

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.03.2021

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P. Nos.5494 & 5498 of 2021 &
W.M.P.Nos.6103, 6104, 6109 & 6113 of 2021

Star Associates,
Rep. by its Managing Partner,
S.R.Venkat Vel,
No.2/122, Panikanoor,
Samudram Post,
Omalur Taluk,
Salem District. Petitioner in both W.Ps.

Vs

- 1.The Senior Divisional Commercial Manager,
Divisional Office,
Commercial Branch,
Salem.
- 2.The Divisional Railway Manager,
Southern Railway,
Salem.
- 3.The Commercial Supervisor,
Coimbatore North Junction,
Southern Railways,
Coimbatore. ... Respondents in both W.Ps.

Prayer in W.P.No.5494 of 2021: Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified mandamus calling for the records of the impugned notice SA/C.442/PCET Corres/RJT/2020 of the 1st respondent dated 24.02.2021 and quash the same and consequently direct the respondents 1 and 2 to waive the license fee to the extent of 70% in respect of the leasing of PCET on Round Trip basis over Coimbatore North - Rajkot Goods Shed) granted under LOA dated 15.07.2020 to the petitioner till normal functioning of railways and refund the excess amount paid since July 2020.

Prayer in W.P.No.5498 of 2021: Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified mandamus calling for the records of the

impugned notice SA/C.442/PCET Corres/PTNR/2020 of the 1st respondent dated 24.02.2021 and quash the same and consequently direct the respondents 1 and 2 to waive the license fee to the extent of 70% in respect of the leasing of PCET on Round Trip basis over Coimbatore to Patel Nagar Circuit Route granted under LOA dated 15.07.2020 to the petitioner till normal functioning of railways and refund the excess amount paid since July 2020.

For petitioner in

both W.Ps.

... Mr.AR.L.Sundaresan, Senior Counsel
for Ms.AL.Gandhimathi

For Respondents in

both W.Ps.

... Mr.P.T.Ramkumar,
Standing Counsel

COMMON ORDER

These writ petitions have been filed challenging the show cause notices both dated 24.02.2021 issued by the first respondent and the petitioner has sought for consequential direction to the respondents 1 and 2 to waive the license fee to the extent of 70 percent in respect of the leasing of PCET on Round Trip basis over Coimbatore North to Rajkot Good Shed and Coimbatore to Patel Nagar Circuit Route granted under LOA dated 15.07.2020 to the petitioner till the normal functioning of railways and refund the excess amount allegedly paid by the petitioner since July 2020.

2. Mr.P.T.Ramkumar, learned Standing Counsel accepts notice on behalf of the respondents. By consent of both parties, these writ petitions are taken up for final disposal at the time of admission itself.

3. The petitioner is a contractor with the Indian Railways. According to the petitioner, due to covid-19 lockdown, they have suffered huge losses on account of lack of business. According to the petitioner, they have given a representation on 28.01.2021 requesting the respondents for waiver of 70% with regard to the payment that they have to pay under the contract entered into with the Indian Railways. In the said representation dated 28.01.2021, they have expressed their difficulties due to Covid-19 lockdown situation and the loss suffered by them due to the said situation. It is their case that similarly placed vendors of the Indian Railways have been given waivers. It is also their case that their contract is for a period six years which is valid upto the year 2026. However, according to the petitioner, by impugned show cause notices, the second respondent has predetermined the issue and without considering the representation seeking for waiver of charges to

the extent of 70% has called upon them to pay the outstanding amount as per the contract without any waiver as sought for by the petitioner in their representation dated 28.01.2021. In such circumstances, they have challenged the impugned show cause notices on the following grounds:

(a) The impugned show cause notices have been issued with the pre-determined conclusion and in violation of principles of natural justice.

(b) The first respondent has issued the impugned show cause notices without giving due consideration to the representation given by the petitioner requesting for waiver of freight charges for the next nominated trips based on payment relaxations issued by railway administration with regard to the other tenders.

(c) The first respondent ought to have seen that the non payment of freight charges will not come under Clause 27.1 and the same cannot be recovered from the security deposit.

(d) The impugned show cause notices sent to terminate the agreement on the ground that there is a breach of agreement is without any notice as to any breach committed by the petitioner.

(e) The first respondent has fixed the demurrage charges on its own and the freight charges had been fixed without considering the request for waiver of charges by the petitioner and had been issued with a predetermined conclusion.

(f) The impugned notices have been issued without any application of mind.

(g) The impugned notices have been issued by the first respondent in total violation to the clauses of the agreement entered into between the petitioner and the respondents.

4. Heard Mr.AR.L.Sundaresan, learned Senior Counsel representing Ms.AL.Gandhimathi, learned counsel for the petitioner and Mr.P.T.Ramkumar, learned standing counsel for the respondents.

5. It is settled law that a show cause notice can be challenged under Article 226 of the Constitution of India only when it has been issued without jurisdiction or without any authority under law.

6. Mr.AR.L.Sundaresan, learned Senior Counsel for the petitioner drew the attention of this Court to the Judgment of the Hon'ble Supreme Court in the case of Siemens Limited Vs. State of Maharashtra and Others reported in 2007 [1] CTC 844 and would submit that if the show cause notice has predetermined the issue, then the same can also be challenged under Article 226 of the Constitution of India.

7. Mr.P.T.Ramkumar, learned standing counsel for the respondents on instructions would submit that apart from representation dated 28.01.2021 given by the petitioner, the

petitioner had also given another representation on 04.02.2021 for which a reply has also been sent by the first respondent on 05.02.2021.

8. Necessarily all the issues raised by the petitioner in these writ petitions which have been indicated earlier will have to be addressed by the first respondent in the final orders to be passed by the first respondent pursuant to the impugned show cause notices both dated 24.02.2021. No prejudice will be caused to any of the parties, if the grounds raised by the petitioner in this writ petition is considered by the first respondent in the final orders to be passed by the first respondent pursuant to the impugned show cause notices dated 24.02.2021.

9. Learned senior counsel for the petitioner would further submit that the petitioner may be permitted to send their detailed reply to the impugned show cause notices dated 24.02.2021 stating all their objections.

10. For the foregoing reasons, this Court directs the petitioner to send a reply within a period of one week from the date of receipt of a copy of this order to the impugned show cause notices both dated 24.02.2021 issued by the first respondent raising all objections which they have raised in these writ petitions and the first respondent on receipt of the same shall pass final orders on merits and in accordance with law after affording a fair hearing to the petitioner including granting them a right of personal hearing within a period of twelve weeks thereafter. It is made clear that till final orders are passed, the petitioner's contract shall not be disturbed by the respondents subject to the payment of the charges as per the contract.

11. With the aforesaid direction, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Senior Divisional Commercial Manager,
Divisional Office,
Commercial Branch,
Salem.

2.The Divisional Railway Manager,
Southern Railway,
Salem.

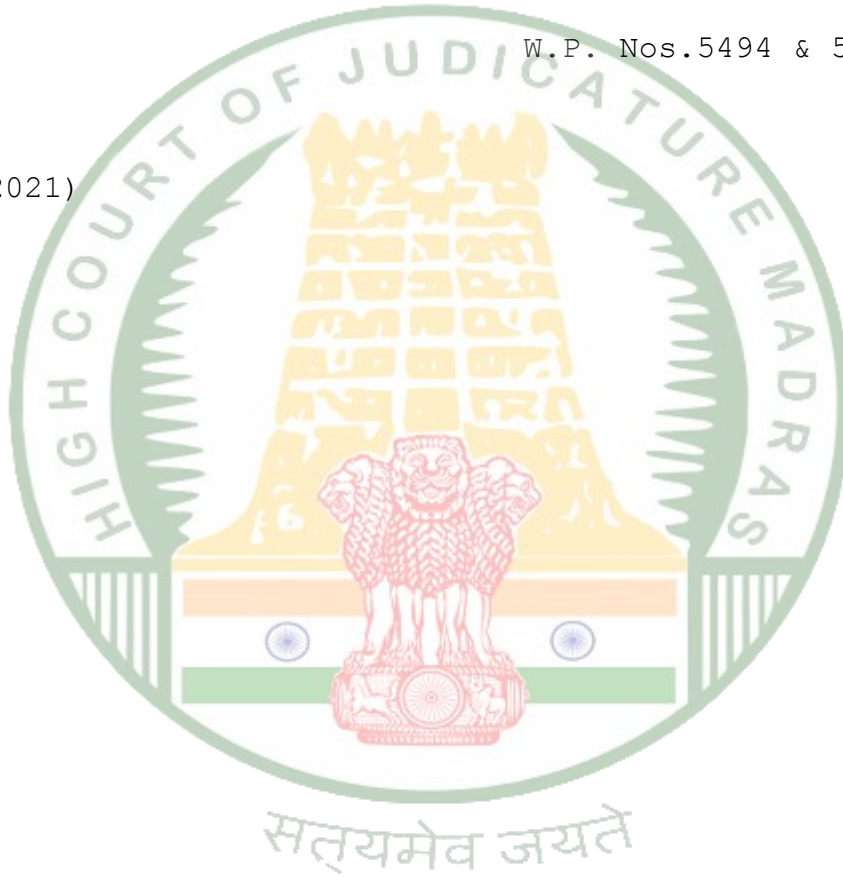
3.The Commercial Supervisor,
Coimbatore North Junction,
Southern Railways,
Coimbatore.

+2cc to M/s.A.L.Ganthimathi, Advocate SR.13986, 13987
+1cc to Mr.P.T.Ramkumar, Advocate SR.13955

W.P. Nos.5494 & 5498 of 2021

(CO)

CB(22/03/2021)



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