

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+W.P.(C)No. 4638/2008 and CM Nos.8951/2008 & 10136/2008

Date of Decision: September 29, 2008

M/s. Deepak & Co. Petitioner

Through : Mr. Naresh K. Thanai,
Advocate.

Versus

Indian Railways Catering & Tourism Corporation
Ltd. ...Respondents

Through : Mr. Gaurab Banerji,
Sr.Advocate with
Mr. Saurav Agrawal and Mr. Arjun Krishnan, Advocates.

CORAM:

HON'BLE MR. JUSTICE MUKUL MUDGAL

HON'BLE MR. JUSTICE MANMOHAN

1. Whether the Reporters of local papers may be allowed to see
the judgment? YES

2. To be referred to the Reporter or not? YES

3. Whether the judgment should be reported in the Digest? YES

JUDGMENT

29-09-2008

: **MUKUL MUDGAL,J.** (ORAL)

1. Rule DB.

2. With the consent of the learned counsel for the parties, the matter is taken up for hearing.

3. This writ petition challenges the interpretation of clause 34. The relevant clause in question reads as follows: -

“Existing lincensee must have paid all past dues relating to license fee failing which his tender will be rendered technically unsuitable.”

4. The main plea of Mr. Thanai, the learned counsel appearing on behalf of the petitioner is that the reference to past dues resolution can only be in respect of the stalls for which tender has been submitted. In support of the above plea, Mr. Thanai has relied upon the clause 5.3 of the General Conditions for the License, in case of the tender which reads as follows: -

“5.3	<i>Award of Licence to the</i>	<i>In case the existing Licensee is the successful bidder, the award of</i>
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	<i>Existing Licensee</i>	<i>licence shall be subject to the clearance of outstanding and payable against IRCTC/Railways”</i>
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5. He submitted that the respondents are fully protected and in the event he is a successful bidder, then clause 5.3 will ensure that all the arrears in respect of the other stalls held by him can also be recovered prior to the award of the licence. He has also relied upon the pleadings in Civil Writ Petition No. 8838/2005 wherein it was averred as follows by the respondent/IRCTC: -

“It is on the basis of this temporary licence granted to the petitioners for a period of three months that they are claiming to be existing licensee in terms of clause 14.4 (iii) of the Catering Policy 2005. It is submitted that an existing licensee in terms of clause 14.4(iii) is a licensee who has been awarded a permanent contract for a full tenure.”

6. The reliance is placed on the aforesaid pleadings to contend that a similar interpretation should also be adopted in the present case. The above pleadings, according to the respondents, arise in context of 2005 Catering Policy and was in respect of clause 14.4 which reads as follows: -

“14.4 Eligibility Criteria

.....(iii) The applicant should have a minimum annual turnover in catering/hospitality and F&B services related business and turnover criterion for different types of units are as under:

<i>Rs.5 crore per annum</i>	<i>Mobile catering on Rajdhani/Shatabdi Express trains</i>
<i>Rs.3 crore per annum</i>	<i>Mobile catering on other mail/express trains</i>
<i>Rs.1 crore per annum</i>	<i>Restaurants/refreshment rooms at Category “A” stations</i>
<i>Rs. 1 crore per annum</i>	<i>Single outlet fast food centres at Mumbai Central, Mumbai CST, Churchgate, Dadar, Delhi, New Delhi, Hazrat Nizumuddin, Chennai Central, Howrah, Sealdah and Bangalore City.</i>
<i>Rs.50 lacs per annum</i>	<i>Single outlet fast food centres at other Category ‘A’ and Category ‘C’ stations</i>
<i>Rs.25 lacs per annum</i>	<i>Single outlet fast food centres at Category ‘B’ stations.</i>
<i>Rs.10 lacs per annum</i>	<i>Single outlet fast food centres at other stations.</i>
<i>Rs.5 crore per annum</i>	<i>Multi outlet food plazas or food courts at Mumbai Central, Mumbai CST, Churchgate, Dadar, Delhi, New Delhi, Hazrat Nizammuddin, Chennai</i>

	<i>Central, Howrah, Sealdah and Bangalore City.</i>
<i>Rs.3 crore per annum</i>	<i>Multi outlet food plazas or food courts at other Category 'A' and Category 'C' stations</i>
<i>Rs. 1 crore per annum</i>	<i>Multi outlet food plazas or food courts at Category 'B' stations.</i>
<i>Rs.50 lacs per annum</i>	<i>Multi outlet plazas or food courts at other stations.</i>

However, existing licensees will be eligible to participate in a tender against the respective units held by them even if they do not fulfill the prescribed turnover criteria for the said catering units. But the concerned licensee should have rendered satisfactory catering services in Railways for atleast 5 years.”

The aforesaid clause nowhere requires the clearance of all existing dues.

Accordingly, the reliance on the aforesaid pleadings in another writ petition in respect of earlier catering policy of 2005 is not justified.

Counsel for the respondent also relied upon clause 11 of the present tender conditions which read as under:-

*“11. Existing/Present holdings of the bidder over Indian Railways.
**ENCLOSE AN AFFIDAVIT DULY NOTARIZED AS PER
ATTACHED FORMAT** (Annexure 'A-1'), if any.”*

The said Annexure-‘A-1’ read as follows:-

“ **Affidavit**
(to be submitted on non-judicial stamp paper of Rs.10/-)

1. I s/o r/o furnishing this affidavit in my capacity as an individual/partner of firm/Director of Body Corporate and solemnly affirm and state as under: -

2. That I/we hold as on date following catering licenses on Indian Railways:

<i>Unit</i>	<i>Details</i>
Mobile units including Rajdhani/Shatabdi, and <u>other</u> <u>Mail/Express trains</u> Multi cuisine Food plazas/Food courts	
Refreshment Room/Restaurant at class ‘A’ station	
Single Outlet fast food centres	
Stalls/Trolleys at Class “A”, & “B” stations – Name of the unit (s)	

3. “I have paid the license fee up to, there is no outstanding dues pending against me. I understand that if I owe dues against IRCTC in respect of above mentioned stalls/trolley/unit run by me, my tender can be rendered technically unsuitable.”

VERIFICATION :

Verified at on this day of 2008, that the contents of the above affidavit are true and correct to my knowledge, no part is false and nothing material has been concealed therefrom. I further declare that I am duly

authorized to make this affidavit.

Date:

Place:

DEPONENT

On behalf of
_____,

7. The aforesaid Annexure 'A-1' clearly indicates that all existing stalls have to be indicated in the said affidavit and an undertaking given to clear all the arrears due in respect of the said stalls. Accordingly, even if it is assumed that there was any ambiguity in clause 2 in respect of the Minimum Eligibility Criteria, we are satisfied that the affidavit Annexure 'A-1' as per Clause 11 abundantly makes it clear that the arrears have to be cleared in respect of all the existing stalls.

8. Accordingly, we find no merit in the writ petition and the same is dismissed.

(MUKUL MUDGAL)

JUDGE

(MANMOHAN)

JUDGE

September 29, 2008

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