

IN THE HIGH COURT OF JUDICATURE AT MADRAS  
DATED : 20.09.2019  
CORAM  
THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN  
W.P. 5214 of 2010

M/s.Chetak Carriers,  
rep. by its Authorised Branch  
Manager Mr.B.Ramalingam,  
S/o. V.Balakrishnan,  
No.9/17, 1<sup>st</sup> Cross Kalasipatayam,  
New Extn., Bangalore-2.

... Petitioner

Vs

1. The Chief Commercial Manager,  
Southern Railway,  
Park Town, Chennai-3.
2. The Chief Traffic Manager,  
Commercial Branch,  
Headquarters Building,  
Southern Railway,  
Chennai-3.
3. The Divisional Railway Manager,  
Southern Railway,  
Park Town, Chennai-3.
4. The Senior Divisional Commercial  
Manager,  
Divisional Office,  
Commercial branch,  
Southern Railway,  
Chennai-3.

... Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the entire records pertaining to the order of the 4<sup>th</sup> respondent in No.M/C.206/SLR/TN 15/2615 (RLC)/Chetak, dated 05.03.2010 and quash the same, consequently directing the respondents to permit the petitioner to carry on its business for the transportation of parcels in terms of the agreements entered between the petitioner and the 4<sup>th</sup> respondent for leasing of parcel space in 1<sup>st</sup> compartment of Rear Brake Van (SLR) from Chennai Central to New Delhi by Train Nos.2621 and 2615 dated 09.11.2007.

For Petitioner : Mr.K.M.Vijayan,  
Senior Counsel for  
Mr.R.Selvakumar

For Respondents : Mr.P.T.Ramkumar

O R D E R

This Writ Petition has been filed challenging the order passed by the 4<sup>th</sup> respondent terminating the petitioner's contract and also blacklisting the petitioner for the period of five years and forfeiting the security deposit as well as registration fees paid by the petitioner.

2. According to the petitioner, the 4<sup>th</sup> respondent has awarded contract, leasing of parcel space in 1<sup>st</sup> compartment of rear brake van (SLR) from Chennai Central to New Delhi by Train Nos.2621 (Tamil Nadu Express) and 2615 (Grand Trunk Express) by an agreement dated 09.11.2007. The period of agreement is for three years i.e. from 12.11.2007 to 11.11.2010. The petitioner has provided 4 ton parcel space for the transportation of parcel traffic throughout the week for three years and the petitioner had paid a sum of Rs.2,46,000/- for two trains. While so, during the pendency of the contract, the 4<sup>th</sup> respondent has passed the impugned order, dated 05.03.2010, on the ground that the petitioner has violated the lease agreement, and he has overloaded in the brake van of Train No.2615, thereby violated clause 14 (a) of the agreement, and terminated all the contracts, and also debarred the petitioner from fresh registration for the period of 5 years. That apart, the security deposit and the registration fee paid by the petitioner was also forfeited. According to the petitioner, the impugned order has been passed without issuing any notice and without conducting any enquiry. That apart, as per the circular issued by the railway authority from time to time, the lessee is permitted to have overload of 5 tonne on permissible carrying capacity. Even according to the impugned order, the overload said to have been transported by the petitioner is less than 5 tonne and on that ground, the contract cannot be terminated. Now, challenging the impugned order passed by the 4<sup>th</sup> respondent, the present Writ Petition has been filed.

3. The respondents have filed a counter affidavit stating that the lease was granted to the petitioner for a parcel space in the first compartment of Tamil Nadu Express and Grand Trunk Express, and on four occasions, the petitioner has violated the conditions. Hence, as per clause 14(a) of the agreement, the contract was terminated. That apart, as per the agreement

entered into between the petitioner and the 4<sup>th</sup> respondent, the petitioner cannot load the parcels beyond the permissible carrying capacity. If at all, any dispute, it should be referred for arbitration, and the petitioner cannot file a Writ Petition.

4. I have heard the learned counsel appearing for the petitioner as well as the learned standing counsel appearing for the respondents and perused the records carefully.

5. The learned counsel appearing for the petitioner would contend that the impugned order has been passed in total violation of principles of natural justice and without issuing any notice whatsoever, and also without conducting any enquiry. That apart, as per the circular issued by the railway department in the year 2009, the petitioner is permitted to carry 5 tonne of excess load. Even as per the impugned order, three occasions, the excess load carried is less than 5 tonne. Hence, clause 14 (a) of the agreement is not applicable to the petitioner, and they cannot invoke the above clause for terminating the contract.

6. Per contra, the learned counsel appearing for the respondents would submit that the petitioner was permitted to carry 5 tonne on permissible carrying capacity, but on four occasions, it has been found that the petitioner has loaded more than the permissible carrying capacity. Earlier, a notice has been issued warning the petitioner not to carry overload, despite the same, the petitioner deliberately overloading. As per clause 14(a) of the agreement, the petitioner is permitted to load parcels only to the permissible carrying capacity, but he has committed default four times and hence, the contract was terminated. That apart, the petitioner cannot maintain the Writ Petition challenging the order of termination.

7. I have considered rival submissions, and perused the records carefully.

8. A perusal of the impugned order, it could be seen that the order of termination has been passed without issuing any notice, and without conducting any enquiry whatsoever. It is true that the parties are bound by the contract. As per Clause 14(a) of the agreement, if the licensee committed default for more than four times, his contract is liable to be terminated. But, the learned counsel appearing for the petitioner submitted that as per the circular issued by the respondent railway board dated 13.10.2009, the overload if any is only within the

permissible limit, without considering the same, the contract was terminated.

9. Be that as it may, now, the licence period expired on 31.11.2010 itself, and that apart, the blacklisting period of five years was also over. In the above circumstances, it is not necessary to go into the validity of the order at this stage. Considering the fact that the petitioner's security deposit as well as registration fees has been forfeited by the 4<sup>th</sup> respondent, it is open for the petitioner to approach the concerned authority/4<sup>th</sup> respondent and to file necessary representation seeking for refund of security deposit as well as registration fees forfeited by the 4<sup>th</sup> respondent, pursuant to the above circular dated 13.10.2009 within a period of four weeks from the date of receipt of the copy of this order. If any such representation is filed by the petitioner, the 4<sup>th</sup> respondent is directed to consider the same and pass suitable orders on its own merit for refunding the security deposit and registration fees.

10. With the above direction, the present Writ Petition stands disposed of. No costs.

Sd/-  
Asst.Registrar (CJ conf)

/true copy/

Sub Asst. Registrar

rpp

To

1. The Chief Commercial Manager,  
Southern Railway,  
Park Town, Chennai-3.
2. The Chief Traffic Manager,  
Commercial Branch,  
Headquarters Building,  
Southern Railway,  
Chennai-3.

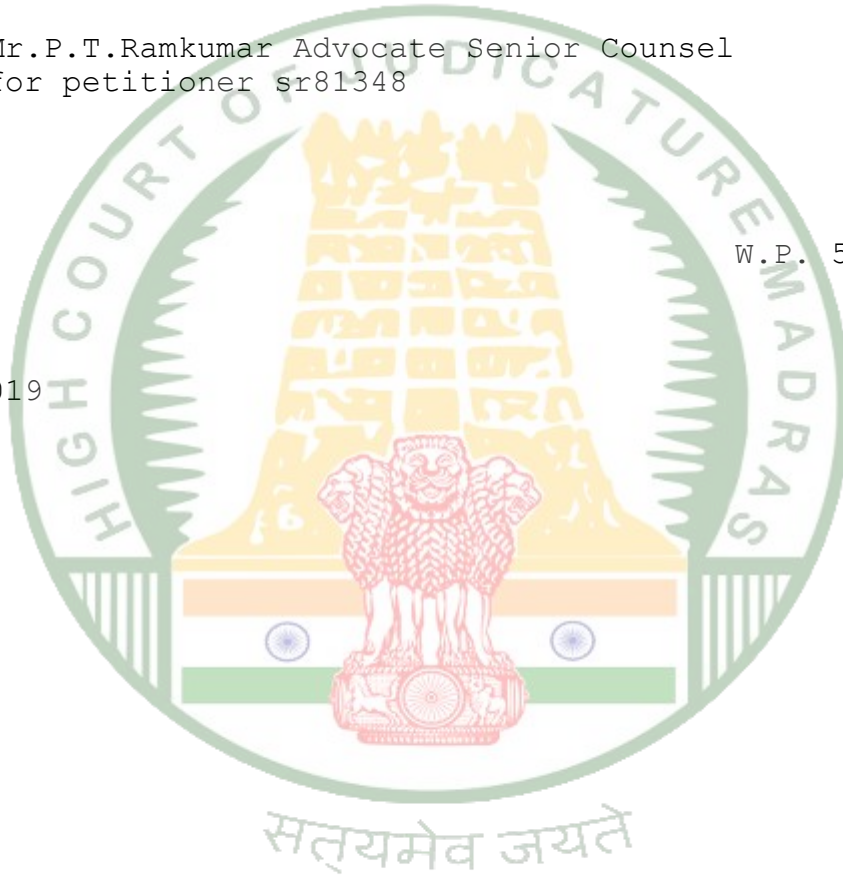
3. The Divisional Railway Manager,  
Southern Railway,  
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4. The Senior Divisional Commercial  
Manager,  
Divisional Office,  
Commercial branch,  
Southern Railway,  
Chennai-3.

+1 cc to Mr.P.T.Ramkumar Advocate Senior Counsel  
Railways for petitioner sr81348

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