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W.P.No.23311 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.23311 of 2021 and
WMP.Nos.24583 of 2021 & 27974 of 2023

K.P.R.Cargo Movers
Represented by its Proprietor,
P.Karthikeyan
02/20, Nannian Street,
Walltax Road, Park Town,
Chennai 600 003

...Petitioner

Vs.

Union of India,
Ministry of Railways,
Railway Board(Southern Railway),
Represented by Senior Divisional Commercial Manager,
Chennai Division,
Southern Railway,
Chennai 600 003

... Respondent

PRAYER: Writ Petition is filed under Article 226 of Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records of the respondent in M/c.206/SLR/12840/R1 and quash the order dated 16.10.2021 passed therein and further direct the respondent to consider the representation of the petitioner dated 19.05.2021, 08.06.2021, 26.07.2021, 16.08.2021, 02.09.2021 and 21.09.2021.

For Petitioner : Mr.S.N.Kirubanandam



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

ORDER

This writ petition has been filed challenging the order passed by the respondent dated 16.10.2021 thereby rejected the request made by the petitioner for withdrawal of the contract.

2. The petitioner is engaged in cargo handling services. The respondent had floated tender for train No.12840 compartment R1 to 4 tonnes parcel space from MGR Central to Howrah (MAS to HWH) for a period of five years with effect from 10.03.2020 to 09.03.2025. The said train runs on seven days in a week with leave of five days in a year. The total value of the contract for five years excluding GST is Rs.7,65,50,598/-. As per the terms and conditions of the contract, 60 days surrender notice is to be given to the respondent for rescinding the contract. According to the petitioner, due to covid 19 crisis, the petitioner could not able to continue the contract and as as such, request was made for withdrawal of the contract and also seeking refund of the security



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deposit amount which was deposited by the petitioner at the time of awarding contract. However, the said request was rejected by the order impugned in this writ petition on the ground that the scenarios which are mentioned in the contract are not applicable to the petitioner. Since as per the agreement, the contract shall be operated for atleast one year (10+2 months notice period) to withdraw from the contract or one has to forego securit deposit and close the contract.

3. The respondent filed counter and the learned counsel appearing for the respondent submitted that as per the contract, the petitioner ought to have completed a period of 10 months + 2 months notice period. However, the petitioner did not even complete one year period and as such, the request made by the petitioner for withdrawal of the contract cannot be considered without forfeiture of the security deposit. He further submitted that though the petitioner made request for withdrawal of the contract by its communication dated 28.01.2021, subsequently by its communication dated 10.03.2021, the petitioner made request to withdraw the notice dated 28.01.2021. Subsequently, the



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petitioner made request for cancellation for withdrawal of contract only on 19.05.2021. He further submitted that as per the agreement, there is an agreement clause No.27.0 which is an arbitration clause in the event of any dispute or difference between the parties hereto as to the construction or operation of this contract, or the respective rights and liabilities of the parties on any matter in question, dispute or differences on any account or as to withholding by the Railway of any certificate to which the contractor may claim to be entitled to, or if the Railway fails to make a decision within a period of 120 days. Therefore, the writ petition is not maintainable.

4. Heard, the learned counsel appearing on either side.

5. On perusal of the records revealed that the petitioner made request on 28.01.2021 itself seeking withdrawal of the leasing contract of SLR-R1 space by train No.12840 MAS-HWH mail by issuing 60 days notice. The said communication revealed that the service of the train No.12840 MAS-HWH has been suspended and non operational from



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22.03.2020 till the date of the representation due to covid 19 crisis.

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Therefore, the petitioner was not able to manage and continue to wait till the said train resumes operation. Further stated that already ten months period of contract was over till 10.01.2021 and as such, the petitioner issued 60 days notice for withdrawal of the contract. Further, by the communication dated 11.02.2021, the petitioner subsequently stated that already notice dated 28.01.2021 was sent to the respondent for withdrawal of the contract by giving 60 days notice on the ground that the petitioner was unaware when the regular train service will be started for the train No.12840 HWH mail.

6. On receipt of the said report, the petitioner was informed by the communication dated 08.02.2021 that to operate the said train No.02840 leaving Chennai MGR Station upto BBS station which leaves weekly. However, time of the said train is not suitable for the petitioner and as such, by the communication dated 11.02.2021, stated that the petitioner is neither connected with this weekly train nor interested in running the weekly special train from Chennai MGR station to BBS



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Station which is of no use to them. Therefore, the petitioner is waiting for regular train to Howrah to commence.

7. Further, on perusal of the communication dated 10.03.2021, thereby the petitioner requested to cancel the withdrawal of notice on the ground that the petitioner was informed that the regular service of mail and express trains will continue from May 2021. Therefore, the petitioner requested the respondent to kindly treat the 60 days notice letter given by the petitioner as cancelled and the petitioner also informed the respondent that the petitioner had waited for almost one year after investing a lump sum amount as security deposit and the petitioner is willing to wait till train No.12840 HWH mail resumes its services and the petitioner wishes to operate it. However, due to covid 19 pandemic, the regular service of train No.12840 has not been operated even till today. Therefore, the petitioner once again, submitted letter on 19.05.2021 stating that train No.02822 MAS-HWH MSPC special which is a covid special train had commenced running from Chennai MGR Central 3 to 4 months back and its departure time from MAS is 19.15 hrs and reaches Howrah station in



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the next day by 23.00 hrs. which is no way nearer to the timings of train No.12840 MAS-HWH mail for which the tender was called for and the petitioner participated and received the same. Therefore, the petitioner informed the respondent that the petitioner will not be able to operate the SLR provided by the respondent in train No.02822 MAS-HWH MSPC special as an alternative for the train No.12840 MAS-HWH mail. Further, it does not meet the petitioner's needs like the leased train. However, it was not considered by the respondent. Therefore the petitioner repeatedly made request for withdrawal of the contract by its communication dated 08.06.2021, 26.07.2021, 16.08.2021 and 02.09.2021, finally by the communication dated 19.09.2021, the respondent informed the petitioner that the request made by the petitioner will not be accepted and the petitioner was directed to run the contract in the special train No.02822 within 10 days from the date of the said communication.

8. Once again, the petitioner made final request on 21.09.2021 for withdrawal of the contract and also requested to refund the security deposit. On receipt of the same, the impugned order has been passed by



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the respondent on 16.10.2021. Therefore, the petitioner by its communication dated 28.01.2021 itself informed the respondent for withdrawal of contract.

9. It is seen that under the circumstances, in order to deal with non-commencement of leasing contracts in the parcel space of Special Trains, Ministry of Railways vide letter No.2020/TC (FM)/10/18 dated 03.12.2020 enunciated the following three types of scenarios for leasing contracts:

Scenario 1:

If leaseholder has served 60 days 'Surrender Notice for Termination of the Contract' prior to the lockdown or cancellation of the regular train service and operation of the notice period could not be ensured due to cancellation of train service, Zonal Railway may accept such notice and the contract may accordingly be terminated without forfeiture of Security Deposit. However, the condition of completion of the contract for one year (which may include period of non-operation of the train) must be ensured strictly.

Scenario 2:



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If leaseholder has served 60 days Surrender Notice after lockdown and cancellation of the regular train service and ?? corresponding Passenger Special Train service was in operation at the time of serving the Surrender Notice, Zonal Railway may accept such Notice and the contract may accordingly be terminated without forfeiture of Security Deposit subject to the following conditions:

i The contract should have completed period of one year (including the period of non-operation of the train):

ii. If the regular or corresponding Special Train service resumes before the expiry of the notice period of 60 days, the leaseholder shall operate the contract for the remaining notice period.

Scenario 3:

If leaseholder has not commenced the contract in the corresponding Passenger Special Train service, Zonal Railway shall get in touch with leaseholder to motivate him to commence the leasing contract for parcel space as per Agreement, for which a reasonable time as decided by the Zonal Railway may be given.

If the leaseholder commences the contract within the given time, the intervening period (during which the lease remained non-operational) may be decided as per the



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provisions of para 32.5 of the Comprehensive Parcel Leasing Policy.

However, if the leaseholder fails to commence the contract within the given time, Zonal Railway shall terminate the contract along with forfeiture of Security Deposit (as per Para 20.4 of the CPLP).

10. In view of the communication of the petitioner dated 28.01.2021 issued notice of 60 days with effect from 28.01.2021 to 29.03.2021, therefore scenario 1 as well as scenario 2 are applied to the case of the petitioner and the petitioner is entitled for refund of security deposit.

11. In view of the above, the order impugned cannot be sustained and the same is liable to be quashed. Accordingly, the impugned order dated 16.10.2021 of the respondent is quashed. The respondent is directed to refund the security deposit of Rs.17,47,204/- to the petitioner within a period of two weeks from the date of receipt of copy of this order.



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12. With the above direction, this writ petition is allowed.

Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

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Neutral citation: Yes/No

Index: Yes/No

Speaking/Non-speaking order
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G.K.ILANTHIRAIYAN, J.

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To
Senior Divisional Commercial Manager,
Union of India,
Ministry of Railways,
Railway Board(Southern Railway),
Chennai Division,
Southern Railway,
Chennai 600 003

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