

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : **06.03.2020**

CORAM

THE HONOURABLE MR. JUSTICE **M.SUNDAR**

O.P.No.584 of 2019

Senior Divisional Commercial Manager,
Divisional Office, Commercial Branch,
Southern Railway, 2nd Floor,
NGO Annexe, Park Town,
Chennai-600 003.

... Petitioner

- Vs -

Mrs.G.Bharathi

... Respondent

Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the impugned award dated 07.01.2019 passed by the Arbitrator and allow the OP.

For Petitioner : Mr.M.T.Arunan

For Respondent : Mr.M.Balasubramaniam

ORDER

There is a sole petitioner and a lone respondent herein. Mr.M.T.Arunan, learned counsel for petitioner and Mr.M.Balasubramaniam, learned counsel for respondent are before this Court.

2. Instant 'Original Petition' ('OP' for the sake of brevity) has been filed under Section 34 of 'The Arbitration and Conciliation Act, 1996 (Act No.26 of 1996)', which shall hereinafter be referred to as 'A and C Act' for the sake of brevity. Be that as it may, instant OP has been filed assailing an arbitral award dated 07.01.2019 made by an Arbitral Tribunal constituted by a sole Arbitrator qua an agreement dated 29.06.2015 (hereinafter 'said contract' for the sake of brevity, clarity and convenience). One covenant in said contract is an arbitration clause and therefore, the same serves as 'arbitration agreement' between the parties being 'arbitration agreement' within the meaning of Section 2(1)(b) read with Section 7 of A and C Act.

3. PREFATORY NOTE:

Challenge to an arbitral award under Section 34 of A and C Act, going by the language in which Section 34 of A and C Act is couched, is by way of an

'application', but this Court is giving the nomenclature 'Original Petition' for such applications under Section 34 of A and C Act. Therefore, in this order, I will continue to refer to instant matter as 'OP'. A OP under Section 34 of A and C Act is neither an appeal nor a revision. It is not even a full-fledged judicial review, but it is a limited judicial review within the contours and confines of Section 34 of A and C Act. By contours and confines of Section 34 of A and C Act, this Court refers to 8 designated slots adumbrated in Section 34 of A and C Act. To be noted, 5 slots are adumbrated under Section 34(2)(a), two slots are adumbrated under Section 34(2)(b) and one slot figures under Section 34(2A). This Court chooses to deploy the term 'slots' in preference to 'grounds' as instant OP is neither an appeal nor a revision and it is not even a full-fledged judicial review as mentioned in the earlier part of this order. To put it differently, it is a mere challenge to an award. When it comes to 'challenge to an award', the principle is, if a petitioner/applicant is able to fit his case into any one or more of the eight slots neatly and snugly, the award will be dislodged or in other words set aside. If that not be so, the award will not be interfered with. This is owing to 'minimum judicial interference' in 'Alternate Dispute Resolution' ('ADR') mechanism, which is an important aspect of the sublime philosophy and salutary principles underlying the scheme of A and C Act. In

this view of the matter, this Court chooses to describe the eight slots adumbrated in Section 34 as eight pigeon holes. To be noted, some of these pigeon holes are even in the nature of keyholes and pinholes, as some of these slots have been circumscribed by limitations. To be noted, a) not entailing review on merits qua conflict with public policy of India slot, b) making re-appreciation of evidence impermissible and eliminating even erroneous application of law from patent illegality slot fall in this category.

4. FACTUAL MATRIX IN A NUTSHELL:

4(i) In the light of aforementioned prefatory note, it is not necessary to dilate in detail qua facts. In other words, short facts shorn of elaboration/details will suffice for disposal of instant OP owing to contours and confines of Section 34 of A and C Act. In this regard, this Court deems it appropriate to remind itself about **Fiza Developers** principle laid down by Hon'ble Supreme Court in **Fiza Developers and Inter-Trade Private Limited Vs. AMCI (India) Private Limited** reported in (2009) 17 SCC 796 and that **Fiza Developers** principle was reiterated by Hon'ble Supreme Court in **Emkay Global** case being **Emkay Global Financial Services Ltd. v. Girdhar Sondhi** reported in (2018) 9 SCC 49, while reiterating **Fiza Developers** principle, Hon'ble Supreme Court

held that **Fiza Developers** principle is a step in the right direction. To be noted, **Fiza Developers** principle is to the effect that summary procedure is to be adopted for disposal of applications under Section 34 of A and C Act. Therefore, with regard to facts, suffice to say that Railways issued a tender notice bearing reference No.M/C.79/SMU/Minutes dated 03.09.2012 inviting applications from eligible persons belonging to Scheduled Tribe category for awarding license for installing and operating a Catering Stall in Chennai Central Railway Station for a period of five years. To be noted, this Catering Stall is described as 'SMU 5'. This Court is also informed that with regard to such Stalls, there are two categories, one category is referred to as General Minor Units and other category is referred to as Special Minor Units. This Court is further informed without any dispute or disagreement that while General Minor Units are available for all categories of people, the Special Minor Units are reserved for persons belonging to Scheduled Caste and Scheduled Tribe category. This Court is informed that stall SMU 5, which forms subject matter of instant OP is a Special Minor Unit. It is submitted without any dispute that the respondent belongs to Scheduled Tribe category, she has submitted an application dated 01.10.2012 and after evaluation, her application was accepted by the Railways vide Letter of Acceptance dated 02.02.2015. Annual License

Fee was provisionally fixed at Rs.9,30,000/- [Rupees Nine Lakhs Thirty Thousand only] and security deposit was fixed at Rs.4,65,000/- [Rupees Four Lakhs and sixty five thousand only]. There is also no dispute with regard to the factual position that respondent commenced the business of running Catering Stall SMU 5 on and from 04.03.2015 and thereafter, a formal agreement came to be executed on 29.06.2015 and that agreement is 'said contract' referred to supra.

4(ii) It is the case of Railways that after two months of commencement of running of Catering Stall by the respondent, an inspection was conducted and according to Railways, certain shortcomings such as using additional space, food packets being packed upside down, etc., were found. It is also submitted that subsequently, several inspections were held and depending on the shortcomings, fines were imposed and some other proceedings were initiated. Ultimately, said contract was terminated by Railways on 22.08.2017. To be noted, though formal termination of the said contract was on 22.08.2017, the said Stall i.e., SMU 5 had to be closed by the respondent owing to action initiated by Railways on 22.03.2017. Therefore, respondent, who was awarded said contract for a period of five years i.e., from 04.03.2015 to 03.03.2020 had actually carried on business only for two years i.e., from 04.03.2015 to

22.03.2017. There is also no dispute or disagreement between the two parties before this Court that there was no default on the part of the respondent in payment of annual license fee of Rs.9,30,000/-.

4(iii) To be noted, this Court is informed that SMU 5 Catering Stall admeasures 60 Sq.ft or thereabouts. This court is also informed that 60 sq.ft is earmarked for the respondent and the respondent has to put up a small superstructure for vending eatables/snacks. Be that as it may, aforementioned termination notice date 22.03.2017 was assailed by the respondent leading to arbitral disputes between the parties and commencement of arbitral proceedings in accordance with the arbitration agreement between the parties. Suffice to say that a Former District Judge i.e, a retired District Judge was appointed as sole Arbitrator to constitute the Arbitral Tribunal, he embarked upon the exercise of entering upon reference, adjudicating upon the arbitral disputes and ultimately, passed aforementioned award dated 07.01.2019 [hereinafter 'impugned award' for brevity]. In the course of the arbitral proceedings, Railways made a counter claim. Vide the impugned award, Arbitral Tribunal allowed the claim made by the respondent before this Court (Claimant before Arbitral Tribunal) and dismissed the counter claim made by Railways.

4(iv) Assailing the impugned award, instant OP has been filed by Railways.

5. RIVAL SUBMISSIONS AND DISPOSITIVE REASONING:

5(i) Before proceeding to deal with the rival submissions, it is necessary to mention that respondent before this Court in her capacity as claimant before the Arbitral Tribunal made the following prayer in her claim petition:

'For the reasons stated above, it is humbly prayed that this Hon'ble Court may be pleased to declare the proceedings of the Respondent herein bearing No.M/C.79/CS/SMU-5/MAS/17 dated 22.08.2017 as void, illegal, unjust and unsustainable in law and direct the Respondent herein to permit the Claimant to continue to operate the Catering Stall – SMU-5 at Platform No.2A/3 (beginning of Platform No.2A3) in Chennai Central Railway Station for the period up to, including the period of closure of the Stall by the Respondent, with a right of renewal for a further period of 3 years from the said date in terms of the Agreement dt. 29.09.2015 and direct the Respondent herein to pay the Claimant the costs of the Arbitration proceedings and pass such further or other orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case

and thus render justice'.

5(ii) Railways in their capacity as respondent before the Arbitral Tribunal made counter claims, which reads as follows:

'For the reasons stated above, it is humbly prayed that the Hon'ble Sole Arbitrator may be pleased to

- (i) dismiss all the claims of the claimant in toto and*
- (ii) Uphold the termination dated 22.08.2017 of the claimant's SMU 5 catering stall contract, forfeiture of the security deposit of Rs.4,65,000/- and license fee and debarment of the claimant from future similar contracts/license of the Indian Railways for a period of one year in terms of Clause 16.1 (a), (b) & © and 17.2 of the Agreement dated 29.06.2015.*
- (iii) award cost of the arbitration proceedings and*
- (iv) pass such further or other orders as the Hon'ble Sole Arbitrator may deem fit and proper and thus render justice.'*

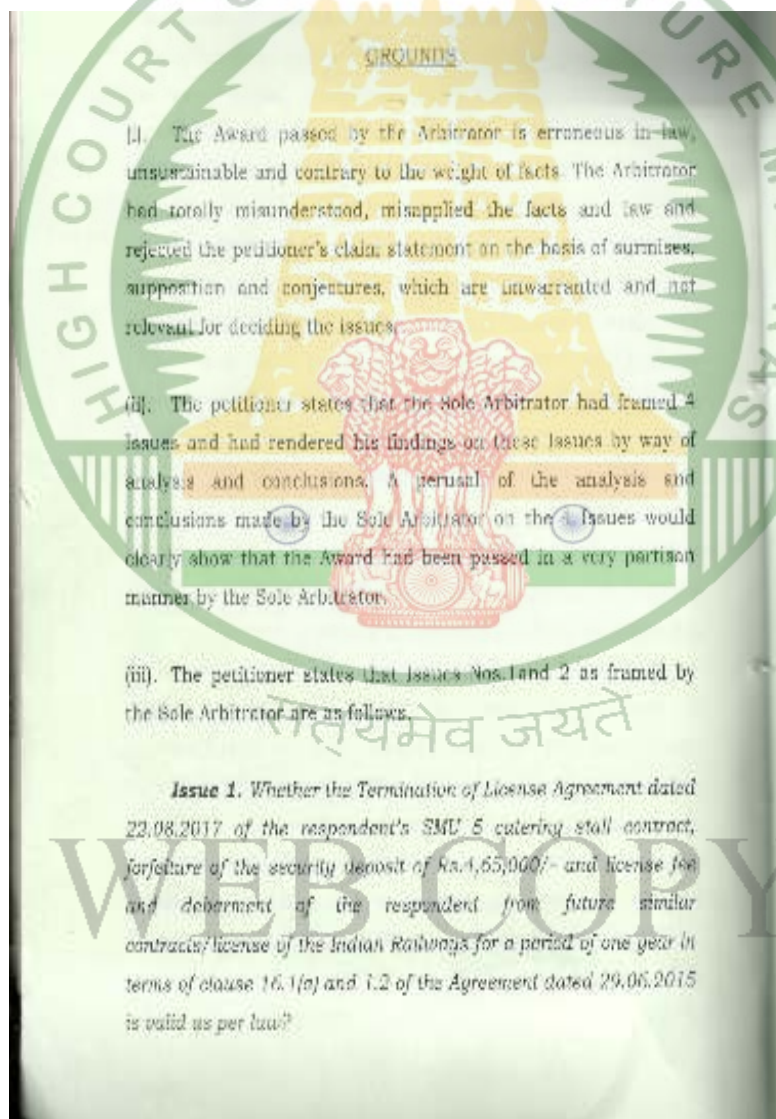
5(iii) As already alluded to supra, Arbitral Tribunal vide impugned award, acceded to the claims made by the respondent before this Court (Claimant before Arbitral Tribunal) and negatived the counter claim made by Railways.

5(iv) Assailing the impugned award, learned counsel appearing on behalf of Railways submitted that it is not a case of one solitary inspection, but there were a series of inspections. The respondents did not rectify the discrepancies in spite of repeated requests and warnings. It was therefore, submitted that the termination was inevitable. It was also pointed out that running such stalls are in the interest of passengers and if there are shortcomings in providing food and eatables, Railways can terminate the contract.

5(v). Learned counsel appearing on behalf of Railways also submitted that the Arbitral Tribunal had overlooked the shortcomings noticed in the inspections and the merits of termination put forth by the Railways for issuing termination.

5(vi). Responding to the above submission of learned counsel for Railways, learned counsel for respondent submitted that the respondent was not served with copies of the alleged shortcomings said to have been recorded by the Railways during inspection and proper opportunity was not been given to the respondent before inflicting penalties. It was pointed out that all these were noticed by the Arbitral Tribunal for returning it's verdict i.e., impugned award.

In this context, it becomes necessary to have a close and careful look at the OP that has been placed before this Court. In other words, as protagonist of instant OP, the manner in which Railways had laid challenge to the impugned award and the manner in which slot on which challenge is predicated is articulated in instant OP needs to be looked into and the same reads as follows:



Issue 2. Whether the respondent is entitled for the relief to continue to operate the catering stall SMU 5 at platform No.2A/3 (beginning of platform No.2A/3) in Chennai Central Railway Station for the period upto including the period of closure of the stall by the respondent with the right of renewal for a further period of 3 years from the said date in terms of Agreement dated 29.09.2015?

(iv). The petitioner states that the Sole Arbitrator had failed to take note of the fact that in the initial inspection conducted by railway officials on 19.05.2015, they had noticed that the fire extinguisher did not carry the next servicing date. The respondent had stacked Railneer water bottle crates and other boxes outside the stall thereby using additional space. The food packets were covered upside down and details such as Veg/Non-veg, name of the licensee, stall, date, weight, content etc were also not stamped on the packets. However, being the first time, the railway officials counselled the respondent and emphasized the importance of avoiding any kind of discrepancies in future. On 24.07.2015, railway officials again conducted a check into the functioning of the respondent's SMU 5 catering stall and noticed that the respondent had committed the following irregularities.

- a) Veg biriyani and Egg biriyani measured 260 grams instead of 300 grams.
- b) Gloves, hairnet and tongs were not used by the staff.
- c) Sealed drinking water tumblers were not supplied.
- d) ID cards, medical and police certificates of the staff were not produced.
- e) Remittance details of electricity and water charges were not produced.
- f) Sales register and bill book were not produced.
- g) 150 ml measurement cups were used for serving tea/coffee as against 170 ml measurement cups.
- h) Price was not printed on food packets.

(v). The petitioner states that since the above said irregularities were serious in nature, the Railway Administration imposed fine of Rs.5000/- vide letter dated 26.11.2015 and closed down the stall on temporary basis on 27.11.2015. The respondent paid the fine of Rs.5000/- under treasury receipt no.176230298 dated 27.11.2015 and submitted letter dated 27.11.2015 undertaking to follow the guidelines and requested for opening the stall. The Railway Administration issued letter dated 15.12.2015 advising the respondent to obtain proper ID cards, medical and police certificates for considering the respondent's request. But the respondent had already on 14.12.2015 itself unauthorizedly opened the stall. Thereupon the Railway Administration issued show cause notice vide letter dated 22.12.2015 regarding the unauthorized opening of the catering stall. The respondent submitted reply vide letter dated 30.12.2015 stating that being illiterate, she had committed the mistake and gave assurance that such incidents will not occur again.

(vi). The petitioner states that during the subsequent inspection conducted by railway officials on 19.01.2016, it was detected that some of the respondent's employees were working without ID card and police certificate. The Attendance Register was also not produced and hence vide letter dated 31.01.2016, the Railway Administration imposed fine of Rs.1000/- on the respondent. The respondent gave reply vide letter dated 05.02.2016 disputing the irregularities and requested cancellation of the fine. In reply to the respondent's letter, the Railway Administration issued letter dated 29.02.2016 detailing the irregularities disputed by the respondent and the relevant clauses in the Agreement relating to such irregularities. The petitioner further states that during the preventive check conducted by Vigilance officials on 16.09.2016 also, they detected that one of the respondent's employees by name, Shri C.Salathavei was working without any ID card and medical certificate. Hence, the Railway Administration vide letter dated 08.06.2016 imposed fine of Rs.1000/- on the respondent.

(vii). The petitioner states that as against the overwhelming evidence submitted by the petitioner in the form of inspection reports, photographs, correspondences etc for proving the irregularities committed by the respondent, the Sole Arbitrator has relied completely upon the vague and flimsy explanation given by the respondent to some of the irregularities only and accepted them to be convincing. The findings of the Sole Arbitrator based solely on the part explanation of the respondent and the petitioner's contention against the same are as follows.

(a). The explanation offered by the respondent is that the Railway water bottles and other food stuffs had been delivered by the vendor only on the day of inspection conducted by the officials of the respondent on 19.05.2015 and the articles were in the process of verifying the same and after the verification, they will be stored and arranged inside the stall and hence, only for the reasons stated therein, those articles were found on the platform is convincing.

- The petitioner states that the inspecting officials would not have highlighted this irregularity if the above explanation had been given by the respondent's employees along with supply details to the inspecting officials. The explanation is an afterthought and contrary to the respondent's admission of the irregularities.

(b). It is pointed out by the Learned Counsel for the respondent that the next servicing date was stuck on the bottom of the said Fire Extinguisher by way of the printed sticker and the officials of the respondent have failed to notice the same.....it is pointed out by the learned counsel for the respondent that the said Chappathi Kurma and Parotta Kurma have been procured from VRR/NVRR/MS which is a railway unit. In fact, the same was mentioned in the said report itself and therefore, all the food stuffs are already made ready and packed while they reached the respondent's stall for sale and the respondent just get them from them and the same is sold along to passengers and the respondent has no opportunity to do the stamping works. So the specific allegations made in the said report dated 19.05.2015 are baseless.

- The petitioner states that the inspecting officials have taken photograph of the blank label on the Fire Extinguisher. The arriving date should be easily visible and there is neither rhyme nor reason to paste the label on the bottom of the fire extinguisher. Regarding the food packets, the petitioner states that the unstamped food packets clearly indicate that the respondent had not procured them from Railway Base Kitchens. The Sole Arbitrator's findings are hence erroneous and liable to be set aside.

(c). It is a definite case of the respondent that Name Badge, Police and Medical Certificates were not available for staff. A perusal of document Ex R2 dated 19.05.2015 would undoubtedly go to show that the Name Badge, Police and Medical Certificates for both the staff are found available. Hence I conclude that this allegation is contrary to their report.

The petitioner states that the Sole Arbitrator had referred to the inspection report dated 19.05.2015 whereas the said irregularities had been pointed out in the inspection report dated 24.07.2017 as stated supra.

(d). It is alleged on the side of the respondent that the Sales Register, Bill Books and Janatha Khana were not available. On the other hand, it is pointed out by the Learned Counsel for the respondent that the above said documents were very much available in the stall and also Janatha Khana is prepared and sold. There is no proof to show on the part of the Respondent that the stall does not have Sales Register and Bill Books.

The petitioner states that the inspecting officials have reported that the respondent has not maintained Sales Register, Bill Books and also not serving Janatha Khana. In the given facts and circumstances of the case, the onus is on the respondent to produce Sales Register, Bill Books etc as proof for serving Janatha Khana and not on the petitioner as wrongly held by the Sole Arbitrator.

(e) It is contended on the side of the respondent that the rate and the name of the food item is stamped very well in each food packet and without the food name stamped on the packet, it is very difficult for the staff to sell the food items. The respondent has not produced any proof to show that it has been sold without the stamping of the rates.

- The petitioner states that the respondent had not disputed the irregularities mentioned in the inspection report in her letter dated 27.11.2015 and had requested the Railway Administration to condone the irregularities. Under the circumstances, the Sole Arbitrator's conclusion that the petitioner had not submitted any proof regarding unstamped food packets during the arbitration, that is, after nearly three years cannot be sustained both on facts and law and is liable to be rejected.

(f) Point No.3 of the said Annexure shows that the penalty at the first instance should be of Rs.500/- only, but in the report Ex C2 dated 26.11.2015 the respondent had imposed a fine of Rs.5000/- which violates the condition of the Master License Agreement Ex C2. As per the conditions stipulated under Ex C2, the penalty of Rs.5000/- should have been imposed only at the third instance.....The respondent had failed to testify the quality of the briyani as per the Clause 7.3 of the Agreement Ex C2.....This is also in violation of the terms and conditions of the Agreement Ex C3.

The petitioner states that the instance and penalty shall be determined by the Railway Administration. Because of the repeatedness, multitude and gravity of the irregularities, the Railway Administration had imposed the said penalty of Rs.5000/- and the respondent had also paid the fine without any protest. As per Clause 7.3 (a), the Railway shall reserve the right to get the food samples/raw materials collected and tested at approved laboratories at the cost of the licensee. Under Clause 7.3 (b), it is mentioned that "In case of unsatisfactory performance or complaint of any nature, the Railway will be entitled to initiate suitable action against the licensee including termination of this Agreement as per the terms and

conditions of this Agreement." Thus Clause 7.3(a) confers right on the Railway Administration to get the food samples tested and against any dispute, if any. The food packets have been opened by Health Department officials in the presence of the respondent's employees and have been found stale and unfit for human consumption. The respondent had neither disputed the bad quality of the food at the time of their seizure by the Health Department nor requested food testing. The Sole Arbitrator's finding that the petitioner had not tested the food packets and the same is also a violation of the terms and conditions of the Agreement is erroneous, misconceived and liable to be rejected.

(g). Yet another allegation made by the respondent is that Mr. Jay Pathak had given a complaint in Twitter to the Ministry of Railways that he purchased three idlis and vada which was Rs.25/- and it was actually charged for Rs.35/- for 4 idlis. The complaint does not mention about the name of the particular stall in which he got the food and also there is no proof for the respondent to show that the pack was bought in the respondent's stall. While this being so, the respondent is no way responsible for the allegation. It is further alleged by the respondent that vegetable biriyani and egg biriyani were found only 260 grams instead of 300 grams. In this connection, it is contended on the side of the respondent that the officials of the respondent should have weighed the biriyani packs with proper weight machines, instead they have randomly weighed just lifting it in hand and arrived at the approximate assessment which is wrong....

The petitioner states that the complainant had clearly identified the catering stall operated by the respondent in his twitter dated 09.06.2016 and the respondent had also admitted to the irregularity vide letter dated 09.06.2016. The inspecting officials belong to catering department and have weighed the food packets with the help of weighing machines and not by hand as alleged by the respondent. Further, the Sole Arbitrator has relied upon a much older inspection report dated 19.05.2015 to conclude that the biriyani packs have been procured by the respondent from Ours Arya Bhavan. Regarding the non usage of hairnets, tongs and gloves by the

respondent's employees, the Sole Arbitrator has accepted the explanation of the respondent that the staff have removed them in between train timings to relax. The findings of the Sole Arbitrator are clearly one sided, erroneous, against facts and catering policies of the Ministry of Railways and are hence liable to be set aside.

(vii). The petitioner states that the Sole Arbitrator had failed to take proper note of the fact that the respondent had been continuously operating the catering stall in an improper manner and bringing disrepute to the Railway Administration. The petitioner had informed the respondent about the result of each and every inspection in detail and advised her to rectify the defects. The respondent had received all the communications but did not take them seriously. The following sequence of events will clearly prove that the respondent's performance has been very dismal and in spite of the fact that the petitioner had given sufficient opportunity to the respondent to rectify the deficiencies, she had not taken any corrective action.

- 19.05.15 - Inspection reveals that fire extinguisher was without next servicing date, railwayer water bottle crates, empty crates and boxes were stacked outside the stall thereby using additional space, food packets were packed upside down, manufacturing details not stamped on the food packets etc.
- 10.06.15 - Respondent counseled to rectify the irregularities.
- 24.07.15 - Inspection reveals that veg biriyani and egg biriyani measured 260 grams as against 300 grams, gloves, hairnet and tongs not used, sealed drinking water tumblers not supplied, ID cards, police and medical certificates not available, electricity and water charges payment details not available, Sales register, bill book and Janatha Khana not available, tea/coffee cups measured 150 ml as against 170 ml, rate not stamped on food packets.
- 16.09.15 - Inspection reveals presence of staff without ID card and medical certificate.

- 26.11.15 - Letter imposing fine of Rs.5000/- and advice to respondent to rectify the irregularities noticed in inspection dated 24.07.15.
- 27.11.15 - Respondent requests to condone the irregularities and undertakes to follow the guidelines.
- 27.11.15 - Inspection reveals that unauthorized persons were operating the catering stall and police and medical certificates were not produced.
- 27.11.15 - Stall closed down and locked and key handed over to Station Manager.
- 14.12.15 - Stall unauthorizedly opened by respondent.
- 22.12.15 - Show cause notice issued to respondent for unauthorized opening of the stall.
- 26.12.15 - Respondent submits letter stating that being illiterate, she had opened the stall by mistake and requests for condoning it.
- 31.12.15 - Passenger lodges complaint about overcharging.
- 31.12.15 - Inspection reveals overcharging of idly and vada combo and respondent refuses to close down the stall in violation of railway official's instructions.
- 19.01.16 - Inspection reveals that some of the employees were without ID card and police certificate, attendance register not available, staff were without apron and shoes, onion raitha not supplied with biriyani and short supply of pickle.
- 27.01.16 - Letter imposing fine of Rs.1000/- and advice to respondent to rectify the irregularities.
- 01.06.16 - Smt.Deepa, passenger lodges complaint about stale egg biriyani bought from respondent's stall.
- 01.06.16 - Inspection reveals that 7 egg biriyani packets and 13 curd rice packets had become stale and were unfit for human consumption.
- 08.06.16 - Letter imposing fine of Rs.1000/- and advice to respondent to rectify the irregularities noticed during inspection dated 16.09.15.
- 08.06.16 - Shri.Joy Pathak, passenger lodges twitter complaint

	to Hon'ble Minister for Railways about overcharging and non supply of correct food items.
08.06.16	Inspection reveals overcharging and non supply of vada. Respondent's staff admits to overcharging and non supply of vada.
17.06.16	Inspection reveals that respondent was selling Railneer water bottles for Rs.20/- as against MRP of Rs.15/-.
20.06.16	Letter imposing fine of Rs.5000/- and advice to respondent to rectify the irregularities noticed during inspection dated 01.06.16.
04.07.16	Letter imposing fine of Rs.10,000/- and advice to respondent to rectify the irregularities noticed during inspection dated 08.06.16.
18.07.16	Letter imposing fine of Rs.10,000/- and advice to respondent to rectify the irregularities noticed during inspection dated 17.06.16.
25.07.16	Inspection reveals that respondent was selling Railneer water bottles for Rs.20/- as against MRP of Rs.15/-.
06.08.16	Respondent submits letter giving assurance to avoid complaints.
22.08.16	Letter imposing fine of Rs.5000/- and advice to respondent to rectify the irregularities noticed during inspection dated 25.07.16.
30.10.16	Passenger posts photo of respondent's staff packing sambar packets in an unhygienic manner in the twitter handle of Hon'ble Minister for Railways.
30.10.16	Inspection reveals that rice pongol, idly/vada packets and sambar packets were very old and unfit for human consumption.
30.10.16	Respondent pays fine of Rs.1000/- imposed by medical department.
03.11.16	Respondent attends enquiry conducted by Assistant Commercial Manager. Respondent admits that her staff had packed food items in an unhygienic manner and that he had been removed.

- Respondent submits that since she is living in Erode, she is unable to personally manage the SMC 5 catering stall.
- 03.01.17 - Show cause notice issued for termination of contract.
- 10.04.17 - Respondent submits belated reply in spite of specific directions passed by the Hon'ble High Court, Madras on 22.02.17 in W.A No.201 of 2017.
- 22.08.17 Termination of the respondent's contract.

(viii). The petitioner states that the catering inspections and checks had been conducted in a transparent manner in the presence of respondent's staff. In her reply letters and enquiry, the respondent had admitted to the defects and stated that she is unable to manage the stall as she was residing in Erode. Inspections are an integral part of catering activities in Railways and it is the duty of the licensee to take the inspection results in the proper perspective and take necessary remedial action. A perusal of the contents of the letter dated 10.04.2017 submitted by the respondent in reply to the petitioner's show cause notice will reveal that she does not have any commitment to improve the quality of catering services. On the other hand, she has mocked the inspections and given improper and vexatious replies. Some of the replies given by the respondent are extracted hereunder.

- i. Mr.Selvam has no weighing machine in his hand and it means that the allegation is false and frivolous.
- ii. Staffs were using gloves/hairnets/tongs and there is no photography evidence and independent evidence to prove this allegation.
- iii. Rate was found not stamped on the food packets - This is confusing and unclear allegation since the inspecting official has accepted that rate was found. The allegation is that "not stamped means" the rate was stamped or handwritten or used any sticker because of this unclear allegation, the official is in a hurry to charge sheet me as per the instructions of his superior.
- iv. It is unfortunate you have not explained clearly what are the corrupt activities and list of fraudulent practices, whether

in bribery, nepotism, communalism, cheating, taking food without paying money, collection of mamool, practicing untouchability, all these activities also part and parcel of the agreement?

ii. As per your Show Cause Notice you are repeating the same subject in para 9 and 10 of your Show Cause Notice. To fill up the more pages and to show that the show cause notice is very big and prove that you have done a good home work.

iii. You say that there are all the grave breach of agreement but in your para 12 you say that an immigration grounds my request was considered and allowed to do business in the stall. It is very much welcomed by everyone and looking forward to you and expecting you to render pardon on humanitarian grounds in future also.

iv. As per your show cause notice you have explained the Desired Performance Level. You have not explained whose desire to be fulfilled. Whether the desire of the passengers or the desire of the officers.

(ix). The petitioner states that the Sole Arbitrator had in his analysis under Issues 1 and 2 rendered his findings only on some of the irregularities committed by the respondent and had omitted to render his findings on the remaining irregularities, which are also inimical to the respondent. The Sole Arbitrator has disregarded the petitioner's abundant evidence on record and has without any basis wrongly concluded that the petitioner had acted in an arbitrary and baseless manner on vague complaints. Even though adequate time and opportunity had been given to the respondent to rectify her mistakes, the Sole Arbitrator has wrongly contended that the respondent should have been given sufficient opportunity. The order of termination passed by the petitioner is in accordance with the catering policy of Ministry of Railways and extant procedures regarding the operation of catering stall in Railways. The award passed by the Sole Arbitrator is against the catering policy and is liable to be rejected on this ground also.

(x). **Issue No.3**

The petitioner states that the Sole Arbitrator had erred in holding that the petitioner is not entitled for counter claim. The

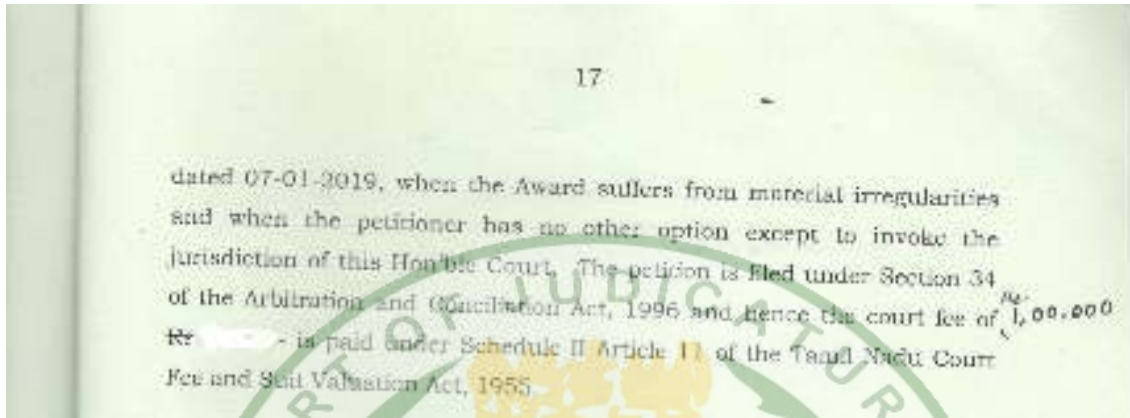
petitioner states that the Sole Arbitrator had failed to take note of the fact that the petitioner had filed documentary evidence in support of his counter claim namely that the termination of the respondent's contract and the consequential action is valid. The petitioner also states that in the Award dated 07.01.2019, the Sole Arbitrator had throughout the 3 Issues only justified the respondent's flimsy explanation under some pretext or the other and had completely ignored the petitioner's submissions. The Sole Arbitrator had taken credence of the respondent's submissions only even if it was demonstrably wrong and against Government rules and policy. The Award is liable to be set aside on this ground also.

(xi). Issue No.4.

The petitioner states that the Sole Arbitrator had erred in holding that the respondent had paid the Arbitrator's fees of Rs.25,000/- on behalf of the petitioner. From the above observation, it is evident that the Sole Arbitrator is focused on somehow refuting the petitioner's submissions only. The finding of the Sole Arbitrator is therefore erroneous and is liable to be rejected.

7. The petitioner finally states that the Award passed by the Sole Arbitrator is one sided and the Sole Arbitrator's rejection of the petitioner's claim in spite of overwhelming evidence in his favour is unjust, unlawful and the Award not being an impartial, fair and independent Award, is liable to be set aside.

8. The cause of action for the above Original Petition arose at Chennai within the jurisdiction of this Hon'ble Court when the petitioner issued letter dated 06.06.17 asking the respondent to show cause why the catering contract awarded to her should not be terminated for poor performance, when the respondent submitted her explanation dated 15.6.17 when the petitioner issued termination letter dated 22.06.17 when the Hon'ble High Court, Madras under order dated in M.P No. of 2017 in Appln No. of 2017 appointed the Arbitrator as Sole Arbitrator and when the petitioner took part in the arbitration proceedings before the Sole Arbitrator pursuant to the orders passed by the Hon'ble High Court, Madras, when the Arbitrator passed the Award



5(vii). A careful perusal of the OP and the grounds on which challenge to impugned award is predicated, brings to light that the entire OP is more in the nature of a regular First Appeal under Section 96 of 'The Code of Civil Procedure, 1908' [hereinafter referred to as 'CPC' for brevity]. This Court has to necessarily remind itself that challenge to an arbitral award under Section 34 of A and C Act is within the contours and confines of Section 34 of A and C Act and all these have been alluded to supra in the Prefatory note. A challenge to an arbitral award qua an award passed in ADR mechanism, cannot be examined like a regular First Appeal under Section 96 of CPC.

5(viii). Notwithstanding the above position which is indisputable, this Court examined instant OP on hand in the light of the submissions made by

learned counsel for petitioner and the contra submissions made by learned counsel for respondent. This Court is left with the considered view that instant OP does not fit into anyone of the eight pigeon holes in Section 34 of A and C Act. If a challenge to an arbitral award does not fit into anyone of the eight pigeon holes in Section 34 of A and C Act, the award cannot be dislodged or in other words, the award cannot be set aside.

5(ix). To be noted, the entire OP has been scanned and reproduced supra to appreciate this aspect of the matter.

5(x). Furthermore, this Court read through the impugned award. A careful reading of the impugned award, leaves this Court with a considered view that it is cogent, coherent and the issues have been dealt with by deploying adequate fidelity of judicial approach. Applying the **Wednesbury** principle of reasonableness, this Court also finds that there is nothing irrational or perverse in the impugned award. Applying *audi alteram partem* principle, does not arise in instant case as it is nobody's case qua impugned award that 'Natural Justice principle' (NJP) has been violated.

5(xi) In other words, notwithstanding instant OP being articulated as if it is a regular First Appeal under Section 96 of CPC, this Court, embarked upon the exercise of examining impugned award by applying Section 34 principles tested whether impugned award is in conflict with public policy and satisfied itself that impugned award is not vitiated by the vice of being in conflict with public policy of India. To be noted, on and from 23.10.2015, the term/expression 'public policy' stands statutorily explained vide Explanation 1 to aforementioned Section 34(2)(b)(ii) of A and C Act.

5(xii) Hon'ble Supreme Court in **ONGC Ltd. v. Western Geco International Ltd.**, reported in (2014) 9 SCC 263 reiterated in **Associate Builders Vs. Delhi Development Authority** reported in (2015) 3 SCC 49 dealing with public policy qua A and C Act culled out three distinct juristic principles. Not only three distinct juristic principles were culled out, but litmus tests for each of the three distinct juristic principles were also laid down. The three distinct juristic principles qua public policy culled out by Hon'ble Supreme Court are

- a) Judicial approach;
- b) Natural justice principle (NJP for brevity); and
- c) Irrationality/perversity.

5(xiii) The tests for the aforesaid three distinct juristic principles are a) fidelity to judicial approach; b) *audi alteram partem* and c) time honoured *Wednesbury* principle of reasonableness. To be noted, these principles were laid down by Hon'ble Supreme Court in aforementioned ***Western Geco*** case law and reiterated in ***Associate Builders*** case, both of which were rendered by Hon'ble Supreme Court prior to 23.10.2015. Be that as it may, this principle continues to govern the field post 23.10.2015 also as the ***Western Geco*** principle, more particularly the three distinct juristic principles culled out by Hon'ble Supreme Court and reiterated in ***Associate Builders*** case was reaffirmed by the Supreme Court in ***Centrotrade Minerals and Metal Inc. Vs. Hindustan Copper Ltd.***, reported in ***(2017) 2 SCC 228*** which was rendered post 23.10.2015. As already alluded to supra, this Court tested the award by applying aforementioned three principles to satisfy itself that the award is not in conflict with public policy of India, it is not in contravention with fundamental policy of Indian law though there is an articulation with specificity in this regard by Railways.

6. CONCLUSION:

In the light of the narrative set out supra under the caption Rival submissions and Dispositive Reasoning, this Court has no hesitation in coming to the conclusion that the impugned award does not deserve to be interfered with.

7. DECISION:

Instant OP is dismissed. Considering the nature of the matter, parties are left to bear their respective costs.

Speaking Order

Index : Yes

kmi

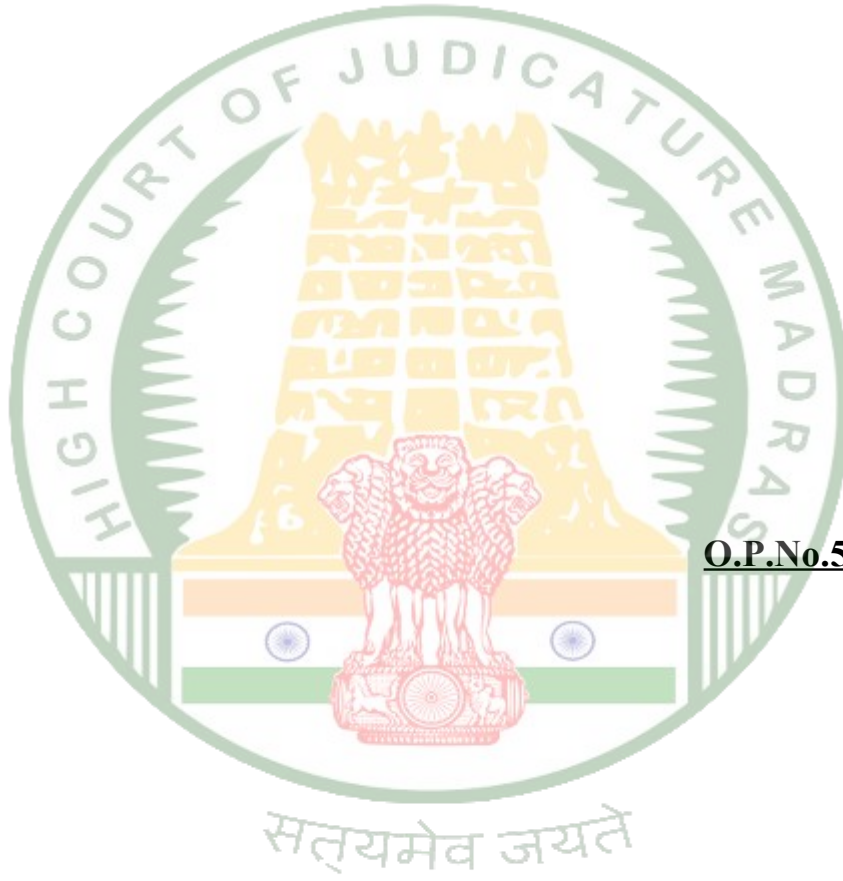
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M.SUNDAR. J.,

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