
(2011) 12 DEL CK 0189

In the Delhi High Court

Case No : Writ Petition (C) No. 3649 of 2011

Sunil Kumar

APPELLANT

Vs

UOI and Others

RESPONDENT

Date of Decision : 09-12-2011

Acts Referred:

Railways Act, 1989 — Section 71
Railways Board Act, 1905 — Section 2

Citation : (2011) 12 DEL CK 0189

Hon'ble Judges : Sunil Gaur, J

Bench : Single Bench

Advocate : K.C. Mittal, for the Appellant; R.N. Singh and Mr. A.S. Singh, for the Respondent

Final Decision : Dismissed

Judgement

Sunil Gaur, J.—On 10th April, 2011, a contract for Leasing of 04 tons FSLR-Ist compartment in Train No. 14041 Ex.DEE to DDN (from

Delhi Sarai Rohilla to Dehradun) was awarded to the petitioner and vide letter of 21st April, 2011, petitioner had sought addendum for

loading/unloading facility at intermediate station at Delhi Railway Station, which has been declined by the respondent vide impugned communication

of 18th May, 2011 (Annexure P-2) by referring to Clause No. 8.20 of the terms and conditions of the aforesaid contract of leasing. The aforesaid

condition No. 8.20 reads as under:-

8.20 In Metropolitan cities served by more than one railway station, loading/unloading of parcels from the leased Brake van will be permitted only

to train's originating/terminating station. The leaseholder shall not be allowed to load/unload the parcels from the leased Brake van at any other

intermediate station of sub urban section of metropolitan cities.

2. Learned counsel for the petitioner strongly relies upon clause CC of the Comprehensive Leasing Policy of 2006 of the respondent to urge that

as per this policy leaseholder has unfettered right of loading and unloading at the intermediation stations and that denial of this right to the petitioner

is in direct violation of aforesaid clause CC of Comprehensive Leasing Policy of 2006.

3. In the counter affidavit, the stand taken by the respondents is that the aforesaid Comprehensive Leasing Policy of 2006 is only a guideline and

petitioner's contract is governed by its terms and conditions which incorporates applicable clause 8.20 of the Comprehensive Leasing Policy of

2006 and clause 8.19 of the aforesaid policy pertains to non-metropolitan areas whereas clause 8.20 of this policy pertains to metropolitan areas.

The rationale or the justification for refusing to permit the petitioner the facility of loading and unloading at intermediate station at Delhi Railway

Station is spelt out in paragraph No. 12 of the counter affidavit, which reads as under:-

The contents of the corresponding para of the petition are misleading, patently wrong and vehemently denied. It is submitted that the petitioner was

well aware with the clause No. 8.20 of the terms and conditions of tender. He has already given his acceptance for the clause No. 8.20 by signing

the rate schedule and loading/unloading facility cannot be granted at Delhi Jn. in Train No. 14041 being suburban station for that train. Primary

motto of Railway is to handle passenger traffic with safety and security. Initially, train No. 14041 was originating from Delhi Jn. which was shifted

to Delhi Sarai Rohilla to avoid congestion at Delhi Jn. Feasibility for loading/unloading of parcels at Delhi Sarai Rohilla is more convenient than

Delhi Jn. The main purpose of clause No. 8.20 also is to reduce congestion of parcel traffic at metropolitan cities station. It is pertinent to mention

here that in the earlier tenders of the same train i.e.14041 ex. DEE to DDN, which were invited during 2009-2010, loading/unloading facility was

not granted at Delhi Jn. It is also stated that respondent has not granted loading/unloading facility at Delhi Jn. in the new tender of same train, i.e.

15280 ex. ANDI to SHC also, opened on 11.11.2010.

4. To controvert the aforesaid stand of the respondents, learned counsel for the

petitioner draws attention of this Court to a decision of a Single

Bench of this Court in Kishan Freight Forwarders Vs. Union of India (UOI) and Others, to point out that the policy circulars of the Railway Board

are of statutory character. In this regard, attention of this Court is also drawn to the following passage in Kishan Freight Forwarders (supra), which

is as under:-

The policy circular of the Railway Board which are issued by it in exercise of powers conferred on it by Section 71 of the Railways Act, 1989

read with Section 2(a) of the Railway Board Act, 1905 and notification of the Government of India, Ministry of Railways No. G.S.R.53(E) dated

23rd January 1995 lend them a statutory character. They are therefore binding on all zones of the Railways. It is therefore not open to the

Northern Railway to adopt a different policy for leasing of spaces in SLRs and Parcel Vans. Such a decision would on the face of it be arbitrary.

The very object of the CRLP is to ensure that there is a uniform policy in relation to leasing of parcel spaces. This gets defeated if one zone, in this

case is Northern Zone, chooses to adopt a different policy for leases concerning parcel spaces on trains emanating from that zone.

5. It is also asserted by petitioner's counsel that the Single Judge Bench decision in Kishan Freight Forwarders (supra) has been affirmed in

Appeal by the Division Bench on 1.9.2011 and the submission advanced is that a term and condition of a tender/contract cannot run contrary to

the Comprehensive Leasing Policy of 2006 and therefore, the respondents ought to be directed to act within four corners of the Comprehensive

Leasing Policy of 2006.

6. On the aspect of discrimination, it is asserted by the petitioner in paragraph No. 8 of this petition that the respondents had granted permission

for loading and unloading at an intermediate station to another in Train No. 15280 ex ANDI to SCH , whereas similar prayer of the petitioner has

been illegally declined.

7. After having heard learned counsel for the parties at length in this matter and upon perusal of the impugned communication (Annexure P-2), the

Comprehensive Leasing Policy of 2006 (Annexure P-3) and the counter affidavit filed, I find that it is not in dispute that the contract of the lease in

question by virtue of clause 8.20 specifically prohibits loading and unloading at

an intermediate station in the metropolitan cities. The reason for inserting this clause in the lease in question is not far to seek. Paragraph No. 12 of the counter affidavit as reproduced hereinabove clearly spells out the reason, i.e., it is not feasible to permit loading and unloading at the Delhi Jn especially when the originating station at Sarai Rohilla is in Delhi itself and the solitary purpose is to reduce the congestion of traffic in transmission of trains in the metropolitan cities. This is a policy matter and this Court does not find this policy to be in any way arbitrary or illogical. So far as the aspect of discrimination is concerned, it is clearly stated in paragraph No. 8 of the counter affidavit that the relaxation for loading/unloading at the Delhi Jn was granted by the Tender Committee itself and that is a solitary instance and as a policy matter in the new tender for the same train, no such relaxation has been granted.

8. During the course of hearing, respondent's counsel had sought to rely upon clause (f) of the Comprehensive Leasing Policy of 2006 (Annexure P-3) to justify the differential treatment is being meted out in the metropolitan cities in the matter of loading and unloading. However on the perusal of the aforesaid clause (f) of the Comprehensive Leasing Policy of 2006 (Annexure P-3), I find that the same does not relate to the aspect of loading and unloading at the intermediate station and is therefore not applicable.

9. It is true that the clause CC of the Comprehensive Leasing Policy of 2006 (Annexure P-3) does not require any permission or no objection for loading and unloading at the intermediate station and the only requirement as per this clause is that the leaseholder must inform the concerned station superintendent in writing that the said leaseholder intends to load or unload at the particular intermediate station. But, when the Comprehensive Leasing Policy of 2006 (Annexure P-3) is read as a whole, it transpires that it does contain clause NN also, which reads as under:-

(NN) Powers to relax certain conditions of the scheme:

1. Zonal Railways, in exceptional cases, with the personal approval of Chief Commercial Manager, may relax some of the conditions which have only local bearing and have no financial implications.

2. These include issues related to loading/unloading problems, relaxation in the stacking time on account of restriction imposed by local municipal

administration on road movement for particular peak period, issuance of platforms permits for more labourers etc.

10. The aforesaid clause NN of the Comprehensive Leasing Policy of 2006 (Annexure P-3) gives ample powers to the respondents to relax any

of the condition of this policy. Impliedly clause CC of the Comprehensive Leasing Policy of 2006 (Annexure P-3) has been relaxed by

incorporating clause 8.20 in the Tender document which has been accepted by the petitioner and after the tender has been granted to the

petitioner, it would not be fair for the petitioner to blow hot and cold at the same time, as it is for the petitioner to have accepted the tender as a

whole or leave it.

11. Since this Court finds that there is justifiable purpose for introducing clause 8.20 in the tender document, therefore by implication clause CC of

the Comprehensive Leasing Policy of 2006 (Annexure P-3) stood relaxed by resorting to clause NN of the aforesaid Comprehensive Leasing

Policy of 2006 (Annexure P-3).

12. On the discrimination aspect, not much is required to be said as the Tender Committee itself had granted the relaxation while granting the lease

to leaseholder of another train whose precedent is cited by the petitioner in paragraph No. 8 of the writ petition. Pleadings on the aspect of clause

8.20 being there in the terms and conditions of the precedent contract is a gray area as there is a complete silence on this aspect in the pleadings by

both the sides.

13. Upon viewing this matter in totality, I find ample justification for the respondents to have introduced clause 8.20 in the Tender Document which

has been accepted by the petitioner and in any case, the impugned communication gives the liberty to the petitioner to accept the contract with this

condition or to leave it. So it is the choice of the petitioner whether to accept the contract in question with clause 8.20 or not.

14. Finding that the impugned Communication (Annexure P-2) of the respondents does not suffer from any arbitrariness, I dismiss the writ petition

with no orders as to costs.