

WPA 18767 of 2024

30.7.2024
ct.25, sl. 26.
sk

DG Raj Highway Services-vs-Union of India & Ors.

Mr. Saptarshi Roy
Mr. Siddhartha Roy
Ms. Kakali Das Chakraborty
...for the petitioner.

Mr. Dwijadas Chakraborty
....for the UOI.

The writ petitioner has challenged a notice of tender issued by the respondent/Railways for leasing out the parcel van space with respect to the following specification:

“12863-12864-VP-3 HWH SMVB-24-1 (Parcel-Parcel Van)”

The writ petitioner being aggrieved that during subsistence of a lease agreement with him with respect to the same VP and by violating protection order already granted by this Court not to take any coercive action against the petitioner, the respondent/Railways has issued tender notice with respect to the self same parcel space/van, which is, in fact second in line of its kind. Hence this writ petition.

Mr. Roy, learned advocate appearing for the writ petitioner seeks stay of the tender process as well as opening of tender, which is scheduled to be held tomorrow (31.7.2024) at 11.30 hours.

Mr. Roy takes this Court to the factual background of case and submits that the difficulty in functioning by

the writ petitioner prompted him to knock the doors of this Court previously in a writ petition. In the same, the Court directed the respondent/Railways for reconciling the dispute and differences with the petitioner and let the petitioner know about the specific date from which he could resume functioning, in terms of the agreement earlier entered into by him with the respondent/Railways.

Subsequent order of the respondent regarding inability as to any reconciliation has prompted the petitioner to come before the Court with another writ petition i.e. WPA No. 22129 of 2022. In the same the Court has been pleased to direct that the respondents shall not take any coercive action against the petitioner. The said interim protection order though was limited but has been extended thereafter from time to time and is presently in operation till September 30, 2024.

Allegedly, in the meantime, the respondent/Railways have issued two consecutive tender notices, intending to lease out the same parcel space as has been enjoyed by the writ petitioner, by virtue of the lease agreement which is still in force and has not been terminated yet.

Under these circumstances, issuance of fresh tender notice for the self-same lease operation shall be untenable in eye of law, Mr.Roy says.

Mr. Chakraborty, learned advocate appearing for the respondent/Railways has submitted that according to the Railways Rules, the parcel space in a parcel van is marked with numbers serially like 'VP2' and 'VP3' etc. He submits upon instructions that the respondent/Railways have issued tender notices with respect to the parcel van VP 2 and VP 3 respectively, against which the writ petitioner has unnecessarily come to the Court in spite of the fact that the petitioner is not concerned with the same in any manner whatsoever. That, the writ petitioner shall have no prejudice to his legal right emanating from the lease deed entered into by him with the respondent/Railways as the same pertains to separate parcel van/space. It has been submitted that by issuing tender notices as above the respondent has not flouted the order of the Court as alleged.

Perused the documents on record and heard submissions of the parties.

On perusal of the copy of the lease agreement as entered into by the writ petitioner with the respondent/Railways, it transpires that the same is devoid of any specific number of parcel space/parcel van.

The same further specifies about the weighment of the articles to be 24 tonnes in the lease operation, by the writ petitioner. It is pertinent to note that the subsequent tender notices including that challenged in this case,

though bears a distinct number of the parcel van space, however mentions about the similar weighment of the articles that is, 24 tonnes. The same can be noted in the specification mentioned in the impugned tender notice, as quoted above.

There is no sufficient document to show that the parcel spaces are leased out as per their distinct identity, marked by separate numbers. In fact only contrary is evident from the lease agreement, to which the writ petitioner is a party and derives his right to utilize the space leased out to him.

On the premise as above, this Court is of the opinion that allotment of distinct number to the parcel space is an afterthought and eyewash which has no other supporting material in terms of rules, regulations, circulars etc. Nothing is evident in the lease agreement entered into by the writ petitioner with the respondent to show that the same has been allotted any number. The respondent has submitted in this regard that the lease granted to the petitioner being with respect to the 1st parcel space/van, that has not been marked with any individual number. The same, however, does not inspire confidence in the mind of the Court in view of the fact that the weighment of the materials in the lease agreement are only replicated in the subsequent tender notices. Thus, the Court finds force in the submissions of

the petitioner that subsequent tender notices including that challenged in the present writ petition are with respect to the same parcel space/van, which has been duly leased out to the petitioner by a lawfully executed agreement, which is still in force.

The Court is also not obliterated of the fact that the writ petitioner is at present protected with an order of the Court, directing the respondents not to take up any coercive step against the writ petitioner. The website publication of the respondent would rather suggest their knowledge about pending of the writ petition being WPA No. 22129 of 2022.

I find that the steps taken by the respondent/Railways as above, would have the effect of circumventing the Court's interim order/s as above.

The same is condemnable, if not understood as the contempt of Court, due to willful and deliberate violation of the Court's order, as above.

Be that as it may, on the basis of the discussion as above, I find this to be a fit case in which the Court must direct for stay of operation of all further action with respect and pursuant to the tender notice dated July 17, 2024, issued by the said respondent.

The stay order as above shall operate till disposal of the present writ petition.

Let this writ petition along with WPA No. 22129 of 2024 appear in the list on 7.8.2024 under the heading “Adjourned Hearing”.

(Rai Chattopadhyay, J.)