

Delhi High Court

M/S D. G. Raj Commercial Pvt. Ltd. ... vs The General Manger, Northern ... on 1 August, 2023

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 21st

Pronounced on: 01st

+ W.P.(C) 7222/2019 & CM APPL. 30010/2019

M/S D. G. RAJ COMMERCIAL PVT. LTD. AND ANR.

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Through: Mr. Manish Kohli and Mr. Ma
Kumar Pathak, Advocates.

versus

THE GENERAL MANGER, NORTHERN RAILWAY AND ORS.

..... Res

Through: Ms. Arunima Dwivedi, CGSC with
Ms. Pinky Pawar and Mr. Aakash
Pathak, Advocates for UOI.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J.

1. The Petitioners are parties to a non-exclusive agreement with Respondent No. 2 concerning a parcel cargo express train. Recently, they became aware of the Respondents' intention to operate additional trains on the same route as theirs. Concerned about potential adverse effects on their business, the Petitioners have filed the present petition to challenge the tender notification issued by the Respondents on 03rd June, 2019. They argue that the introduction of additional trains would result in commercial non-viability and poor business prospects for them, and hence the impugned Signature Not Verified By:SAPNA SETHI Signing Date:01.08.2023 10:56:54 tender should be scrapped.

2. Briefly stated, the facts of the present case are as follows: 2.1. The Petitioners have a long-standing association with Respondents [hereinafter collectively, "Northern Railways"] for approximately fifteen years. During this time, the Petitioners have entered into multiple contracts with Indian Northern Railways for leasing of parcel vans for various train operations. One such contract is the Agreement to Lease a parcel cargo express train that operates from Alwar to New Guwahati, via Patel Nagar (Delhi) and Chitpur (Kolkata), and back [hereinafter, "the Agreement"]. This particular agreement was executed on 23rd March 2018, and is valid for a duration of six years. As per the terms contained therein, the Petitioners have agreed to pay a lumpsum freight rate of Rs. 35,32,155/- for each round trip of the leased parcel cargo express train.

2.2 The Petitioners commenced the operation of the said train on a semi- weekly or weekly basis, depending on the demand and operational feasibility. The frequency of operations was adjusted to

accommodate the needs of consignors and consignees and to optimize the utilization of the train service.

2.3 As per Clause 14.3 of the Agreement, the Petitioners had a contractual obligation to maintain a 'manifest', which is a document containing essential information related to the consignments loaded in the parcel vans. This information includes details about the consignors, consignees as well as the loading and destination stations for each shipment transported by the parcel cargo express train. Upon reviewing the manifests for the last six months, it has come to light that the cargo train has been operated by the Petitioners with significantly low occupancy. Many days witnessed the train running Signature Not Verified By:SAPNA SETHI Signing Date:01.08.2023 10:56:54 nearly empty, indicating a lack of sufficient demand for parcel leasing services on the specified route.

2.4 Despite lower than anticipated demand and low occupancy levels, the Petitioners continued to pay the full lease rental amount for each round trip, as per the terms agreed upon in the Agreement. Petitioners have adhered to the contractual commitments despite the financial burden in sustaining the operations and experiencing minimal returns due to the lack of demand for their parcel leasing services.

2.5. On 03rd June, 2019, Northern Railways issued a tender notice proposing leasing of similar parcel cargo express trains scheduled to run from (a) Shakurbasti to New Guwahati Goods Shed via Chitpur and (b) Patel Nagar to Royapuram [hereinafter, "the Tender"]. Concerned with the potential adverse impact(s) on their business, Petitioner No. 1 submitted a representation dated 01st July, 2019 to Northern Railways, requesting them to withdraw the Tender. Their request did not yield the desired outcome. Aggrieved, Petitioners have filed the present petition for setting aside of the Tender.

3. Mr. Manish Kohli, counsel for Petitioners, submitted that the two proposed routes outlined in the Tender are nearly identical to the route of Petitioners' parcel van. Such concurrent operation of the trains would adversely impact the Petitioners' business activities. Under the Agreement, the frequency of trains is heavily dependent on the demand. As the Tender introduces operation of more trains on overlapping routes, the demand for Petitioners' services would fall significantly, thereby causing them losses and tarnishing their reputation. Mr. Kohli also argued that issuance of the Tender by Northern Railways amounts to violation of their fundamental Signature Not Verified By:SAPNA SETHI Signing Date:01.08.2023 10:56:54 right to carry on any business, guaranteed under Article 19(1)(g) of the Constitution of India, 1950.

4. Per Contra, Ms. Arunima Dwivedi, counsel for Respondents, contended that it is general practice for the Northern Railways to float tenders for parcel cargo express trains on different routes, based on the trade needs. One such tender for the Shakurbasti-New Guwahati-Shakurbasti route was opened on 27th June, 2018, wherein Petitioner No. 1 participated, but did not succeed. However, H1 bidder in that tender failed to comply with the preconditions, leading to termination of the tender process. Thereafter, Northern Railways issued the impugned Tender, in which Petitioner No. 1 willingly participated and emerged as the highest bidder. Ms. Dwivedi argued that since the Petitioners failed to respond to the acceptance letter for their bid, they do not possess any legal right

to challenge the Tender now.

5. After a thorough consideration of the contentions raised by both parties and a review of the material placed on record, the Court finds no legal grounds to grant the relief sought by Petitioners. The following factors support our decision:

5.1. Absence of legal standing to challenge the Tender: Northern Railways' argument that Petitioners lack the locus standi to challenge the Tender is well-founded. The Petitioners willingly participated in the tender process, subjecting themselves to the rules and conditions governing the tender process. As a result, they emerged as the successful bidder, yet failed to complete the necessary formalities mentioned in the acceptance letter. Petitioners' active engagement in the process and the subsequent success in securing the bid prevents them from now seeking quashing of the very same Tender. Engaging in opportunistic litigation undermines the fairness and Signature Not Verified By:SAPNA SETHI Signing Date:01.08.2023 10:56:54 credibility of the tendering process, creating an environment of unpredictability. Such practices must be strongly discouraged to ensure integrity of the tendering system of procurement. 5.2. Lack of exclusivity under the Agreement: The existing Agreement dated 23rd March 2018, that governs leasing of the parcel cargo express train between Shakurbasti and New Guwahati to Petitioners, does not include any provision guaranteeing exclusivity of the train route to the Petitioners. This fact has been explicitly acknowledged by the Petitioners. Consequently, as the Petitioners do not possess exclusive rights for the train route in question, there appears to be no legal ground warranting grant of desired relief. Furthermore, even if the Agreement did envisage exclusivity of operation, any dispute or disagreement concerning the scope of the Agreement terms would have to be resolved and addressed through arbitration, as per clause 26 of the Agreement, rather than through a writ petition. 5.3. Absence of demonstrable adverse impact: While the Petitioner has expressed concerns about the proposed trains affecting their business, there is insufficient evidence to substantiate this assertion. The mere proposal of a new train on a similar route does not guarantee that it will lead to a significant diversion of customers or affect the Petitioners' business substantially. Petitioners' grievance qua the potential impact is speculative and lacks any concrete data or factual basis. The Court cannot base its decision on mere apprehensions, without proof of actual harm. If the terms of the Agreement are perceived to be commercially inviable due to factors such as low demand and infrequent service, the Petitioners are free to seek alternative remedies available under law to address these issues effectively. 5.4 No violation of constitutional or legal right: This Court does not Signature Not Verified By:SAPNA SETHI Signing Date:01.08.2023 10:56:54 agree with the Petitioners' contention that their right to do business under Article 19(1)(g) of the Constitution of India is being violated by the Tender. The right to conduct business is subject to reasonable restrictions in the interest of public welfare and economic balance. The Northern Railways' decision to introduce new trains is a legitimate and essential step, aimed at enhancing railway services and meeting the evolving needs of the public. Such measures are essential for efficient functioning of the railway system and cannot be considered as arbitrary or unconstitutional restrictions on Petitioners' right to conduct business of their choice. Improvisation of railway operations should not be hindered by speculative apprehensions of adverse impacts on Petitioners' business. Public interest considerations are crucial in such matters, and support the dismissal of the petition. 5.5. Duration of the Lease Agreement: The Lease Agreement executed between the parties was for a fixed term of six years. By initiating the

present petition, the Petitioners essentially seek to prevent Northern Railways from issuing any tenders in respect of the relevant routes for the entire duration of the Agreement. By raising such a plea, and securing an interim stay, the Petitioners have effectively gained an unfair advantage by depriving the Respondents of potential financial benefits that could have been derived from the impugned Tender. The Court cannot endorse such an action which impedes the Respondent from fulfilling their legitimate functions.

6. On careful consideration of the afore-mentioned factors, we conclude that the Petitioners' contentions lack merit and do not reveal any legal or constitutional grounds to support the petition. The petition is dismissed with costs of Rs. 50,000/-, which the Petitioners shall deposit with the Delhi Signature Not Verified By:SAPNA SETHI Signing Date:01.08.2023 10:56:54 Police Welfare Fund within three weeks from today. Interim order dated 04th September, 2019 is vacated forthwith.

SANJEEV NARULA, J SATISH CHANDRA SHARMA, CJ AUGUST 01, 2023 as Signature Not Verified By:SAPNA SETHI Signing Date:01.08.2023 10:56:54