

May 10, 2024
(947) ARDR

WPA 12784 of 2024

Poonam Subhash Agarwal
Vs.
The Union of India & ors.

Adv. Saptarshi Roy,
Adv. Kakali Das Chakraborty,
...for the petitioner.
Adv. Ashok Bhowmick,
Adv. Amal Kumar Datta,
...for the UOI.

Affidavit of service filed on behalf of the petitioner
is taken on record.

Heard learned counsels for the parties.

Being the highest bidder in e-auction floated by
the Eastern Railways (Howrah Division) for leasing of one
24 tonnes VPH by Train no. 12321/12322 HWH-CSMT
Express and upon depositing the bid amount of
Rs.3,35,786/- the petitioner was granted tender for a
period of two years on round trip basis upon executing a
lease agreement on 17th April, 2024 and depositing
security deposit to the tune of Rs.61,28,095/-. The
petitioner requested the Principal Chief Commercial
Manager (FM), Eastern Railways to allow him for
loading/unloading perishable consignment to the tune of
5 tonnes from the platform at Howrah by a
representation submitted before the authority on 18th
April, 2024. The representation is yet to be considered.

Learned counsel for the petitioner has taken this
Court to the Freight Marketing Circular no. 12 of 2022

which governs the lease agreement of the petitioner in terms of the special conditions of contract laid down therein.

It shall be useful to reproduce the Clauses 10.1 and 10.2 of the circular of 2022.

“10.1 Loading/unloading operation of parcels in the leased parcel space at originating destination and intermediate stations will be carried out by the contractor.

10.2 Contractor shall complete loading/unloading operation within the available time at originating and destination stations after placement of rake at originating station and before removal of rake at destination station”.

Clause 11 of the circular deals with placement/withdrawal of rakes on/from platforms. Clause 11.1 says that at the originating stations, all efforts should be made to place the empty rakes of trains at least half an hour before the scheduled departure of the train. Clause 11.2 demonstrates that at the terminating stations, contractor shall be required to unload all parcels expeditiously on arrival of the train at the destination stations. In other words, the said provision allows loading and unloading at the platforms of the originating and terminating stations. Since the lease agreement of the petitioner was executed on 17th April, 2024, that is, after the Freight Marketing Circular no.12 of 2022 came into operation, the said agreement is

undoubtedly governed by the Freight Marketing Circular no.12 of 2022.

Learned counsel for the respondents submits that the term “station” used in the circular is not synonyms with the term “platform” and indicates that such loading and unloading shall be done at the cargo shed and not in the platform. But Clause 11 which deals with placement/withdrawal of rakes on/from platforms indicates that loading/unloading at the platforms of the originating and terminating stations is provided for by the said clause.

In view of the above, this Court is inclined to hold that since the Freight Marketing Circular which governs the lease agreement of the petitioner allows loading and unloading at the platforms of the originating and terminating stations, the concerned authority, being the 5th respondent herein be directed to consider and dispose of the representation submitted by the petitioner dated 19th April, 2024 within a period of one month from the date of communication of this order upon affording reasonable opportunity of hearing to all concerned including the petitioner/his legal representative in the light of the observation made by this Court in the body of this order and Freight Marketing Circular no.12 of 2022, in accordance with law.

With the above observations and directions, the writ petition is disposed of.

There shall however, be no order as to costs.

Since no affidavit is invited, the allegations contained in the petition are deemed not to have been admitted.

Urgent certified website copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Suvra Ghosh, J.)