

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Rai Chattopadhyay

WPA 12139 of 2023

Moonline Express Cargo Pvt. Ltd.

Vs.

Union of India & Ors.

For the Petitioner

: Mr. Saptarshi Roy
: Ms. Kakali Das Chakraborty

For the Union of India

: Mr. Dwijadas Chakraborty

Heard on

: 07/04/2025

Judgment on

: 13/05/2025

Rai Chattopadhyay, J. :-

1. The petitioner, which is a private limited company and the party to the lease agreement with the respondent Railway, has faced operational inconvenience and admittedly has stopped operating. The lease agreement is dated April 15, 2023 and commencement of operation by the petitioner was scheduled from the same date.
2. The petitioner has stated to have been compelled due to such operational inconveniences, as stated in this judgment later, to write to the Authority, vide letter dated May 10, 2023, to seek redress in accordance with the mutually agreed terms and conditions. An inter-departmental

communication dated May 11, 2023, has also been referred to, by dint of which, the appropriate officer has been vested to look into the grievances of the writ petitioner in its letter dated May 10, 2023. However, allegedly no steps have ever been taken towards the same. Hence, this writ petition.

- 3.** The petitioner initially has prayed for resolution of his operational inconvenience, that no steps should be taken for termination of his agreement or forfeiture of his security deposit and no demand of freight charges by the respondent should be made till the time the issues are resolved.
- 4.** Later, on the basis of some other facts having crept in, the petitioner, by way of moulding his prayers as above, has sought for refund of the security deposit amount to the tune of Rs. 56,94,274/-, treating the agreement between it and the Railway dated April 15, 2023, as cancelled.
- 5.** It is stated that during pendency of this writ petition and flouting the interim order passed by the Court herein not to take any coercive steps against the petitioner, the Railway has issued auction catalogue afresh, for the selfsame parcel van space on June 11, 2024, has selected new bidder and entered into a fresh agreement with him. That, though at a later point of time the said agreement has been cancelled by the Railway, however, according to the petitioner, entering into a fresh contract with the third person has automatically and by implication has terminated the contract dated April 15, 2023, with the petitioner. In that event, the petitioner has stated that it is entitled to be refunded with the security deposit amount and has prayed for the same.

6. Respondent Railway is not agreeable to what has been put forth by the petitioner, as discussed above. According to the respondent, it is by its own volition, that the petitioner has ceased to operate. That, the same amounts to violation of the terms of agreement and the petitioner is, therefore, liable for the punitive actions as provided therein. Respondent has mentioned instances of the other operators who operate smoothly, indicating thereby that the operational inconveniences as put forth by the petitioner, are virtually baseless. It says that agreement between the petitioner and the Railway is still in existence and can be carried on by the petitioner, which it does not. Respondent's further case is that, the auction catalogue dated June 11, 2024 and subsequent processes are unrelated with the petitioner's case as the auction is with relation to some other parcel van space, as mentioned therein. Without differing with the petitioner as regards the subsequent developments pursuant to the auction catalogue dated June 11, 2024, as narrated above, it is submitted that those shall bear no consequence with the facts and circumstances of the instant case.

7. The petitioner, in his letter dated May 10, 2023, has mentioned about the following operational inconveniences confronted by him:
 - a. ***The train has been running late on both sides daily by 8 to 10 hours.***
 - b. ***Placement and retrieval at Shalimar further gets delayed by over 8 to 10 hours***
 - c. ***There is an overall delay of over 24 hrs, which is putting your Petitioner's sensitive cargo to serious risk of contamination, due to this delay.***
 - d. ***Petitioner has requested vide letter dated 19th April 2023, for platform loading/unloading of perishable cargo for better transit time, which was***

not answered. In the process petitioner has lost a lot of sensitive cargo clients as it is not in a position to provide better transit time.

e. Upon arrival of train the concerned LVP it may be placed 2 hours after at the yard for unloading so that perishable items may not get damaged for unnecessary delay in placing the Rakes.

8. Mr. Roy has represented the petitioner. He says that as an existing operator, whose lease agreement stands valid as on the relevant date, his client is entitled to the remedial measures as per the Railway Policy Guidelines, in case it confronts with any operational inconvenience. He says that the grievance of the petitioner though acknowledged by the respondent vide its letter dated May 11, 2023, but has not been remedied yet, by taking appropriate measures. Mr. Roy says that the petitioner company, which deals with the business of transportation of goods generally perishable in nature, temperature controlled life saving drugs (LSD) medicines and vaccines, could not have afforded late running trains resulting into delay of over 24 hours, as it turns out to be detrimental for the very sensitive cargo of the petitioner. Mr. Roy says that permission by the Authority for platform loading of the goods could have resolved the problem of the petitioner. However, in spite of attempts made by his client to seek such permission, due to non-consideration thereof by the respondent, no effective resolution of grievance of the petitioner could be arrived at, leaving no other option for the petitioner but to stop operating, as operation has thus become an impossible task, allegedly due to the inaction of the respondent Authority.

9. Mr. Roy has submitted that, in case of operational exigency, a contract between the parties is terminable, without any financial repercussions to

the parties. In this regard, he would refer to clause 17.2 of the Freight Marketing Circular No. 11 of 2022. He says on the basis of the said provision, as the grievances of the petitioner could not have been resolved by the Authority, its contract with the respondent should be terminated, without any financial repercussions on either side and the petitioner should be refunded with the security deposit amount paid by it.

10. The other reason as to why the petitioner should be refunded back the security deposit amount has been stated to be that by its own conduct, the respondent has rendered the contract with the petitioner, as terminated. Mr. Roy has referred to the auction catalogue published by the Railway dated June 11, 2024.

11. According to him it is for the self same parcel van space, for operation of which the petitioner has been granted the contract. He says that entering into a contract with a third person, with respect to the selfsame parcel van space, when parties are bound by a valid and subsisting agreement to abide by the terms thereof, has the effect of termination of that agreement, for all practical purposes. Hence, he says it is a termination of agreement entered into between the parties, by necessary implication and at the instance of the respondent. Hence, the petitioner would be entitled for refund of his security deposit amount, he says. Mr. Roy says that the petitioner's action as above, has not only flouted the terms of agreement but has violated the interim order of the Court that during pendency of this writ petition, no coercive action should be taken by the respondent against the petitioner.

12. Mr. Roy contends that in case of the petitioner, the respondent has conducted itself arbitrarily, in so far as it has never considered the grievances of the petitioner as its lessee, though being obliged to do so

under the contract. That, this arbitrariness of the respondent has rendered the contract itself as inoperative and the petitioner, in that case, would not be bound by its clauses anymore. In support of his contentions as above, he has relied on a decision of the Supreme Court in ***Surya Constructions v. State of Uttar Pradesh*** as reported in **(2019) 16 SCC 794**. He says that the relief claimed in the petition by way of the supplementary affidavit of refund of the security deposit is a consequential relief prayed by the petitioner in this case. He says that the action of the respondent being arbitrary, the petitioner would be entitled for the consequential relief of monetary claim. For this, he says that the petitioner is supported by the judgment of the Supreme Court in the case of ***Unitech Limited v. Telangana State Industrial Infrastructure Corporation (TSIIC)*** as reported in **(2021) 16 SCC 35**. Similarly held in the judgement of ***State of Kerala v. V. NaRoyana Pillai (Dead) by LRS.*** as reported in **(2000) 10 SCC 265**, by the Supreme Court, which is also relied on by the petitioner.

13. Mr. Roy says that even availability of an alternative remedy would not preclude the petitioner to pursue the public law remedy, in case of manifest arbitrariness of the respondent's action, is a settled position of law. In support of his contention as above he relied on an unreported decision of the Supreme Court in ***M/S Utkal Highways Engineers and Contractors v. Chief General Manager [Special Leave Petition (C) No. 14350/2022]*** order dated January 8, 2025. In that case the Court has allowed monetary relief to the petitioner and Mr. Roy has also emphasised that aspect. Lastly, he has relied on ***Rajesh D. Darbar v. Narasingrao Krishnaji Kulkarni*** as reported in **(2003) 7 SCC 219** in support of his contention that the petitioner would also be entitled to mould his prayer, which it has done by dint of the supplementary affidavit and in view of the development occurred during pendency of this writ petition.

14. Mr. Chakraborty has represented the respondent Railway. He submits that the ground of operational inconvenience, cited by the petitioner would be baseless, in so far as, the other operators, on the similar footing with that of the petitioner, are operating smoothly, without raising any grievance for any inconvenience. That, had there been any such irregularity as pointed out by the petitioner in his letter dated May 10, 2023, it would have affected the other operators too. As there is none, it would also not be believable that the petitioner with the same set of facilities would suffer any operational inconvenience, as alleged. He says that even as on date, the Railways has not taken any steps for termination of his agreement and the petitioner is free to resume operating, in terms of the agreement entered into by it with the Railways. Mr. Chakraborty has said further that the petitioner should not have any issue with the auction catalogue dated June 11, 2024 as the same is with respect to other parcel van space, unconnected with that of the petitioner. Even also, the contract entered into pursuant to the auction catalogue dated June 11, 2024, has now been terminated by the Railways. Therefore, according to him, this writ petition is based on some unfounded and imaginary grounds and is not maintainable.

15. The petitioner to be valid operator in terms of the lease agreement dated April 15, 2023, is an undisputed fact in this case. That the petitioner has submitted the security deposit, as well as advance freight charges are also not disputed.

16. After initiation of operation in terms of the agreement dated April 15, 2023, it has faced certain operational inconveniences. It is written in a letter dated May 10, 2023, that is within less than one month of his starting operation in terms of agreement, by describing therein, what difficulties it faced and seeking redress thereof. It is also not disputed

that pursuant to the same, the petitioner is never called for any discussion or hearing nor ever any steps have been taken by the respondent authority to address the issues raised by the petitioner in his letter dated May 10, 2023.

17. Facts of the case help us to understand that the petitioner is a business house, which deals with transportation of goods through Railway, for which it works under contract, with various zonal Railways. In this case also, the petitioner has expressed and established its willingness to pursue in terms of the contract, by deposit of security deposit amount and freight charges in advance. In that case one has to search for answer of the question that as to what went wrong for which the petitioner has ceased operation, which is also an admitted fact in this case. According to the respondent, it is only its own volition due to which the petitioner has stopped operating. The petitioner, having undertaken the financial burden would not unjustifiably refrain from what would in turn fetch it yield in terms of profit. Its desperate effort is apparent from its letter dated May 10, 2023, addressed to the respondent that it sought for certain resolution.

18. A contractor would be obliged to perform in terms of agreement if not under influence of force majeure or expresses its desire to terminate the contract by giving 30 days' notice. According to the Freight Marketing Circular No. 11 of 2022, such notice is acceptable only after completion of six months of contract period (Cl. 28.1). In this case there would not be any financial repercussions on either side and security deposit amount would be refunded. The circular has also provided that in case of operational exigency, the contract would be terminable at the instance of the Railways and security deposit amount would be refunded.

19. Therefore, the Railway would be obliged and duty-bound under the contract and as a party thereto, to ascertain if there is any operational exigency, in existence, in case of a contractor. The Railway refraining itself from examining and ascertaining about any operational exigency or alleged inconveniences in case of the present petitioner, would be non-compliance with the duties and responsibilities under the contract and would amount to gross arbitrariness of the said Authority. In this case, there is no explanation as to why the authority has not considered the petitioner's representation dated May 10, 2023. Instead, it has contended that since other operators have not raised any grievance as regards operational exigency, the petitioner would also not be justified in doing so. The Court finds, since as per Rules, the operational exigency would be a valid ground for termination of contract, without any financial repercussions for the parties in contract, it would have been a bounden duty of the respondent to look into the grievances raised by the petitioner. Without actually examining the truthfulness of the grievances of the petitioner, the respondent has prompted to attract two eventualities. Firstly, an adverse inference can be drawn against it, finding the allegations made by the petitioner as true facts, in absence of even any examination as to its falsehood, if any. Secondly, that sitting tight over the matter with the preconceived mind regarding baselessness of the grievances of the petitioner would be the absolute highhanded, unreasonable and arbitrary action on its part, particularly when as per the Rules, operational exigency if found to be in existence, should lead to termination of contract with no financial repercussions. It is the settled law, as has been iterated in ***Surya Contructions*** (supra) that where the State behaves arbitrarily, even in the realm of contract, such action is unsustainable and can be declared so in a writ proceeding. In other words, the same would amount to termination of the contract between the parties by operation of law, with no financial repercussions.

20. The other judgments referred to by Mr. Roy for the writ petitioner applies to this case to justify maintainability and merits in the writ petition.

21. The other aspect of the matter is that a fresh auction catalogue dated June 11, 2024, has been issued by the respondent, during pendency of the present writ petition. According to the petitioner, the same is with relation to the self same parcel van space for which the petitioner holds a contract to operate and the Court directs vide an interim protection order that during pendency of this case, no coercive action with regard to the same should be taken. Therefore, according to the petitioner it is not only an impermissible and illegal action by the respondent during validity period of the agreement with the petitioner, but also it is in violation of the Court's order, as above. Though the respondent's version as regards the same is otherwise, that the said auction catalogue is unconnected with the petitioner's case and relates to the other parcel van space, being identified as "VP-2" whereas the petitioner operates in "VP-1". However, the train itself consists of 22+1 (parcel van) compartments in standard operation and attachment of more is not permissible in general. A Van Parcel unit (VPU) or the Parcel Van (VP) is typically one in a passenger train. Also in this case, there is no material to show that at the relevant time of publication of the alleged auction catalogue, there were more parcel vans attached to the train or even contemplated. The bizarre objection taken out by the respondent in this regard is grossly unsupported by any material and relevant fact or data. It amounts not only to suppression of material facts but also misleading the Court by placing reliance as to unsupported and baseless facts. In such view of the fact, publication of auction catalogue during pendency of this writ petition and during existence of the interim order passed by the Court, particularly during validity period of the contract of the petitioner amounts to termination of that, by the respondent by

conduct. During existence of a contract, the respondent could not enter into another valid contract with respect to the same parcel van, without terminating the previous one, in terms of the procedure as prescribed under the Freight Marketing Circular. This amounts to induction of a new contractor, in place of the petitioner, without terminating his contract, which is impermissible under law and is thus arbitrary and illegal. Introduction of a new contractor in place of the petitioner, really dislodge the petitioner from its original place due to entering into the agreement by the petitioner and the agreement would have no consequence thereafter.

22. It is another instance of high handedness of the respondent which has even not cared about the interim order passed by the Court. The Railway, an instrumentality of State should act in a fair manner. Fairness, reasonableness and judiciousness are the tenets, are the foundational ways of practice for a State instrumentality and any departure therefrom would amount to arbitrariness in its action. Arbitrariness is fatal for the State, even while performing under the realm of a contract. Arbitrariness in State action would destroy the balance in level playing field, therefore rendering the other without any remedy and to surrender at the whims and caprices of the mighty. That would destroy the equilibrium and balance with which the parties to a contract should perform, even if one of those is the State or its instrumentality.

23. On the premise as above, the findings of the Court in this case are, that, the respondent should have considered the grievance of the petitioner in its letter dated May 10, 2023 and its failure to do so is in violation of the Rules, governing the parties and is arbitrary. In that case adverse inference is taken against the respondent by holding that the petitioner's grievances are true and amounts to be operational exigency as enumerated under the Freight Marketing Circular, that such

operational exigency should lead to termination of the petitioner's contract, without any financial repercussion against him, also that by inviting tenders without terminating the petitioner's contract for the self-same parcel van space, the respondent has acted arbitrarily, leaving the contract with the petitioner to be a non-operative one any further.

24. Hence, this writ petition should succeed.

25. On the discussion as above, the Court is of considered opinion that the agreement entered into by the petitioner with the respondent/railway dated March 27, 2023, which was initially scheduled to remain operative till April 14, 2025, that is for 2 years stands automatically cancelled/terminated/revoked due to the unresolved operational exigency for which the operation in terms of the agreement becomes impossible and the agreement is rendered as terminated, without any financial repercussions for the petitioner in terms of the Rules. Similarly so upon issuance of auction catalogue dated June 11, 2024 by the respondent/railway. In such circumstances, as per the terms of agreement and the Railway Policy guidelines, the petitioner would be entitled for refund of the security deposit to the tune of Rs. 56,94,274/-. Hence the instant writ petition should succeed. WPA 12139 of 2023 is allowed with the following directions.

- i) The agreement entered into between the petitioner and the respondent/railway dated March 27, 2023 stands cancelled/terminated/revoked;
- ii) Let the respondent immediately refund the security deposit amount to the tune of Rs. 56,94,274/- to the writ petitioner, maximum within a period of two weeks from the date of communication of copy of this order.

26. Writ petition no. 12139 of 2023 is disposed of along with applications, if any. Interim order, stands vacated on the date of refund of the security deposit amount to the writ petitioner.

27. Urgent certified website copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Rai Chattopadhyay, J.)