IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.12.2019

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

W.P.No.34136 & 34138 of 2019
and
W.M.P.Nos.34747 & 34748 of 2019

M.Mohammed Akbar ....Petitioners in both W.Ps.

Vs.

1.The Southern Railway,
rep. by its General Manager,
Park Town,
Chennai-600 003

2.The Assistant Commercial Manager- II,
The Senior Divisional Commercial Manager/MAS,
Southern Railway,
Office of the Divisional Railway Manager,
Commercial Branch,
Park Town, Chennai-600 003

3.The Station Manager,
Southern Railway,
Arakonam Junction,
Arakonam. .. Respondents in both WPs.

Petitions filed under Article 226 of The Constitution of India praying for the issuance of

(a) a writ of Certiorarified Mandamus to call for the records of the second respondent herein relating to M/C.79/GMU-29/AJJ dated 08.11.2019 and No.M/C.79/CS/GMU 29/AJJ dated 28.11.2019 and quash the same and consequently direct the second respondent herein to permit the petitioner to continue to operate the stall GMU 29 at Platform No.1 at Arakkonam Railway Station for the full period of 5 years from 19.02.2016(prayer in WP.No.34136 of 2019).

(b) a writ of Certiorarified Mandamus to call for the records of the second respondent herein relating to M/C.79/GMU-30/AJJ dated 05.11.2019 and quash the same and consequently direct the petitioner to continue to operate the stall GMU 30 at Platform No.4/5 at Arakkonam Railway Station for the full period of 5 years ending 18.02.2021(prayer in WP.No.34138 of 2019).

For Petitioner : Mr.AR.L Sundaresan, SC for Ms.AL.Gandhimathi
For Respondents : Mr.P.T.Ramkumar

ORDER

WP.No.34136 of 2019

The petitioner is interested in Catering Stall GMU 29 at Platform No.1 at Arakkonam Railway Station which had been allotted on 19.02.2016 but, vide order No.M/C.79/CS/GMU 29/AJJ dated 28.11.2019, the said Catering Stall was closed by the second respondent.

WP.No.34138 of 2019

The petitioner is interested in Catering Stall M/C.79/GMU-30/AJJ dated 05.11.2019 at Platform No.4/5 at Arakkonam Railway Station which had been allotted on 06.03.2015 for a period of 5 years.

2. The learned Senior Counsel appearing for the petitioner stated that arbitrarily the respondents had closed down the Catering Stall No.29 and are also taking steps to terminate the licence in respect of Shop No.30. He further stated that without proper adjudication, the liquidated damages had been computed exorbitantly while no damages had been sustained by the 2nd respondent.

3. Mr.P.T.Ramkumar, learned counsel appearing for the respondents would submit that the petitioner was granted licence in respect of two catering stalls, viz., GMU-29 and GMU-30 in Arakkonam Railway Station. As regards catering stall-GMU-29 is concerned, the second respondent has ordered closure by proceedings dated 28.11.2019 on the ground for non-remittance of licence fee and liquidated damages and had hence raised demand for payment of arrears. As regards catering stall-GMU-30, he would submit that the second respondent, by proceedings dated 05.11.2019, directed the petitioner to remit the amount due and payable towards licence fee, etc. The learned counsel has produced a copy of the proceedings dated 7.12.2019 of the second respondent, wherein, the details regarding the dues payable by the petitioner in respect of both catering stalls towards licence fee and liquidated damages along with GST charges, have been mentioned, and which are extracted below:

GMU-29 Cattering Stall, Arakkonam(Wp.No.34136 of 2019)

1.licence fee dues(06.03.2019 to 05.03.2020-Rs.3,48,500/- plus
GST 18% Rs. 62,730/-
2.Old GST dues(06.03.2017 to 05.03.2019) -Rs.1,25,460/-
Total -Rs.5,36,690/-
3.LIquidated damages dues -Rs.1,54,645/- plus
GST@18% Rs.27,836/-

GMU-30 Catering Stall, Arakkonam(WP.No.34138 of 2019)
1.licence fee dues(06.03.2019 to 05.03.2020-Rs.86,797/- plus
GST 18% Rs. 15,623/-
2.Old GST dues(06.03.2017 to 05.03.2019) -Rs.2,04,840/-
Total -Rs.3,07,260/-
3.LIquidated damages dues -Rs.2,03,248/- plus
GST@18% Rs.36,585/-

4. After hearing both learned Senior Counsel for the petitioner and the learned counsel for the respondents, it appears that since there is a Clause for arbitration in the agreement, it would only be in the interest of both the parties, that they resolve their issues with respect to claim for liquidated damages by arbitration. The learned Senior Counsel for the petitioner also stated that the petitioner could not start the business immediately from the date of the commencement of the lease period since the stall could not be opened till a year as no electricity connection was granted. Therefore, it is urged that as and when an Arbitral Tribunal is constituted, the reference regarding ascertainment of liquidated damages ought to be reckoned or calculated from the date of commencement of business of the petitioner alone and no damages ought to be taken into account during the pendency of the arbitral proceedings and for the entire period of five years.

5. It is made clear that the parties are at liberty to raise all issues including the issues relating to the claim for liquidation damages and also issues relating to the actual date of commencement of lease, etc., before the Arbitral Tribunal and the learned Arbitral Tribunal may decide the same based on evidence in manner known to law.

6. However, since the Catering Stall no.29 is already closed as on date, the learned Senior Counsel for the petitioner states that they are ready to pay the arrears of licence fee and GST, i.e. a total sum of Rs.4,11,230/- by way of demand draft which had also been handed over to Mr.P.T.Ramkumar, learned counsel for the respondents, who has also acknowledged the receipt of the same. In view of the fact that the petitioner has made the above payment, it would only be appropriate for the respondents to open Catering stall No.29

i.e., on 11.12.2019 itself so as to enable the petitioner herein to commence the business in the said stall without any delay.

7. The learned Senior Counsel for the respondents has also stated that GST amount of Rs.5,25,460/- with respect to the said Stall no.29 would be paid within a period of two weeks and states that it would be without prejudice to the issues to be raised before Arbitral Tribunal which may decide on the same.

8. With respect to GMU Stall no.30, it was stated that the petitioner would pay a sum of Rs.86,797 and 15,623/- towards licence fee and GST on or before 20.12.2019 and also pay the old GST dues for a sum of Rs.2,04,840/- on or before 20.01.2020. In respect of liquidated damages pertaining to both the Stalls, as stated above, the same shall be referred to the Arbitration as and when the Arbitral Tribunal is constituted, which shall take up the said reference and decide in accordance with law after affording opportunities to both sides. Consequently, at this stage, I am not adverting deeply into the claims with respect to the liquidated damages of Stall no.29 & Stall no.30 and, other issues and both the parties are at liberty to work out their remedy before the Arbitral Tribunal.

9.The writ petitions are disposed of, with the above observations. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1.The General Manager,
Southern Railway,
Park Town,
Chennai-600 003

2.The Assistant Commercial Manager- II,
The Senior Divisional Commercial Manager/MAS,
Southern Railway,
Office of the Divisional Railway Manager,
Commercial Branch,
Park Town, Chennai-600 003

3.The Station Manager,
Southern Railway,
Arakonam Junction,
Arakonam.

+2cc to Ms.AL.Gandhimathi, Advocate sr.102957 and 102958
+1cc to Mr.P.T.Ram Kumar, Advocate sr.103330(28/01/2020)

W.P.Nos.34136 & 34138 of 2019

ss(co)
nr 11/12/2019