

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.9985 OF 2023

M/s. Omsainath Enterprises

Through its Proprietor

Divakar Jagabali Pandey

: Petitioner.

Vs.

Divisional Railway Manager,

Central Railway,

Divisional Office, Commercial

Branch CSMT, Mumbai-400 008

: Respondent.

Mr. Sushant Prabhune i/by Mr. Bharatkumar Nukte for the
Petitioner.

Ms. Anamika Malhotra for the Respondent.

Mr. Shailesh R. Tawdi, Chief Law Asstt. Central Railway, Mumbai,
CSMT, present.

**CORAM : DEVENDRA KUMAR UPADHYAYA, CJ. &
ARIF S. DOCTOR, J.**

DATE : 07th AUGUST, 2023

P.C. :

Heard Mr.Sushant Prabhune, the learned counsel
representing the Petitioner and Ms. Anamika Malhotra, learned
counsel representing the Respondent – Divisional Railway
Manager, Central Railway, Division Office, Mumbai.

2. Our jurisdiction under Article 226 of the Constitution
of India has been invoked by the Petitioner to challenge the

Notice dated 6th June 2023 (Exhibit-E) whereby it has been provided that in case the Petitioner – Licensee does not accept the revised license fees, the contract shall stand terminated after 3 months. Accordingly in case revised rates as proposed in the Impugned Notice dated 6th June 2023 are not accepted, in terms of the Impugned Notice the contract would come to an end on 6th September 2023.

3. The submission of the learned counsel for the Petitioner is that, the Impugned Notice runs contrary to the terms and conditions of the contract, especially Clause 6(d) and Clause 10(d). Drawing our attention to Clause 6(d) of the terms and conditions of the contract, it has been argued by the learned counsel for the Petitioner that in case any revision of rate is made effective on account of various factors, the revised parking rates can be made applicable to the old contractor up to the currency of contract with appropriate increase in license fee, and it is only if the licensee does not agree to the revised proposal of enhanced license fee, that the contract may be terminated by giving three months notice.

4. Similarly, reliance has also been placed by the learned counsel for the Petitioner on Clause 10(d) of the terms and conditions of the contract, according to which, the agreement shall at all times be open to revision and amendment by the Railway Administration, however, such revision/amendment is

permissible only after giving one month notice in writing of intended revision or amendment at the end of which any revision or amendment shall take effect, unless the contractor objects thereto in writing within 15 days after the receipt of the said notice.

5. The learned counsel for the Petitioner thus submitted that the Impugned Notice has been issued in clear violation of the Clauses 6(d) and 10(d) of the terms and conditions of the contract.

6. When we examine the Impugned Notice in the light of what has been submitted by the learned counsel for the Petitioner, what we find is that the Impugned Notice does not conform to the requirements of Clauses 6(d) and 10(d) of the terms and conditions of the contract. As a matter of fact, the Impugned Notice does not provide any time to the Petitioner to respond regarding acceptance/rejection of the offer made by the Railway Administration. Clauses 6(d) clearly stipulates that once an offer of revised rates is made and, only if the licensee does not agree with the proposed enhanced license fees, that the contract may be terminated. The Impugned Notice does not give any time to the Petitioner to respond to the proposal of enhanced license fee. Clause 10(d) also requires the Railway Administration to give one month's notice of the proposed revision or amendment and, it is only at the end of the notice

period, that the revision or amendment shall take effect. The Impugned Notice also thus clearly does not conform to the requirement as detailed in Clause 10(d) of the terms and conditions of the contract.

7. In view of aforesaid, we disposed of the Writ Petition with the following directions :-

- (i) The Impugned Notice dated 6th June 2023 shall be treated to be a Notice in terms of Clause 6(d) and clause 10(d) of the terms and conditions of the contract. However, the portion of the said notice where it recites that the contract would stand terminated after three months, shall not be read.
- (ii) The Petitioner shall file his response to the said Notice within 15 days from today.
- (iii) The appropriate authority of Railway Administration shall consider the reply to be filed by the Petitioner under this order and take a decision afresh within next four weeks.

(ARIF S. DOCTOR, J.)

(CHIEF JUSTICE)