

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

+ W.P.(C) 123-24/2006

Date of Decision: 21st April, 2009

1. M/s Poorvanchal Caterers
a partnership firm, through
Swami Vivekanand Singh its partner,
3481, Dariba Paan, Paharganj,
New Delhi.

2. Swami Vivekanand Singh
S/o Shri Keshav Singh
resident of 3481, Dariba Paan,
Paharganj, New Delhi.

..... Petitioners

Through Mr. Brajesh Kumar, Adv.

versus

1. Indian Railway Catering and Tourism Corporation Ltd.
(A Govt. of India Undertaking) through its Managing
Director, 9th Floor, Bank of Baroda Building, 16 Parliament
Street, New Delhi-01.

2. Managing Director,
Indian Railway Catering and Tourism Corporation Ltd.
through its Managing Director, 9th Floor, Bank of Baroda
Building, 16 Parliament Street,
New Delhi-01.

3. M/s Hakmi Chand D' & Sons
G-4, Nityanand Apartment,
Vakil Wadi, Near Punit Ashram,
Mani Nagar, Ahmedabad.

.... Respondents

Through Mr. Saurav Aggarwal, Adv.
for R-2.

Mr. B. Anand, Adv. for R-3.

CORAM:
HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

1. Whether 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

MADAN B.LOKUR, J (ORAL):

The Petitioner is aggrieved by a direction requiring him to vacate the pantry car through which catering services are provided on train No. 8405-8406 (Puri to Ahmedabad and back).

2. The Petitioner already provides catering services on train No. 8401-8402 from Puri to Okha and back and train No. 8403-8404 from Puri to Ahmedabad and back. The train services of 8401-8402 and 8403-8404 are run with integrated rakes.

3. What are integrated rakes? We have been explained that train No. 8401 leaves Puri on Sunday at 0845 hours and arrives in Okha at 1505 hours on Tuesday. The next day it leaves Okha at 0700 hours (as train No. 8402) and arrives in Puri on Friday at 1330 hours. On Saturday, at 1015 hours, the same train (as train No. 8403) departs from Puri and goes to Ahmedabad arriving there the next day and leaves Ahmedabad (as train No. 8404) soon thereafter and arrives in Puri on Wednesday at 1210 hours.

4. The journey of this train is more or less continuous and the various

coaches and pantry car collectively called rakes are the same. In terms of the Catering Policy announced by the Railway Board in March, 2005 this is classified as an integrated rake. Basically, the 'integration' is to avoid inconvenience to passengers and for optimum utilization of the resources. Consequently, the contract for catering services is given to the same caterer even though the destination of the rakes may be different.

5. The Petitioner admittedly has a contract in this integrated rake (which we have explained above) that is the rake from Puri to Okha and back and Puri to Ahmedabad and back.

6. The Indian Railways Catering and Tourism Corporation Ltd. (IRCTC) brought out a tender sometime in October-November, 2005 in respect of train No. 8405-8406 that is from Puri to Ahmedabad and back. The Petitioner participated in the tender process but did not succeed. In fact, Respondent No. 3 was the highest bidder and was awarded the catering contract for this train.

7. According to the Petitioner, it should have been awarded the catering contract as a matter of right in terms of the paragraph 6.2(vi) of the Catering Policy of the Railway Board announced in March, 2005. The IRCTC did not agree with the view of the Petitioner and that led the Petitioner to approach this Court by filing the present writ petition.

8. By an order dated 28th March, 2006 the writ petition was allowed following the decision rendered in the connected case being ***R.K. Enterprises v. Indian Railway Catering and Tourism Corporation Ltd.***

& Ors. (WP (C) No. 23241/2005) decided on 7th February, 2006.

9. Feeling aggrieved by the decision rendered by the Division Bench both in this case as well as in ***R.K. Enterprises***, the IRCTC preferred two SLPs before the Supreme Court which were registered as Civil Appeal No. 1500-1501/2007. By an order dated 20th March, 2007 the Supreme Court set aside both the judgments delivered by this Court in this case as well as in the case of ***R. K. Enterprises*** and remanded the matters back for fresh consideration.

10. The case of ***R.K. Enterprises*** was heard by a Division Bench of this Court and by an order dated 5th September, 2008 the writ petition was allowed. According to learned counsel for the Petitioner there is no distinction between the facts of ***R.K. Enterprises*** and this case and, therefore, even this writ petition should be allowed in terms of the decision rendered in ***R.K. Enterprises***.

11. This is opposed by learned counsel for IRCTC, who submits that there is a factual difference between the two cases and this Court should not automatically follow the decision rendered in ***R.K. Enterprises***.

12. We have heard learned counsel for the parties and are of the view that learned counsel for IRCTC is correct, inasmuch as there are two significant factual distinctions between the present case and ***R.K. Enterprises***.

13. Paragraph 6.2(vi) of the Catering Policy is of some importance and this reads as follows:

“6.2 Provision of pantry cars:

(i) to (v) xxx xxx xxx

(vi) There may be cases where train services are run with integrated rakes and only one or more trains may be having the pantry cars. In such cases, IRCTC will provide pantry car services on all trains running with integrated rakes to avoid shunting and make optimum use of the rolling stock. IRCTC will however follow the extant instructions for awarding fresh pantry car licence on new train/trains as this will be an additional service.

Trains having the same originating and destination stations (including Rajdhani/Shatabdi express trains), but following different routes with different numbers and Rajdhani/Shatabdi trains running with advanced coaches (IRY / LHB, etc.), which are given different numbers for conventional rakes (due to technical reasons), should be treated as one unit. Composite licence should be awarded for such trains. In case of existing integrated rakes, composite licence may also be awarded for these trains. For holding purpose from the ceiling point of view, one composite tender for such trains will be treated as one unit.”

14. The first part of sub-clause (vi) deals with integrated rakes and it is quite clear that when the rakes are integrated, then to avoid shunting and to make optimum use of the rolling stock as well as for the benefit of the passengers, the contract for catering should be given to the same party.

15. In the example that we have given above (train No. 8401-8402 and 8403-8404) since the rakes are integrated, the contract has been given to the Petitioner even though the origin and the final destination of the trains are different. There is no dispute insofar as the integrated rakes are concerned or the entitlement of the Petitioner to this extent.

16. The nub of the controversy lies in the second part of sub-clause

(vi). Simply put, the second part provides that where the originating and the destination stations are the same and even though the routes of the rakes may be different and the rakes may be given different numbers they should be treated as one unit and a composite licence may be awarded for such trains.

17. In ***R.K. Enterprises*** the train starts from Delhi and goes to Bhubaneswar, on some occasions via Gaya and on other occasions via Bokaro. While interpreting the second part of sub-clause (vi) the Division Bench came to the conclusion that even though the routes are different, since the origin and the destination stations are the same, both the rakes have to be treated as one unit and, therefore, a composite licence is required to be given to R.K. Enterprises.

18. The case of the present Petitioner is that since the originating station is the same (that is Puri) and the destination station is also the same (that is Ahmedabad) the Petitioner should also be granted a composite licence for train No. 8401-8402, 8403-8404 and 8405-8406 treating it as one unit. It is for this reason that learned counsel for the Petitioner relies upon the decision in ***R.K. Enterprises***.

19. We find that sub-clause (vi) deals with three situations: (i) integrated rakes (ii) composite licence for one unit (iii) hybrid or mixture of integrated rakes and one unit. We are concerned with the third situation.

20. For the first category of integrated rakes, the Petitioner already has

a catering licence; the second category has been dealt with in ***R.K. Enterprises*** and concerns a single unit being granted a composite licence. In respect of the third (hybrid or mixed) category that is an integrated rake plus a single unit for which the IRCTC may grant a composite licence. There is no obligation on the IRCTC nor is there any entitlement or vested right in a party to hold a catering licence for integrated rakes as well as a catering licence for a single unit. It is on this interpretation that IRCTC invited tenders as mentioned above in October-November, 2005. It is also on this interpretation that the Petitioner gave its bid but unfortunately it turned out to be the second highest bidder and, therefore, was not awarded the contract.

21. Learned counsel for IRCTC has brought to our notice a decision of the Supreme Court in ***Tafcon Projects (I) (P) Ltd. v. Union of India and Ors.***; (2004) 13 SCC 788. Insofar as this decision is concerned, it has been observed in paragraph 16 of the Report that where a person has given a bid in response to a tender notice and participated in the proceedings, it cannot then challenge the tender notice on the ground that it is vague. In our view, the observation of the Supreme Court squarely applies to the present case. The Petitioner participated in the tender process and after having lost, it cannot now turn around and claim a different interpretation to the second part of paragraph 6.2(vi) of the Catering Policy. The Petitioner participated in the tender process with its eyes wide open and not having succeeded, it is estopped from challenging

the tender process.

22. We may note that in ***R.K. Enterprises*** also the IRCTC had invited tenders, even though it was a single unit. However, R.K. Enterprises did not participate in the tendering process but straightaway approached this Court and challenged the tender process. This challenge was upheld by this Court. This is one distinguishing fact between ***R.K. Enterprises*** and the present case. The second distinguishing fact, which is already noted above, is that ***R.K. Enterprises*** pertained to a single unit being granted a composite licence, while the present case pertains to a hybrid or mixed situation where there is an integrated rake as well as a single unit. As we have already indicated above, so far as the integrated rake is concerned the Petitioner already has a catering licence but wants that to be extended to the single unit. In our opinion, the Petitioner does not have such a vested right or entitlement. The Respondents may or may not grant a composite licence for a hybrid or mixed situation. In the present case, they have opted not to grant a composite licence but to call for a tender treating the single unit as being different from an integrated rake, and the Petitioner participated in the tender process.

23. On these facts, we do not think the writ petition ought to be entertained. Dismissed.

MADAN B. LOKUR, J

APRIL 21, 2009

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SIDDHARTH MRIDUL, J