

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.02.2019

CORAM

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

W.P.No.13918 of 2016
and
W.M.P.No.12193 of 2016

V.G.Jeyakumaar
Proprietor-Sri Ganga Transport,
D-13, CMDA, Truck Terminal Complex,
Madhavaram, Chennai - 600 110. .. Petitioner

Vs.

- 1.Union of India
Represented by its General Manager,
Southern Railway,
Chennai.
- 2.Senior Divisional Commercial Manager,
Southern Railway, Park Town,
Chennai - 600 003. .. Respondents

PRAYER : Writ Petitions filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records relating to the order dated 22.09.2015 bearing No.M/C.300/Cycles/MCPK on the file of the 2nd respondent and quash the same and consequently direct the respondents to return to the petitioner (1) the EMD of Rs.8,73,653 that was given by him, (2) Rs.30,53,200/- towards the Advance license fee and the sum of Rs.9,00,000/- expenses spent by petitioner for making the vehicle parking stand, Chepauk Railway Station fit for parking, along with interest @ 12% per annum from 30.04.2014 till the date of payment.

For Petitioner : Mr.T.Sathiyamoorthy
For Respondents : Mr.P.T.Ramkumar

O R D E R

The Writ Petition has been filed by the petitioner challenging the order passed by the second respondent bearing No.M/C.300/Cycles/MCPK dated 22.09.2015 and seeking consequential directions.

2. The petitioner is a contractor. He submitted representations on 06.05.2015 and 06.01.2016 to the respondents, seeking return of (1) the EMD of Rs.8,73,653/- that was given by him, (2) Rs.30,53,200/- towards the Advance license fee and the sum of Rs.9,00,000/- towards expenses incurred by him for cleaning and making the vehicle parking stand, Chepauk Railway Station along with interest @ 12% per annum from 30.04.2014 till the date of payment. As the same have not been considered, the present writ petition has been filed.

3. When the matter is taken up for hearing, Mr.P.T.Ramkumar, learned counsel appearing for the respondents submitted that clause 37 of the agreement speaks about the existence of the Arbitration Clause. The learned counsel further submitted that considering the similar issue in C.R.P.(PD) No.2678 of 2013, this Court, by order dated 24.07.2014, passed an order to resolve the dispute in Arbitration.

4. Clause 37 of the agreement is extracted hereunder:
"37. If any dispute, difference or question shall arise between the Railway Administration and the Licensee as to the respective rights, duties and obligations of the parties hereto or as to the constructions or interpretation of any of the terms and conditions of the Agreement as to its applications (except the decision whereof it herein expressly provided for) then the same shall be referred to the Chief Commercial Manager of the Southern Railway Administration whose decision will be final."

5. The learned counsel for the respondents contended that in view of the above clause, the option open to the petitioner is to invoke the Arbitration Clause.

6. However, the learned counsel for the petitioner also invited the attention of this Court to Clause 28 of the agreement, which is extracted hereunder:

"28. (i)

(ii)

The licensee hereby agrees that the sum of money or moneys so withheld or retained under the lien referred to above by the Railway will be kept withheld or retained as such by the Railway till the claim arising out of or under the contract is determined by the arbitrator or the competent Court as the case may be and that the licensee will have no claim for interest or damages whatsoever on any account in respect of such

withholding or retention under the lien referred to supra and duly notified as such to the licensee."

7. In view of the above clause also, it is open to the petitioner to seek appointment of an arbitrator.

8. Accordingly, either the petitioner or the Chief Commercial Manager of the Southern Railway Administration is directed to initiate arbitral proceedings with respect to the dispute in particular reference to the impugned order dated 22.09.2015. The petitioner is also directed to file an application before the Arbitrator in this regard within a period of four weeks from the date of receipt of a copy of this order.

9. With the above observations, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

To

1. The General Manager
Southern Railway,
Union of India, Chennai.
2. The Senior Divisional Commercial Manager,
Southern Railway, Park Town,
Chennai - 600 003.
3. The Chief Commercial Manager
Southern Railway
Chennai

+1 CC to Mr. T. Sathiyamoorthy, Advocate sr 15678.

+1 CC to Mr. P. T. Ramkumar, Advocate sr 15882.

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and

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GJ(CO)
SP(19/03/2019)