S/L 14
24.07.2024
Court. No. 9
Sourav

WPA 14849 of 2024

Chandan Raj
Vs.
The Union of India & Ors.

Md. Sarwar Jahan
Mr. Maidul Islam Kayal
Mr. Firoj Hossain
Ms. Tapati Sarkar

... for the petitioner.

Mr. Sauvik Nandy
Ms. Ranjana Chatterjee

... for the Union of India.

Mr. S. Dasgupta
Ms. Afreen Begum

... for the respondent nos. 2 to 5.

1. The writ petition has been filed alleging inaction on the part of the IRCTC to allow the petitioner to exit from the contract, prior to a period of four years from the date of commencement of the contract.

2. Mr. Jahan, learned advocate for the petitioner relies on Clause 6.1 of the tender document in support of his contention that the tender document permits exit from the contract even prior to the lock in period of four years. The consequences are forfeiture of the licence fee, forfeiture of the security deposit and debarment for a period of one year. The petitioner submits that such clauses may be imposed, but the petitioner must be allowed to exit. They have already discontinued the work.

3. The contention of the petitioner is that when the tender document provides for an exit clause prior to the

completion of the lock in period by issuing six months' notice in advance, denial of such request was contrary to the terms of the contract. It is next contended by the petitioner that instead of allowing the petitioner to exit, the authorities raised a demand of Rs. 20,84,176/- towards deposit of provisional advance licence fee for the period between March 17, 2024 and March 16, 2025. Allegation is made that such claim amounts to unjust enrichment. As early as in December, 2023, the petitioner already expressed the intention to exit from the contract. As per the requirement of the tender document, such notice was served in advance.

4. Learned advocate for the Union of India submits that there is an arbitration clause and at page 94 of the writ petition, a document has been annexed which indicates that the petitioner was aware of such clause. It is further submitted that the petitioner could not quit midway, as it would be difficult to organize a change in the contractor. The work related to service of food to the passengers.

5. Learned advocate for the IRCTC submits that licence fees up to 16th March, 2024 had been deposited by the petitioner at the time of initiation of the work. Thereafter, no fees had been paid. The petitioner was required to issue six months notice in advance and the notice was issued in December, 2023. The period of six months ended in May, 2024. By then, the second instalment had become due and payable towards licence fees, to be paid in advance, upto March 16,

2025. This was claimed as per the tender document. Thus, the claim was bona fide and justified.

6. The IRCTC also submits that no one can suddenly quit the job and stop providing essential service like food and water to the passengers. A prayer is also made for dismissal of the writ petition on the ground of alternative remedy.

7. Learned advocate for the petitioner submits that if the contention of the authority is that the notice period ended in May, 2024, then the petitioner should be allowed to exit thereafter, upon payment of proportionate amount. The entire amount for the period up to March 16, 2025 i.e., for a period of 10 months beyond expiry of the notice period, could not be demanded, especially as the petitioner had stopped working.

8. Having heard the learned advocates for the respective parties, it appears that there are disputes and differences between the parties with regard to the construction of Clause 6.1 of the tender document and the demand raised by the IRCTC. Clause 6.1 is quoted below:-

> "**6.1** Lock-in period : The Licensee may exit the business after lock-in-period of 04(four) years from the date of commissioning of the unit. In case licensee takes an exit from license before completion of lock-in-period there will be forfeiture of license fee, Security Deposit and debarment for a period of one year."

9. Clause 9 of the tender document provides as follows:

> **"9.0 ARBITRATION**

a. In the event of any dispute or difference between the parties hereto as to the construction or operation of this contract of the respective right and liability of the parties on any matter in question, with reference to the contract, <u>the Parties agree to use their best efforts to attempt to resolve all disputes in prompt, equitable and good faith. In the event the Parties are unable to do so, such party may submit demand in writing for reference of dispute to arbitration as prescribed herein.</u>

b. The parties will submit demand in writing that the dispute/differences be referred to arbitration. The demand for arbitration shall specified the matters which are in question, or subject of dispute or differences as also the amount of claim item wise.

c. Only such dispute or differences, in respect of which the demand has been made, together with counter claims of setoff given by IRCTC shall be referred to arbitration and other matters shall not included in the reference."

10. Under such circumstances, the writ petition is disposed of, with liberty to the parties to explore the possibility of resolution of the dispute in a prompt and equitable manner and in good faith in terms of Clause 9(a). If the parties are able to reach an understanding, the dispute will be resolved. The exit may be allowed upon the petitioner meeting a demand, as agreed by way of the amicable settlement. If such amicable settlement fails, then the petitioner has no other option, but to seek arbitration.

11. It is expected that the attempt at amicable settlement as per Clause 9(a) with regard to the demand of the IRCTC

and the offer of the petitioner to pay proportionately, shall be concluded within a period of six weeks from date.

12. Accordingly, the writ petition is disposed of.

13. However, there will be no order as to costs.

14. Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)