



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 04.11.2025

Pronounced on : .11.2025

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THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN
and

THE HONOURABLE MR. JUSTICE MUMMINENI SUDHEER KUMAR

OSA(CAD) No. 108 of 2025

AND

CMP No. 26139 of 2025 CMP NO. 25753 OF 2025,
CMP NO. 25756 OF 2025, CMP NO. 25759 OF 2025

Brandavan Food Products
Rep. by its Partner, Sh. Rahul Agarwal,
Having office at D-187, FF, B-Wing,
Okhla industrial Area,
Phase - I, New Delhi - 110020.

... Appellant(s)

Vs.

Southern Railway
Through its General Manager,
having office at 37MG/2VH,
Poonamallee High Road,
NGO Annexe, Park Town, Chennai.03

..... Respondent(s)

Prayer: Appeal filed under Section 13 of the Commercial Courts Act, 20156 r/w Section 13(1) of the Commercial Courts Act to set aside the Order passed in OA.No.833 of 2025 as well as Arb.Appln.No.1165 of 2025 dated 14.10.2025.



For Appellant(s) : Mr.Satish Parasaran, Senior Counsel for
Mr.T. Nagin Chella Kaushik
Mr.Jasmeet Singh

For Respondent : Mr.Ar.L.Sundaresan,
Additional Solicitor General,
assisted by Mr.V.Chandrasekaran,
Senior Panel Counsel.

For proposed
Respondent : Mr.V.G.Suresh

J U D G M E N T

This is an appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (for short “Act,1996”) at the instance of an unsuccessful petitioner in a petition filed under Section 9 of the Act, 1996 filed seeking interim protection.

2. The appellant herein was awarded a Contract by the respondent for provision of onboard Yatri Seva Anubandh (YSA) services for 06 pairs of Vande Bharat trains of Southern Railway, under Tender No.SR/YSA/02/2024



vide. Letter No.SR HQ-COMMERCIAL/ SRYSA022024/10127360100928, dated 15-04-2024 for a period of five years. During the course of the performance of the said contract by the appellant, certain disputes arose on the ground of unsatisfactory performance by the appellant. In view of the same, the respondent had imposed penalty in terms of the contract on the appellant on few occasions and finally the respondent issued a Notice, dated 30.05.2025 under Article 17.1 expressing its intent to issue termination notice giving 90 days period to submit representation. It is aggrieved by the said intent to termination notice and apprehending termination of contract, the appellant herein moved an application under Section 9 of Act, 1996 seeking interim protection against proposed termination vide Arbitration Application NO.1165 of 2025 and O.A.Nos. 833 and 834 of 2025. The relief sought in the said application is as under:

“(a) 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 30-05-2025 bearing No. SR-HQ0COMM/32/2025 (E.544143);

(b) 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 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, and the letter of Acceptance dated 15-04-2024 issued by the Respondent in favour of the Applicant.

(c) An order or ad-interim stay on the effect and operation of the Impugned Notice dated 30-05-2025 bearing No.SR-HQ0COM/32/2025 (E.544143), issued by the Respondent;”

3. The learned Single Judge of this Court, initially passed an interim Order, dated 20-08-2025 restraining the respondent from taking any adverse action against the appellant in furtherance of the Notice, dated 30.05.2025. Aggrieved by the said Order, dated 20-08-2025, the respondent herein filed an appeal under Section 37 before us vide O.S.A.(CAD) No.97 of 2025 and the said appeal was disposed by us by an Order, dated 17-09-2025 after having taken note of Article 17.5.4 while clarifying the order, dated 20-08-2025 passed by the learned Single Judge and requested the learned Single Judge to consider the application filed under Section 9 expeditiously. In paragraph 8 of the said order reads as under:

“8.This Court, after giving anxious consideration to the rival submissions as well as impugned notice and the Model Agreement, the interim order passed by the Learned Single Judge, are of the view that the apprehension expressed by the Respondent/Service Provider that the agreement is intended to be terminated on the expiry of 90- days per se is



not correct. The impugned notice issued as per Article 17.1 of the Model Agreement, clearly stated that after the representation of the Service Provider, the Railway will take decision whether the contract to be terminated or not and, in case, the contract to be terminated, it will be done in accordance with Clause 17.5.4.”

4. Accordingly, the learned Single Judge, having considered the matter afresh, dismissed the application filed under Section 9 by Order, dated 14-10-2025 holding that, 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 and before granting such an interim order, 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 and thereby arrived at a conclusion that in case if an interim injunction is granted, the inconvenience that would be caused to the respondent is more and that the appellant can be compensated in terms of money if he ultimately succeeds in the Arbitration Proceedings and vacated the earlier order dated 20-08-2025

5. Immediately after passing the said order, dated 14-10-2025, the



respondent appears to have terminated the services of the appellant vide S.R.No.SR-HQDCOMM/32/2025(E.544143), dated 14-10-2025 and entrusted the job infavour of IRCTC and inturn the IRCTC stated to have granted temporary license for rendering YSA services in favour of different agencies on nomination basis on the same day i.e. on 14-10-2025, and they have been rendering the services. The said termination of services and the subsequent grant of temporary license in favour of third party agencies is not the subject matter of Application under Section 9 or in the present Original side appeal. However, the same is during the pendency of the lis.

6. We have heard Mr.Satish Parasaran, learned Senior Counsel for Mr.T.N.C.Kaushik, learned counsel for the appellant and Mr.A.R.L.Sundresan, learned Additional Solicitor General of India for Mr.V.Chandrasekaran, learned Senior Panel counsel for respondent.

7. The learned Senior Counsels appearing on either side have argued the matter at length and they have also taken us through entire material on record especially the data basing upon which the performance of the appellant was found to be unsatisfactory and various other instances whereby the



appellant herein was imposed with penalty etc. As regards the constitution of the Arbitral Tribunal for the resolution of the dispute in question is concerned, they have expressed their willing for this court appointing a Sole Arbitrator, notwithstanding the pendency of an application said to have been filed under Section 11 of the Act, 1996 for resolution of the dispute between the parties. We have carefully considered the submissions made on either side and also perused the entire material on record.

8. Under the Contract, a method is provided under Article 12.1.2 for ascertaining Average Quarterly Feedback and in terms of the same 70% weightage is based on the passenger feedback on the YSA app and the Rail Madad App; 20% weightage for third party Audit and 10% weightage based on the Internal Railway Inspections. Admittedly, YSA App has not been launched as on the date of issue of Notice, dated 30-05-2025 and instead Rail Madad App is only being used for assessment. It is basing upon the assessment of the performance of the appellant under the said Article 12.1.2, for 2 quarters i.e. Q2 and Q3 from 12-10-2024 to 11-01-2025 and 12-01-2025 to 11-04-2025 said to have been made by the respondent and on arriving that the score of the appellant is falling below for the said two



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quarters, the respondent issued the Notice, dated 30-05-2025 under Article 17.1, which triggered the initiation of Arbitral Proceedings. The score of the appellant for the last two quarters ending 11-01-2025 and 11-04-2025 is 1.98. Had it been 2 there is no cause of action for invoking Article 17 of the Contract. From the perusal of the material placed before us, it is evident that the performance of the appellant as was assessed through Rail Madad App for the quarter commencing from 12-10-2024 to 11-01-2025 scored more than 2 and whereas by adding the same to the assessment made through IR inspections the score came below 2. Similarly, the assessment made through Rail Madad App and Third Party Audit for the quarter commencing from 12-01-2025 to 11-04-20025 scored above 2 and whereas by adding the assessment made through IR inspections, the same came below 2 i.e. 1.98. Thus, it is only the IR inspections that made all the difference for both the quarters in question. At the same time, there are good number of occasions wherein penalty was imposed on the appellant for not complying with its obligations, but the same is not subject matter of any dispute as on date, thereby suggesting that the appellant admitted or accepted the same.

9. According to learned senior counsel appearing for the appellant,



there is a litigation dispute between the parties and it is only on the petitioner approaching this court on an earlier occasion vide W.P.No.5162 of 2024 the petitioner could participate in the bidding process and the bid was awarded in favour of the appellant, thereby giving scope for a hostile atmosphere between the appellant and respondent, and for that reason only the appellant is being targeted by the respondent at the instance of the rival bidder and another writ petition vide W.P.No.21002 of 2004 was also stated to have been filed by the rival bidder on the alleged suppression of fact by the appellant herein and dispute that arose in that connection in already subject matter of arbitration wherein it was proposed to terminate the services of the appellant. According to him, most of the complaints are orchestrated at the instance of the rival bidder alone and also contended that the appellant herein has been providing the identical services through out the country successfully in different zones of the Indian Railways.

10. On the other hand, according to Mr.A.R.L.Sudresan, Learned ASG, the performance of the appellant during the subsequent quarters is also not upto the mark and there are several serious complaints against the quality of services rendered by the appellant and has also drawn our attention to the



relevant material, whereby repeatedly heavy penalty was imposed on the appellant.

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11. In the light of the above, in order to arrive at any definite conclusion, the appreciation of various material placed on record is required to be made and then only this court can arrive at any definite conclusion. As already noted above, the scope of this appeal is only within the four corners of Section 9 of the Act, 1996 which is very limited and only prima facie case is only required to be looked into. The learned Single Judge, having assessed the rival case and contentions, came to the conclusion that balance of convenience is in favour of the respondent railways and declined to grant any relief in the application filed under Section 9. As already noted above, on an earlier round of litigation, when the respondent filed appeal under Section 37 vide. OSA (CAD) NO. 97 of 2025, we have expressed our prima facie view at Para 8 of the Order, dated 17-09-2025 holding that in order to terminate the license/contract, it is incumbent upon the respondent herein to take further action under Article 17.5.4 of the Bid document.

12. But, the respondent without taking any further action under Article



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17.5.4 of the License Agreement, as soon as the application under Section 9 was dismissed on 14-10-2025, terminated the License Agreement with the appellant and proceeded to entrust the job to IRCTC as already noted above. Thus, this is also one aspect that is required to be looked into. Thus, it is evident that in order to decide the appeal on hand and correctness or otherwise of the order passed by the learned single, a detailed probe is required to be made both on factual as well as legal aspects.

13. Confronted with the above situation, and considering the fact that the License Agreement also was already terminated on 14-10-2025 and some alternative arrangement on temporary basis is already made and the said termination is not subject matter of petition filed under Section 9 of the Act, 1996, especially taking into consideration concession/ consent expressed by the learned Senior Counsel appearing on either side for constitution of the Arbitral Tribunal by us, we deem it appropriate that instead of this court dwelling deep into the matter at this stage it would be in the best interest of both the parties to constitute an Arbitral Tribunal and relegate the parties before the Arbitral Tribunal by filing an application under Section 17 of the Act, 1996. At the same time, if the respondent is allowed to proceed to entrust



the contract in question to any other agency on permanent basis, the same would jeopardize the interests of the appellant herein and therefore, the protection to that extent is required to be granted.

14. Accordingly, we dispose of this OSA as under:

- (i) With the consent of the parties we hereby appoint Thiru F.M.Ibrahim Kalifulla, Former Judge, Supreme Court of India, as Sole Arbitrator for resolving the dispute between the parties in connection Notice No.HQ0COMM/32/2025(E.544143), dated 30-05-2025, the termination order dated 14.10.2025 or any other dispute arising out of or in connection with letter of acceptance bearing Letter No.SR HQ-COMMERCIAL/SRYSA022024/10127360100928, dated 15.04.2024,
- (ii) The appellant is granted liberty to file an application under Section 17 of the Act, 1996, if so advised and in case if any such application is filed, the learned Sole Arbitrator shall endeavor to dispose of the same as expeditiously as possible duly affording opportunity to the respondent without being influenced by any of the observations made in the Order, dated 14-10-2025 passed by



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the learned Single Judge or in this Order.

- (iii) Pending further orders to be passed by the Learned Sole Arbitrator under Section 17 of the Act, 1996, respondent shall not take any steps for entrustment of the job of providing YSA services covered by Letter of Award, dated 15-04-2024 to any other agency on permanent basis.

15. Accordingly, the Original Side Appeal is disposed of. All the miscellaneous applications including C.M.P.No.26139 of 2025 to implead the IRCTC are closed. No costs.

(Dr.G.J.,J.) (M.S.K.,J.)
.11.2025

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Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation : Yes / No

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Pre-Delivery Order made in
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