

N.22S1

WPA 11996 of 2025

151/CL

Shyam Sel and Power Ltd. & Anr.

16.07.25

v.

Sl-28

Union of India & Ors.

Ct.551

(S.R.)

Mr. Jishnu Saha, Sr. Adv (Through Virtual Mode)
Mr. Sounak Mukhopadhyay
Ms. Pooja Chakrabarti
Ms. Somdutta Bhattacharyya
Mr. A. Bhattacharyya ... for the petitioners.

Mr. S. Tiwari
Mr. K.C. Das ... for the respondents.

The petitioners allege arbitrary action on the part of the respondent Railway Authorities in utilizing the rakes procured by the petitioners under General Purpose Wagon Investment Scheme, floated by the Railways. It is the petitioners' case that such rakes were to be utilized by the petitioners for their own business, in terms of an agreement entered by and between the petitioners and the Railway Authorities on September 21, 2022.

Mr. Saha, learned senior advocate appearing for the writ petitioners submits that the respondent Railway Authorities have been using the rakes, that have been procured by the petitioners for their own business, in contravention of various terms of the agreement dated September 21, 2022 between the petitioners and the Railways and that, they have unilaterally modified several clauses of the said contract based on circulars issued by them from time to time.

Mr. Tiwari, learned advocate appearing for the

respondent Railway Authorities refutes such submission and submits that the circulars were issued upon meetings being held between the respondent Railway Authorities including the petitioners and that in such view of the matter no grievance can be raised that the contractual terms were unilaterally altered.

It is further submitted by Mr. Tiwari that this writ petition should not be entertained inasmuch as there is an arbitration clause governing the parties and any dispute pertaining to the said agreement should be resolved by way of arbitration in terms of the arbitration clause.

Mr. Saha, learned senior advocate appearing for the petitioners, in reply, submits that the writ petition is directed against the arbitrary act of the respondent Railway Authorities in unilaterally tinkering with the terms of the contract and the same cannot be really said to be a dispute arising from the agreement.

It is further submitted on behalf of the petitioners that the respondent Railway Authorities are not even adhering to the latest Freight Marketing Circular No.23 of 2024 issued by the Joint Director Freight Marketing under letter No.2018/TC(FM)/4/13 dated 09.08/09.2024 (Annexure P11 at pages 131 and 132 of the writ petition) whereby para 2.2 of Chapter-IV of the GPWIS Master Circular stood amended as provided in the said circular.

Having heard the learned advocates appearing for

the respective parties and having considered the material on record, this Court finds that the agreement between the parties itself contains a provision for amicable resolution of disputes that may arise between the parties. The case run in the writ petition also indicates that the petitioners have made several representations before the respondent Railway Authorities and that none of those representations have been considered by the Railway Authorities.

In such view of the matter, this Court is of the view that instead of exercising its highly prerogative writ jurisdiction under Article 226 of the Constitution of India, it would be proper to allow the respondent Railway Authorities and the petitioners to get the disputes that have arisen between them resolved amicably, at the first instance, in terms of the provisions contained in the agreement itself.

The petitioners shall, therefore, be at liberty to make a detailed representation before the respondent no.2 i.e. the Chief Commercial Manager (Freight Marketing) indicating their grievances and upon such representation being made, the respondent no.2 shall consider such representation and dispose of the same within a period of three weeks from the date of receipt thereof, upon hearing the petitioners by passing a reasoned order strictly in accordance with law.

It is made clear that the aforesaid direction is

without prejudice to the rights and contentions of the parties to avail any remedy either by way of the dispute resolution mechanism as provided in the agreement or by resorting to any other remedial measure available to the parties, in accordance with law.

At this juncture a prayer is made by the petitioners that till such time the petitioners' representation is considered by the respondent Railway Authorities Freight Marketing Circular No.23 of 2024, the aforesaid may be abided by. Since it has not been disputed before the Court that the aforesaid circular is the Railway Authorities' latest circular, it is expected that the respondent Railway Authorities would adhere to such circular till such time, the petitioners' representation is considered and disposed of.

Needless to mention that his Court has not gone into the merits of the case and all points are left open to be urged by the parties and to be decided by the railway authorities, in accordance with law.

Since no affidavit-in-opposition has been called for, the allegations made in the writ petition will be deemed not to have been admitted by the respondents.

With the above observations, WPA 11996 of 2025 stands disposed of.

There shall, however, be no order as to costs.

Urgent certified photocopy of this order, if applied for, be supplied as expeditiously as possible.

(Om Narayan Rai, J.)