



W.P. (MD).No.16378 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 29.11.2023

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THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P. (MD).No.16378 of 2021
and W.M.P(MD)No.13230 of 2021

M.Mohamed Akbar

... Petitioner

Vs

1. The Chief Commercial Manager,
Head Quarters Southern Railway Commercial Branch,
Catering Section, Chennai 600 003.
2. The Divisional Railway Manager (Commercial),
Southern Railway, Trichy.
3. The Senior Divisional Commercial Manager,
Southern Railway, Trichy.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ Certiorarified Mandamus, calling for the records relating to the proceedings of the impugned order No.C. 355/CC/Catg./WP(MD) 11692/2017, dated 17.07.2017 on the file of the 1st respondent and quash the same and further directing the respondents to refund the license fee of Rs.17,82,923/- with interest at 18 percentage per annum from the date of payment.



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For Petitioner : Mr. G. Prabhu Rajadurai

For Respondents : Mr.K.R.Laxman

ORDER

This writ petition has been filed challenging the proceedings of the first respondent, dated 17.07.2017 and for a consequential direction to the respondent to refund the licence fee of Rs.17,82,923/- with interest from the date of payment.

2.Heard the learned counsel appearing for the petitioner and the learned Counsel appearing for the respondents.

3.The case of the petitioner is that the second respondent had issued a tender notification calling for the tenders to establish Vegetarian and Non-vegetarian Refreshment Rooms at Villupuram Railway Station. The petitioner had submitted his tender with respect to Non-Vegetarian refreshment room. The Tender Valuation Committee declared the petitioner is the highest bidder and accepted the tender. Further case of the petitioner is that the license was awarded to run Non-Vegetarian Refreshment Room at Villupuram Railway Station for the period from



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01.11.2013 to 30.10.2018. The petitioner also paid the security deposit of Rs.8,91,461/-. The petitioner also paid the first annual licence fee.

4.The grievance of the petitioner is that there was a confusion with regard to the location of the refreshment room and all of a sudden, it was shifted to the first floor area. In view of the same, the business of the petitioner was seriously affected. The Railway issued a final notice, dated 26.06.2014 to the petitioner directing him to pay the licence fee. The petitioner challenged the same before this Court in W.P(MD) No.10672 of 2014. The writ petition was entertained with a condition that the petitioner must pay the licence fee. Accordingly, the licence fees was paid by the petitioner in compliance with the interim order. Ultimately, the writ petition came to be dismissed by order of this Court, dated 23.07.2014 and also confirmed in the Writ Appeal in W.A(MD) No.1067 of 2014 dated 19.09.2014.

5.The petitioner submitted an appeal before the first respondent, since the third respondent had issued a notice terminating the contract and forfeiting the security deposit. Thereafter, through the



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impugned proceedings, dated 17.07.2017, the petitioner was informed that there was a breach of contract, since the petitioner did not pay the licence fee within the stipulated time and also failed to commence the service. As a result, it was made clear that there will be forfeiture of licence fee and security deposit. Aggrieved by the same, the present writ petition has been filed before this Court.

6.In the considered view of this Court, both the parties are governed by a contract. According to the Railways, there was a substantial delay on the part of the petitioner in remitting the licence fee. That apart, there was also a substantial delay in starting the service of providing non-vegetarian food to the passengers. In view of the same, the Railway invoked the relevant clause in the agreement and forfeited the licence fee and also the security deposit. If the petitioner is aggrieved by the decision taken by the Railways, the appropriate forum to agitate the dispute will be by raising an Arbitration Dispute as provided under the agreement in Clause 19.2(f). The petitioner has knocked the doors of the wrong forum and this Court will not exercise its jurisdiction under Article 226 of Constitution of India in contractual matters, particularly,



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where the parties can resolve the dispute by invoking the Arbitration Clause.

7.In view of the above, this Court does not find any merits in this petition. Accordingly, this writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

8.The learned counsel for the petitioner further submitted that the petitioner must be given liberty to invoke the Arbitration Clause. It is left open to the petitioner to work out the remedy if the law so permits.

29.11.2023

NCC : Yes/No
Internet : Yes/No
Index : Yes/No
PNM

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N.ANAND VENKATESH, J.

PNM

ORDER IN
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