

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

W.P.No.39292 of 2018

ORDER:

Heard Sri E.Madanmohan Rao, learned counsel for the petitioner and Sri T.S.Venkataramana, learned Standing Counsel for Respondent Railways.

2. The short issue for consideration in this writ petition is whether the Respondent Railways can deny the petitioner from loading and unloading in the intermediate station between Hyderabad and Shalimar.

3. The petitioner is the successful bidder pursuant to the tender notification dated 20.4.2018 and in terms thereof, he was granted leasehold rights, leasing of Parcel Vans on round trip basis between Hyderabad and Shalimar Stations.

3. According to the learned counsel for the petitioner Sri E.Madanmohan Rao, in terms of the tender notification, last column in the tabulated statement deals with "restricted intermediate loading/unloading stations" and against Serial No.1 with which petitioner is concerned, it is written as "nil". He would therefore submit that there was no restriction imposed in the tender notice, depriving the leaseholder to load and unload the goods in the intermediate stations. Howrah is intermediate station between Hyderabad and Shalimar. Therefore, petitioner was entitled to load/unload at Howrah station. He submit that in the tender application form in content No.II unloading and loading at intermediate stations including Howrah specifically mentioned. He therefore submit that denying loading/unloading at Howrah station is illegal.

4. Learned Standing Counsel representing the Railways submits that loading/unloading at Howrah station is not permissible as it was not specified by the petitioner. By placing reliance on para (G) at page 86 of the writ petition material papers, he would submit that after the commencement of contract for leasehold rights, leaseholder should make a request to allow loading/unloading at new/additional intermediate stations (which have not been mentioned by the tenderer in the tender form at the time of submission of tender) and that may be considered by the competent authority and since the petitioner was not permitted, he is not entitled to load/unload at Howrah.

5. A bare reading of Clause-(G) at page 86 of the writ petition material paper book, it is apparent that this clause is applicable if leaseholder intent to add new intermediate stations to load/unload. In the case on hand, firstly, petitioner specifically asserted in paragraph 6 of the affidavit filed in support of the writ petition that that he has already specified in the tender application loading/unloading at Howrah Station, which assertion is not denied in the counter affidavit; and secondly, the tender notification did not impose any restriction for such loading/unloading at Howrah station. The parties are governed by the tender notification, leading to awarding of contract and in terms thereof, when there is no restriction imposed on the leaseholder to load/unload at Howrah station, depriving such benefit to the petitioner on the assumption that the request of the petitioner to load/unload at Howrah station would be amounting to a new additional intermediate station is erroneous and amounts to arbitrary exercise of power. The decision of the Respondent Railways in depriving the petitioner's entitlement to load/unload at Howrah station in terms of the leasehold rights granted to him during the subsistence of contract is illegal.

6. The writ petition is allowed and the Respondents are directed to permit the petitioner to load/unload at Howrah station during the subsistence of contract. It is needless to observe that if there any dues by petitioner, the same shall be cleared. As a sequel, the miscellaneous petitions if any, shall stand closed. There shall be no order as to costs.

JUSTICE P.NAVEEN RAO

Date: 28.3.2019
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