
(2012) 09 DEL CK 0368

In the Delhi High Court

Case No : LPA No. 887 of 2011 and CM No. 2270 of 2012

Chief Commercial Manager and Others

APPELLANT

Vs

Jugnu Jayant

RESPONDENT

Date of Decision : 17-09-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Railways Act, 1989 — Section 71

Railways Board Act, 1905 — Section 2(a)

Citation : (2012) 09 DEL CK 0368

Hon'ble Judges : A.K. Sikri, Acting C.J.;Rajiv Sahai Endlaw, J

Bench : Division Bench

Advocate : Joydeep Mazumdar with Ms. Sainina Shek and Mr. Rohit Putta, for the Appellant; Ashish Mohan, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—This intra court appeal impugns the order dated 15th July, 2011 of the learned Single Judge allowing WP(C) No. 4779/2011 preferred by the respondent, by directing the appellant Railways to extend the lease of the respondent for a period of two years from the date of expiry of the original lease, in terms of Clause (E) of the Comprehensive Parcel Leasing Policy and Clause 18 of the Contract of RSLR in Train No. 2394 Ex. NDLS to PNBE. Notice of the appeal was issued, though no stay of operation of the order of the learned Single Judge granted. This appeal was on 15th December, 2011 admitted for hearing. The counsels have been heard. Pursuant to invitation of tenders for parcel space in the aforesaid train, the respondent herein submitted his bid and was allotted the contract of leasing of 4 tonnes RSLR space in the said train and a formal contract dated 22nd July, 2008 was signed between the appellant Railways and the respondent. As per the terms of the said contract, the lease was for a period of three years w.e.f. 21st June, 2008 till 20th June, 2011. Clause 18 of the contract was as under:

Extension of lease contract:

Extension of lease is permissible only in case of long term lease of 3 years wherein the same can be extended only once, by 2 more years at a lease rate of 25% more than the lumpsum leased freight rate subject to satisfactory performance by the leaseholder, without any penalty for overloading or violation of any provision of the contract.

2. The respondent vide his letter dated 10th February, 2011 sought extension of the lease for a period of two years in terms of the aforesaid Clause and offered to pay 25% more freight during the extended period of two years. The appellant Railways however vide letter dated 15th June, 2011 rejected the request of the respondent for extension. No reasons whatsoever were given for rejection.

3. Aggrieved therefrom the respondent filed the writ petition from which this appeal arises. It appears that the writ petition was allowed without calling for any counter affidavit of the appellant, finding the subject matter to be covered by the earlier judgment in *Kishan Freight Forwarders Vs. Union of India* 181 (2011) DLT 547 and in other connected batch of writ petitions, holding :

- i. the writ remedy to be available notwithstanding the arbitration clause in the agreement;
- ii. the Comprehensive Parcel Leasing Policy of the appellant Railways to be applicable to Parcel Vans as well as SLRs and the distinction sought to be drawn by the Railways to justify adopting a different policy in respect of SLRs being inconsistent with the said policy;
- iii. that the policy applied throughout India and no exception is made to any particular zone;
- iv. the said policy was issued in exercise of powers conferred on the Railway Board by Section 71 of the Railways Act, 1989 r/w Section 2(a) of the Railway Board Act, 1905 and notification of the Government of India, Ministry of Railways dated 23rd January, 1995 and all of which lend a statutory character to the policy which was binding on the railways;
- v. that the Railways could not therefore adopt a different policy for leasing of spaces in SLRs and Parcel Vans and such a decision would on the face of it be arbitrary;
- vi. that the Northern Zone could not choose to adopt a different policy for leases concerning parcel spaces on trains emanating from that Zone;
- vii. that a standard form lease contract was drawn up and sent to every Zone;
- viii. that the contracts subject matter of those petitions were also in the same standard form and uniformly contained an extension Clause which granted a two-year extension with a 25% increase in the lease rate;
- ix. that the rights and obligations of the parties flowed from the contracts and

could not be arbitrarily repudiated by the Northern Railway without any change in policy of the Railway Board;

x. that even though the Railways had in the year 2010 brought out a new policy but had decided that the contracts signed under the 2006 policy, as the subject contract in those petitions as well as this LPA are, are to be governed by the policy in force at the time of execution thereof;

xi. that the Railways in the matter of contracts was required to satisfy the test of non-arbitrariness under Article 14 of the Constitution of India;

xii. the explanation of the Northern Railways of wanting to maximize revenues by departing from the policy overlooked the binding nature of the policy;

xiii. the Railways was indulging in a "pick and chose" policy while granting extension to some contractors, refusing it to others and granting extension to yet others on different conditions.

4. The respondent, in the writ petition itself admitted that penalty had been imposed upon it once on account of overloading of parcels. The appellant on the basis thereof contended that the case was not covered by the judgment aforesaid, as the performance of the respondent was not satisfactory. Per contra, the contention of the counsel for the respondent was that the rejection letter dated 15th June, 2011 was not based on any such violation by the respondent. The learned Single Judge held that the administrative authorities are expected to give clear reasons for rejection and the appellant Railways in the rejection letter dated 15th June, 2011 having not given any such reasons could not before the Court justify the rejection of the request for extension of contract, thereon. It was further observed that in another case before the learned Single Judge i.e. WP(C) No. 4781/2011 Sakshi Rail Parcel Services Vs. Union of India also disposed of on 15th July, 2011 inspite of the complaints of overloading and imposition of penalty, extension had been granted though only till the finalization of fresh tenders. On the basis thereof it was opined that overloading of parcels by the lease holder was not being viewed seriously by the appellant Railways to deny extension of the lease period. It was thus held that a singular act of overloading by the respondent could not form the basis for denying the extension of the contract. Accordingly the mandamus was issued.

5. The appellant pleads:

i. that the lease agreement admittedly was a terminable contract and thus could not be specifically enforced;

ii. that the policy though framed by the Railway Board was to be implemented and monitored by the Zonal Railways and thus the Northern Zone was entitled to take a policy decision and the Delhi Zone was entitled to take a decision as was taken in September, 2010 not to give extension of the SLR contracts to any of the contractors;

- iii. that the contract aforesaid was essentially a commercial contract;
- iv. that there is a fundamental difference between a SLR and Parcel Van and though the policy dated 28th March, 2006 covered both SLRs as well as Parcel Vans but vide subsequent circular dated 13th October, 2009 concessions in penalty were provided only for Parcel Vans and not for SLRs;
- v. that overloading in SLRs can lead even to derailment and hence loss of life and property; that while consignments are weighed by the Railway Authorities before loading in the Parcel Van, they are loaded in the SLRs on the basis of declaration by the contractors;
- vi. that the revised policy dated 9th February, 2010 is materially different and has done away with the clause for extension of contracts for two years;
- vii. that had opportunity been given to the appellant Railways to file counter affidavit, they would have brought on record the incidents of overloading committed by the respondent;
- viii. that neither under the 2006 Policy nor under the contract, was the extension mandatory and was only permissible;
- ix. that after February, 2011 extension had been refused to all leases without any discrimination;
- x. that the whole purpose of granting a lease for a period of three years is frustrated if extension of two years is held to be mandatory.

6. Before we proceed with the matter, notice may be taken of the intra court appeal preferred by the appellant Railways against the judgment aforesaid (on the basis whereof the impugned judgment is structured) in Kishan Freight Forwarders batch of writ petitions being LPA. No. 713/2011 titled Chief Commercial Manager Vs. Kishan Freight Forwarders and other connected appeals. The same were disposed of by a Division Bench of this Court vide order dated 1st September, 2011. It is recorded in that order that there were no allegations against the contractors in those cases of overloading or of any other kind of irregularities and a consensus was arrived at between the Railways and the contractors to extend the contracts. The Division Bench accordingly left the legal question open for adjudication.

7. We had requisitioned the record of the appellant Railways relating to the respondent. The same shows that upon receipt of request for extension from the respondent, a working report highlighting irregularities including incidences of overloading or under charging, was requisitioned. Though a report dated 18th August, 2011 was submitted in pursuance thereto and which cited four incidences of imposition of penalties on the respondent and which were paid by the respondent but the same, as would be obvious, is of a date after the rejection letter dated 15th June, 2011. The record shows the rejection to be based merely for the monitory reasons i.e. the likelihood of new tender fetching

more rate than would be payable under the extended contract.

8. What we therefore find is that the position is not very different in this case than from as prevailing in Kishan Freight Forwarders group of cases where the appellant Railways before the Division Bench had agreed to grant the extension. Now that, of the extended period also, only about nine months are remaining and even if we remand the case to the concerned authority of appellant Railways for reconsideration of request of the respondent for extension and even if the appellant Railways, on the basis of report dated 18th August, 2011 refuses such extension, this process and the process of inviting fresh tenders itself may consume minimum 2-4 months. We in the exercise of powers under Article 226, do not see any purpose in going into the other questions. As far as the distinction carved out between the SLRs and the Parcel Vans is concerned, the same also fades into insignificance owing to the rejection of the extension being not based on the defaults of the respondent. Though at one time it was observed that the matter needs to be adjudicated owing to such questions arising repeatedly but in view of the change in the policy, we do not feel the need to sit in appeal over the judgment in Kishan Freight Forwarders group of writ petitions, the contracts wherein the Railways had itself agreed to extend.

For the aforesaid reasons we dismiss this appeal. No costs.