner requested the respondents to provide the allotment letter to start the operation of the work from July 26, 2015. Similar representation was made in August, 2015. It is the case, the on August 7, 2015, he filed a representation vide letter dated August 6, 2015 with the respondents and asked the respondents to return the earnest and security money deposited with them. He on August 17, 2017, once again filed a representation vide letter dated August 17, 2017 with the respondents and asked the respondents to return the earnest and security money to him. On August 28, 2015, respondents issued a show cause notice asking why action should not be taken against him for contravention of FM Circular No. 06/2014 dated April 15, 2014 to which the petitioner had filed a representation dated September 15, 2015 with the respondents and asked the respondents to return the earnest and security money to him. Respondents

issued the impugned order terminating the lease contract and also debarred the petitioner from entering into any contract with Northern Railway, Delhi zone.

3. When the matter was listed on January 18, 2018, the learned counsel for the respondents had taken an objection with regard to the maintainability of the writ petition in view of an arbitration clause existing in the agreement executed with the petitioner on July 22, 2015 and had sought the dismissal of the writ petition.

4. Learned counsel for the petitioner insisted that the present petition is maintainable inasmuch as the impugned action is in violation of the fundamental rights of the petitioner without following the principles of interest of justice. In this regard, he relied upon the judgment of the Supreme Court in the case of ***Harbanslal Sahnia and Anr. V. Indian Oil Corpn. Ltd. and Ors. AIR 2003, Supreme Court 2120*** to contend, if the writ petition is for an enforcement of a fundamental right and there is a violation of principles of natural justice or where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged, then the writ petition is maintainable de-hors the existence of an arbitration clause in the agreement. It is his endeavour to contend that the impugned order is contrary to clause 6.4 and 20.1 of the leasing policy. Learned counsel for the petitioner states, petitioner has been requesting the respondents to give allotment letter to enable him to start the work. Denial of an allotment letter resulting in delay could not be the fault of the petitioner and also could not lead to the termination of contract / forfeiture of the security deposit, debarring the petitioner from entering into any tender for next 2 years. He

also relies on the judgment of the Supreme Court in the case of *Satwati Deswal v. State of Haryana and Ors. JT 2009 (14) SC 1* and *Union of India and Ors. v. Tania Constructions Pvt. Ltd. JT 2011 (5) SC 59*.

5. On the other hand, learned counsel appearing for the respondents state, the first allotment letter was issued in the month of July, 2015 which was followed by another allotment letter on August 6, 2015. In other words the submission that he had not received the allotment letter is an incorrect stand. In fact despite allotment letter the petitioner did not start the work for which he was granted the tender. He would state, in terms of the stipulations referred to by the petitioner, respondents were justified in taking the impugned action. He also states, the judgments relied upon by the counsel for the petitioner has no applicability in the facts.

6. Having heard the learned counsel for the respondents, suffice to state, respondents have not filed any reply to the writ petition. That is, there is no submission of statement on substance of the dispute resulting in submitting to the jurisdiction of this Court. There is no dispute, in fact, conceded by the learned counsel for the petitioner that there is an arbitration clause in the agreement. His plea, the same would not bar this court to entertain the writ petition in view of the judgment of the Supreme Court in the case of *Harbanslal Shahania and Anr. (supra)* is not appealing. In the said judgment, the Supreme Court has held as under:

“7. So far as the view taken by the High Court that the remedy by way of recourse to arbitration clause was available to the appellants and therefore the writ petition filed by the appellants was liable to be dismissed, suffice it to observe that the rule of exclusion of writ jurisdiction by availability of an

alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies; (i) where the writ petition seeks enforcement of any of the Fundamental Rights; (ii) where there is failure of principles of natural justice or; (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act and is challenged. (See Whirlpool Corporation v. Registration of Trade Marks, Mumbai and others (1998) 8 SCC 11). The present case attracts applicability of first two contingencies. Moreover, as noted the petitioners' dealership, which is their bread and butter, came to be terminated for an irrelevant and non-existent cause. In such circumstance, we feel that the appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings."

7. There is no averment alleging, the violation of any of the fundamental rights because of the termination of the agreement. Relationship between the petitioner and the respondents was purely contractual and the grievance of the petitioner is primarily against the termination effected; forfeiting the security deposit and debarring the petitioner from further tenders. Hence, none of the grounds, held by the Supreme Court for entertaining the writ petition are available here. That apart, it cannot be the case of the petitioner that there is a violation of principles of natural justice. In fact, it is a conceded case of the petitioner that show cause notice dated August 28, 2015 was issued to the petitioner before the respondents took the impugned action. It is also not the case of the petitioner that the orders have been passed without the jurisdiction or the petitioner has challenged the vires of an Act. The said judgment has no applicability in the facts of this case. In so far as the reliance placed by the learned counsel for the petitioner on the

case of *Tantia Construction Pvt. Ltd. (supra)*, the Supreme Court in Para 27 held as under:

“27. Apart from the above, even on the question of maintainability of the writ petition on account of Arbitration Clause included in the agreement between the parties, it is now well-established that an alternative remedy is not an absolute bar to the invocation of the writ jurisdiction of the High Court or the Supreme Court and that without exhausting such alternative remedy, a writ petition would not be maintainable. The various decisions cited by Mr. Chakraborty would clearly indicate that the constitutional powers vested in the High Court or the Supreme Court cannot be fettered by any alternative remedy available to the authorities. Injustice, whenever and wherever it takes place, has to be struck down as an anathema to the rule of law and the provisions of the Constitution. We endorse the view of the High Court that notwithstanding the provisions relating to the Arbitration Clause contained in the agreement, the High Court was fully within its competence to entertain and dispose of the Writ Petition filed on behalf of the Respondent Company.

8. There can be no dispute on the said proposition of law. But the stand of the parties, clearly demonstrate disputed questions of facts, which cannot be gone into in these proceedings. Appropriate remedy is to invoke Arbitration clause, where, the parties would be able to produce witnesses / lead evidence in support of their respective stand. The arbitration clause in the agreement reads as under:

“In the event of any difference of opinion or dispute between the Railway Administration and the Leaseholder as to the respective rights and obligations of the parties hereunder or as the true intent and meaning of these presents or any articles of conditions thereof. Such difference opinion shall be referred to

the sole arbitrator appointed by the General Manager, Northern Railway, Baroda House, New Delhi whose decision shall be final, conclusive and binding on the parties, the intention of the parties being that every matter in respect of this agreement must be decided by him as sole arbitrator and not taken to a Civil Court. In the event of the arbitrator dying, refusing to act, resigning or being unable to act for any reason it shall be lawful of GM/NR to appoint another arbitrator in place of outgoing arbitrator in the manner aforesaid. All disputes are subject to the territorial jurisdiction of High Courts of Delhi.”

9. It is not the case of the petitioner that the said arbitration clause does not contemplate adjudication of the nature of dispute arisen. This Court is not inclined to entertain the petition.

10. The present petition is dismissed, liberty is with the petitioner to invoke the Arbitration clause in accordance with law.

CM No. 35601/2017 (for stay)

In view of the order passed in the writ petition, the application is dismissed.

V. KAMESWAR RAO, J

JANUARY 19, 2018/jg