

11 22.04.2022
rkd Ct.15

W.P.A. 3163 of 2020

Sharuan Kumar

-vs-

Union of India & Ors.

Mr. Saptarshi Roy,
Mr. Amadipta Sengupta,
Ms. Kakali Das Chakraborty.

....for the petitioner.

Mr. Sanajit Kumar Ghosh

....for the UOI.

Affidavit-in-reply filed on behalf of the
petitioner today is taken on record.

In this writ petition order of termination of
a lease of a parcel space in break vans/parcel vans
(1st compartment) in train no. 12351 Ex-Howrah to
R.J.P.B. (Danapur Express) dated 6th February,
2020 issued by the Assistant Commercial Manager,
Eastern Railway is under challenge.

Mr. Roy, learned advocate appears on
behalf of the petitioner and has submitted that
previously the show cause notice was issued on 6th
September, 2019 asking the petitioner to explain
why steps shall not be taken for overloading which
was put under challenge by filing a writ petition
being W.P.A. 20756 of 2019 and the same was
disposed of vide order dated 11th November, 2019
by a coordinate Bench. Since point was taken

before the coordinate Bench while considering the previous writ petition on behalf of the petitioner that certain relevant documents including the manifests ought to have been permitted to be inspected by the petitioner the coordinate Bench in the order dated 11th November, 2019 fixed the date on 13th November, 2019 within 6 P.M. for inspection of those documents, if the petitioner makes an approach to the concerned authority of Eastern Railway.

It has been further directed by the coordinate Bench that on inspection of such documents as asked for, petitioner would file reply to the show cause notice by 22nd November, 2019 and thereafter the concerned authorities of Eastern Railway shall decide the issue finally upon giving opportunity of hearing to the petitioner or his representative.

It has been contended on behalf of the petitioner that in spite of such direction given by the coordinate Bench on 11th November, 2019 petitioner was not permitted to inspect the documents on 13th November, 2019 though he made attempt to have inspection and subsequently offered reply to the show cause notice vide letter dated 22nd November, 2019. Ultimately the

impugned decision of termination was communicated vide letter dated 6th February, 2020 by the concerned respondent authority without affording opportunity of hearing to the petitioner. It has been contended that before taking such decision of termination the authority was required to grant opportunity of hearing upon serving due notice upon the petitioner in order to comply the order passed by the coordinate Bench dated 11th November, 2019 in its true letter and spirit. It has been submitted that failure on the part of the Railway Authorities to grant opportunity of hearing and to provide scope to have inspection of the relevant documents vitiates the decision making process.

Mr. Ghosh, learned advocate appears on behalf of the Eastern Railway Authorities and has placed original records before this Court pursuant to the previous order passed by this Court on 5th April, 2022 in order to satisfy the query of the Court whether petitioner was given opportunity to inspect the documents and whether petitioner was provided opportunity of hearing before taking decision of termination as directed by the coordinate Bench.

This Court has perused the relevant records

of the Eastern Railway wherefrom it appears that since petitioner himself did not approach the authority for inspection of documents on 13th November, 2019 the representative of the petitioner was not permitted to have inspection of the documents. It has further been submitted by Mr. Ghosh that subsequently the copies of the relevant documents as asked for by the petitioner were supplied to him by e.mail. On requirement of providing opportunity of hearing to the petitioner as directed by the coordinate Bench it has been submitted on behalf of the respondents that the petitioner himself appeared before the authority on 22nd November, 2019 and submitted representation after receiving e.mail letter dated 14th November, 2019 from the respondents but he declined to put signature on the attendance sheet and subsequently by filing the present writ petition petitioner is taking the point that opportunity of hearing had not been accorded to him. According to the respondent authorities there has been due observance of the directions passed by the coordinate Bench as contained in order dated 11th November, 2019.

This Court has heard the rival submissions of the parties and perused the relevant documents

including the original records produced on behalf of the Eastern Railway today at the time of hearing.

On consideration of the direction passed by the coordinate Bench in the order dated 11th November, 2019 it appears to this Court that there was necessity of giving fair chance to the petitioner to have inspection of the documents prior to taking final decision of termination of lease and there was also a requirement to give opportunity of hearing to the petitioner preceding such decision.

In the present case, it appears that since the petitioner personally did not approach the respondent authorities on 13th November, 2019 he was not allowed to inspect the documents even his representative was also not allowed to inspect the documents. As it appears to this Court for granting fair opportunity to make deliberation in support of the case of the petitioner before the respondent authorities the documents relied upon by the respondent authorities while taking decision as well as those documents which have been indicated in the order passed by the coordinate Bench on 11th November, 2019 are required to be inspected by the petitioner if appropriate approach being made on behalf of the petitioner. In the present case, in addition thereto it appears that no prior notice of

hearing was served upon the petitioner by the respondent authorities.

Since the respondent authorities have terminated the licence which has civil and evil consequences principle of natural justice needs to be followed prior to taking such decision.

On considering the direction passed by the coordinate Bench and after perusal of the original records produced on behalf of the respondents, this Court permits the petitioner personally to have inspection of the relevant documents as referred to in the previous order dated 11th November, 2019 on 25th April, 2022 by 3 P.M.

Petitioner is directed to approach Assistant Commercial Manager, Eastern Railway for inspection of those documents.

Accordingly, the date of hearing of the petitioner or his representative is fixed on 12th May, 2022 at 3 P.M. and the issue is to be heard by the Principal Chief Commercial Manager of Eastern Railway, respondent no.3. At the time of hearing of the issue, the respondent no.3 shall take into consideration the order passed by the coordinate Bench on 11th November, 2019 and the observations made by this Court today as well as fair opportunity shall be provided to the petitioner

for making deliberation on his case and the decision to be taken by the respondent no.3 shall be communicated to the petitioner within one week thereafter.

The impugned decision of termination of lease dated 6th February, 2020 shall be kept in abeyance and shall abide by the decision to be taken by the respondent no.3. However, the respondent no.3 shall take the decision independently without being influenced by the decision taken by the Assistant Commercial Manager, Eastern Railway which is at page 72 of the writ petition.

With the above direction, the writ petition stands disposed of.

However, there shall be no order as to costs.

Petitioner shall be permitted to inspect the documents on the aforesaid fixed dated on the basis of the written communication of the learned advocate of the petitioner without insisting the petitioner for production of server copy of today's order since the order is passed in presence of the learned advocates representing the petitioner as well as Eastern Railway.

The original records produced before this

Court today are returned to Mr. Ghosh, learned advocate representing the Eastern Railway.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)