

GAHC010044252023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/1171/2023

KRISHNA ENTERPRISE AND ANR.
HAVING ITS REGD. OFFICE AT GROUND FLOOR, H.NO. 44 R.C.C.
BUILDING, K.C. PATOWARI LANE, MANIPURI BASTI, PALTAN BAZAR,
GUWAHATI- 781008, ASSAM, THROUGH ITS MANAGER SATYABAN TOMAR
AGED ABOUT 48 YEARS

2: SUNSHINE CATERERS PVT. LTD.
HAVING ITS REGD. OFFICE AT H.NO. 43
ISLAMPUR GANDHI BASTI
SILPUKHURI
GUWAHATI- 781003
ASSAM
THROUGH ITS SUPERVISOR AND AUTHORISED REPRESENTATIVE
SATYABAN TOMAR AGED ABOUT 48 YEAR

VERSUS

THE UNION OF INDIA AND 5 ORS
THROUGH THE SECRETARY, MINISTRY OF RAILWAYS, RAIL BHAWAN,
RAISINA ROAD, NEW DELHI- 110001

2:THE RAILWAY BOARD
THROUGH THE DIRECTOR (TRAFFIC AND CONTROL)
RAIL BHAWAN
RAISINA ROAD
NEW DELHI- 110001

3:THE GROUP GENERAL MANAGER (PROCUREMENT)
IRCTC
BARAKHAMBA ROAD
NEW DELHI- 110001

4:THE ASSISTANT GENERAL MANAGER
IRCTC

BARAKHAMBA ROAD
NEW DELHI- 110001

5:THE INDIAN RAILWAY CATERING AND TOURISM CORPORATION LTD.
(A GOVT. OF INDIA ENTERPRISE)
THROUGH THE DIRECTOR
IRCTC REGIONAL OFFICE 4-D MANDOWI APPARTMENT
OPP. RABINDRA BHAWAN GNB ROAD
AMBARI
GUWAHATI- 781001
ASSAM

6:THE CHIEF COMMERCIAL MANAGER
NORTH-EAST FRONTIER RAILWAY
MALIGAON
GUWAHATI- 78101

Advocate for the Petitioner : MS. B CHOWDHURY

Advocate for the Respondent : DY.S.G.I.

Linked Case : WP(C)/7624/2022

M/S KRISHNA ENTERPRISES AND ANR.
HAVING ITS REGISTERED OFFICE AT GROUND FLOOR

HOUSE NO. 44 R.C.C. BUILDING
K.C. PATOWARI LANE
MANIPURI BASTI
PALTAN BAZAR
GUWAHATI- 781008
ASSAM.

THROUGH ITS MANAGER SATYABAN KUMAR AGED ABOUT 48 YEARS.

2: M/S CLASSIC CATERERS
HOUSE NO. 17
GREEN PARK COLONY
BYLANE 01 NEAR KAMAKHYA RAILWAY STATION
MALIGAON GUWAHATI- 781010
ASSAM BY ITS AUTHORISED REPRESENTATIVE SATYABAN KUMAR
AGED ABOUT 48 YEARS.
VERSUS

THE UNION OF INDIA AND ORS.
THROUGH THE SECRETARY
MINISTRY OF RAILWAYS
RAIL BHAWAN
RAISINA ROAD
NEW DELHI- 110001.

3:THE RAILWAY BOARD
THROUGH THE DIRECTOR (TRAFFIC AND CONTROL)
RAIL BHAWAN
RAISINA ROAD
NEW DELHI- 110001.

4:THE GROUP GENERAL MANAGER (PROCUREMENT)
IRCTC
BARAKHAMBA ROAD
NEW DELHI- 110001.

5:THE INDIAN RAILWAY CATERING AND TOURISM CORPORATION LTD.
(A GOVERNMENT OF INDIA ENTERPRISE)

THROUGH THE DIRECTOR
IRCTC REGIONAL OFFICE
4-D MANDOLI APARTMENT
OPPOSITE RABINDRA BHAWAN
GNB ROAD
AMBARI
GUWAHATI- 781001
ASSAM.

6:THE CHIEF COMMERCIAL MANAGER
NORTH-EAST FRONTIER RAILWAY
MALIGAON
GAUHATI- 781011.

Advocate for : MS. B CHOWDHURY

Advocate for : DY.S.G.I. appearing for THE UNION OF INDIA AND ORS.

Linked Case : WP(C)/1841/2023

M/S DEEPAK AND CO. AND ANR.
A PARTNERSHIP FIRM REGISTERED UNDER THE INDIAN PARTNERSHIP
ACT
1932 HAVING ITS OFFICE AT 7
HARGOBIND ENCLAVE
ANAND VIHAR

DELHI- 110092
THROUGH ITS PARTNER MR. RAKESH KUMAR GUPTA.

2: RAKESH KUMAR GUPTA
S/O LATE SHRI S.L. GUPTA
PARTNER- M/S DEEPAK AND CO.
7
HARGOBIND ENCLAVE
ANAND VIHAR
DELHI- 110092.
VERSUS

THE UNION OF INDIA AND 6 ORS.
THROUGH THE SECRETARY

MINISTRY OF RAILWAYS

RAIL BHAWAN
RAISINA ROAD

NEW DELHI- 110001.

2:THE RAILWAY BOARD
THROUGH THE DIRECTOR (TRAFFIC AND CONTROL)

RAIL BHAWAN
RAISINA ROAD

NEW DELHI- 110001.

3:THE GROUP GENERAL MANAGER (PROCUREMENT)
IRCTC
BARAKHAMBA ROAD

NEW DELHI- 110001.

4:THE GENERAL MANAGER (MOBILE CATERING SERVICE)
IRCTC
BARAKHAMBA ROAD

NEW DELHI- 110001.

5:THE ASSISTANT GENERAL MANAGER
IRCTC
BARAKHAMBA ROAD

NEW DELHI- 110001.

6:THE INDIAN RAILWAY CATERING AND TOURISM CORPORATION LTD.
(A GOVERNMENT OF INDIA ENTERPRISE)

THROUGH THE DIRECTOR
IRCTC REGIONAL OFFICE 4-D MANDOLI APPARTMENT
OPPOSITE RABINDRA BHAWAN
GNB ROAD

AMBARI
GUWAHATI- 781001
ASSAM.
7:THE CHIEF COMMERCIAL MANAGER
NORT-EAST FRONTIER RAILWAY
MALIGAON
GAUHATI- 781011.

Advocate for : MS. B CHOWDHURY
Advocate for : DY.S.G.I. appearing for THE UNION OF INDIA AND 6 ORS.

Linked Case : WP(C)/7597/2022

M/S JAYANTA KUMAR GHOSH OUTDOOR CATERING PVT. LTD. AND ANR.
HAVING ITS REGISTERED OFFICE AT 119/3
M.N.K. ROAD
(GROUND FLOOR)
BARAHNAGAR
KOLKATA-700036
THROUGH ITS DIRECTORS AND SHAREHOLDER JAYANTA KUMAR GHOSH

2: JAYANTA KUMAR GHOSH
S/O LATE BALARAM GHOSH
NEAR OLD LOWER HAFLONG RAILWAY STATION
P.O.-LOWER HAFLONG
P.S.-HAFLONG
DIST- DIMA HASAO
ASSAM
PIN-788819
PRESENTLY AT HOUSE NO. 44
K.C. PATOWARY LANE
PALTAN BAZAR
GUWAHATI-781008
VERSUS

THE UNION OF INDIA AND 4 ORS.
THROUGH THE SECRETARY
MINISTRY OF RAILWAYS
RAIL BHAWAN
RAISINA ROAD
NEW DEHI-110001

2:THE RAILWAY BOARD
THROUGH THE DIRECTOR (TRAFFIC AND CONTROL)
RAIL BHAWAN
RAISINA ROAD

NEW DELHI-110001

3:THE GROUP GENERAL MANAGER (PROCUREMENT)

IRCTC

BARAKHAMBA ROAD

NEW DELHI-110001

4:THE INDIA RAILWAY CATERING AND TOURISM CORPORATION LTD.

(A GOVERNMENT OF INDIA ENTERPRISE)

THROUGH THE DIRECTOR

IRCTC REGIONAL OFFICE 4-D MANDOLI APARTMENT

OPPOSITE RABINDRA BHAWAN

GNB ROAD

AMBARI

GUWAHATI-781001

ASSAM

5:THE CHIEF COMMERCIAL MANAGER

NORTH EAST FRONTIER RAILWAY

MALIGAON

GUWAHATI-781011

Advocate for : MS. B CHOWDHURY

Advocate for : DY.S.G.I. appearing for THE UNION OF INDIA AND 4 ORS.

Linked Case : WP(C)/7138/2022

M/S JAYANTA KUMAR GHOSH OUTDOOR CATERING PRIVATE LTD. AND 3
ORS.

HAVING ITS REGISTERED OFFICE AT 119/3

M.N. K. ROAD

(GROUND FLOOR)

BARAHNAGAR

KOLKATA- 700036

THROUGH ITS DIRECTOR

JAYANTA KUMAR GHOSH.

2: JAYANTA KUMAR GHOSH

S/O-LATE BALARAM GHOSH

NEAR OLD LOWER HAFLONG RAILWAY STATION

POST OFFICE- LOWER HAFLONG

P.S.- HAFLONG

DISTRICT- DIMA HASAO

ASSAM

PIN- 788819.

3: M/S CLASSIC CATERERS
A-33
CHANDER VIHAR

PATPARGANJ
DELHI

REPRESENTED BY SATYABAN KUMAR
AGE 48 YEARS.

4: M/S KRISHNA ENTERPRISE
H-307
INDRALOK COLONY

KRISHNA NAGAR
LUCKNOW

UTTAR PRADESH- 226023

REPRESENTED BY SATYABAN KUMAR
AGE 48 YEARS.
VERSUS

UNION OF INDIA AND 4 ORS.
THROUGH THE SECRETARY

MINISTRY OF RAILWAYS

RAIL BHAWAN
RAISINA ROAD

NEW DELHI- 110001.

2:THE RAILWAY BOARD
THROUGH THE DIRECTOR (TRAFFIC AND CONTROL)

RAIL BHAWAN
RAISINA ROAD

NEW DELHI- 110001.
3:THE GROUP GENERAL MANAGER (PROCUREMENT)
IRCTC
BARAKHAMBA ROAD

NEW DELHI- 110001.

4:THE INDIAN RAILWAY CATERING AND TOURISM CORPORATION LTD.
(A GOVERNMENT OF INDIA ENTERPRISE)

THROUGH THE DIRECTOR

IRCTC REGIONAL OFFICE

4-D MANDОВI APPARTMENT

OPPOSITE RABINDRA BHAWAN

GNB ROAD

AMBARI

GUWAHATI- 781001

ASSAM.

5:THE CHIEF COMMERCIAL MANAGER
NORTH-EAST FRONTIER RAILWAY

MALIGAON

GAUHATI- 781011.

Advocate for : MR. P K GOSWAMI

Advocate for : DY.S.G.I. appearing for UNION OF INDIA AND 4 ORS.

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

J U D G M E N T & O R D E R

07.06.2023

Heard Mr. P.K. Goswami, learned senior counsel, assisted by Ms. B. Chowdhury, learned counsel for the petitioners. Also heard Mr. G.N. Sahewalla, learned senior counsel, assisted by N. Anix Singh, learned counsel for the I.R.C.T.C., representing respondent nos. 3 and 4 and Ms. L. Devi, appearing on behalf of Sri R.R.D Choudhury, ASGI.

2. As common issue arises in all these five writ petitions, and same set of counsel are representing the parties, these matters are taken up together. In this order, the documents are referred to from the records of W.P.(C) 7138/2022.

3. In all these writ petitions filed under Article 226 of the Constitution of India, the petitioners, who are catering contractors under Indian Railway Catering and Tourism Corporation Ltd. (IRCTC for short), have challenged the decision dated 23.11.2022 communicated to the petitioners by the Group General Manager (Procurement), IRCTC (respondent no. 3) by which the petitioners were required to deposit 6 months' licence fees in advance to carry out catering service in Rajdhani, Shatabdi, Duronto, Garibrath, Tejas, Vande Bharat, Mail/Express trains and in train side vending (RSDGTV, M/E, TSV for short).

4. At the outset, the learned senior counsel for the petitioners has submitted that the petitioner no. 3 in W.P.(C) 7138/2022, by a letter, had informed his learned instructing counsel that he has settled his dispute with the respondent nos. 3 and 4 and would not be prosecuting his case. We have taken note of the said submissions. Nonetheless, the name of the said petitioner cannot be struck off because no application has been filed for the said purpose.

5. In brief, the case of the petitioners is that during Covid-19 pandemic, the rail services was disrupted for a long time and even after resumption of service, catering service were not commenced and therefore, for not being able to operate from 26.03.2020 to 24.04.2021, the petitioners had suffered losses. Therefore, by a letter dated 02.11.2022, the General Manager/MCS, IRCTC, Corporate Office, Delhi had informed the Group General

Manager of IRCTC, for all five railway catering zones, i.e. North Zone, East Zone, West Zone, South Central Zone and South Zone to the effect that upon examining the representation dated 27.09.2022, submitted by the Indian Railway Mobile Caterers Association, New Delhi it was decided that all SBD and "long term tender licencees (RSDGTV, M/E, TSV)" shall be permitted to deposit the licence fee on quarterly basis for the period of one year only.

6. Thereafter, the IRCTC had issued notice inviting tenders (NIT for short) for various long distance trains for a period of 6 (six) months, further extendable upto 6 (six) months. The said tenders were to be opened on 09.11.2022 and accordingly, the petitioners had participated in the bidding and they were awarded catering contract for several trains. The description of the trains is not relevant for the purpose of this order and therefore, not mentioned in this order.

7. The grievance of the petitioners is that without following the policy as communicated vide herein before referred letter dated 02.11.2022, the full licence fees for initial 6 (six) months was required to be paid in advance within 5 (five) days from the issuance of the "letter of intent (LoI for short) and licence fees for extendable period of 6 (six) months, if applicable, was required to be paid 1 (one) month before the date of expiry of the first term of 6 (six) months.

8. Accordingly, the learned senior counsel for the petitioners has submitted that having taken a policy decision to allow payment of 3 (three) month's licence fees in advance, the benefit accrued to the petitioners could not have been taken away. It was also submitted that the tender condition to deny the benefit of the policy of the respondents to the petitioners is discriminatory

and violative of Article 14 of the Constitution of India as relief cannot be denied only on the basis of tenure of contract. Accordingly, it was submitted that the action of the respondent nos. 3 and 4 requiring the petitioners to make advance payment of the full licence fees for initial 6 (six) months was unfair, discriminatory, arbitrary and unreasonable. It was also submitted that all the trains for which contract was awarded to the petitioners are long distance trains, but with short duration of contract. It has also been submitted that the tenders were e-Tenders and could be participated from anywhere in the Country and therefore, this Court would have jurisdiction to entertain this writ petition notwithstanding that the tender documents had provided that the Courts at Delhi would have jurisdiction and in this regard it was submitted that this Court, while exercising writ jurisdiction, had plenary and inherent power to use its discretion to entertain and adjudicate these writ petitions.

9. In support of his submissions, the learned senior counsel for the petitioners has cited the following cases, viz., *L. Chandra Kumar v. Union of India & Ors.*, (1997) 3 SCC 261 (para-99), and *Maharashtra Chess Association v. Union of India*, (2020) 13 SCC 285 (para 10, 23 and 24).

10. Per contra, the learned senior counsel for the respondents has raised preliminary objections as to maintainability of these writ petitions on ground that no part of cause of action arose within the territorial jurisdiction of this Court. In support of the said submissions, reliance is placed on the following cases, viz., (i) *Aligarh Muslim University & Anr. v. Vinay Engineering Enterprises (P) Ltd. & Anr.*, (1994) 4 SCC 710, (ii) *Swastik Gases Pvt. Ltd. v. Indian Oil Corporation Ltd.*, (2013) 9 SCC 32, (iii) *Alchemist Ltd. & Anr. v. State Bank of Sikkim & Anr.*, (2007) 11 SCC 335, and (iv) *Maharashtra Chess*

Association v. Union of India & Ors., (2020) 13 SCC 285.

11. It was also submitted that the policy vide letter dated 02.11.2022 was only for "long term tender licencees", which would not include petitioners, who are licencees for short term not exceeding six months, extendable to further six months. It was also submitted that "long term tender licencees" would not mean "licencees for long distance trains". By referring to Annexure-N appended to the affidavit-in-reply filed by the petitioners in W.P.(C) 7138/2022, it has been submitted that sub-clause (b) of clause 4.2 at page 233 thereof would demonstrate that the licence fee for the entire duration of licence was payable on 2+2+1 yearly basis in advance. Thus, it was submitted that "long term tender licencees" would be those licences having tenure of 5 years and it would not mean contracts for 6 months.

12. It was further submitted that having participated in the bidding process with knowledge of the terms, the conditions of tender cannot be challenged during subsistence of contract. In this regard, the case of *Meerut Development Authority v. Association of Management Studies & Anr., (2009) 6 SCC 171*, and *Bharat Coking Coal Ltd. v. AMR Dev Prabha & Ors., (2020) 16 SCC 759*, was referred to. A written note of submission has also been filed.

13. Considered the writ petition and affidavits exchanged by the parties as well as the submissions of the learned senior counsel on both sides.

14. It is noticed that Sri Jayanta Kumar Ghosh, the petitioner no. 2 in W.P.(C) 7138/2022 and W.P.(C) 7597/2022 is not the catering contractor. The petitioner no. 1 in W.P.(C) 7138/2022 and W.P.(C) 7597/2022 are a Company, but it does not have its registered office in Assam. Notwithstanding that the

petitioner no. 3, M/s. Classic Caterers is not prosecuting the said W.P.(C) 7138/2022, the petitioner nos. 3 and 4 are firms, which also do not have its office within the State of Assam. In W.P.(C) 7624/2022, the said M/s. Classic Caterers is petitioner no. 2, and in the cause title, the said firm has given the address at Guwahati, but in the letter of award of contract dated 04.11.2022 (pg. 159), the address of the said firm is at Delhi. The GST registration also discloses Delhi address. It is not in dispute that the registered office of IRCTC is at New Delhi. The tender was issued by respondent no. 3, having office at Delhi. The security deposit and/or other deposit by the bidders was to be paid in Delhi and in several places in the bidding/tender documents, it is clearly mentioned that the Court at Delhi would have jurisdiction. Therefore, in the considered opinion of the Court, the cause of action for the tender and/or bidding arose within the jurisdiction of the Court at Delhi and therefore, the Court at Delhi alone would have jurisdiction. The cases cited by the learned senior counsel for the petitioners would not come to the rescue of the petitioners on the distinguishable facts of this case and therefore, the Court is not inclined to burden this judgment with discussion on the said cases.

15. Be that as it may, as the preliminary issue was not taken up for hearing at the preliminary stage, the Court does not propose to dismiss this writ petition on this ground alone. Therefore, the merit of the case has also been examined.

16. The petitioner has annexed a copy of catering policy 2010 vide Commercial Circular No. 35/2010 dated 21.07.2010. As per Clause 16.1.2, 16.2.2, and 16.2.3 thereof the tenure of major units and general minor units is envisaged for a period of 5 (five) years. Similarly, under clause 16.2.1 and

16.2.2, the tenure of the licence is envisaged at 5 (five) years. Therefore, as the petitioners have not been able to demonstrate from the said policy or any other policy that the Railways and/or the IRCTC had allowed all licencees having contract tenure of 6 (six) months, extendable by another 6 months, the Court is constrained to hold that the benefit of the letter dated 02.11.2022 cannot be applied in the case of the petitioners. Thus, in other words, the benefit of letter dated 02.11.2022, permitting the "long term tender licencees" to deposit the licence fees on quarterly basis for the period of one year only cannot be extended to the petitioners.

17. The learned senior counsel for the petitioner had urged that discrimination on the basis of tenure of contract is unsustainable. After a careful consideration of the submissions made from both sides, the Court is of the considered opinion that the IRCTC had permitted the "long term tender licencees" to deposit the licence fees on quarterly basis for the period of one year only. However, when the present tender was issued, the respondent authorities took a conscious decision to incorporate that the tenure of contract would be 6 (six) months, extendable to a further period of 6 (six) months, and provided that the entire licence fees for 6 (six) months would be payable in advance. The said condition cannot be held to be bad because the petitioners had participated in the tendering/ bidding process with full knowledge of the conditions. The petitioners have not annexed any document to show that they had registered their protest with the tendering authority on the clause relating to payment of licence fees for 6 (six) months in advance. Therefore, having participated in the tendering process with eyes open and with knowledge of the payment clause, the petitioners cannot be permitted to turn around to challenge the tender clause. In this regard, we find support from the case of *Meerut*

Development Authority (supra) and *Bharat Coking Coal (supra)*, cited by the learned senior counsel for the respondents. The same would be impermissible because many persons, firms or companies might not have participated in the tender because of such clause. Therefore, the said contention of the petitioners has to be rejected. The Court is of the considered opinion that the licence fee payment clause in the present tender/ contract is not violative of Article 14 of the Constitution of India or discriminatory against the petitioners as the petitioners have not been able to satisfy the requirement of letter dated 02.11.2022 that they are "long term tender licencees".

18. Moreover, the Court is of the considered opinion that tender and its terms and conditions are within the realm of commercial contract, where the tendering authority must have freedom to impose terms and conditions. The petitioners have not been able to demonstrate that within their contract category, i.e. tender with 6 (six) months tenure, extendable for a further period of 6 (six) months, after LoI was issued to the petitioners, the respondent authorities had imposed different conditions for payment of licence fees for other similar contractors. Therefore, it cannot be accepted that there was any discrimination with the petitioners. There is no bar for the persons in different category to be treated differently, which solely depends on the wisdom of the tendering authority.

19. Therefore, this writ petition fails on all counts and therefore, these batch of 5 (five) writ petitions stands dismissed. However, the parties are left to bear their own cost.

20. Needless to mention that the interim orders stand vacated.

JUDGE

Comparing Assistant