2025:MHC:2381

In the High Court of Judicature at Madras

Reserved on	Delivered on :
08.10.2025	**14.10.2025**

Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Original Application Nos.833 & 834 of 2025
& Arbitration Application No.1165 of 2025

Brandavan Food Products
rep.by its Partner
Shri.Rahul Agarwal, having
its office at D-187, FF,
B Wing, Okhla Industrial
Area, Phase I, New Delhi.
110020. ...Applicant in all the Applns.

Vs

Southern Railway, through
its General Manager,
having office at 37MG + 2VH,
Poonamallee High Road,
NGO Complex, Park Town,
Chennai. Tamil Nadu-600003. ...Respondent in all the Applns.

ORIGINAL APPLICATIONS under Order XIV Rule 8 of the Original Side Rules and Section 9(2)(D) and (E) of the Arbitration and Conciliation Act, 1996 praying to

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(i) pass an order of ad-interim injunction restraining the respondent, its agents, representatives or anyone acting through or under the respondent from taking any adverse action against the applicant in furtherance of its impugned notice dated 30.5.2025 bearing No.SRHQ0COMM/32/2025 (E.544143) (OA.No.833 of 2025); and

(ii) pass an order of ad-interim injunction restraining the respondent its agents, representatives or anyone acting through or under the respondent from taking any steps which would be prejudicial to the rights and interest of the applicant flowing from the Standard Bid Document of Tender No.SR/YSA/02/2024 for provision of Yatri Seva Anubandh (YSA) services for 6 pairs of Vande Bharat Trains of the Southern Railway, the YSA Model Agreement contained in such Standard Bid Document, the Letter of Acceptance dated 15.4.2024 issued by the respondent in favour of the applicant (OA.No.834 of 2025); and

ARBITRATION APPLICATION under Order XIV Rule 8 of the Original Side Rules and Section 9(2)(D) and (E) of the Arbitration and Conciliation Act, 1996 praying to grant an order of ad-interim stay on the effect and operation of the impugned notice dated 30.5.2025 bearing No.SRHQ0COMM/32/2025 (E.544143) issued by the respondent.

For Applicant in all the Applns.	:	Mr.P.H.Arvind Pandian, SC for Mr.T.N.C.Kaushik
For Respondent in all the Applns.	:	Mr.AR.L.Sundaresan, ASGoI assisted by Mr.V.Chandrasekar, SPC - UoI and Mr.K.Aadhishankaran

COMMON ORDER

These applications have been filed under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter called the Act) seeking

(a) to grant an order of ad-interim injunction restraining the respondent from taking any adverse action against the applicant in furtherance of the impugned notice dated 30.5.2025; and

(b) to grant an order of ad-interim injunction restraining the respondent from taking any steps, which would be prejudicial to the rights and interest of the applicant flowing from the Standard Bid Document of Tender No.SR/YSA/02/2024 for provision of Yatri Seva

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Anubandh (YSA) services for 6 pairs of Vande Bharat Trains of the Southern Railway, the YSA model agreement contained in such Standard Bid Document, the Letter of Acceptance dated 15.4.2024 issued by the respondent; and

(c) to grant an order of ad-interim stay on the effect and operation of the impugned notice dated 30.5.2025 issued by the respondent.

2. Heard both.

3. The case of the applicant is as follows :

(i) Admittedly, the petitioner is a service provider. The respondent floated a tender to provide ***Yatri Seva Anubandh (YSA)*** services for six pairs of Vande Bharat Trains of the respondent for a period of five years, which is extendable further upto two years. The applicant was declared as the highest bidder and accordingly, a letter of award (LoA) dated 15.4.2024 was issued in favour of the applicant. In furtherance of the said LoA, the applicant deposited a sum of Rs.6,81,45,000/- on 18.4.2024 towards total licence fee along with

GST.

(ii) As per the Yatri Seva Agreement (for short, the agreement), the service provider viz. the applicant was required to commence the services within 90 days from the acceptance of the letter of award. Accordingly, the applicant was rendering the YSA services since 12.7.2024.

(iii) The applicant received a letter dated 22.4.2025 issued by the respondent stating that the services rendered by the applicant were not upto the desired level of satisfaction as per the key performance indicator (KPI) rating. In the said letter, the applicant was also called upon to show cause within seven days as to why action should not be initiated as per Category 3 in Schedule I of the agreement.

(iv) In response to the said letter dated 22.4.2025, the applicant sent a reply dated 01.5.2025 and sought for certain reports/datas in order to give a reply effectively and for extension of time to give a suitable reply. On receipt of the said reply, the respondent supplied the reports, based on which, the performance rating was given to the applicant. The applicant was also directed to give a suitable reply/ explanation by 22.5.2025.

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(v) It is alleged that the respondent also started levying penalty against the applicant from 28.4.2025 till 20.5.2025.

(vi) A meeting was held with the officials of the respondent on 20.5.2025 and it was decided between the parties that there would be a follow up meeting in the presence of the officials of the respondent and other key ministerial staff of the applicant in order to highlight the operational and other difficulties faced by the parties and to discuss the measures to be taken to improve the quality of services.

(vii) On 22.5.2025, the applicant submitted a reply to the said show cause notice dated 22.4.2025. In spite of receiving the reply, once again, huge penalty was imposed on the applicant on 28.5.2025. However, the applicant contested the same.

(viii) Thereafter, the respondent issued a notice dated 30.5.2025 expressing its intention to terminate the agreement under Article 17.1.1 of the agreement. In the said notice, the respondent informed the applicant about the KPI rating for the third quarter of the agreement as 1.98 from 12.1.2025 to 11.4.2025. Thereafter, there was exchange of communications between the parties. Ultimately, the communication dated 04.8.2025 was issued by the respondent to the applicant giving the entire details leading to issuance of the intention to terminate notice dated 30.5.2025. Aggrieved by the same, these applications have been filed before this Court.

4. The respondent filed a counter affidavit wherein they took the following stand :

(i) The assessment scores for two quarters out of three quarters were found to be falling below 2 and therefore, as per Article 17.5.4 of the agreement, the intention to terminate notice dated 30.5.2025 was issued to the applicant. Such a notice was issued after the applicant failed to provide quality services as per the agreement and no efforts were taken by the applicant to rectify the deficiencies.

(ii) It was found that there were life threatening hazards caused by the applicant in the food that was supplied to the passengers, traveling public. On receipt of the notice dated 30.5.2025, the applicant raised objections as to the manner, in which, the assessment was done and also sought for time to file a detailed reply. In response to the same, the respondent had sent a reply to the applicant by informing that there was no scope for providing further time beyond

90 days as was provided in the agreement.

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(iii) Apart from that, the respondent also took a stand that the third party audits and the inspections conducted by the Railway Officials unearthed certain serious discrepancies in terms of lack of basic facilities and hygienic systems and usage of non standard and inferior quality raw materials. Further, many complaints were received on the quality of the food that was supplied by the applicant.

(iv) All these factors were taken into consideration by the respondent and the KPI rating was done strictly in accordance with the agreement, in which, it was found that for two successive quarters, the score was falling below 2. Even with respect to the fourth quarter, the score has fallen to 1.81 and therefore, there was absolutely no improvement in the services provided by the applicant. Accordingly, the respondent sought for vacating the interim order already granted by this Court on 20.8.2025 in O.A.No.833 of 2025 and to dismiss all these applications.

5. The learned Senior Counsel appearing on behalf of the applicant submitted as follows :

(a) Even on the previous occasion, already there has been a litigative background between the parties wherein the applicant had challenged one of the eligibility criteria in the tender by filing W.P.No. 5162 of 2024, which enabled the applicant to participate in the tender process. Further, a competitor bidder (H3 bidder) filed W.P.No.21002 of 2024 against the award of contract in favour of the applicant on the ground that certain material facts were not disclosed. W.P.No.21002 of 2024 was disposed of by order dated 25.7.2024. Based on that, the respondent issued the notice dated 28.8.2024 against the applicant on the ground that the applicant concealed material facts and demanded for explanation by intending to terminate the contract.

(b) Such a notice was assailed earlier by filing O.A.Nos.614 to 616 of 2024 before this Court under Section 9 of the Act seeking to

(i) grant an order of interim injunction restraining the respondent from taking any adverse action against the applicant in furtherance of its notice dated 28.8.2024;

(ii) grant an order of ad-interim injunction restraining the respondent from taking any steps which would be prejudicial to the rights and interest of the applicant flowing from the relevant bid documents; and

(iii) grant an order of ad interim injunction restraining the respondent from giving effect to or implementing the notice dated 28.8.2024 issued by the respondent, respectively.

(c) By a common order dated 23.10.2024, the said original applications were disposed of directing that the respondent should not proceed further pursuant to the notice dated 28.8.2024 till the learned Arbitrator entered upon the dispute.

(d) The entire process adopted by the respondent is prejudicial, arbitrary and malicious since the passenger feedback and the third party audits were given in favour of the applicant and only the respondent is giving a lower score against the applicant. That apart, on many occasions, penalties were imposed on the applicant without providing any opportunity.

(e) The arbitration proceedings commenced before the Arbitral Tribunal consisting of three members with respect to the earlier notice dated 28.8.2024 and the same is at the stage of final hearing. While so, the present impugned notice dated 30.5.2025 has been issued with an intention to cancel the agreement, as per the terms of which, while determining the overall performance index, a remedial period/cycle is also provided to make improvements within 7 days of the next quarter. However, this was made impossible by the respondent since the grading for the first and second quarters was informed to the applicant only by letter dated 22.4.2025 i.e. much beyond the second quarter.

(f) The impugned notice dated 30.5.2025 was issued without providing opportunity to the applicant and in an unfair manner only with an intention to terminate the agreement. If (i) the agreement is terminated, (ii) the security deposit is forfeited and (iii) the respondent refuses to refund the advance licence fee, the applicant will be put to irreparable loss and hardship. Hence, interim protection granted by this Court has to be continued.

(g) Already, the trigger notice has been issued under Section 21 of the Act and steps have been taken for referring the dispute to the Arbitral Tribunal. Therefore, the dispute between the parties may be referred to the Arbitral Tribunal with the interim protection already granted to the applicant.

6. Per contra, the learned Additional Solicitor General appearing

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on behalf of the respondent submitted as follows :

(a) as per the agreement, a formula is provided to review the performance. Accordingly, the assessment scores of the passenger feedback for the third quarter i.e. from 12.1.2025 to 11.4.2025 are based on (i) 70% by RailMadad App, (ii) 20% by the third party audit and (iii) 10% by the inspection conducted by the Railway. While applying the above criteria under Article 12 of the agreement, it was found that for two consecutive quarters, the applicant was falling below 2. This also continued even during the fourth quarter.

(b) Several complaints were received against the applicant alleging that lizard, cockroaches, flies, etc., were found in the food that was supplied by the applicant, that substandard food was served to the passengers and that the food stuff was sold beyond the expiry date. Even a suo motu cognizance was taken by the State Human Rights Commission, Kerala. If this situation continued, the Railway will cut a sorry figure with passengers and the respondent has to take immediate steps. Even otherwise, only a notice expressing the intention to terminate was issued to the applicant and no final decision is taken.

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(c) In the meantime, the applicant approached this Court and obtained an interim order. Even during the pendency of these applications, the performance of the applicant is falling below to a score of 1.81. Thus, the summary of all the four quarters would show that at least in quarters 2, 3 and 4, the applicant scored below 2. Therefore, the respondent has to immediately act as per the agreement.

(d) The earlier proceedings initiated by the Railway have nothing to do with the present applications. The earlier proceedings pertained to non disclosure of a material fact and the same is pending before the Arbitral Tribunal. The case in hand pertains to providing substandard quality of food supplied by the applicant and it is a separate cause of action. Just because the earlier proceedings are pending, it does not mean that the applicant can supply substandard food to passengers and no action should be taken against the applicant.

(e) The balance of convenience is in favour of the respondent and by continuing the applicant to supply food, it is the respondent, which will be facing irreparable loss and hardship.

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7. This Court has carefully considered the submissions of the learned counsel on either side and perused the materials available on record and more particularly the impugned proceedings.

8. Clause 3 of the Objectives and Snapshots of YSA Pilot Initiative on Vande Bharat Trains provides for rights and obligations of the service provider. Clause 5 provides for digital interface among the passengers, the service provider and the Indian Railways. It contemplates an application called as YSA App. Admittedly, this App is yet to become operational. Clause 11 provides for performance review through KPIs + RailMadad App + Inspection + Audit.

9. Article 12 of the agreement provides for KPIs and penalty regime. On carefully going through the same, it is seen that the quality assessment of performance on the YSA trains shall be based on weighted averages namely (i) 70% on the passenger feedback in the YSA App and the RailMadad App, (ii) 20% on the audits by third party and (iii) 10% of the railway inspections. The quarterly assessment of the performance will be made based on the weighted averages.

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10. Article 17 provides for termination on account of default on the part of the service provider.

11. Article 17.1.1(e) provides for termination where there is unsatisfactory performance of the service provider as measured through KPI score for three or more consecutive quarters.

12. Article 17.5.4 also provides for termination by the Railways on account of recurrent service failure by the YSA service provider. It has been further made clear that the Railway Administration can terminate the agreement after giving notice of recurrent service failure by the service provider, which repeatedly failed over two consecutive quarters to satisfactorily provide the YSA services where the overall performance index falls below 2 for two successive quarters.

13. Earlier, the dispute arose pursuant to the notice dated 28.8.2024 issued by the respondent on the ground that the applicant suppressed the material fact regarding involvement in a criminal offence. This notice was issued by the respondent after a writ petition

in W.P.No.21002 of 2024 was moved before this Court by one of the participants in the bid and by order dated 25.7.2024, a learned Single Judge of this Court disposed of the same granting liberty to the petitioner therein to make a representation to the General Manager, Southern Railway, Southern Railway Headquarters, Park Town, Chennai–3, who was, in turn, directed to dispose of the representation that would be filed within a stipulated time.

14. Thereafter, the notice dated 28.8.2024 was challenged before this Court under Section 9 of the Act by filing O.A.Nos.614 to 616 of 2024. Further, a learned Single Judge of this Court, by a common order dated 23.10.2024, disposed of the said original applications after coming to the conclusion that the notice dated 28.8.2024 indicated that the respondent pre-concluded the issue and hence, proceeded to grant interim protection till the Arbitral Tribunal entered upon the dispute and an interpretation of the tender conditions and model agreement appended to the tender documents was made. It was also directed to ascertain as to whether the applicant had actually concealed any material fact.

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15. In continuation of the said common order dated 23.10.2024, an Arbitral Tribunal has been constituted and the reference is now at the stage of final arguments before the Arbitral Tribunal. The issue pending before the Arbitral Tribunal absolutely has no connection to the present dispute. The present dispute has arisen only on the ground that the applicant is supplying substandard food to the passengers and that the applicant has scored below 2 for two successive quarters. Therefore, the respondent proceeded further as per Article 17.5.4 of the agreement. Just because the earlier notice was issued for a different cause of action, that, by itself, will not lead to the conclusion that the present action is vitiated by mala fides.

16. By letter dated 22.4.2025, the respondent informed the applicant that they received a number of complaints registered in the RailMadad App and that the issues were highlighted in the social media putting the Railways in a bad light. In spite of repeated advice by the officials of the respondent to the applicant for taking remedial action, no improvement was noticed. Hence, the performance of the applicant

was assessed based on the feedback given in RailMadad App and the inspection done by the Railway Officials. The weightage for the third party audit was also distributed between the RailMadad App and the inspection by the Railway Officials. Further, the overall grading for two quarters (Q1 & Q2) was found to be 2.01 and 1.98 respectively. The manner, in which, the calculation was done was also annexed along with the said letter. In view of the same, the applicant was informed that the performance in the second quarter was unsatisfactory since the score has gone below 2. Therefore, the applicant was called upon to explain with regard to the improvement of services within 7 days, failing which, it was made clear that further action would be initiated.

17. The respondent also found that for the third quarter, the score has gone below 2. Therefore, the notice dated 30.5.2025 was issued purportedly under Article 17.5.4 of the agreement since the score has gone below 2 in two successive quarters (Q2 & Q3). The applicant was further informed that the notice dated 30.5.2025 has been issued with an intention to issue termination notice and hence, a 90 days' notice was issued to the applicant under Article 17.1 to

enable the applicant to make a representation.

18. A lot of hue and cry was made on the side of the applicant contending that only the respondent is giving a lower score whereas there was no adverse assessment either from the passengers or from the third party audit and that the respondent is targeting the applicant only with an intention to terminate the agreement.

19. It is seen from the records that repeated complaints were received by the respondent on the poor quality of food supplied. Pursuant to the inspection that was conducted in the base kitchen at various places, a report has been given. The third party audit report is also available. There are several complaints received in the RailMadad App about the quality of food supplied, which was assessed by the passengers themselves as tasteless, stale, not properly cooked, etc. There are complaints of foreign particles found in the food. That apart, there are also complaints stating that the food that was served contained dead lizard, worms, insects, etc., which would cause potential health hazards.

20. As on 31.7.2025, out of 1,214 complaints on catering, 426 complaints were received on the quality of food alone. All these 1,214 complaints were received through the RailMadad App. In so far as the inspection conducted by the Railways is concerned, the report revealed several discrepancies, which included not only regarding the quality of food, but also shortage of staff and deficiency in the services.

21. The respondent also took into consideration the report of the third party audit firm dated 08.5.2025 conducted from 12.1.2025 to 11.4.2025. The assessment score for the first quarter was 2.01, for the 2nd quarter, it was 1.98 and for the third quarter, it was again 1.98. The method adopted for calculating the same has also been explained. It has also been mentioned in the counter affidavit that even for the fourth quarter, the score has fallen to 1.81, which is apparently lesser than the score obtained for the second and the third quarters.

22. While this Court decides an application under Section 9 of

the Act, the Court cannot dig deep into the merits of the case nor render its interpretation on the various clauses in the agreement. The Court must only provide its prima facie opinion.

23. It is now too well settled that while deciding an application under Section 9 of the Act for interim protection, the Court must be satisfied that the applicant has made out a prima facie case, that the balance of convenience is in favour of the applicant and that if the interim order is not granted, the applicant will be put to irreparable loss and hardship.

24. In the case in hand, the issue revolves around providing substandard food to the passengers travelling in the six pairs of Vande Bharat trains of the Southern Railway. It is famously quoted that ***providing good food is an easy way to get into a man's heart***. In the same manner, providing a substandard food can adversely impact the image of the respondent, which is providing public services. Food becomes a very sensitive issue and repeated complaints are not being attended to by the applicant. If the quality of food continues to be

substandard, it will really cause serious hardship to the respondent.

25. It is made clear that this Court is not rendering a positive finding that the applicant is providing substandard food to the passengers. At this stage, only prima facie materials can be considered and it is seen that there are sufficient number of complaints regarding the quality of food, deficiency in the services, etc. The agreement provides for a formula to determine the score and by applying this score, the respondent found that for the second and third quarters, the score had fallen below 2. Therefore, the notice dated 30.5.2025 has been issued to the applicant. However, no final decision has been taken by the respondent.

26. At this juncture, this Court must carefully assess the components of balance of convenience and irreparable loss and hardship that would be caused to either of the parties and see as to which party will suffer more if an interim order is not granted.

27. As stated supra, the issue involves providing food to the passengers in the Vande Bharat trains. The allegation is that substandard food is provided to the passengers and that there is a deficiency in the services. Further, several other complaints have been received. If, ultimately, the agreement is cancelled, the applicant will be entitled to challenge such cancellation before the Arbitral Tribunal and seek for compensation/damages, if the cancellation is illegal. The applicant will also be entitled to seek for refund of the security deposit and the licence fee paid along with interest.

28. On the contrary, if the termination of the agreement is found to be valid and if the interim order is continued in favour of the applicant till the completion of the arbitration proceedings, the damage suffered by the respondent will be more than what will be suffered by

the applicant.

29. While determining the balance of convenience, if the grant of damages would be an adequate remedy and if the respondent would be in a financial position to pay the same, normally, the interim injunction should not be granted, however strong the applicant's claim appears to be at this stage. The extent, to which, the disadvantage to each party would be incapable of being compensated any damages in the event of succeeding in the arbitration proceedings is by way of significant factor in assessing as to where the balance of convenience lies.

30. In the case in hand, even if the applicant succeeds in the arbitration proceedings, whatever loss is incurred by the applicant can be compensated by the respondent by way of damages/compensation apart from the refund of deposit, etc. However, if the respondent succeeds in the arbitration proceedings by justifying the issuance of a termination notice and the if the interim order continues, the image of the Railways, which takes a hit due to the substandard food provided, can never be compensated. Hence, this Court holds that the balance of

convenience is in favour of the respondent. For the very same reason, it will be the respondent which will suffer irreparable loss and hardship if the interim order is continued more than the loss and hardship that would be suffered by the applicant.

31. The mere fact that the prima facie case exists for the grant of an order of interim injunction may not be sufficient for granting the interim order. Before the Court exercises its jurisdiction to grant such an interim relief, which is essentially an equitable and discretionary remedy, the Court will have to further satisfy itself that the comparative mischief or inconvenience, which is likely to arise from withholding an interim injunction, will be greater than that is likely to arise from granting it. If this test is applied to the facts of the present case, this Court is of the considered opinion that the components of balance of convenience and irreparable loss and hardship lean in favour of the respondent.

32. The learned Senior Counsel appearing on behalf of the applicant, while questioning the intent of the respondent, submitted

that the entire process has been orchestrated by one of the bidders, which was not able to get the contract in their favour and which was the trigger for the respondent to take steps to cancel the agreement after filing W.P.No.21002 of 2024, that they were trying to achieve indirectly what they were not able to achieve directly and that the respondent is attempting to award the contract in favour of the rival bidder after cancelling the agreement given in favour of the applicant.

33. In response to this submission, the learned Additional Solicitor General appearing on behalf of the respondent made it clear that no such attempt is being made by the respondent to allot the contract in favour of the rival bidder and that if, ultimately, the contract awarded in favour of the applicant is terminated, it will be taken over by the Indian Railway Catering and Tourism Corporation (IRCTC).

34. The conspectus of the above discussions leads to the only conclusion that the interim order sought for by the applicant is not granted by this Court.

35. Accordingly, these applications stand dismissed. As a consequence, the interim order already granted by this Court stands vacated. It will be open to the parties to raise all the grounds before the Arbitral Tribunal and the same shall be considered on their own merits and in accordance with law. It is needless to point out that any observations made by this Court in this common order are based on the prima facie materials and that they will have no bearing while the Arbitral Tribunal decides the case on merits.

14.10.2025

Index : Yes
Neutral Citation : Yes

To
Southern Railway, through
its General Manager,
having office at 37MG + 2VH,
Poonamallee High Road,
NGO Complex, Park Town,
Chennai. Tamil Nadu-600003.

RS

N.ANAND VENKATESH,J

RS

COMMON ORDER in
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