

**In the High Court at Calcutta  
Constitutional Writ Jurisdiction  
Appellate Side**

**The Hon'ble Justice Sabyasachi Bhattacharyya**

**W.P.A. No.21362 of 2021**

**Anil Bareja  
Vs.  
Union of India and others**

|                              |   |                                                   |
|------------------------------|---|---------------------------------------------------|
| For the petitioner           | : | Mr. Saptarshi Roy,<br>Ms. Kakali Das Chakraborty  |
| For the respondent no.1 to 4 | : | Mr. Pathik Bandhu Banerjee                        |
| For the respondent no.5      | : | Mr. Abhishek Banerjee,<br>Ms. Parna Roy Choudhury |
| Hearing concluded on         | : | 21.04.2022                                        |
| Judgment on                  | : | 18.05.2022                                        |

**Sabyasachi Bhattacharyya, J:-**

1. The petitioner's sole proprietorship concern participated in a tender floated by the South Eastern Railway for leasing of 23 tonne Parcel Van (VPH) on round-trip basis in different trains *vide* Tender Notice No. Com/G27/Parcel-Lease/VPH/18-VII dated December 11, 2018. The petitioner became the highest bidder, and a letter of allotment was issued in favour of the proprietorship concern of the petitioner on March 27, 2019. The petitioner was asked to submit security deposit to the tune of Rs. 1,01,55,906/- (Rupees One Crore One Lakh Fifty-Five Thousand Nine Hundred and Six only) by way of fixed deposit

receipt and to execute an agreement. The petitioner submitted the security deposit *vide* Fixed Deposit A/C No.09253031158719 dated April 10, 2019 drawn on the respondent no.5-bank.

2. Thereafter, the petitioner executed an agreement with the South Eastern Railway on May 3, 2019 for leasing 23 tonnes Parcel Van (VPH) by Train No. 12834/12833 (Howrah – Ahmedabad Express) Ex-Shalimar to Ahmedabad and back for a period of 05 (five) years.
3. It is contended that the petitioner, in terms of the said agreement, had commenced loading and unloading at both the Shalimar and the Ahmedabad Stations upon payment of advanced freight. However, subsequently, the petitioner started facing problems at the time of loading and unloading at the Shalimar station which, according to the petitioner, was in contravention of Clause 11.6 of the agreement. It is contended by the petitioner that the inconvenient timings of placing parcel vans at Shalimar Station by the Railway Authority caused huge loss of business to the petitioner, since the petitioner was unable to load perishable goods due to the long waiting time under the open sky.
4. Being thus constrained, the petitioner wrote a letter on June 17, 2019 to the Railway Authority explaining his difficulties and requesting their intervention to resolve the issue.
5. The petitioner also gave notice in the said letter for suspension of the lease parcel van on and from June 18, 2019 till resolution of the issues.

6. Since no steps were taken by the Railway Authorities, the petitioner sent reminders to the Railway Authorities on December 9, 2019 and August 4, 2020.
7. Without resolving the issue, the Railways issued a letter on October 1, 2020 bearing No. Com/G27/Parcel-Lease/VPH/12834/12833, purportedly in response to the petitioner's letters, wherein certain clauses of the agreement were cited by the Railway Authorities.
8. The petitioner replied in writing to the said letter on October 9, 2020, stating that the petitioner had suspended the lease operation temporarily, pending resolution of the issues faced by the petitioner, and indicating that Clauses 8.4 and 25.1 of the agreement do not apply to the petitioner.
9. The petitioner again issued a letter on October 6, 2021 to the Railway Authorities, indicating the petitioner's willingness to operate the lease parcel van provided the difficulties as indicated in the earlier letters were resolved. By the said letter, the petitioner also requested the respondent-Railway Authorities to refund the security deposit in the event the problem would not be resolved by the Railways.
10. However, on December 1, 2021 the Railway Authorities sent a termination letter to the petitioner by citing breach of Clauses 8.4 and 25.1 of the agreement, thereby forfeiting the security deposit of the petitioner and debarring the petitioner from entering into any tender for the next two years.
11. Learned counsel for the petitioner contends that the said termination of the contract was arbitrary and *de hors* the terms of the agreement

between the parties, as well as violative of Articles 14 and 19(1)(g) of the Constitution of India. Learned counsel for the petitioner submits that the debarment of the petitioner for two years without issuing any prior notice of show cause and/or granting any opportunity of hearing to the petitioner was patently unlawful.

- 12.** It is reiterated that Clauses 8.4 and 25.1 of the agreement are not attracted in the present case at all. The petitioner had issued a notice on June 17, 2019, intimating the Railways about the intention to suspend the operation from June 18, 2019, and, as such, did not fall within the purview of Clause 8.4 of the agreement, which contemplated failure to operate the contract continuously for 10 days without giving any notice to the Railways.
- 13.** It is argued that the Railway Authorities acted *de hors* the law and natural justice in terminating the contract and blacklisting the petitioner without giving any consideration to the petitioner's several letters.
- 14.** In the absence of any specific letter seeking termination of contract, the provision of Clause 25.1, it is argued, could not be invoked.
- 15.** Moreover, it is contended that the post of Assistant Commercial Manager does not fall within the definition of 'Railway Administration' under the agreement and the termination letter issued by the Assistant Commercial Manager does not specify that such power of the Senior Divisional Commercial Manager under the agreement had been assigned to the author of the letter. Hence, the termination

letter itself was issued by the Assistant Commercial Manager without having any authority to do so under the agreement.

16. It is submitted that the termination letter does not even record concurrence of the Senior Divisional Commercial Manager of the South-Eastern Railways, Kharagpur Division and was, therefore, without jurisdiction.
17. That apart, learned counsel for the petitioner submits that the Railway Authorities have not recorded any finding that the Railways have suffered any loss, caused deliberately by the petitioners, in the absence of which the debarment of the petitioner by the Railway Authorities is bad in law.
18. The Railways, being statutory authorities, are bound to act within the four corners of law, which the Railways have failed to adhere to in the present instance.
19. Learned counsel appearing for the petitioner places reliance on a judgment reported at *(2021) 6 SCC 15 [Uttar Pradesh Power Transmission Corporation Limited and another Vs. CG Power and Industrial Solutions Limited and another]*, in support of the proposition that availability of an alternative remedy does not prohibit the High Court from entertaining a writ petition in an appropriate case, in the situations as indicated therein. In the present case, as such, the Arbitration Clause in the agreement between the parties is not a hindrance to this Court exercising its jurisdiction.
20. By citing *Harbanslal Sahnia and another Vs. Indian Oil Corpn. Ltd. and others*, reported at *(2003) 2 SCC 107*, learned counsel contends that

the rule of exclusion of writ jurisdiction by availability of an alternative remedy is of discretion and not one of compulsion.

21. Learned counsel for the petitioners cites *M/s. Erustan Equipment and Chemicals Ltd. Vs. State of West Bengal and another*, reported at (1975) 1 SCC 70, for the proposition that a blacklisted party is entitled to a notice of hearing before his name is put on the blacklist. In the present case, the fundamentals of fair play required that the person concerned, that is, the petitioner, should be given an opportunity to present its case before being put on the blacklist. Such opportunity was, however, denied to the petitioner. The principle of equality of opportunity applies to matters of public contracts and the Government cannot choose to exclude by discrimination, it is argued on the basis of the last-mentioned judgment.
22. Learned counsel next relies on two co-ordinate Bench judgments of this Court, one dated July 11, 2019 passed in *WP No.6053 (W) of 2018 [Sharuan Kumar Vs. Union of India and others]* and the other dated April 6, 2022 passed in *WPA 106668 of 2021 [Radhey Shyam Pandey Vs. Union of India and others]*. In similar circumstances but in respect of different Railway Authorities, the Supreme Court judgments previously cited by the petitioner, as indicated above, were followed and upheld.
23. Apart from holding that under certain circumstances, as applicable to the present case, the High Court can interfere in its writ jurisdiction even in tender or contractual matters, it was held in the said co-

ordinate Bench judgments that similar clauses of the agreement, as in the present case, were not applicable under similar circumstances.

- 24.** Learned counsel appearing for the Railway Authorities submits that both Clauses 8.4 and 25.1 of the agreement are squarely applicable in the facts of the present case.
- 25.** Moreover, it is argued that the petitioners specifically sought withdrawal of the security deposit, thereby indicating the petitioners' intention to terminate the contract permanently.
- 26.** Moreover, in view of the specific arbitration clause (Clause 29.2) in the agreement-in-question clearly covering the disputes raised in the present writ petition, this court ought not to interfere in its writ jurisdiction, particularly in contractual matters, between the parties.
- 27.** It is submitted that the judgments cited by the petitioner are not applicable in terms, in the facts of the present case.
- 28.** As regards the ground of maintainability of the writ petition in view of existence of an arbitration clause in the contract-in-question, a plain reading of the said Clause, that is, Clause 29.2, indicates that the same covers all disputes in regard to "implementation of the policy/agreement with S.E. Railway", under that scheme.
- 29.** Such Arbitrator was to be nominated by the General Manager of the S.E. Railway.
- 30.** On the other hand, Clause 30.0 provides for jurisdiction, under which Clause 30.1 reads that in case of any dispute, any suit, petition, reference or other finding shall be subject to exclusive jurisdiction of the Court located in Kolkata (West Bengal), city of India.

- 31.** In the present context, however, there arises some doubt as regards whether the disputes raised by the petitioner, in respect of termination of the contract, are covered within the phrase “implementation”. Although the respondent-Authorities have relied on two important clauses of the contract, which might bring the dispute within the purview of the Arbitration Clause, in the facts of the present case, as discussed below, the said clauses are not applicable at all.
- 32.** As such, in a situation where the question does not pertain to implementation of any clause of the agreement but to termination of the same and subsequent consequential blacklisting, which is also *de hors* the provisions of the agreement, Clause 29.2, that is, the Arbitration Clause is not applicable strictly to the present case.
- 33.** That apart, the judgment of the Supreme Court in *Uttar Pradesh Power Transmission Corporation Limited* (supra) clearly lays down the proposition that availability of an alternative remedy does not prohibit the High Court from entertaining a writ petition in certain circumstances, particularly:
- (i) where the writ petition seeks enforcement of a Fundamental Right;
  - (ii) where there is failure of principles of natural justice; or
  - (iii) where the impugned orders or proceedings are wholly without jurisdiction; or
  - (iv) the *vires* of an act is under challenge.

- 34.** The same principle was reiterated by the Supreme Court in *Harbanslal Sahnia* (supra). The said judgments were also followed by the two Learned Single Judges, whose unreported judgments in *Sharuan Kumar* (supra) and *Radhey Shyam Pandey* (supra) have been cited by the petitioner.
- 35.** In the present case, the ratio as laid down in the said judgments squarely applies, since the complaint of the writ petitioner seeks the enforcement of the petitioner's Fundamental Rights under Articles 14 and 19 of the Constitution of India and has pleaded failure of the principle of *Audi Alteram Partem*, which is a basic tenet of natural justice. A question as to jurisdiction of the person issuing the termination notice has also been raised, as such attracting the issues as stipulated in the said judgments in order for the High Court to invoke its writ jurisdiction.
- 36.** Clause 8.4 of the agreement provides as follows:
- “8.4 If the leaseholder, after commencement of loading fails to operate the contract continuously for 10 days without giving any notice, his contract will be terminated and security deposit forfeited.”*
- 37.** In the present case, prior to operating further in terms of the contracts, the petitioner gave a clear notice on June 17, 2019, where the specific grounds of the petitioner's inconveniences were stipulated, touching the violation of Clause 11.0 – 11.12 of the agreement, pertaining to loading/unloading facility at intermediate stations and similar operation at originating, intermediate and destination stations.
- 38.** Annexure P-3 at page 46 of the writ petition is a copy of the said communication, where the petitioner, in no uncertain terms, indicated

that the petitioner had no intention to stop the running of the lease VPH operation but the circumstances as stated therein were forcing the petitioners to do so because of continuing business losses and rising operation costs due to the reasons given therein, making the task difficult for the petitioners. The petitioners also requested a resolution of the above issues immediately without any delay.

- 39.** However, the said grievances were not considered by the Railway Authorities at all, nor was any hearing given on the same to the petitioners.
- 40.** Insofar as the communication of the petitioners dated August 4, 2020 is concerned, the argument of the respondents, that the petitioners sought to withdraw the security amount, is only partially true. In reality, it is reflected from the said communication that the petitioners had reiterated their grievances and ventilated the same to the respondent-Authorities on June 17, 2019 and the subsequent reminder dated December 9, 2019. It was also reiterated that, despite the petitioners' letters and requests, the South-Eastern Railway Office did not help the petitioners, for which, to avoid further loss, the petitioners had to stop the operation of the said train VPH.
- 41.** In such context, the petitioner had further stated that, in view of the aforementioned scenario, the Railway Authorities were liable and responsible to refund the security amount deposited by the petitioners.
- 42.** However, the communication dated August 4, 2020 cannot be interpreted as a unilateral notice by the petitioners to terminate the

contract from their end. Interpreted in proper perspective, the refund of security deposit demanded by the petitioners was only due to the inaction of the respondent-Authorities.

- 43.** Even when the South-Eastern Railway intimated, through a communication dated October 1, 2020 to the petitioners reminding the latter of Clauses 8.4 and 25.1 of the lease agreement, the petitioners wrote back on October 9, 2020 whereby they reminded the Railway Authorities that the VPH lease had only been temporarily suspended for a specific time because the issues raised by the petitioners were not resolved by the respondent-Authorities, despite repeated intimations to that effect, due to the consequential loss suffered by the petitioners on a day-to-day basis.
- 44.** Again, vide the letter dated October 6, 2021 (Annexure P-7 at page 56 of the writ petition), the petitioners clarified that the refund was asked for only in the case the petitioner's request and proposal for resolution of the issues was not addressed by the Railway Authorities. More importantly, in the said letter, the petitioners categorically stated that, if the Railways agree, the Railway Authorities were to mention the date when the petitioners had to start commencement of lease, by giving one month's time for marketing, etc.
- 45.** Hence, it is clear from the aforesaid communications that the petitioners were all along willing to resume the contract, subject to the specific grievances of the petitioners being addressed by the respondent-Authorities, which was never done from the latter's end.

**46.** Taking a close look at Clause 8.4, it is seen that the same is not attracted in the present case at all, since the failure of the petitioners to operate the contract was not “without giving any notice”.

**47.** Clause 25.1 of the lease agreement, on the other hand, states:

*“25.1: Lease holder shall have the right to terminate the agreement after serving 60 days notice to Railway Administration. However, leaseholder shall not be allowed to terminate that contract before one year (10 months + 2 months notice period) in case of any contract whether it is on short term or long term. In case he does so, his security deposit shall be forfeited and he shall be debarred from entering into any tender for next two year. But he shall be allowed to operate existing tender of other trains, if any.*

*(The leaseholder can give notice for termination of contract after completion of 10 months. Thus, 10 months + 2 months (notice period) = 12 months period will be completed. After completion of 1 year period, the leaseholder can be allowed to quit the contract. In such cases, security deposit will not be forfeited.)”*

**48.** In the present case, the leaseholder, that is the petitioners, never sought to terminate the contract. Even the request for refund of security deposit was repeatedly qualified by the factor that the petitioners’ issues were not addressed by the respondent-Authorities, giving rise to huge losses at the petitioners’ end.

**49.** It is well-settled that one cannot take advantage of one’s own wrong, and, as such, there is no reason why the Railways should be treated as a favoured litigant.

**50.** Insofar as the interference on alleged contractual rights is concerned, it is another well-established principle of law that the State and/or public authorities have to adhere to fair play and transparency in all their public dealings.

51. The railway-Authorities are public authorities and squarely fall within the purview of 'State' under Article 12 of the Constitution of India. Yet, the impugned action of the respondent-Authorities was palpably arbitrary and *de hors* the principles of natural justice.
52. Insofar as the blacklisting of the petitioners by the termination letter dated December 1, 2021 itself is concerned, it is well-established that the petitioners were entitled to a prior notice and the right of hearing before such blacklisting took place.
53. The said principle was clearly reiterated in *M/s. Erustan Equipment* (supra). The Supreme Court held therein that blacklisting has the effect of denying a person the privilege and the advantage of entering into a lawful relationship with the Government for the purpose of gains. The fact that a disability is created by the order of blacklisting indicates that the relevant authority is to have an objective satisfaction. Fundamentals of fair play, it was held, require the person concerned to get an opportunity to present his case before he is put on blacklist.
54. However, no such opportunity was given to the petitioners at all, prior to blacklisting them by the notice dated December 1, 2021.
55. It has been categorically reiterated in *Radhey Shyam Pandey* (supra) by a Co-Ordinate Bench of this Court that a similar blacklisting of a different leaseholder, under clauses quite alike the present agreement, was unlawful and fell foul of the contractual terms between the parties.

- 56.** In the context of blacklisting, it is relevant to note that Clause 25.1 also provides that in case the leaseholder terminates the contract before one year (10 months + 2 months notice period), he shall be debarred from entering into any tender for the next two years. However, in the absence of any such termination notice from the petitioners, the said Clause could not be invoked at all by respondent-Authorities.
- 57.** Clause 25.2 of the agreement stipulates that the petitioners have the right to terminate the agreement for any reason whatsoever, after serving one month's notice to the leaseholder. No such notice was given to the petitioners in the present case.
- 58.** Clause 25.2 further provides that the Railway reserved the right to terminate the contract as a punitive measure, without any notice and at any time, in case of breach of agreement or serious violation of any of the stipulations of policies/Railway's rules by the leaseholder or in case of operational exigencies. None of the said criteria are applicable to the present case, since there was no breach of any of the clauses of the agreement, let alone serious violation of any stipulation of policy/Railway's rules, by the petitioners.
- 59.** In such view of the matter, following the ratio laid down in *Radhey Shyam Pandey* (supra) the blacklisting of the present petitioners also has to be held to be violative of the contractual terms as well as the Fundamental Rights of the petitioners as guaranteed under Article 19 of the Constitution of India.

- 60.** In the present case, the impugned action of the Railway Authorities in terminating the petitioner's contract and blacklisting the petitioners for two years was evidently unlawful and in contravention of not only the clauses of the agreement but also the tenets of natural justice and the Fundamental Rights guaranteed to the petitioner by the Constitution of India, in particular the right to equality, in all its shades, as enshrined in Article 14 thereof.
- 61.** Next entering into the question of authority of the Assistant Commercial Manager of the South-Eastern Railway to issue the termination and blacklisting notice impugned in the present case, the connotation of the expression 'Railway Administration' has to be taken into consideration.
- 62.** Section 2 (32) of the Railways Act, 1989 (hereinafter referred to as 'the 1989 Act') provides that, in relation to a Government Railway, the said expression means the General Manager of a Zonal Railway. Sub-section (18) of Section 2, in turn, provides that 'General Manager' means the General Manager of a Zonal Railway appointed under Section 4 of the 1989 Act.
- 63.** Section 4, on the other hand, provides that the Central Government shall, by notification, appoint a person to be the General Manager of a Zonal Railway, in whom the general superintendence and control of the Zonal Railway shall vest.
- 64.** It is nobody's case that the Assistant Commercial Manager was designated as the General Manager of the South-Eastern Railway.

- 65.** Apart from the statute, the agreement between the parties, under the general stipulation/definitions in Clause B, stipulates that Railway Administration “means and includes the President, Union of India and his successors and assignees, the General Manager, Chief Commercial Manager, Chief Commercial Manager (FM), Chief Commercial Manager (PM), Divisional Railway Manager, Chief Traffic Manager, Senior Divisional Commercial Manager, South-Eastern Railway and their successors and assignees.”
- 66.** Although the Senior Divisional Commercial Manager had entered into the agreement between the parties on behalf of the Railway Administration, the impugned termination letter dated December 1, 2021, as well as the previous communication in that regard, were made by the Assistant Commercial Manager, who was not specifically designated to function as the Senior Divisional Commercial Manager, as per the records.
- 67.** In fact, in paragraph 12 of the affidavit-in-opposition, the Railway Authorities have admitted that there was no such delegation to the Assistant Commercial Manager.
- 68.** Although the Assistant Commercial Manager, in the present case, issued the termination notice “for Sr. Divl. Comml. Manager”, it is crystal-clear from the purport of the termination notice itself that the termination took place pursuant to the said notice itself, which was not issued by the Senior Divisional Commercial Manager but the Assistant Commercial Manager in the present case.

- 69.** The specific expression used in respect of termination in the impugned notice dated December 1, 2021, was “the termination with immediate effect”, and with regard to the security deposit, “is forfeited”, in the present tense. Thus, the Assistant Commercial Manager was not communicating any decision taken by the Senior Divisional Commercial Manager but issued the letter of his/her own.
- 70.** Hence, the impugned termination and blacklisting notice issued by the Assistant Commercial Manager on December 1, 2021 was patently without jurisdiction, in view of the author thereof not being authorised, in law or by the agreement between the parties, to issue such a notice.
- 71.** In view of the aforesaid findings, it is palpably clear that the respondent-Authorities acted patently *de hors* the principles of natural justice and in contravention of the Fundamental Rights of the petitioners, in a clearly arbitrary manner, in issuing the impugned termination and blacklisting notice dated December 1, 2021.
- 72.** Since the petitioners have expressed their willingness in their communication to the respondent-Authorities, particularly, the last communication dated October 6, 2021 (Exhibit P-7 at page 56 of the writ petition) that the petitioners are agreeable to continue with the lease, there cannot arise any question of refund of security deposit by the Railway Authorities either.
- 73.** Hence, in the facts and circumstances of the case, W.P.A. No.21362 of 2021 is allowed, thereby setting aside the impugned termination and blacklisting notice of the petitioners dated December 1, 2021 *vide* No.

Com/G27/Parcel-Lease/VPH/12834/12833. There will be no order as to costs. The Railway Authorities shall immediately intimate the petitioners, preferably within a fortnight from date, the date from which the petitioners shall resume operations of loading and unloading in terms of the agreement between the parties, which stands revived. In so intimating, ample time should be given to the petitioner for taking appropriate preparatory steps accordingly in the meantime.

74. The respondent-Authorities shall also consider the issues raised by the petitioners in respect of the difficulties faced by the petitioners in so operating, upon giving a right of representation/hearing to the petitioners, prior to the date fixed for actual commencement of the operations.
75. Urgent certified copies of this order shall be supplied to the parties applying for the same, upon due compliance of all requisite formalities.

**( Sabyasachi Bhattacharyya, J. )**