

S/L 3
27.07.2026
Court. No. 25
Suwayan

WPA 16764 of 2026

Rajendra Kumar Ameria & Anr.
Vs.
Union of India & Ors.

Mr. Jishnu Saha, Sr. Adv.
Mr. Ishan Saha
Ms. Ayushi Mishra
Mr. Satyam Bhimsarin

...for the petitioners.

Mr. Sanajit Kr. Ghosh
Ms. Mary Datta
Mr. Siddharta Gupta

...for the Union of India.

1. The petitioners have filed the present writ application challenging the impugned notice dated July 3, 2026 wherein the railway authorities have claimed an amount of Rs. 1,40,57,835.32 from the petitioners being the maintenance and inspection as well as OHE maintenance charges from 2017-2018 to 2022-2025.
2. Mr. Saha, learned Senior Advocate appearing for the petitioners submits that in the said notice the respondents have threatened the petitioners that if the petitioners will not pay the aforementioned amount, the respondent authorities adjust the amount from the existing pending dues of the petitioners against the Eastern Railway.
3. Learned counsel for the petitioners submits that there are two agreements entered between the parties, one is with regard to the private siding agreement No. 567 dated February 6, 2018 and another is with regard to the manufacture and supply of wagons. He submits that

under the siding agreement there is no provision or clause that the railway authorities can adjust the pending amount of the petitioners from the existing pending dues of the petitioners. Learned counsel for the petitioners further submits that though in the agreement there is a clause of arbitration but the claim raised by the railway authorities are beyond the purview of the agreement. He submits that siding agreement executed on October 25, 2019 and the claim made by the respondents are from 2017-2018 onwards. Thus the arbitration clause will not apply with regard to the said claim.

4. Learned counsel for the petitioners further submits that by a letter dated January 30, 2026 the railway authorities have informed that OHE maintenance cost in respect of the petitioners for siding, Baruipur is not applicable and it is to be exempted but the respondent authorities in the impugned notice have claimed the OHE maintenance charges.
5. Learned counsel for the petitioners has relied upon the judgment in the case of ***Bharti Airtel Limited & Anr. vs. Vijaykumar V. Iyer & Ors.*** reported in **2024 SCC OnLine SC 4** and submits that for set off in law, the obligations existing between the two parties must be debts which are for liquidated sums or money demands which can be ascertained with authority.
6. Learned counsel for the petitioners further relied upon the judgment in the case of ***Gangotri Enterprises Limited vs. Union of India & Ors.*** reported in **(2016) 11 SCC 720** and submits that a person who

commits a breach of the contract incurs any pecuniary liability, nor would it be true to say that the other party to the contract who complains for the breach has any amount due to him from the other party the only right which he is the right to go to the Court of law and recover damages.

7. He further relied upon the judgment in the case of ***M/s H. M. Kamaluddin Ansari & Co. vs. Union of India & Ors.*** reported in ***(1983) 4 SCC 417*** and submits that the question whether any amounts were payable by the petitioner to the respondents under other contracts was not the subject matter of the arbitration proceeding.
8. *Per contra* learned counsel appearing for the railway authorities raised the preliminary objection with regard to the maintainability of the present writ application on the ground that the siding agreement dated September 25, 2019 contains the arbitration clause and the petitioners by a notice dated July 11, 2026 has admitted that dispute between the parties is to decide under the arbitration but instead of initiating the arbitration proceeding, the petitioners have filed the present writ application.
9. Learned counsel for the respondents further submits that time and again the respondents have issued the demand notice with regard to the claim of the respondents but the petitioners have not paid the said amount and as such finding no other alternative, the respondent authorities have issued notice dated July 3, 2026 directing the

petitioners to pay the amount of Rs. 1,40,57,835.32 failing which the pending dues will be adjusted from the pending bill of the petitioners. He has relied upon the clarification dated December 19, 2025 wherein the railway authorities have clarified regarding applicability of the OHE maintenance cost/charges for siding commission and submits that the query raised by the zonal railways have been clarified by the concerned authority wherein it is categorically mentioned that the siding/terminal commission prior to FMC 11 of 2016 are not supposed to pay the OHE maintenance charges as there are continued to be the responsibility of railways siding but subsequently it was further clarified that the revised guidelines for OHE maintenance charges (over siding commissioned under FMC 11 of 2016) are applicable with effect from June 23, 2020 that is from the date of issue of amendment letter. Prior to this date, sidings/terminals were governed as per their original agreement. He further submits that the authorities have further clarified that OHE maintenance is to be taken up by the railway and the costs thereof to be raised by railway as OHE maintenance charges as per guidelines mentioned in the Board's letter dated March 6, 2024.

10. Learned counsel for the respondents further submits that in Clause 8 of the siding agreement provides for maintenance and the other charges and as such the respondent authorities have raised the bill with regard to the maintenance and the inspection as well as the OHE maintenance charges in accordance with the agreement.

11. Learned counsel for the respondent further submits that in terms of the clarification dated December 19, 2025 the respondents can claim the OHE maintenance from June 23, 2020 instead of October 25, 2022. He submits that the claim made by the respondents in the impugned notice dated July 3, 2026 the OHE maintenance charge is to be claimed only from June 23, 2020 not from October 25, 2022.
12. Learned counsel for the respondent has also relied upon the judgment in the case of ***Kamaluddin Ansari & Co. vs. Union of India*** reported in ***1984 AIR 29*** and submits that the Hon'ble Supreme Court has categorically held that injunction order restraining the respondents from withholding the amount due under other pending bills to the contractor virtually amounts to a direction to pay the amount to the contractor. Such an order was clearly beyond the purview of Clause (b) of Section 41 of the Arbitration Act.
13. By referring the said judgment, learned counsel for the respondents submits that if this Court passed any order restraining the respondents for realizing the amount claimed by the respondents, these amounts to allow the petitioners to pay the remaining pending bill of the petitioners.
14. The petitioners have also relied upon the unreported judgment passed by the co-ordinate Bench of this Court in the case of ***Titagarh Wagons Limited & Anr. vs. Union of India, represented by the Principal Secretary, Ministry of Railways & Ors.*** in WPA

18852 of 2021 dated April 5, 2022 wherein the coordinate Bench of this Court held that the matter falls in the realm of private contract between the railways and the petitioners and the demand raised by the railways cannot be gone into or decided by the Court since it involves disputed questions of fact requiring a trial by evidence and the Hon'ble Judge has dismissed the writ application.

15. Heard the learned counsel for the respective parties perused the materials on record.
16. The respondents have claimed an amount of Rs. 1,40,57,835.32 by the impugned notice dated July 3, 2026 being the maintenance and the inspection as well as OHE maintenance charges. The maintenance and the inspection have been claimed from year 2017-2018, 2021-2022, 2022-2023 and OHE maintenance charges have claimed from October 25, 2022 to October 24, 2025 and July 24, 2022 to July 24, 2026.
17. At the time of hearing, learned counsel for the respondents submits that the OHE maintenance charges is to be paid by the petitioners from June 23, 2020 instead of October 25, 2022. The issue raised in the present writ application whether the claim made by the respondents are coming under the purview of the arbitration clause.
18. Clause 34 of the siding agreement dated September 25, 2019 provides for arbitration which reads as follows:

"34. Arbitration

(A) In the event of any dispute or difference of opinion between the parties as to the respective rights and obligations of the parties hereunder or as to the true intent and meaning of these presents or any or conditions thereof arising such dispute or difference of opinion (except the matters regarding which the decision has been specifically provided for in this agreement shall be referred to an arbitral tribunal consisting of at least 3 members to be appointed by the General Manager, Eastern Railway for the time being, and his decision shall be final conclusive and binding on the parties. For the purpose of this Agreement, the General will mean the head of the Eastern Railway Administration.”

19. As per the said Clause any dispute or differences of opinion between the parties as to the respective rights and obligations of the parties hereunder or as to the true intent and meaning of these presents or any or conditions thereof arising such dispute or difference of the opinion the parties have to approach the arbitration.
20. In the present case, the respondents have claimed the maintenance and the inspection charges from 2017 to 2023 and the OHE maintenance charges from October 25, 2022, now the respondents claiming that the claim should be from June 23, 2020 till July 24, 2025. The siding agreement was entered on September 25, 2019 but as per Clause 37 of the agreement, the agreement shall be deemed to have come into force on and from November 7, 2003.

21. Learned counsel for the petitioners submits that the claim raised by the respondent authorities is not coming under the purview of the arbitration and the arbitrator cannot decide the said claim. Thus this Court has to decide whether the claim raised by the respondent authorities is legal or sustainable.
22. This Court finds that though the siding agreement was entered on September 25, 2019 but the same was given effect on and from November 7, 2023 and the maintenance and other charges are also provided in the said agreement. But the respondent authorities by a letter dated January 30, 2026 have informed the petitioners that the OHE maintenance is not applicable and is exempted. This Court also finds that the petitioners by a communication dated July 11, 2026 raised an objection with regard to the demand of maintenance and inspection charges of OHE maintenance charges.
23. In the said letter the respondents have mentioned as follows:

“In view of the aforesaid, we demand justice from your good self and request your office not to take any coercive steps or make any adjustments from our other bills pending resolution of the aforementioned disputes through mutual consultation or through the arbitration mechanism provided under Clause 34 of the Private Siding Agreement. We are pained to state that, in the event such deductions are effected despite our objection, we shall be constrained to treat the same as wrongful and

illegal recovery and shall pursue all available legal remedies and invoke the writ jurisdiction of the Hon'ble High Court at Calcutta to protect our interests and legal rights. We beseech your august office to intervene and request that a meeting be called urgently to resolve the issue as we have a long standing business relation with Indian Railways."

24. Subsequent to the said letter, the petitioners have issued the notice under Section 21 of the Arbitration and Conciliation Act. Once the petitioners have taken the plea with regard to the arbitration whether the claim made by the petitioners are coming under the purview of arbitration is to be decided by the arbitrator not by this Court.
25. The Clause 34 of the agreement also prescribed with regard to the arbitration and the said agreement was also provided with regard to the maintenance charges. Whether OHE maintenance charges has been exempted or not is also the matter of evidence. The petitioners have to prove that the letter issued by the respondents with regard to exempting the OHE maintenance is in accordance with law or not. Accordingly, this Court did not find any merit in the matter.
26. The petitioners instead of approaching the arbitration proceeding has filed the writ application thus this writ application is not maintainable.
27. WPA 16764 of 2026 is dismissed.
28. However, there shall be no order as to costs.

29. Urgent Xerox certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Krishna Rao, J.)