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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 8427/2019, CM Nos. 34825-34826/2019**

ARUN KUMAR Petitioner

Through: Mr. Ashish Mohan and Mr. Mohit
Kumar, Advs.

versus

UNION OF INDIA AND ANR. Respondents

Through: Mr. Jagjit Singh, Sr. SC with
Mr. Vipin Chaudhary, Adv. for
Railways.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

% **07.08.2019**

CM No. 34826/2019 (for exemption)

Exemption allowed, subject to all just exceptions.

Application stands disposed of.

W.P.(C) 8427/2019, CM No. 34825/2019

The present petition has been filed by the petitioner with the following prayers:

“In view of the above submissions it is most humbly prayed that this Hon’ble Court may be pleased to:

A. Allow the present Writ Petition;

B. Issue a Writ, Order or Direction in the nature of Mandamus directing Respondent No.2 to allow the petitioner to operate the parcel leasing space of F-1 compartment having capacity of 4 tonnes on the same terms and conditions as mentioned in the acceptance letter and

allotment letter.;

C. Issue a consequential Writ in the nature of Mandamus to the Respondent to not cancel / terminate the contract of the petitioner to operate leasing space in train No.14056 ex. DLI to DBRG on account of conversion from conventional rake to LHB;

D. Pass any such other or orders as may deem fit and proper in the interest of justice.”

It is the case of the petitioner and contended by his counsel that he has been allowed to operate the parcel leasing space of F-1 compartment having capacity of 4 tonnes vide letter dated June 11, 2019. According to him, pursuant thereto an amount of ₹15,94,427/- has been deposited by the petitioner as security deposit. That as the respondents have converted the conventional rakes into LHB w.e.f. July 23, 2019, the respondents had disallowed the petitioner to operate the contract allotted to him.

On a specific query to Mr. Jagjit Singh, learned Sr. Standing Counsel appearing for the respondents as to the reason for cancelling the contract, he by relying on the clauses 1.2 and 23.2 of the tender documents which reads as under, has reiterated that it is because of conversion of conventional bogies into LHB:

“1.2 Railway administration shall give guarantee to provide leased parcel space of the Assistant Guard’s Cabin / Brakevan /Parcel Vans as per terms and conditions of the agreement. However, in case of Railway’s operational exigencies such as termination of train, short of destination

or cancellation of service / train due to floods / foggy weather, derailment / accident, breach of line, interruption of traffic, conversion of conventional rake into LHB, change in nomenclature of train or any other operational reasons; Railway Administration shall not be held responsible for not providing the guaranteed service for the leased parcel space.

23.2 Railway shall have the right to terminate the contract / agreement for any reason whatsoever after serving one month's notice to the lease holder. However, Railway shall reserve the right to terminate the contract as a punitive measure without any notice and at any time in case of breach of agreement of serious violation of any of the stipulation of policy / railway's rules by the lease holder or in case of operational exigencies (as mentioned in Para 1.2). Railway has the right to terminate the agreement if the registration of the leaseholder expires within the contractual period and / or party fails to renew the registration before its expiry.

However, such instantaneous termination of contact by railway administration would be followed by a written intimation of termination."

Mr. Singh also states that previously the Railways were running four parcel bogies but after conversion the Railways are operating two bogies only, one in the front of the train and one in back. He also states that insofar as the bogie at the back of the train is concerned, the same is being operated

by the Railways. In other words, it is his submission that as against one bogie, there are two lease holders, who have to be accommodated and it was decided by the Railways to issue tender for allotment of LHB.

At this stage, Mr. Ashish Mohan on instructions states that the other lease holder is not interested to operate the LHB.

On this submission of Mr. Ashish Mohan, this Court is of the view that it would be appropriate for the petitioner to make a representation annexing therewith no objection from the second lease holder to operate LHB, to enable the Competent Authority in the Railways consider the said representation and pass appropriate orders. The representation shall be made by the petitioner within one week from today. The Competent Authority shall consider the same and pass appropriate orders within two weeks thereafter.

It goes without saying if the petitioner is aggrieved by any order to be passed by the Railways, it can seek such remedy as available in law.

Till such time, the representation is decided, the respondents shall not issue any tender for allotment of LHB.

The writ petition is disposed of.

CM No. 34825/2019

Dismissed as infructuous.

V. KAMESWAR RAO, J

AUGUST 07, 2019/aky