

GAHC010070222023



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

Case No. : WP(C)/1828/2023

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

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

2:THE GENERAL MANAGER
NORTHEAST FRONTIER RAILWAY
MALIGAON
GAUHATI- 781011.

3:THE CHIEF COMMERCIAL MANAGER (PM AND CATERING)
NORTHEAST FRONTIER RAILWAY
MALIGAON
GAUHATI- 781011.

4:THE DIVISIONAL RAILWAY MANAGER (CATERING)
NORTHEAST FRONTIER RAILWAY
LUMDING
ASSAM- 782447.

5:SENIOR DIVISIONAL COMMERCIAL MANAGER
NORTHEAST FRONTIER RAILWAY
LUMDING
ASSAM- 782447.

6:ASSISTANT COMMERCIAL MANAGER
NORTHEAST FRONTIER RAILWAY
LUMDING
ASSAM- 782447

Advocate for the Petitioner : MS. B CHOWDHURY

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

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

ORDER

31.03.2023

1. Heard Mr. M. Nath, learned Senior Counsel assisted by Ms. B Chowdhury, learned counsel for the petitioners. Also heard Mr. R.K.D. Choudhury, learned Dy. S.G.I. and Mr. B. Sharma, learned Standing Counsel, Railways.
2. The grievance of the petitioners is that they have been requested to vacate their catering stalls/vends, vide communication dated 02.03.2023 issued by the respondent no.5, on the ground that their licences have expired.
3. The learned Senior Counsel for the petitioners submits that a reading of Clause 16.1.3 of the Catering Policy, 2010 read with the judgment of the Apex Court in ***Senior Divisional Commercial Manager & Others vs S.C.R.***

Caterers, Dry Fruits, Fruit Juice Stalls Welfare Association & Another reported in ***(2016) 3 SCC 582*** and the order dated 30.10.2018 passed in Vendors Cooperative Society Ltd. & Others vs Union of India & Others (WP(C) No. 373/2017), shows that renewal of the petitioners' catering stall licence would have to be done in terms of the Catering Policy, 2010.

4. The learned Senior Counsel also submits that this Court in its order dated 27.03.2023 passed in WP(C) No.1719/2023 has in similar circumstances, issued a direction for maintaining *status quo*. He also submits that a perusal of the letters dated 13.12.2021 and 27.08.2019 issued by the Ministry of Railways (Railway Board), Government of Assam, would go to show that renewal of licences for catering stalls could continue to be done in terms of the Catering Policy of 2010, till a decision was taken by the Delhi High Court in WP(C) No.13809/2018 and various cases before the Apex Court. He accordingly submits that the petitioners' licences for running their catering stalls/vends should be renewed in terms of the Catering Policy of 2010.

5. Mr. R.K.D. Choudhury, learned Deputy SGI submits that the Catering Policy of 2017, which came into effect from 27.02.2017 does not provide for renewal of licence of catering stalls. He submits that as the Catering Policy of 2017 has superseded the Catering Policy of 2010, the provision of the Catering Policy of 2017, which has not been put to challenge in this writ petition, has to be followed. He also submits that in terms of Clause 20.2 of the Catering Policy, 2017, tenders that had been finalised and Letter of Award (LoA) issued prior to the coming into force of the Catering Policy, 2017 would still be valid for the period of licence, subject to no further extension being given, as extension of

licence cannot be given under the Catering Policy, 2017. He also submits that the present case is a covered case, in terms of the orders passed by this Court in WP(C) No.5143/2014 and WP(C) No.5313/2017.

6. I have heard the learned counsels for the parties.

7. Clause 16.1.3 of the Catering Policy, 2010 provides that licence can be given for running a catering stall/vending shop for a period of 5 (five) years and extensions can be given after completion of every 3 (three) years thereafter.

8. In the case of *Senior Divisional Commercial Manager & Others vs. S.C.R. Caterers, Dry Fruits, Fruit Juice Stalls Welfare Association & Another (supra)*, which was decided on 29.01.2016, the Apex Court had held that as per the provision of Catering Policy, 2010, the action of the Railways in not granting renewal of licence to members of the Welfare Association was arbitrary and unreasonableness. The Apex Court in it's order dated 30.10.2018 passed in *Vendors Cooperative Society Limited & Others vs. Union of India & Others* [WP(C) No.373/2017) had clarified paragraph 34 of the judgment and order dated 29.01.2016 passed in *Senior Divisional Commercial Manager & Others vs. S.C.R. Caterers, Dry Fruits, Fruit Juice Stalls Welfare Association & Another*, by holding that Cooperative Societies, Partnership Firms and HUF shall be entitled to renew more than 1 (one) licence, if they had more than one licence.

9. The above clarification made by the Apex Court in it's order dated 30.10.2018 passed in WP(C) No.383/2017 in relation to para. 34 of the judgment passed in *Senior Divisional Commercial Manager & Others vs. S.C.R.*

Caterers, Dry Fruits, Fruit Juice Stalls Welfare Association & Another (supra) makes it clear that the issue therein was not with regard to issues pertaining to the Catering Policy of 2017, but with regard to the Catering Policy of 2010.

10. Clause 11.2 of the Catering Policy, 2017 provides that tenure of Food Plaza shall be for a period of 9 years. Tenure of all other catering units (Major Units & Minor Units) will be for a period of 5 years only. There will be no further extension/renewal, except for units specifically referred to in clause 3.8.1.

11. Clause.3.8.1 of the Catering Policy, 2017 pertains to all Base Kitchens under departmental operation of Zonal Railways (Nagpur, Chhtrapati Shivaji Terminus, Mumbai Central and Balharshah) and all kitchen units i.e. Refreshment Rooms at A1 and A category stations. However, the petitioners' catering stalls do not come within the provision of clause. 3.8.1. Further, clause 3.8.1 is not applicable to the case in hand, as the licence for the catering stalls that are sought to be renewed in this writ petition pertains to Guwahati and Kamakhya Railway Station.

12. Clause 20.2 of the Catering Policy, 2017 provides that tenders that have been finalized and Letter of Approval (LoA) issued prior to the date of Notification of the Catering Policy, 2017, shall be allowed to continue as per policy guidelines prevailing at that time. Zonal Railways will cancel all such tenders and return the earnest money to the tenderers in cases, where LoA has not been issued before issuance of the Catering Policy, 2017.

13. As can be seen from the provisions of the Catering Policy, 2017, there is no clause providing for extension of licences for running catering units/stalls beyond 5 years. The Catering Policy, 2017 provides that all licences and LoA issued as per the Catering Policy, 2010 would be considered to be valid for 5 years, even under the Catering Policy, 2017, *sans* any further extension being given to the same in terms of the Catering Policy, 2017.

14. In WP(C) No.5313/2017 (N.F. Railway Vending & Catering Contractors Association, Lumding Division vs. The Union of India and 3 Others), which was disposed off vide judgment and order dated 24.01.2023, this Court has held that in terms of the Catering Policy, 2017, the right to renew a licence had been taken away and allotment of the various vending units would be based upon open tender. This Court had also held that the question of interfering with the Catering Policy, 2017 did not arise.

15. In WP(C) No.5143/2014 (N.F. Railway Vending & Catering Contractors Association, Lumding Division, represented by its Secretary vs. The Union of India and 2 Others), which was disposed off, vide judgment and order dated 24.01.2023, this Court had held that the Catering Policy, 2017 did not have the concept of renewal of licences and under such circumstances, the Court could not issue a Writ to allow the members of the petitioner association to continue their business of vending, contrary to the Catering Policy, 2017. This Court thereafter gave liberty to the respondent Railways to resort to such action as they deemed fit, in terms of the existing Catering Policy, 2017.

16. The judgment and orders passed in WP(C) No.5313/2017 and WP(C) No.5143/2014 were put to challenge vide WA No.47/2023 and WA No.54/2023

respectively. The Division Bench of this Court disposed off WA No.47/2023 and WA No.54/2023, vide a common order dated 13.03.2023, wherein it did not interfere with the decision of the learned Single Judge which had held that the Catering Policy, 2017 did not provide for renewal of licences of catering vends/stalls. It also did not interfere with the direction passed by the learned Single Judge, wherein liberty had been given to the Railway Authorities to resort to such actions as they deemed fit, in terms of Catering Policy, 2017. It also did not interfere with the finding of the learned Single Judge that the Catering Policy, 2017 did not provide for renewal of licences.

17. The letter dated 13.12.2021 issued by the Government of India, Ministry of Railways, Railway Board has given remark with regard to whether existing licences of individual and proprietorship firms can be renewed as follows :

“Existing minor catering units, allotted prior to Catering Policy, 2017 and under the purview of renewal as per Supreme Court’s Judgment, are to be governed in terms of Board’s Commercial Circular No.22/2017 and Board’s letter of even number dated 27.08.2019. Necessary action may be taken accordingly”.

With respect to whether licence fee can be revised and increased in the wake of *status quo* for static minor catering units covered under *status quo* order, it has been stated in the said letter dated 13.12.2021 that fixation/revision of licence fee of the aforesaid units during *status quo* will continue to be done as per the extant policy for renewal. The said letter dated 13.12.2021 also taken into consideration the letter dated 27.08.2019 issued by the Railway Board does not in any manner indicate that renewal of licence can be done under the Catering Policy, 2017 and the same have to be governed in

terms of Catering Policy, 2017.

18. On considering all the above facts, this Court finds that the Catering Policy, 2017 does not provide for renewal of licence for catering vends/stalls. As such, the petitioners cannot have any legitimate right to have their catering vends/stalls extended beyond 5 years, in terms of the Catering Policy, 2017. The passing of the interim order of *status quo* in WP(C) No.1719/2023 cannot, in the opinion of this Court, mean that any final decision had been taken in the said case, with regard to the subject matter in issue. As such, the interim *status quo* order passed therein does not help the cause of the petitioners.

19. In view of the reasons stated above, this Court does not find any merit in the writ petition. The writ petition is accordingly dismissed.

JUDGE

Comparing Assistant