



**In the Court of Gurnam Singh.II,
Addl. District Judge-I, Ferozepur (UID: PB0094)**

**Arbitration Case No.10/05.08.2019.
CIS No. Arb/18/2019.
CNR No.PBFZ010003631019
Date of Decision: 23.09.2019.**

M/s Amit Rail Cargo having its registered office at Ground Floor,
7681, Plot No.57, Street No.2, Ram Nagar, Pahad Ganj, Central
Delhi, Delhi.110055, through its proprietor Sh Amit Channa.

.....Petitioner.

Versus

1. Union of India, through Divisional Railway Manager, Northern Railway, Divisional Railway Manager Office, Ferozepur, Punjab.
2. The Senior Divisional Commercial Manager, Northern Railway Divisional Manager Office, Ferozepur, Punjab.

.....Respondents.

Application with a prayer to grant interim measures under Section 9(ii)(e) of the Arbitration and Conciliation Act, 1996 (as amended upto date) against the cancellation of registration dated 16.07.2019, issued by Divisional Office, Ferozepur, Northern Railway vide letter No.C/SLRD/02/11078/18.

Present: Sh.Pankaj Sharma, Advocate, counsel for the petitioner.
Sh. Amit Chopra, Advocate, counsel for the respondents.

ORDER

The petitioner has preferred the instant application under Section 9(ii)(e) of the Arbitration and Conciliation Act (hereinafter referred to as the Act) against the cancellation of registration dated 16.07.2019, issued by Divisional Office, Ferozepur, Northern Railway vide letter No.C/SLRD/02/11078/18.

2. It has been pleaded in the application that the petitioner is a proprietorship firm and is carrying on its business at the address mentioned above. Sh. Amit Channa is its sole proprietor. The petitioner entered into a lease agreement with respondent No.2, which was executed at District Ferozepur. Respondent No.2 invited tender for leasing of R.1 Compartment having capacity of 5 tonnes SLRD, in Train No.11078 Ex. JAT to PUNE (Jammu to Pune) for a period of 5 years. The petitioner participated in the same and his tender was accepted. Accordingly, on 08.02.2018, he submitted a letter of acceptance of allotment of the contract and submitted security of deposit of Rs.16,17,480/- in the shape of FDR bearing receipt No. U20052434755 for 67 months. Consequently, on 12.02.2008, the

petitioner and respondent No.2 entered into an agreement of leasing of parcel space in Brake Vans/Parcel Vans by Train No.11078 from JAT to Pune. The petitioner was allowed to use the given space for the period of 5 years commencing from 20.02.2018 till 19.02.2023. The contractual value the same was Rs.7,92,88,288/-.

3. It has been further pleaded that in pursuance of the above, on 13.02.2018, respondent No.2 issued a letter pertaining to award of lease contract of 5 tonne space in the aforesaid Train. Accordingly, from 20.02.2018 till 19.02.2021, the petitioner was supposed to pay lease freight of Rs.40,888/- per 5 tonne per day along with 2% development charges and GST as applicable. Thereafter, from 20.02.2021 till 19.02.2022, the petitioner was supposed to pay lease freight of Rs.44,977/- per 5 tonne per day along with 2% development charges and GST as applicable. Then, from 20.02.2022 till 19.02.2023, the petitioner was supposed to pay lease freight of Rs.49,475/- per 5 tonne per day along with 2% development charges and GST as applicable. The petitioner was provided loading/unloading facilities in 7 intermediate stations falling in between Jammu Tawi to Pune.

4. It has been further submitted that since 20.02.2018, the petitioner was using the space as per the terms and conditions of the agreement executed between the parties and never committed any breach thereof. However, on 24.06.2019, respondent No.2 sent a notice to the petitioner on his mobile phone through WhatsApp message informing that he had not deposited lease freight for 09.06.2019 and loading was done at Ludhiana and New Delhi by giving fake MR. The petitioner made reply to the notice, wherein it was specifically stated that he was not feeling well and was suffering from on 09.06.2019 and in his absence, one of his employees mistakenly prepared wrong manifest in New Delhi. However, no loading/unloading had been done right from Jammu upto New Delhi. As such, no loss was caused to the respondents.

5. It has been further pleaded that no proper opportunity was provided to the petitioner to plead and prove his case and he was condemned unheard, which caused grave injustice to him. At the most, minor penalty could be imposed upon the petitioner. He requested the respondents to invoke the clause 26.2 and 26.3 of the agreement, according to which, Railway could impose the penalty in case of any

irregularity. Besides, as per Clause 26.4 of the agreement, in case of difference of opinion, General Manager, Northern Railway, New Delhi could appoint a Sole Arbitrator to resolve the dispute. The petitioner, in its reply, requested for appointment of Arbitrator to resolve the dispute. However, instead of appointing Arbitrator, respondent No.2 sent cancellation of registration letter dated 16.07.2019, which was received by the petitioner on 20.07.2019, by invoking clause No.26.1 of the agreement along with clauses No.4.15 of the FM Circular No.6 of 2014, according to which if the registration of a lease holder is cancelled as a punitive measure, either for reasons of "repeated overloading" or for "repeated failure" to start loading after award of contract, or for attempt to "deliberately defraud" railways or for "repeated violation" of any of the existing stipulations, where cancellation of registration has been legislated as the penalty, then the entire registration fee would be forfeited. However, in the instant case, the respondents prima facie failed to establish that the registration of lease was cancelled due to alleged repeated incident. Therefore, grounds/reasons mentioned in the cancelled of registration letter dated 16.07.2019 were completely on the basis of imaginary and flimsy

grounds just to cause unlawful loss to the petitioner.

6. It has been further pleaded that respondent No.2 had terminated the leasing contract arbitrarily without going into the facts and circumstances of the present case. The petitioner invested huge amount to operate lease of the Train by raising loans from the banks at higher rates. The entire funds lying with him were invested in the lease and in case the impugned order is not set aside, the petitioner would suffer an irreparable loss. On account of termination of the lease contract, more than 30 employees of the petitioner would be jobless, badly impacting the source of income of their families. Consequently, a prayer was made to restrain respondent No.2 from terminating the lease contract of Train No.16032 & 11078 and to allow the petitioner to continue all existing lease contracts over Ferozepur Division and use the space in Train No.16032 and 11078 till final adjudication of the disputes between the parties by appointment of an Arbitrator. It was further prayed to restrain respondent No.2 from forfeiture of security deposits of Train No.16032 and 11078 and from debarring the petitioner from fresh registration for a period of 5 years.

7. Upon notice of the petition, the respondents appeared and

filed the written reply, wherein they raised preliminary objections that the petition is not maintainable and is liable to be dismissed. The petitioner has not come to the court with clean hands and concealed and suppressed the material facts from this court. The petitioner was allotted to 5 tonne R.1 SLRD space in the Train No.11078 Ex. JAT to PUNE for the period of five years from 20.02.2018 to 19.02.2023 @ Rs.40888/- per 5 tonne per day for the first three years and then escalated lease freight @ 10% per annum of lump sum leased freight of immediate preceding year from 4th year onwards without any leave during the contract period. On 09.06.2019, the petitioner did not deposit the requisite freight to the Railway department as per contract and on 10.06.2019 at New Delhi Railway Station a manifesto bearing fake money receipt (MR) was shown to the parcel clerk by representing that the MR was on the way in other Train. The official concerned was asked to sign the manifesto but he refused to sign the same without production of original MR. On this, the petitioner in an illegal manner uploaded the consignment on the allotted SLR of Train No.11078 (Ex Jammu Tawi to Pune) without paying freight to the Railway department as per contract and caused monetary loss to the

Railway department by committing fraud with Railway department. As per Clause 26.1 of the contract, if any information/declaration made by the leaseholder was found false at any stage before or after award of contract or deliberately defraud with Railways, the registration would be cancelled and registration fee would be forfeited. In addition to forfeiture of registration fee, all existing leasing contracts being operated from the division would also be cancelled.

8. It has been further pleaded that a show cause notice was issued to the petitioner by respondent No.2 on 24.06.2019 by registered post and on his WhatsApp regarding the fraud committed by him and for the violation of the terms and conditions of the agreement. This notice was replied by the petitioner vide his reply dated 27.06.2019. In Para No.(iv) of the reply, the petitioner admitted that wrong information had been given regarding wrong MR in Manifesto dated 09.06.2019 by their staff but there was no fault of the firm. Thereafter, after providing proper opportunity, the contract of the petitioner was terminated.

9. On merits, it has not been disputed that the petitioner was allotted 5 tonne R.1 SLRD space in the Train No.11078 Ex. JAT to

PUNE for the period of five years from 20.02.2018 to 19.02.2023. It has also not been disputed that a show cause notice was issued to the petitioner by respondent No.2 on 24.06.2019 by registered post and on his WhatsApp regarding the fraud committed by him and for the violation of the terms and conditions of the agreement. It is also not disputed that a wrong manifesto was prepared by his staff and a fake MR was mentioned in that manifesto.

10. It has been further pleaded that the petitioner no more remained the contractor of the respondents w.e.f. 15.07.2019 as his contract was terminated as per clause 26.1 of the agreement. No Arbitrator was required to be appointed in the present case as per Clause 26.4 of the agreement as the dispute between the parties was not of the arbitration nature. The lease contract of the petitioner was rightly cancelled after giving proper opportunity of being heard to him.

The other material averments raised in the petition were denied and a prayer for dismissal of the petition was made.

9. In the rejoinder filed by the petitioner, the averments made in the written reply were controverted and those of the petition were reiterated.

10. I have heard the counsels for the parties at length and also gone through their written submissions filed on record.

11. After hearing the counsels and going through the record, it is found that the petitioner has sought the following relief in the present petition:-

1. Allow the petitioner to continue all existing leasing contracts over Ferozepur Division and use the lease space in Train No.16032 and 11078 till the final adjudication of disputes between the parties by the appointed Arbitrator.
2. Restrain respondent No.2 from terminating the lease contract of Train No.16032 and 11078 till the final adjudication of disputes between the parties by the appointed Arbitrator.
3. Restrain respondent No.2 from cancellation of registration and forfeiture of registration fee till the final adjudication of disputes between the parties by the appointed Arbitrator.
4. Restrain respondent No.2 from forfeiture of security deposits of Train No.16032 and 11078 till the final adjudication of disputes between the parties by the appointed Arbitrator.
5. Restrain respondent No.2 from debarring the petitioner from fresh registration for a period of 5 years.
6. Pass any other order or direction, interim or final, that this court may deem fit and proper in the present facts and circumstances during the pendency of present petition.

12. From the facts already stated in the first part of this order,

it is clear that the agreement dated 12.02.2018 between the petitioner and respondent No.2 for leasing of parcel space in Brake vans/parcel vans of Train No.11078 from JAT to PUNE for a period of 5 years has already been cancelled as the petitioner failed to adhere to the terms and conditions of the agreement on the ground that on 09.06.2019, the petitioner did not deposit the requisite freight to Railway department as per the contract and on 10.06.2019 at New Delhi Railway Station showed manifesto bearing fake money receipt (MR). This fact has been admitted by the petitioner in application that it happened due to a mistake on the part of his staff member. The cancellation of registration was duly conveyed to the petitioner by respondent No.2 vide its letter dated 16.07.2019. The security deposited by the petitioner was ordered to be forfeited and he was debarred for fresh registration for five years in all Zonal Railway/divisions. As the agreement between the parties already stands cancelled, so during the subsistence of the cancellation, the present application cannot be allowed to grant the relief in the nature of prohibition or restraint against the respondents. On account of cancellation of the registration/agreement, the petitioner cannot be allowed to continue all existing

lease contracts over Ferozepur Division by using the lease space in train No.16032 and 11078.

13. For the reasons recorded above, there is no merit in the present application and the same is hereby dismissed with no order as to costs. File be consigned to record room, Ferozepur.

Announced in open Court
Dated : 23.09.2019.
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sd/-
(Gurnam Singh.II),
Additional District Judge-I,
Ferozepur.
UID: PB0094)