

WEB COPY



O.S.A.No.49 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02-12-2024

CORAM

HONOURABLE MR.K.R.SHRIRAM, CHIEF JUSTICE
AND
HONOURABLE MR JUSTICE SENTHILKUMAR RAMAMOORTHY

O.S.A.No.49 of 2021
and C.M.P.Nos.1663 of 2021 and 12118 of 2023

SOUTHERN RAILWAY
REPRESENTED BY ITS SENIOR DIVISIONAL
COMMERCIAL MANAGER, CHENNAI DIVISION,
SOUTHERN RAILWAY, 2ND FLOOR, NGO ANNEXE,
PARK TOWN, CHENNAI-600003

APPELLANT

Vs

G.BHARATHI
NO. 27 MANALMEDU STREET,
OPPOSITE TO GOODS SHED,
ERODE-638001

RESPONDENT

For Appellant(s):

MR. V.RADHAKRISHNAN
SENIOR ADVOCATE
for Mr.M.VIJAY ANAND

For Respondent(s):

Mr.V.S.SENTHILKUMAR



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ORDER

WEB COPY(Order of the Court was made by the Honourable The Chief Justice)

On 18th November, 2024, the following order was passed:

“At the outset, Mr.V.Radhakrishnan, senior counsel appearing on behalf of appellant stated that since the five year period got over long ago and the one year period of respondent being debarred from participating in future contracts/licence of Indian Railways also got over long ago, appellant will have no objection to respondent participating in any future bids for running of catering stalls. Counsel for appellant also states, in fact respondent is running another stall in Tambaram railway station.

2. Counsel for respondent states that he is happy with the statement made by the counsel for appellant; at the same time, there is a security deposit of Rs.4,65,000/- that was given when respondent was awarded the licence for management of the catering Stall No.SMU-5 at Chennai railway station for the period from 04.03.2015 to 03.03.2020. Counsel states that the security deposit has to be also returned because a) the Arbitrator's award was in favour of respondent by which appellant was directed to specifically perform the contract; and b) appellant also lost in the petition that was filed by appellant under Section 34 of the Arbitration and Conciliation Act, 1996.

3. Counsel for respondent also submitted that under the agreement, Clause 17.6 provides that the security deposit can be invoked only where the agreement is terminated under Clause 17.4 and that also when the agreement is terminated by the licensee, that is respondent, under Clause 17.4 of the agreement. Counsel states, since it was appellant which had terminated, which termination has been held to be bad, the question of invoking the security deposit does not arise. Counsel states, the security deposit ought to be returned forthwith or in the alternative, the security deposit could be adjusted against the licence fee payable for the Stall GMU-60 operated at the Tambaram railway station.



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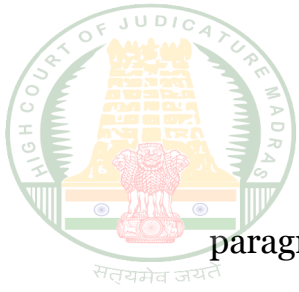
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4. Mr.Radhakrishnan states that the matter may be stood over for two weeks to enable appellant to take instructions on the return/adjustment of security deposit. Counsel states, in the meanwhile, if there are any stalls being advertised, respondent may apply for the same and the termination or debarring for one year shall not be used against respondent. Statement is accepted.”

2. Today, Shri Radhakrishnan, Senior Counsel, submitted that the security deposit of Rs.4,65,000/- was given in the form of a fixed deposit, which has not been renewed. Counsel states that the fixed deposit receipt can be returned to respondent. Statement accepted.

3. At this stage, counsel for respondent states that there is a further sum of approximately Rs.12.00 lakhs to be paid by the railways. Certainly, that was not the subject-matter of arbitration. If only respondent had portrayed about these things on the earlier occasions, we could have directed appellant to take instructions. But, what we find is that appellant has not been able to give the stall on rent to any other party and thereby railway is suffering a loss. We are sure if there was no such stay against appellant, respondent would have been quick in coming back with details.

4. Therefore, the order dated 17th March, 2021, to the extent it says in



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paragraph 4 “*However, this order will not permit the appellant to take any precipitous step against the respondent herein*” is recalled. Appellant may give the stall on rent by following the usual process of public auctioning, etc. We shall permit respondent also to participate in the auction.

5. Appeal to come up for final hearing on 24.01.2025.

(K.R.SHRIRAM, C.J)

(SENTHILKUMAR RAMAMOORTHY J.)

02-12-2024

B.Baskar