

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

ARBITRATION APPLICATION NO.4 OF 2018

M/S N.N. MAKHIJANI AND SONS, THROUGH PROPRIETOR MANOHAR
NANAKRAM MAKHIJANI
VERSUS
THE GENERAL MANAGER, CENTRAL RAILWAY, CHHATRAPATI SHIVAJI
MAHARAJ TERMINUS, MUMBAI

...
Advocate for the Applicant : Shri Patil Sandesh R.
Advocate for the Respondents : Shri Navandar Manish N.
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 08th April, 2019

Per Court:

1 This Court (Coram : V.K.Jadhav, J.) had passed the following order on 07.03.2018 :-

"1. *Learned counsel for the petitioner submits that the petitioner is running a tea, coffee, sweets and fruits stall at Pachora Railway Station under license issued by the respondents. Learned counsel submits that the respondents have terminated the contract of tea stall of the petitioner for non-payment of license fees, on 25.09.2017 and communicated the same by letter dated 14.11.2017. It is the case of the petitioner that the said contract was terminated arbitrarily. Consequently, the petitioner has issued notice dated 18.12.2017 to respondent No.2 for appointment of an arbitrator as contemplated in clause No. 30 of agreement. However, the respondents have not paid any heed to his notice*

and on the other hand issued a communication dated 15.01.2018 calling upon the petitioner to remit the outstanding dues of Rs.11,09,318/-.

2. *In view of the above, issue notice to the respondents, returnable on 04.04.2018."*

2 I have considered the submissions of the learned advocates for the respective sides.

3 The Respondent has raised the grievance that as the Applicant has not deposited the outstanding licence fees of Rs.11,09,318/- despite the letters dated 14.11.2017 and 15.01.2018, the licence was terminated. Though the Applicant had prayed for appointment of an Arbitrator under clause 30 of the agreement, the Respondent called upon the Applicant to deposit the outstanding dues.

4 The learned advocate for the Respondent further submits that the arbitration proceeding was not commenced and the Respondent did not respond to the communication of the Applicant seeking appointment of the Arbitrator by letter dated 18.12.2017 because the Applicant had failed to deposit the outstanding dues.

5 I have gone through clause 26 of the agreement between the parties, which provides for either of the parties to terminate the agreement by giving one month's notice in writing in that behalf without assigning any reason. The contention of the Applicant is that his licence was terminated on 25.09.2017 and this was communicated to him by the

letter dated 14.11.2017, which is against clause 26.

6 I have also considered the arbitration clause 30 appearing in the arbitration agreement. It clearly indicates that the General Manager of the Central Railway shall be the Sole Arbitrator. If he is not available, the Authority, which is entrusted with the functions of the General Manager, can be the Arbitrator. If the General Manager or any such officer is unable or unwilling to act as a Sole Arbitrator, the General Manager can appoint another officer as a Sole Arbitrator. For clarity clause 30 is reproduced verbatim as under :-

"30. *All questions, disputes and or differences arising under or in connection with this agreement or in any way touching or relating to or concerning the construction, meaning or effect of these presents (except as to matters the decision whereof is otherwise hereinbefore expressly provided for) shall be referred to the sole arbitration of the General Manager for the time being of the Central Railway or, in case his designation is changed or his office is abolished, to the sole arbitration of the officer who for the time being is entrusted, whether or not in addition to other functions, with the functions of the General Manager, Central Railway by whatever designation such officer may be called (hereinafter referred to as the said officer), and if the General Manager for the time being of the Central Railway or the said officer is unable or unwilling to act, to the sole arbitration of some other person appointed by the General Manager or the said officer willing to act as such arbitrator. It will be no objection to any such appointment that the arbitrator so appointed is a Government servant that he had to deal with the matters to which this agreement relates and that in the course of his duties as such*

Government servant he has expressed view on all or any of the matters in dispute or difference. The award of the arbitrator so appointed shall be final and binding on the parties thereto."

7 In view of the above, the termination of the agreement as like in this case, can be a part of the arbitration proceedings since all questions, disputes and/or differences arising under or in connection with this agreement or in any way touching or relating to the construction, have to be referred to the sole Arbitrator.

8 Considering the above, this Arbitration Application is allowed. The Respondent, through the General Manager, Central Railway, shall forthwith take a decision on the notice issued by the Applicant dated 18.12.2017 as regards the appointment of the Sole Arbitrator and shall convey his decision to the Applicant, on or before 07.05.2019.

9 Needless to state, all contentions of the litigating sides are kept open for the Arbitrator to consider in the arbitration proceedings.