28 to 42
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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 6880/2013 & CM APPL. 14902/2013

SUNDARAM PARCEL SERVICE ..... Petitioner
Through: Mr. Ashish Mohan with Mr. Mohit Kumar, Advocates

versus

UNION OF INDIA AND ORS ..... Respondents
Through: Mr. Jagjit Singh, Sr. Standing counsel with Ms. Nisha, Advocate.

WITH

\+ W.P.(C) 7077/2013 & CM APPL. 15273/2013

MANGLAM EXPRESS CARGO PVT. LTD ..... Petitioner
Through: Mr. Ashish Mohan with Mr. Mohit Kumar, Advocates
versus

UNION OF INDIA AND ANR ..... Respondents
Through: Mr. Jagjit Singh, Sr. Standing counsel with Ms. Nisha, Advocate.

AND

\+ W.P.(C) 2629/2014 & CM APPL.5463/2014

GUNEET SINGH ..... Petitioner
Through: Mr. Ashish Mohan with Mr. Mohit Kumar, Advocates
versus

UNION OF INDIA AND ANR ..... Respondents
Through: Mr. Jagjit Singh, Sr. Standing counsel with Ms. Nisha, Advocate.

AND

\+ W.P.(C) 7090/2013 & CM APPL.15296/2013

MANGLAM EXPRESS CARGO PVT. LTD ..... Petitioner
Through: Mr. Ashish Mohan with Mr. Mohit Kumar, Advocates

versus

UNION OF INDIA AND ANR ..... Respondents
Through: Mr. Jagjit Singh, Sr. Standing counsel with Ms. Nisha, Advocate.

AND

\+ W.P.(C) 7095/2013 & CM APPL. 15301/2013

M/S SAINATH CARGO ..... Petitioner
Through: Mr. Ashish Mohan with Mr. Mohit Kumar, Advocates

versus

UNION OF INDIA AND ANR ..... Respondents
Through: Mr. Jagjit Singh, Sr. Standing counsel with Ms. Nisha, Advocate.

AND

\+ W.P.(C) 7102/2013 & CM APPL.15313/2013

M/S SAINATH CARGO ..... Petitioner
Through: Mr. Ashish Mohan with Mr. Mohit Kumar, Advocates

versus

UNION OF INDIA AND ANR ..... Respondents
Through: Mr. Jagjit Singh, Sr. Standing counsel with Ms. Nisha, Advocate.

AND

\+ W.P.(C) 7196/2013 & CM APPL. 15474/2013

S.L. ENTERPRISES ..... Petitioner
Through: Mr. Ashish Mohan with Mr. Mohit Kumar, Advocates

versus

UNION OF INDIA AND ANR ..... Respondents
Through: Mr. Jagjit Singh, Sr. Standing counsel with Ms. Nisha, Advocate.

AND

\+ W.P.(C) 8173/2013 & CM APPL. 17242/2013

SHABBU MIYA ..... Petitioner
Through: Mr. Ashish Mohan with Mr. Mohit Kumar, Advocates

versus

UNION OF INDIA AND ANR. ..... Respondents
Through: Mr. Jagjit Singh, Sr. Standing counsel with Ms. Nisha, Advocate.

AND

\+ W.P.(C) 117/2014 & CM APPL.201/2014

CHANDRA KUMAR ..... Petitioner
Through: Mr. Ashish Mohan with Mr. Mohit Kumar, Advocates

versus

UNION OF INDIA AND ANR. ..... Respondents
Through: Mr. Jagjit Singh, Sr. Standing counsel with Ms. Nisha, Advocate.

AND

\+ W.P.(C) 934/2014 & CM APPL.1891/2014

MOHD. UZAIR ..... Petitioner
Through: Mr. Ashish Mohan with Mr. Mohit Kumar, Advocates

versus

UNION OF INDIA AND ANR ..... Respondents
Through: Mr. Jagjit Singh, Sr. Standing counsel with Ms. Nisha, Advocate.

AND

\+ W.P.(C) 1005/2014 & CM APPL.2035/2014

AMIT CARGO TRANSPORT SERVICE ..... Petitioner
Through: Mr. Ashish Mohan with Mr. Mohit Kumar, Advocates

versus

UNION OF INDIA AND ANR ..... Respondents
Through: Mr. Jagjit Singh, Sr. Standing counsel with Ms. Nisha, Advocate.

AND

\+ W.P.(C) 1511/2014 & CM APPL.3153/2014

NARENDER KUMAR ..... Petitioner
Through: Mr. Ashish Mohan with Mr. Mohit Kumar, Advocates

versus

UNION OF INDIA AND ANR ..... Respondents
Through: Mr. Jagjit Singh, Sr. Standing counsel with Ms. Nisha, Advocate.

AND

\+ W.P.(C) 1900/2014 & CM APPL.3962/2014

M/S. SHREE SHYAM RAIL PARCEL ..... Petitioner
Through: Mr. Ashish Mohan with Mr. Mohit Kumar, Advocates

versus

UNION OF INDIA AND ANR. ..... Respondents
Through: Mr. Jagjit Singh, Sr. Standing counsel with Ms. Nisha, Advocate.

AND

\+ W.P.(C) 2382/2014 & CM APPL.5008/2014

KAMAL SINGH RAWAT ..... Petitioner
Through: Mr. Ashish Mohan with Mr. Mohit Kumar, Advocates

versus

UOI AND ANR ..... Respondents
Through: Mr. Jagjit Singh, Sr. Standing counsel with Ms. Nisha, Advocate.

AND

\+ W.P.(C) 4749/2014 & CM APPL. 9461/2014

SULTAN HUSSAIN ..... Petitioner
Through: Mr. Ashish Mohan with Mr. Mohit Kumar, Advocates

versus

UNION OF INDIA AND ANR ..... Respondents
Through: Mr. Jagjit Singh, Sr. Standing counsel with Ms. Nisha, Advocate.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

% Date of Decision: 16th October, 2015

J U D G M E N T

MANMOHAN, J: (Oral)

1. Present batch of writ petitions has been filed primarily seeking a writ, order or direction in the nature of prohibition restraining the respondents from charging enhanced license fee in terms of Freight Marketing Circular No. 21 of 2013 dated 25th September, 2013 on the ground that it does not apply to the lease contract of the petitioners which are statutory in nature.

2. Learned Predecessor of this Court at the ad interim stage passed orders directing that the impugned Circular dated 25th September, 2013 shall not be given effect to with respect to petitioners.

3. It is submitted by learned counsel for petitioners that the revised rates are only applicable to non-leased parcel traffic and it is specifically inapplicable to leaseholders such as the petitioners who operate leased parcel traffic. According to petitioners, the intention of the Railway Board was clear that the revised rates were not to apply to leased parcel traffic.

Petitioners state that on misreading the document, respondent no. 1 is applying the rates to the petitioners which is absolutely untenable and against the clear terms of the Freight Marketing Circular No. 21 of 2013.

4. Mr. Ashish Mohan, learned counsel for petitioners states that even in terms of Paragraph 1 of the Freight Marketing Circular No. 25/2012 dated 29th November, 2012 read with Clause 3.1 of the Standard Form Contract executed between the parties, the rates of the petitioners are not liable to be enhanced. According to him, even if the stand of the Northern Railway were to be accepted, in terms of Clause 3.3 of the Agreement, any budgetary increase or other increase in tariff which is made during the currency of contractual period can only be made applicable to leased contracts. He further contends that the contract period as per Clauses 1.1 and 3.1 of the Agreement executed between the parties is for a period of three years, with effect from 9th October, 2013 for instance in CWP 7245/2013. According to him, the enhancement of rates introduced vide Circular No. 21/2013 dated 25th September, 2013 is not during the currency of the contract but rather is prior to the contract. The same cannot, therefore, be applied to the petitioners even in terms of Circular No. 25/2012 dated 29th November, 2012 read with Clause 3.3 of the Standard Form Contract executed between the parties.

5. On the other hand, Mr. Jagjit Singh, learned senior standing counsel for respondents states that Clause 3.3 is part and parcel of the contract executed between the parties. According to him, the said Clause makes it clear that budgetary and any other increase in the tariff rates shall also be made applicable to the leased parcel traffic during the currency of the contract. He contends that said Clause lays down that even lumpsum leased

freight shall be increased on pro rata basis.

6. Mr. Jagjit Singh reiterates that the contract was concluded on 30th August, 2013 when the tender of the petitioners was accepted. He submits that as the tender was accepted prior to the increase in tariff, namely, 25th September, 2013 w.e.f. 1st October, 2013, the contractual period starts from the said acceptance date and not 9th October, 2013. According to him, as the Railways issued letter dated 25th September, 2013 for budgetary increase / increase of lease money on pro rata basis as per the budget during the currency of the contract, that means, after 30th August, 2013, the effective date of start of work cannot be termed as date of contract as has been urged by the petitioners.

7. Having heard learned counsel for parties, this Court finds that Paragraph 1 of Freight Marketing Circular No.25/2012 dated 29th November, 2012 and the *pari material* Clause 3.3 of the Standard Form contract executed between the parties reads as under:-

> *"Budgetary or any other increase in the tariff rates shall be made applicable in case of leased traffic during currency of contractual period. The lumpsum leased freight shall be increased accordingly on pro-rata basis."*
>
> (emphasis supplied)

8. Even if the stand of the respondents were to be accepted, then also in terms of Clause 3.1 of the Agreement, any budgetary increase or other increase in traffic rates which is made during currency of contractual period can only be made applicable to leased contracts. The contract period as per Clauses 1.1 and 3.1 of the Agreement dated 18th October, 2013 executed between the parties is for a period of three years w.e.f. 09th October, 2013.

Thus the enhancement of rates introduced vide Circular No.21/2013 dated 25th September, 2013 is not during the currency of the contract but rather is prior to the contract.

9. The respondents' argument that the contractual period starts once the tender has been accepted, fails to appreciate the distinction between expressions 'the contractual period' and 'post-contractual period'. The respondents' arguments is also is contrary to facts inasmuch as the validity of the contract has also been defined in the contract. In the agreement for Leasing of Parcel Space in Brake Vans, the relevant portion of the Clauses 3.1 is reproduced hereinbelow:-

> *"3.1 The contract for leasing will commence with effect from 09/10/2013 (date/moth/year) and it will remain valid up to 08/10/2016 (date/month/year) for a period of three years....."*
>
> (emphasis supplied)

10. Consequently the same cannot be applied to the petitioners even in terms of Circular No.25/2012 dated 29th November, 2012 read with Clause 3.3 of the Standard Form contract executed between the parties. On this sole ground, the present writ petitions are allowed. The other contentions and submissions urged by the petitioner are left open. With the aforesaid observations, present writ petitions and applications stand disposed of.

MANMOHAN, J

OCTOBER 16, 2015
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