

March 11, 2024
ARDR (817)

WPA 25566 of 2023

C. Siva Prakash
Vs.
The Union of India & ors.

Adv. Debrup Bhattacharjee,
Adv. Sapatamita Pramanick,

...for the petitioner.

Adv. Kakali Dutta,
Adv. Proteek Debnath,

...for the UOI.

Heard learned counsels for the parties.

Being the highest bidder in the tender floated by the respondents for leasing of parcel van of 23 tonnes capacity on round trip basis for transportation of cargo by train no.18045/18046 Shamilar Hyderabad East Coast Express for a period of five years, lease agreement was executed by and between the petitioner and the railways on 8th July, 2023 upon the petitioner depositing security deposit to the tune of Rs. 35,51,397/-. The petitioner was unable to carry on operation despite paying lumpsum freight since he was not granted permission for loading and unloading at the en route stations. The petitioner intimated the same to the authority by a letter issued on 30th December, 2022 which records that several communications were made by him to the authority seeking grant of permission for loading and unloading in en route stations where the train stopped for five minutes and more. The petitioner stopped operating on and from 30th December, 2022. By

a letter issued on 12th January, 2023, the Assistant Commercial Manager for the Senior Divisional Commercial Manager, Kharagpur terminated the lease agreement of the petitioner with immediate effect, forfeited the security deposit and black listed him, preventing him from entering into any tender for the next two years. The said termination letter is assailed in the writ petition.

Learned counsel for the petitioner submits that the grounds on which the agreement has been terminated are not applicable in case of the petitioner and also, no notice was served upon the petitioner prior to black listing him.

Learned counsel for the respondents submits that though a letter was issued upon the petitioner prior to black listing him, the authority is not able to submit any document showing service of such letter upon the petitioner. Also, the petitioner has violated clauses 8.4 and 25.1 of the agreement for which the agreement was terminated, security deposit forfeited and the petitioner black listed.

Clause 8.4 of the agreement enumerates that if the leaseholder, after commencement of loading fails to operate the contract continuously for ten days without giving any notice, his contract will be terminated and security deposit forfeited.

In the case in hand, the petitioner served several notices upon the authority stating reasons for which he was facing difficulty to operate the contract and finally intimated the authority by a letter issued on 30th December, 2022 that he was constrained to stop operation due to such difficulties. Therefore it cannot be said that the petitioner violated clause 8.4 of the lease agreement in any manner.

Also, clause 25.1 of the agreement deals with the right of the leaseholder to terminate the agreement after serving sixty days' notice to the railway administration. The clause lays down certain conditions to be fulfilled by the petitioner prior to such termination.

In the present case, the petitioner has not sought to terminate the contract and has only requested assistance of the authority so that he is able to operate the contract smoothly and effectively, without incurring any loss. The letter issued by the petitioner does not express intent of the petitioner to terminate the contract. Therefore clause 25.1 is also not applicable in case of the petitioner. No other reason has been assigned by the authority in terminating the contract of the petitioner.

Learned counsel for the petitioner has placed reliance on the authority in M/s. Erusian Equipment & anr. vs. Union of India & ors. reported in **(1975) 1 Supreme Court cases 70** wherein the Hon'ble Supreme Court has held as hereunder:

“20. Blacklisting has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for purposes of gains. The fact that a disability is created by the order of blacklisting indicates that the relevant authority is to have an objective satisfaction. Fundamentals of fair play require that the person concerned should be given an opportunity to represent his case before he is put on the blacklist.”

In view of the above, this Court is inclined to hold that the authority was not entitled to blacklist the petitioner without serving notice upon him or granting an opportunity of hearing to him. Though the respondents have tried to impress upon this Court that such notice was served upon the petitioner, they have not able to substantiate their cause by any cogent document. The grounds taken in the letter impugned dated 12th January, 2023 also do not apply in the case of the petitioner and as such, have too weak a leg to stand upon.

It is not in dispute that the upon termination of the contract of the petitioner, fresh contract has been granted in favour of a third person who is operating in the same route. Since the contract of the petitioner was terminated without any valid reason, the security deposit forfeited and the petitioner blacklisted arbitrarily and

illegally, the letter impugned dated 12th January, 2023 is required to be set aside.

Accordingly, the letter impugned dated 12th January, 2023 is set aside. The concerned authority, being the 5th respondent herein, is directed to refund the security deposit of the petitioner to the tune of Rs.35,51,397/- along with bank interest thereon to be calculated from the date of issuance of the termination letter till payment of the same in favour of the petitioner, within two weeks from the date of communication of this order.

Needless to mention that the petitioner will be at liberty to participate in all future tenders including ones floated by the authority.

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.)