
(2015) 01 RAJ CK 0185
In the Rajasthan High Court
Case No : Civil Writ Petition No. 150/2015

Anil Bareja

APPELLANT

Vs

The Chairman, Railway Board and Others

RESPONDENT

Date of Decision : 09-01-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 1 WLN 425

Hon'ble Judges : Sangeet Lodha, J.

Bench : Single Bench

Advocate : Vishal Sharma, for the Appellant

Final Decision : Dismissed

Judgement

Sangeet Lodha, J.—By way of this writ petition, the petitioner has questioned legality of the action of the Senior Divisional Commercial Manager, North Western Railway, Bikaner giving advance notice vide communication dt. 27.11.14, for termination of contract of 4.0 tone space of FSLR-I in Train No. 13008 ex SGNR-SWH, for Sunday only, for a period of three years w.e.f. 4.8.13 to 3.8.16, awarded vide order dt. 30.5.13. That apart, the fresh tender notice issued by the North Western Railway for leasing out the space inter alia in Train No. 13008, is also impugned in the writ petition. It is averred that 4.0 tone space in FSLR-I compartment in Train No. 13008 ex Sri Ganganagr to Hawarah @ 28,628/- plus 2% development charges Rs. 572.56 per day (for Sunday only) with overall value of contract quantified at Rs. 45,55,287/- was leased out to the petitioner vide order dt. 30.5.13. Pursuant to the contract awarded as aforesaid, an agreement was executed between the parties. As per clause 24.1 of the Agreement, the Railway Administration reserved its right to terminate the operation of the lease contract/agreement for any reason whatsoever after serving one month's notice to the lease holder. It was further stipulated in the said clause of the contract that the Railway reserves the right to terminate the contract without giving any notice at any time for whatsoever reason as a punitive measure or breach of

agreement by the lease holder or in case of operational exigencies or if it is necessary to do so in the public interest.

2. Learned counsel for the petitioner contended that the action of the respondent-Railway in proposing to terminate the contract w.e.f. 31.12.14 without assigning any reason is ex facie illegal and arbitrary. Learned counsel submitted that before terminating the contract, no opportunity of hearing has been extended to the petitioner. Learned counsel submitted that the petitioner has not breached any of the condition of the Agreement and therefore, the penal action sought to be taken by the Railways without giving an opportunity of hearing to the petitioner, is violative of principle of natural justice.

3. However, learned counsel fairly submitted that while issuing the fresh NIT, the Railway has proposed to award the contract for all seven days in the week instead of Sunday only. Regarding the availability of the alternative remedy and scope of the interference by this Court in exercise of its extra ordinary jurisdiction under Article 226 of the Constitution of India, learned counsel submitted that the rule of exclusion of writ jurisdiction by availability of alternative remedy is rule of discretion and not one of compulsion and therefore, the petitioner cannot be non suited on the ground of availability of alternative remedy. In this regard, learned counsel has relied upon a decision of the Hon'ble Supreme Court in the matter of Harbanslal Sahnia and Another Vs. Indian Oil Corpn. Ltd. and Others,

4. I have considered the submissions of the learned counsel and perused the material on record.

5. The controversy raised rolls round clause 24.1 of the Agreement, which may be beneficially quoted:

"24.1 The Railway Administration shall have the right to terminate the operation of lease contract/agreement for any reason whatsoever after serving one month's notice to the Lease Holder. Railway shall also reserves the right to terminate the contract without giving any notice at any time for whatsoever reason as a punitive measure or breach of agreement by the leaseholder or in case of operational exigencies or it is necessary to do so in public interest." 6. Indisputably, in terms of clause 24.1 of the Agreement, the Railway Administration has a right to terminate the contract awarded for any reason after serving one month's notice to the petitioner. From perusal of the order, in no manner it could be inferred that the contract awarded is sought to be terminated by the Railways as a punitive measure or breach of agreement by the petitioner. It is not disputed before this Court that the Railway has taken a policy decision to lease out the space in various trains for a period of seven days in a week instead of Sunday only. In this regard, the NIT issued by the North Western Railways placed on record as Annexure 4 is self explanatory. Thus, on the facts and in the circumstances of the case, the termination of the contract by the Railways appears to be in conformity with the clause 24.1 of the Agreement executed

between the parties. Moreover, in terms of clause 28.0 of the Agreement in the event of any difference of opinion or dispute between the Railway Administration and Lease Holder as to respective rights and obligations of the parties under the Agreement, the dispute is required to be referred to the sole Arbitrator or any officer appointed by General Manager, Northern Railway and therefore, in view of the availability of the remedy for adjudication of the dispute within the terms of the Agreement, there is absolutely no reason why the petitioner should be permitted to invoke the extra ordinary jurisdiction of this Court under Article 226 of the Constitution of India.

7. It is true that rule of exclusion of the writ jurisdiction by availability of alternative remedy is rule of discretion but then, in the considered opinion of this Court, the instant case, does not suggest any special feature so as to warrant interference by this Court in contractual matters, in exercise of its extra ordinary jurisdiction by passing the remedy available to the petitioner in terms of the Agreement and under the general law. For the aforementioned reasons, the writ petition is dismissed in limine.