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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10-12-2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

WP Nos.7506 to 7511 of 2008

M/s.Northern Freight Carriers,
Partnership Firm, represented by its
Partner, B.K.Garg,
No.274, Linghi Chetty Street,
Chennai - 600 001.

..Petitioner in WP 7506/2008

G.S.Anand,
Proprietor of M/s.Karishma Express
Transport Co.,
No.280, Walltax Road,
Park Town,
Chennai - 600 003.

..Petitioner in WP 7507/2008

M/s.Bic Logistics Ltd.,
Represented by its General Manager,
New No.109 (Old No.53),
Linghi Chetty Street,
2nd Floor,
Chennai-600 001.

..Petitioner in WP 7508/2008

M/s.Green Express,
Represented by its Manager/Authorised
Signatory,
No.31, Stringer Street, Broadway,
Chennai - 600 108.

..Petitioner in WP 7509./2008

M/s.Indo Arya Central Transport Ltd.,
Represented by its Dy. General Manager,
No.49, Broadway,
Chennai - 600 108.

..Petitioner in WP 7510/2008

M/s.Om Air Freight Ltd.,
Represented by its Manager/Authorised
Signatory,
No.97, Samy Pillai Street,
Choolai,
Chennai - 600 112.

..Petitioner in WP 7511/2008

vs.



Union of India,
Owning Southern Railway,
Represented by its General Manager,
Park Town,
Chennai - 600 003.

..R-1 in all WPs

The Chief Commercial Manager,
Southern Railway,
Chennai-3.

..R-2 in all WPs

The Chief Traffic Manager,
Southern Railway,
Chennai-3.

..R-3 in all WPs

The Chief Commercial Manager (FM),
Baroda House,
Northern Railway,
New Delhi.

..R-4 in all WPs

WP 7506 of 2008 is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records relating to the impugned order of the third respondent herein dated 26.02.2008 in No.C.441/II/10/Misc./overloading and quash the same.

WP 7507 of 2008 is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records relating to the impugned order of the third respondent herein dated 26.02.2008 in No.C.441/II/10/Misc./overloading and quash the same.

WP 7508 of 2008 is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records relating to the impugned order of the third respondent herein dated 10.03.2008 in No.C.206/86/40/38/VPU/Leasing/Ten.27/BIC and quash the same.

WP 7509 of 2008 is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records relating to the impugned order of the third respondent herein dated 26.02.2008 in No.C.441/II/10/Misc./overloading and quash the same.

WP 7510 of 2008 is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records relating to the impugned order of the third respondent herein dated 26.02.2008 in No.C.441/II/10/Misc./overloading and quash the same.

WP 7511 of 2008 is filed under Article 226 of the Constitution



of India, praying for the issuance of a Writ of Certiorari, calling for the records relating to the impugned order of the third respondent herein dated 10.03.2008 in No.C.206/86/40/38/VPU/Leasing/Ten.34/2615/16 and quash the same.

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For Petitioner
in WP 7506/2008 : Mr.R.Selvakumar

For Petitioner in
WPs 7507to7511/2008 : Mr.Guru Prasad for
Mrs.Shanmugavalli Sekar

For Respondents
in all WPs : Mr.P.T.Ramkumar

C O M M O N O R D E R

The order of termination of contract by the Railways, is under challenge in all these writ petitions.

2. The petitioners are Transport Carriers undertaking transport of commercial materials. The petitioners were awarded lease rights of carrying various goods in Parcel Van of Trains. The periods mentioned in the Agreement For Lease are on Round Trip basis.

3. It is not in dispute that the Memorandum of Agreement signed between the parties provides terms and conditions of including for termination of contract.

4. The learned counsel for the petitioners states that before issuing the order impugned, no show cause notice or opportunity was provided to the petitioners and therefore, the order impugned is in violation of principles of natural justice.

5. The learned counsel for the petitioners is of an opinion that the petitioners are not committed any such allegation of overloading and the Railway is having the head of not weighing the materials properly. On several occasions, refunds were made in favour of the petitioners and therefore, the order of termination is untenable.

6. The learned counsel for the petitioners reiterated that in respect of the contractual obligations these writ petitions are maintainable. The petitioners relied on the judgment of the Hon'ble Supreme Court of India and states that the opportunity to defend the case has not been provided and therefore, these writ petitions are maintainable.



7. The learned counsel for the petitioners drew the attention of this Court with reference to the terms and conditions of the contract and also contended that the order of termination is cryptic and not containing any reasons and thus, it is liable to be set aside.

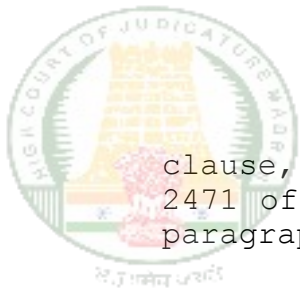
8. The learned counsel for the respondent-Railways disputed the abovesaid contentions of the petitioners by stating that the transactions between the petitioner and the Southern Railways are on contract basis and admittedly, the agreement had been signed between the parties.

9. As per Clause 10 of the terms and conditions of the agreement, the contract is liable to be terminated unilaterally by the Railways without giving any prior notice if overloading on re-weighment is detected on three occasions. Relying on the said conditions in the contract, the learned counsel for the respondents reiterated that no prior notice is contemplated under the contract and the contract was admittedly signed by the petitioners.

10. Whenever overloading of re-weighment is detected and if it exceeds the three times, then the Railways has got powers to terminate the contract by invoking Clause 10 of the agreement. However, in the present case, show cause notice was issued to the petitioners on 03.07.2007, categorically stating that as per surprise checks conducted overloading has been detected. The details of the overloading are also provided in the show cause notice and the petitioner was provided with an opportunity to submit their reply within ten days.

11. Pertinently, the petitioners have submitted their objections on 24.11.2007, which is enclosed by the petitioners themselves in the typed set of papers filed along with these writ petitions. They have raised certain objections and the Railways have taken a decision to terminate the contract as the overloading exceeds more than three occasions and accordingly issued the impugned order of termination.

12. Earlier the learned counsel for the respondents brought to the notice of this Court that on similar circumstances, rejected the relief in WP No.5214 of 2010 dated 20.09.2010. Further, in the agreement between the petitioners and the respondents, arbitration clause has been provided and the petitioners also in the event of any such contractual disputes, have to invoke the arbitration clause for the purpose of adjudication of the issues. Thus these writ petitions are not maintainable and the arbitration clause provided in clause 5 of the agreement and admittedly, these writ petitions are not invoking the arbitration clause. In respect of arbitration



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clause, the Hon'ble Supreme Court of India in W.A.Nos.2470 and 2471 of 2010 passed an order on 06.12.2010, wherein the relevant paragraphs 10 to 13, the Hon'ble Supreme Court held as under:-

"10. It is also useful to refer to Clause 24.3 of the Agreement, which reads as under: -

In the event of any difference of opinion or dispute between the Railway Administration and the Leaseholder as to the respective rights and obligations of the parties hereunder or as to the true intent and meaning of these presents or any articles of conditions thereof. Such difference of opinion shall be referred to the sole arbitrator, who shall be a Gazetted Railway Officer appointed by the General Manager, Southern Railway, Chennai for the time being whose decision shall be final, conclusive and binding on the parties, the intention of the parties being that every matter in respect of this agreement must be decided by him a sole arbitrator and not taken to a Civil Court. All disputes are subject to the territorial jurisdiction of courts located in Chennai only.

11. From the aforesaid two clauses, it is evidently clear that the agreements were for a period of three years, which can be extended for a further period of two years, subject to satisfactory performance by the appellant. The learned single Judge found that the appellant violated the terms and conditions of the contract, for which penalty was imposed and the same was deposited by the appellant.

12. In the facts and circumstances of the case, we are of the definite view that a writ of mandamus cannot be issued directing the respondents to extend the lease for a further period of two years. Admittedly, the contract in question is not a statutory contract, rather a commercial contract having an arbitration clause also. Hence, the relief sought for by the appellant is not only hit by the provisions of the Specific Relief Act, 1963, but also the writ jurisdiction cannot be invoked having regard to the arbitration clause contained in the



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agreement.

13. For the reasons aforesaid, we do not find any merit in these appeals, and accordingly, they are dismissed. No costs. Consequently, miscellaneous petitions are closed."

It is brought to the notice of this Court that WP No.7506 of 2008 is filed by the very same petitioner, namely, M/s.Northern Freight Carriers.

13. This Court is of the considered opinion that contractual obligations and violations of terms and conditions of contract cannot be adjudicated in the writ proceedings. Only on exceptional circumstances, the Court entertains the writ petitions filed against certain contractual obligations. The factual disputes and the issues involved are to be decided by way of an elaborate adjudication based on documents in original and evidences.

14. Contrarily, the High Court cannot enter into an adjudication of this nature which involves scrutinisation of documents in original. Further the arbitration clause has been agreed between the parties. Thus, the petitioners have to invoke the arbitration clause for the purpose of resolving the issues and contrarily, the petitioners have filed all these writ petitions by merely stating that no show cause notice was issued to the petitioners before passing the order of termination.

15. However, the respondents could able to establish that notice was issued and the petitioners also filed their objections and thereafter termination order was issued. Even in the absence of show cause notice, clause 10 of the agreement stipulates that without prior notice termination can be issued if the overloading exceeds for more than three occasions.

16. This Court is of the considered opinion that regarding the weightment or re-weightment of overloading and the facts involved as well as the measurements or otherwise, the Authorities are bound to invoke the arbitration clause. Even in the absence of arbitration clause, they are bound to approach the Competent Civil Court of Law for effective adjudication of the issues. Contrarily, the High Court cannot adjudicate such issues in the writ proceedings under Article 226 of the Constitution of India and as far as these writ petitions are concerned, the period of contract expired long back and further the learned counsel for the respondents brought to the notice of this Court that the petitioners were re-engaged by the revoking the cancellation.



17. This being the facts and circumstances, if at all any grievance exists with reference to the factual issues or otherwise, the petitioners are at liberty to invoke the arbitration clause or to approach the Competent Civil Court of Law, as the case may be, for the purpose of redressal of such grievances. However, it is made clear that in the event of the petitioners approaching the Arbitrator or the Civil Court, the issues are to be decided independently uninfluenced by any of the observations made in these writ petitions.

18. With the abovesaid observations, the writ petitions stand dismissed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

Svn

To

1. The General Manager,
Union of India,
Owning Southern Railway,
Park Town,
Chennai - 600 003.
2. The Chief Commercial Manager,
Southern Railway,
Chennai-3.
3. The Chief Traffic Manager,
Southern Railway,
Chennai-3.
4. The Chief Commercial Manager (FM),
Baroda House,
Northern Railway,
New Delhi.

+1cc to Mr.P.T.Ramkumar, Advocate, S.R.No.65997
+1cc to Mr.R.Selvakumar, Advocate, S.R.No.66436
+1cc to Mrs.Shanmugavalli Sekar, Advocate, S.R.No.66031

WPs 7506 to 7511 of 2008

SV(CO)
RGA(27/12/2021)