

HIGH COURT FOR THE STATE OF TELANGANA

**THE HON'BLE THE CHIEF JUSTICE RAGHVENDRA SINGH CHAUHAN
AND**

THE HON'BLE SRI JUSTICE A. ABHISHEK REDDY

W.A. No. 391 of 2019

Date: 13.09.2019

Between:

Union of India,
Rep. by its General Manager,
South Central Railway,
Rail Nilayam, Secunderabad, and others.

... Appellants

and

Mohammed Akram

...Respondent

Counsel for the appellants: Mr. T. S. Venkata Ramana

Counsel for the respondent : Mr. N. Krishna

The Court made the following:

JUDGMENT: *(per the Hon'ble the Chief Justice Sri Raghendra Singh Chauhan)*

The Union of India has challenged the legality of the order dated 28.03.2019, passed by a learned Single Judge of this Court, in W.P.No.39292 of 2018, whereby the learned Single Judge has allowed the writ petition filed by the respondent, the petitioner ('the petitioner', for short) and has directed the Union of India to permit the petitioner to load/unload the consignment at Howrah Station during the subsistence of the contract.

Briefly the facts of the case are that on 20.04.2018, the appellants had called for a sealed tender for leasing of 23 tonnes space in VPH by Train No.18646/18645 East Coast Express (Hyderabad-Shalimar-Hyderabad), on round trip basis, for seven days a week, for a period of five years. On 25.05.2018, the petitioner had submitted his tender form, wherein he sought permission to load/unload the consignment at various railway stations, including the Howrah Station. On 05.07.2018, the contract was awarded to the petitioner. According to the contract, under Clause 5, it was made abundantly clear that the petitioner would be permitted to load/unload the consignment only at BZA (Vijayawada) and VSKP (Visakhapatnam) Stations. Since the petitioner wanted to unload the consignment at Howrah Station, on 10.07.2018, he filed a representation before the Railways. However, the said request was rejected by the Railways by its letter dated 18.07.2018. Thereafter, on

23.07.2018, the petitioner again requested the Railways to implement the contract and further requested to attach the parcel van as the last bogie.

On 24.08.2018, the contract commenced. On 03.09.2018, an agreement was entered between the parties. In Clause 8.18 of the agreement, it was clearly mentioned that the petitioner would be permitted to load/unload the consignment only at Secunderabad, Vijayawada and Visakhapatnam. The contract commenced from 26.08.2018, for a period of five years. On 07.09.2018, the petitioner again filed a representation requesting the Railways to permit him to load/unload his consignment at Howrah Station. However, by letter dated 15.09.2018, the Railways rejected the said request. Since the petitioner was aggrieved by the letter dated 15.09.2018, he filed the writ petition before the learned Single Judge. As mentioned hereinabove, the learned Single Judge allowed the writ petition by order dated 28.03.2019. Hence, this appeal before this Court.

Mr. T.S. Venkata Ramana, the learned counsel for the Union of India, has reiterated the facts mentioned herein above. According to the learned counsel, it was made abundantly clear by the Railways, while awarding the contract to the petitioner, that he would be permitted to load/unload his consignment only at Vijayawada and at Visakhapatnam Stations. Subsequently, upon the request of the petitioner that he should be permitted to load/unload his

consignment at Secunderabad also, the said request was conceded. However, even in the agreement entered between the parties, it was made crystal clear that the petitioner would not be permitted to load/unload the consignment at any other Railway Station except at Secunderabad, Vijayawada and Visakhapatnam. According to the learned counsel, since the agreement had been entered by the petitioner with full knowledge that he will not be permitted to load/unload his consignment at Howrah Station, the petitioner cannot claim that he has a right to modify the contract once it has been signed by him.

Secondly, once a contract is signed by the parties, both the parties are bound by the terms and conditions of the contract. Hence, the learned Single Judge has erred in modifying the terms and conditions of the contract. Therefore, the impugned order deserves to be set aside by this Court.

On the other hand, the learned counsel for the petitioner submits that in the Tender Notice dated 20.04.2018, it was clearly indicated that there would not be any restriction on the intermediate loading/unloading stations. Moreover, according to Clause 10 of the Tender Notice, the terms and conditions of the tender will form part of the agreement to be executed between the Railways and the lease holder. Therefore, according to the learned counsel, the Railways is bound by the conditions mentioned in the Tender

Notice dated 20.04.2018. Hence, it could not place any restriction upon the petitioner for loading/unloading his consignment at Howrah Station. Therefore, according to the learned counsel, the learned Single Judge was certainly justified in not only allowing the writ petition, but also in directing the appellants to permit the petitioner to load/unload the consignment at Howrah Station.

In rejoinder, the learned counsel for the appellants submits that according to Clause 8 of the Tender Notice dated 20.04.2018, it was made amply clear to the lease holder that until a formal agreement is executed, acceptance of tender shall constitute a binding contract between the Railways and the tenderer, *“subject to any specific modifications as may be mutually agreed to and indicated in the letter of acceptance issued”*. According to the learned counsel, since the contract itself made it clear that the petitioner will be permitted to load/unload the consignment only at Vijayawada and Visakhapatnam, the terms of the tender notice were duly modified and mutually agreed upon between the parties. Therefore, the learned counsel for the petitioner is unjustified in claiming that the Railways is precluded from imposing any restriction with regard to the intermediate loading/unloading stations.

Heard the learned counsel for the parties, perused the record and considered the impugned order.

It is, indeed, trite to state that the parties are bound by the terms and conditions of the contract which they enter into. Once a contract has been agreed upon and signed, neither of the parties are permitted to wriggle out of the conditions of the contract. Moreover, a party cannot seek modification of the contract. Furthermore, it is needless to say that a Court is also bound by the contract entered between the parties, and cannot travel beyond the parameters of the contract. Most importantly, the Court is not permitted to modify the terms and conditions of the contract.

A bare perusal of the Tender Notice does indicate that as far as the restriction with regard to the intermediate loading/unloading stations was concerned, there was “nil” restriction. However, Clause 8 of the Tender Notice made it clear to the tenderer that the conditions of the tender may be modified. And once modified and mutually agreed upon, those conditions of the agreement will be binding on the lease holder. Even in the contract awarded to the petitioner, it was made crystal clear that he would be permitted to unload his consignment only at Vijayawada and Visakhapatnam Stations. Knowing this fact fully well, the petitioner had agreed to the said term. Once having agreed to the said term, the petitioner is unjustified in claiming that he has a right to unload his consignment even partially at Howrah Station.

A bare perusal of the impugned order clearly reveals that the learned Single Judge has modified the terms of the

contract. Thus, the learned Single Judge has traveled beyond his jurisdiction.

For the reasons stated above, this appeal is hereby allowed; the impugned order dated 28.03.2019 is set aside. There shall be no order as to costs.

As a sequel, miscellaneous petitions, pending if any, shall stand closed.

(RAGHVENDRA SINGH CHAUHAN, CJ)

(A. ABHISHEK REDDY, J)

Date: 18.09.2019
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