

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

972 WRIT PETITION NO.11060 OF 2023
WITH
CIVIL APPLICATION (ST) NO. 29420 OF 2023
WITH
WRIT PETITION NO. 11148 OF 2023

FURKAN AHMED SALIM AHMED
VERSUS
UNION OF INDIA
THROUGH THE SENIOR DIVISIONAL COMMERCIAL MANAGER
...
Mr. Gajendra D. Jain, Advocate for the Petitioner
Mr. Ramdas B. Bhosale, Standing Counsel for Respondent No.1

CORAM : RAVINDRA V. GHUGE &
Y. G. KHOBRAGADE, JJ.

DATE : 14th September, 2023

ORDER:

1. On 06.09.2023, we had passed the following Order:

"1. "We have considered the submissions of the learned Advocates of the respective sides on 05.09.2023 and today.

2. Issue notice to the Respondent, returnable on 11th October, 2023.

3. Mr. Bhosale, the learned Standing Counsel for the Union of India waives service of notice on behalf of the sole Respondent in both the matters.

4. The Petitioner submits that he would deposit the next quarter fee as per the earlier rates applicable, in

view of the tender having been issued for a period of five years, within five days from today. The said amount is approximately Rs.15 lakhs inclusive of GST.

5. In view of the above, the Petitioner shall deposit the quarterly fees for a further period of three months from 2nd September, 2023 within five days from today. On the condition of depositing the said amount, the Petitioner would be permitted to operate the Rail Coach Restaurant at the existing location.

6. Needless to State, this order would not create equities in favour of the Petitioner and the same shall be subject to the result of the of these petitions.

7. Let the reply of the Respondent be filed on or before 5th October, 2023."

2. The learned Standing Counsel for the Union of India has received a communication dated 14.09.2023 from Shri Dharendra Singh, Senior DCM/BSL, Central Railway, Bhusawal informing him that the communication dated 11.09.2023 from Shri Rajesh Abrol, GM.EPS Spl. Projects, is self-explanatory and the licence of the Petitioner has already been terminated on account of the default in payment of licence fee by the Petitioner. The licence fee was to be deposited between 10.08.2023 to 24.08.2023. The said communication along-with the communication dated 11.09.2023 (3 pages), are taken on record and marked as "X-1", collectively for identification.

3. The communication dated 11.09.2023 indicates the policy of the Railways vis-a-vis the contractors. A grace period of 7 days after the due date of payment with penalty of 0.5% per day is permissible. The Railway Board has recently made changes in the policy and as per the amended policy, an additional relaxation of seven days can be allowed beyond the grace period with penalty @ 0.75% per day and further relaxation of 7 days with penalty @ 1% per day.

4. According to Shri Rajesh Abrol, who has addressed the letter dated 11.09.2023, the due date for depositing the next part of the money, by the Petitioner was 17.08.2023. Going by the policy of the Railways, the first seven days with penalty @ 0.5% per day expired on 24.08.2023. The second segment of 7 days with penalty @ 0.75% per day expired on 31st August, 2023. The last segment of 7 days with penalty @ 1% per day expired on 7.09.2023. Our order is dated 06.09.2023. In view of this admitted position, the Railways cannot take a stand that they have terminated the contract of the Petitioner prior to the expiry of the said period. In fact, it has been set out below paragraph 1.0 in the letter dated 11.09.2023 that the contract is not cancelled by the Department, but it is automatically done by the system. We find that the contract of the Petitioner has been terminated pre-maturely.

5. The learned Advocate for the Petitioner has filed a Civil Application, tendered across the Bar contending therein that he had obeyed the order of this Court dated 06.09.2023 and had approached the Railways with the options of payment of the amount, either online or by DD or by Cheque or even by cash. The Railways did not open their Portal on 06.09.2023 and 07.09.2023, when they should have obeyed the order of this Court by keeping the portal open, since the delayed period expires after 07.09 2023. As a goodwill gesture, the Petitioner will deposit the DD tomorrow alongwith additional penalty @ 1% per day from 8th September, 2023 till tomorrow i.e. 15th September, 2023, though the Railways did not open their portal on 06.09.2023 and 07.09.2023.

6. We find that, in law, the Petitioner had the period available to him till 07.09.2023 to deposit the next installment of Rs.15 lakhs approximately alongwith penalty. A bonafide stand is taken to pay even further interest/penalty from 08.09.2023 till 15.09.2023 though the Petitioner is not at fault.

7. In view of the above, we direct the Respondent- Railways to allow the Petitioner to deposit a DD alongwith the penalty component, on or before 16.09.2023, up to 05.00 p.m.

8. In view of the above, by consent of the Petitioner, **Writ Petition No.11060 of 2023 is disposed off. The Civil Application also stands disposed off.**

9. The learned Advocate for the Petitioner submits on instructions that the other Petition i.e. Writ Petition No 11148 of 2023 is with regard to shifting of the canteen. This would not survive and may be disposed off. In the event the Railways insist on shifting of the canteen or some other orders are passed, the Petitioner would prefer a fresh petition.

10. Considering the above statement, keeping the liberty open, **Writ Petition No. 11148/2023 stands disposed off.**

(Y. G. KHOBRADE, J.)

(RAVINDRA V. GHUGE, J.)

JPChavan