



WEB COPY



W.P.No.20983 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.06.2024

CORAM:

THE HONOURABLE MR.JUSTICE G.K.IANTHIRAIYAN

W.P.No.20983 of 2021
and
W.M.P.No.22243 of 2021

Viskan Logistics Services Private Limited,
Rep. by its Authorised Signatory Mr.Viswam Subra Manimaran,
No.2,3rd and 4th Floor, 1st Main Road,
Muneshwara Block, Mahalakshmi Layout,
Bangalore – 560 086.

... Petitioner

Vs

1.The General Manager,
Southern Railway,
Chennai – 600 003.

2.The Senior Divisional Commercial Manager,
Southern Railway,
Salem – 636 005.

3.The Senior Divisional Finance Manager,
Southern Railway, Divisional Office,
Commercial Branch, Salem – 636 005.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India, pleaded to issue a Writ of Certiorarified Mandamus, calling for the records of the impugned order passed by the 2nd respondent in Lr.No.SA/C.442/PCET Corres/VNJ/2020 dated 03.09.2021 and quash the same and consequently



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direct the respondents 2 & 3 to release the Security Deposit/Bank Guarantee of Rs.1,02,21,248/- (Rupees One Crore Two Lakhs Twenty One Thousand Two Hundred and Forty Eight Only) given by the petitioner company in favour of the 3rd respondent vide BG No.15410100017118 dated 31.12.2020 drawn at Axis Bank of India, CBB Bengaluru, Nitesh Times Square Building No.08, 3rd Floor, MG Road, Bengaluru-560001 as Security Deposit which is valid upto 31.12.2026 as 'Performance Guarantee' in the light of the termination notice dated 27.08.2021 within a time frame fixed by this Court .

For Petitioner : Ms.Kanimozhi Mathi

For Respondents : Mr.M.Vijay Anand,
Additional Standing Counsel

ORDER

This Writ Petition has been filed challenging the impugned order passed by the 2nd respondent in Lr.No.SA/C.442/PCET Corres/VNJ/2020 dated 03.09.2021, thereby imposing conditions to accept the termination notice that operation of 6 non operated trips of 3 months within 26.10.2021 and advance payment of lumpsum leased freight for rescheduled trip on 22.08.2021 and further imposed that operation of 02 nominated trips each in the 8th and 9th contract months.

2.The petitioner is engaged in freight handling, clearing and forwarding operations and cargo clearance. While that being so, 2nd respondent had floated



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an E-tender notice dated 13.10.2020 for leasing Parcel Cargo Express Train + 1

Brake Van from Vanjipalayam-New Guwahati. The petitioner being a successful bidder, on 26.03.2021, entered into an agreement with the 2nd respondent for round trip lease of Parcel Cargo at the Express Train for a period of 6 years. As per the contract, leasing period will commence with effect from 30.01.2021 and valid till 29.01.2027. The lumpsum leased freight payable for leasing Parcel Cargo Express Train + 1 Brake Van from Van shall be at Rs.32,12,340/- for each round trip journey for first six months of contract and after six months freight payable will be Rs.42,58,853/-. As per the terms of the contract, the successful bidder should submit a security deposit/bank guarantee equal to 10% of annual contract value calculated on the basis of accepted rate at which train is leased out. The petitioner had furnished the bank guarantee to the tune of Rs.1,02,21,248/- vide bank guarantee dated 31.12.2020 drawn at Axis Bank of India. However, during the course of implementation of contract, the petitioner had faced a lot of hardship like handling of cargo and freight operation. That apart, during COVID 19, there was a complete lockdown and as such the petitioner had requested the 2nd respondent for canceling the operation for three months due to COVID 19 lock-down. On receipt of the same, the 2nd respondent by the communication in Lr.No.SA/C.442/PCET Corres/VNJ/2020



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dated 05.05.2021, informed the petitioner that request made by the petitioner was forwarded to the Head Quarters. However, there was no further communication and the petitioner had stopped the operation for the month of May 2021 due to COVID 19 lock-down. Once again the petitioner forwarded another letter dated 16.07.2021 about their hardships about the operation in terms of poor infrastructure at loading platforms, exorbitant delays in PCET operations and due to great financial strain. However, 2nd respondent by his reply vide Lr.No.SA/C.442/PCET Corres/VNJ/2020 dated 12.08.2021, stated so many reasons and blamed the petitioner for the delay in loading. Thereafter, the petitioner decided to terminate the contract and request to release the performance guarantee furnished by the petitioner. On receipt of the same, the 2nd respondent issued order impugned in this Writ Petition, thereby directed the petitioner to operate 6 non operated trips of three months before 26.10.2021. Apart from that, the 2nd respondent directed the petitioner for operation of 2 nominated trips each in 8th and 9th months of contract. During the notice period, the petitioner had completed two trips. However, the running of parcel cargo express train was delayed even after the loading was completed before schedule time at originating points.



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3.The learned counsel for the petitioner submitted that even as per the amendment due to lockdown and modified the clause No.9.2 of the contract.

Accordingly, in case when lease-holder has not been able to load the train due to circumstances beyond his control, the restriction on rescheduling may be relaxed. Further as per the termination clause 16, if it is not feasible to continue the contract due to any reason, either the lease operator or Railway Administration can terminate the contract by giving two months notice. In such cases, Security deposit/Performance guarantee will not be forfeited. Therefore, the condition imposed in the impugned order cannot be sustained and the petitioner is entitled refund of the security deposit which was made by him to a tune of Rs.1,02,21,248/- by way of bank guarantee dated 31.12.2020.

4.She further submitted that due to COVID 19, petitioner's mother and brother died. Therefore, the petitioner could not able to continue the contract and as such issued termination notice prior to two months.

5.Learned counsel for the respondent filed his counter and submitted the facts. The contract of the leasing Parcel Cargo Express Train + 1 Brake Van from Vanjipalayam-New Guwahati was awarded to the petitioner on



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01.12.2020 for the value of Rs.66,62,34,875/- for a period of six years. The

minimum frequency of service is two trips per month. Railway Administration will provide the composition of 15 Parcel Vans + One Brake Van to the leaseholder for the transportation of parcel traffic on Saturday for a period of six months initially at the rate of Rs.32,12,340/-per round trip from 7 contract months, the composition of 20 Vps + one Brake Van will be provided at the rate of Rs.42,58,853/- per round trip. However, petitioner had operated 7 trips with effect from 30.01.2021 to 30.04.2021. He further pointed out that, as per Clause 22.3 Railway Administration shall not be responsible for any loss, destruction, damage, deterioration or non-delivery of goods arising from the following causes as enumerated as in Section 93 of the Railway Act, 1989, as such Act of God, Act of war, Act of public enemies, Restraint or seizure under legal process and etc. Therefore, request made by the petitioner was forwarded to the Headquarters and thereby, the condition was relaxed by issuing Circular No.18 of 2021 dated 16.08.2021. Accordingly, when loading is not possible on scheduled day, it can reschedule the train for any other day within mutual consent of the parties. This facility shall be provided for a maximum of one trip in a month. However, in cases, when leaseholder has not been able to load the train due to circumstances beyond his control, such as curfew, lock-down,



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natural calamity etc., the restriction on rescheduling may be relaxed, duly

considering the merits of the case with the approval of PCCM. Accordingly, the respondents had issued guidelines for compensation of non-operated trips for this contract within the contract period itself and the same was advised to the petitioner for compensation of 6 Non operated trips of 4th, 5th and 6th contractual months within the contract period itself and same was advised to the petitioner through letter dated 25.08.2021. Thereafter, by communication dated 09.08.2021, the petitioner requested for recommencement of PCET with placement of rake on 14.08.2021. By that time, 6 months contract period has already been completed. Therefore, the petitioner was advised to remit advance lumpsum freight charges for rake composition of 20 Vps + 1 SLR as per the agreement. Once again the petitioner requested vide communication dated 11.08.2021 for rescheduling of trip from 14.08.2021 to 22.08.2021. However, the petitioner failed to pay the advance lumpsum lease freight as per agreement.

6.Once again the petitioner requested vide communication dated 13.08.2021 to operate the 2nd nominated trip on 28.08.2021, thereby assuring to compensate the rescheduled trip of 22.08.2021 with one additional trip before 30.10.2021, for which Competent Authority had advised to remit the advance



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lumpsum lease freight for the rescheduled trip which is also not fulfilled by the petitioner. Therefore, when the petitioner requested for termination of contract, the conditions were imposed.

7.It is relevant to extract the termination clause,

“16.0 Termination of contract: If it is not feasible to continue the contract due to any reason, either the lease operator or Railway Administration can terminate the contract by giving two months' notice. In such cases, 'Security deposit/Performance guarantee' will not be forfeited.”

8.Accordingly, the either party can terminate the contract by giving two months notice. When such being the case, security deposit/performance guarantee will not be forfeited. However, the total dues pending to Railways from the petitioner is tabulated below:-

Sl.NO	Contract Month	From	To	Details of Trip	Freight due in Rs.
1	IV	01.05.2021	31.05.2021	Two Non-operated trips	6880832
2	V	01.06.2021	01.07.2021	Two Non-operated trips	6880832
3	VI	01.07.2021	30.07.2021	Two Non-operated trips	6880832
4	VII	01.08.2021	31.08.2021	Non operated	3440418



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Sl.NO	Contract Month	From	To	Details of Trip	Freight due in Rs.
				Rescheduled trip of 22.08.2021 (First Nominated Trip)	
5	VIII	01.09.2021	30.09.2021	Non operated Second Nominated Trip of 25.09.2021	4707428
6	IX	01.10.2021	31.10.2021	Non operation of Nominated Trips	9414856
Total				10	3,82,05,199

9.As per the conditions imposed, while accepting the order of communication of the termination of contract were also not complied with by the petitioner. It is also relevant to extract Clause 25.07 of the agreement,

"25.7 In case of any breach/repeated breach of any of the condition, mentioned herein, agreement shall be terminated without assigning any reason and the decision of the Principal Chief Commercial Manager/Southern Railway or Divisional Railway Manager, Salem shall binding on the contractor. In that event, the Security Money deposited by the contractor/lease holder shall be forfeited and PG shall be en-cashed without prejudice to Railway right."



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Thus, the petitioner has failed to comply with Agreement conditions as follows.

(i) The petitioner has failed to deposit advance lumpsum freight charges for the rescheduled First Nominated Trip of 07th Contract Month to 22.08.2021, for which he has to remit the advance lumpsum leased freight which is still due.

(ii) The petitioner has not operated the 2nd Nominated Trip of 08th Contract Month on 25.09.2021 and not operated two nominated trips for 09th Contract month.

(iii) The petitioner has not operated the Compensated Trips arises due to non-operated trips of IV, V & VI contractual months i.e., May 2021 to July 2021 [06 Trips].”

10. That apart, for non-operation of trips, respondents had incurred revenue loss to a tune of Rs.94.14 lakhs/- per month by way of non-operation of train. There is no justification on the part of the petitioner to prove that there is malice in the act of the respondents, despite incurring huge revenue loss. Therefore, this Court does not find any irregularity or illegality in the order passed by the 2nd respondent in Lr.No.SA/C.442/PCET Corres/VNJ/2020 dated 03.09.2021 dated 03.09.2021. Accordingly, this Writ Petition is dismissed.



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Consequently, the connected Miscellaneous Petition is closed. No costs.

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Index :Yes/No

Internet :Yes/No

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G.K.IANTHIRAIYAN, J.



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