

GAHC010116092021



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

Case No. : WP(C)/3556/2021

DINESH SAH
S/O LATE PREM CH. SAH.
RESIDENT OF COLLEGE PARA, FALAKATA, PO FALAKATA, PS FALAKATA,
DIST ALIPURDUAR, WEST BENGAL.

VERSUS

THE UNION OF INDIA AND 4 ORS
REPRESENTED BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY
OF RAILWAYS, RAIL BHAWAN, AND NEW DELHI 110001

2:THE CHIEF COMMERCIAL MANAGER

NORTHEAST FRONTIER RAILWAY. MALIGAON
GUWAHATI
ASSAM

3:THE GENERAL MANAGER

N.F RAILWAYS
MALIGOAN
GUWAHATI
ASSAM

4:THE SENIOR DIVISIONAL COMMERCIAL MANAGER

NF RAILWAY
ALIPUDUAR JUNCTION
DIST JALPAIGURI
WEST BENGAL

5:STATION SUPERINTENDENT

NF RAILWAY
FALAKATA
DIST ALIPURDUAR
WEST BENGAL

For the petitioner (s) : Mr. R. Dubey, Advocate

For the respondent (s) : Mrs. U. Chakraborty, SC, Railways

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

Date of Hearing : 10.10.2023

Date of Judgment : 10.10.2023

JUDGMENT AND ORDER (ORAL)

The instant writ petition has been filed by the petitioner seeking writ in the nature of Certiorari for setting aside the communication dated 09.09.2020 issued by the respondent No.4 as well as the tender notice dated 02.07.2021 to the extent it includes the tea stall of the petitioner at Platform No.1 of Falakata Railway Station. The petitioner has also sought for a direction in the nature of Mandamus directing respondent authorities not to give effect to the impugned letter dated 09.09.2020 as well as the impugned tender notice dated 02.07.2021 to the extent it includes a snack bar in place of wheelbarrow of the petitioner at Platform No.1 of Falakata Railway Station and further a direction upon the respondents for transferring the licence of the wheelbarrow at Platform No.1 of Falakata Railway Station in the name of the petitioner.

2. The facts which can be discerned from the pleadings available on record

reveals that the a Master Licence Agreement was entered into between one Premchand Shah (since deceased) who was the father of the petitioner and the Railway Authorities on 05.09.2018. The said agreement as per Article 1.1 stipulated that it would commence from 01.11.2015. In Article 3.1 of the said agreement, it was mentioned that the agreement would commence on the commencement date which has been agreed to by the parties as 5 years and subject to the provisions of Articles 3.2, 8 and 16 shall continue until a period of 5 years from the commencement date and if not terminated/expired will be renewed on mutually agreed terms. In terms with Article 3.2, it is seen that the tenure of the license shall be initially for a period of 5 years with a provision for further renewal for another period of 5 years on satisfactory performance and payment of all dues and arrears and withdrawal of court cases, if any. It has been categorically mandated that the renewal will not be a matter of right. Further to that, it is also seen from the said Article 3.2 that the licensee must apply for renewal minimum 6 (six) months in advance before the expiry of the contract. No Dues Certificate from the concerned authority must be attached along with the application for renewal which shall be submitted afresh along with the renewal application.

3. Unfortunately, the father of the petitioner Late Premchand Shah expired on 19.05.2019. It is not known when the petitioner thereupon applied for transfer of licence in terms with Article 19.4 of the said agreement. However, a perusal of Annexure-5 to the writ petition reveals that on 27.07.2020, the Senior Divisional Commercial Manager in reference to an office letter dated 12.09.2019 and the petitioner's prayer made in the letter dated 06.07.2020, advised the petitioner to submit the Succession Certificate for transfer of the wheelbarrow licence at Falakata Railway Station within a period of 7 days from the date of

receipt of the letter, failing which action as deem fit and proper shall be taken by the Railway Administration. It further reveals from the said communication that on the earlier occasion also the petitioner was advised to submit the Succession Certificate which the petitioner failed to do so. The petitioner thereupon on receipt of the said communication dated 27.07.2020, submitted a communication on 03.08.2020 stating inter-alia that he could not submit the Succession Certificate till then due to the prevailing situation of COVID-19 pandemic, and as such, sought for time to produce the Succession Certificate before the Senior Divisional Commercial Manager. On 09.09.2020, the Senior Divisional Commercial Manager taking note of that the petitioner failed to submit the Succession Certificate as directed vide the communication dated 27.07.2020, directed the petitioner to remove the wheelbarrow from the Falakata Railway Station within three days from the date of receipt of the said letter. It is not known what the petitioner did thereafter in as much as the communication dated 09.09.2020 was not put to challenge then. It further transpires that thereafter on 02.07.2021, a notice inviting tender was issued inviting bids from the partnership firm, Companies, registered Self Help Group/sole proprietor firm or any individual etc. for the provision of catering/vending facilities at various stations on General Minor Unit (GMU) to the respective reservation category over the Alipurduar Junction Division for the tenure of 5 years only, renewable after one year subject to satisfactory performance and payment of all dues during the contract seeing the reliefs as aforementioned.

4. From a perusal of the contents of the said notice inviting tender dated 02.07.2021, it is seen that there is no category of wheelbarrow. However, in respect to Falakata Railway Station, Falakata Platform No.1, there is a Tea Stall-

1 earmarked for man and a snack bar earmarked for woman. It reveals thereupon that the petitioner has approached this Court by filing the instant writ petition.

5. This Court vide an order dated 04.08.2021 passed an interim order to the effect that the tender process initiated under NIT dated 02.07.2021 shall not be finalized in respect of wheelbarrow stall standing at Falakata Platform No. 1.

6. The record further reveals that on 23.08.2021, this Court issued notice and the interim order thereupon has been continuing from time to time.

7. It is also seen from the records that an affidavit-in-opposition was filed by the respondents through the Senior Divisional Commercial Manager, N. F. Railways, Alipurduar Junction. In the said affidavit-in-opposition, apart from taking various preliminary objections as regards the maintainability of the writ petition, it was stated that the petitioner failed to establish or provide any evidence for any claim in the event of his father's death on 19.05.2019 who was the original licensee during unexpired period of agreement. It was further mentioned that the original contract agreement expired on 31.10.2020 i.e. after the death of the Original Licensee but the petitioner claimed the transfer of Licence on 06.09.2019 in his name in violation of Para 21 of the Catering Policy, 2010 dated 27.07.2010 and Article 19.4 of the agreement dated 05.09.2018 which clearly spelt out that licence can be transferred in the name of spouse/legal heirs for the unexpired period of agreement in the event of death of original licensee. It was further mentioned that the petitioner failed to establish his claim as legal heir of the original licensee authentically with any legal documentary evidence as required under the Catering Policy, 2010 which is evident from office letter dated 27.07.2020. Further to that, it was mentioned that the original licensee did not declare the name of his spouse or any legal

heirs at the time of entering into the contract with the respondents. It was further mentioned that the petitioner is not entitled to transfer of the licence of the original licensee in his name without any authentic documentary evidence under the Catering Policy, 2010. The Railway Rules as explained in the letter dated 27.07.2020 and office letter dated 09.09.2020, the petitioner did not fulfill the actual requirement. It was further mentioned that the contract agreement was executed in terms with Catering Policy, 2010 which was superseded by the new Catering Policy, 2017 which specifically barred the renewal of such vending units. Further to that, it was stated that after expiry of said contract agreement dated 05.09.2018, the Railway had taken back the physical custody of the said unit. Further to that, it was mentioned that the notice inviting tender were in respect to other stalls and the stall of the petitioner was not included.

8. In the backdrop of the above pleadings, let this Court take into account the respective submission of the learned counsels for the parties.

9. Mr. R. Dubey, the learned counsel for the petitioner submits that by virtue of Article 19.4, the spouse/the legal heirs of the original licensee has a right to transfer of the licence for the unexpired period of agreement. The learned counsel for the petitioner submits that once the licence is being transferred, the legal heirs steps into the shoes of the original licensee and under such circumstances by virtue of Article 3.2 of the agreement, the petitioner being the legal heir had the right to be considered for renewal. In that regard, the learned counsel for the petitioner has drawn the attention of this Court to a judgment of Delhi High Court in the case of ***Indian Railway Catering and Tourism Corporation Ltd. vs. Mayuri Ben M Chotai***, reported in ***2018 SCC OnLine Del 9760***. It is the further case of the petitioner that in the said judgment an interpretation of a similar Article dealing with the term “unexpired period” was decided by the Delhi

High Court holding inter-alia that by virtue of Clause 7 which is paramateria to Article 19.4 herein, the legal heirs steps into the shoes of the original licensee, and therefore, entitled to the renewal. The learned counsel for the petitioner, however, submits that the said judgment was rendered in a proceeding under the Arbitration and Conciliation Act, 1996 whereby damages were awarded by the Arbitral Tribunal which was however not interfered with by the Delhi High Court in the proceedings under Section 34 of the Arbitration and Conciliation Act, 1996.

10. Mrs. U. Charkaborty, the learned Standing Counsel appearing on behalf of the Railways submitted that though the agreement was entered into on 05.09.2018, but it was effective for a period of 5 years w.e.f 01.11.2015, and accordingly, the period ended on 31.10.2020. The petitioner did not produce the legal heir certificate prior to the expiry of the period inspite of various opportunities so given as could be seen from the communication dated 27.07.2020 and 09.09.2020. It is under such circumstances, immediately upon expiry of the period on 31.10.2020, the Railway Authorities have taken over the physical custody of the unit. Further to that, it is the submission of the learned Standing Counsel appearing on behalf of the respondent Railways that Article 19.4 of the agreement only gives right to the spouse/the legal heirs of the original licensee to continue with the licence for the unexpired period of the agreement only and not beyond that. Under such circumstances, any right of the petitioner on the basis of the agreement dated 05.09.2018 stood extinguished on 31.10.2020. The learned Standing Counsel further submitted that the question of renewal does not arise in as much as not only from a reading of Article 19.4 of the agreement, the right of the spouse/the legal heirs is only for the unexpired period of the agreement only, but also from Para 21 of

the Catering Policy, 2010, it would be seen that the renewal of licence on transfer to legal heirs may be permitted in the case of licences belonging to reserved minor catering unit as per the existing instructions. The learned Standing Counsel further submitted that as per Para 15 of the Catering Policy, 2010, the reserved category in respect to Category-D station which is the present station are only the ST/SC/OBC and minorities and the petitioner does not belong to any of it.

11. I have heard the learned counsels for the parties and also perused the materials on record. For the purpose of proper adjudication of the instant dispute, this Court finds it relevant to quote some of the relevant Articles of the agreement dated 05.09.2018. The said Articles are Article 3.1 and Article 3.2 as well as the Article 19.4 which are quoted hereinunder:-

“3.1 The Tenure of the Agreement will commence on the Commencement Date which has been agreed by the parties as Three (5) years and subject to the provisions of Article 3.2, 8 and Article 16 herein below, respectively, shall continue until a period of three (5) years from the Commencement Date and, If not terminated/expired, will be renewed on the mutually agreed terms.

3.2 Tenure and Renewal of License

The tenure of License shall be initially for a period of 5 years with a provision of further renewal for period(s) of 5 years on satisfactory performance and payment of all dues and arrears and withdrawal of court cases, if any. Renewal will not be a matter of right. The licensee must apply for renewal minimum 6 (six) months in advance before the expiry of the contract. No Dues Certificate from the concerned authority, must be attached along with the application for renewal. The licensee must submit the documents afresh along with the renewal application.

19.4 Transfer of License

Transfer of license to the spouse/legal heir would be allowed only In the event of death of the original licensee. The license can be transferred in the name of spouse/legal heir for the unexpired period of the agreement only, with personal approval of the Chief Commercial Manager, Railway shall obtain the nomination of the legal heir from the license holder at the time of entering into contract. The nomination should be only from amongst the family members."

12. This Court in the previous segments of the instant judgment has duly mentioned the contour of Articles 3.1 and 3.2, and as such, to avoid prolixity, this Court is not repeating the same. As regards the Article 19.4, it is clear that the transfer of licence to the spouse/legal heir would be allowed only in the event of the death of the original licensee. It is also mentioned that the licence can be transferred in the name of spouse/legal heir for the unexpired period of the agreement only, that too, with personal approval of the Chief Commercial Manager, Railway. The said Article 19.4 emanates from Para 21 of the Catering Policy of 2010. The said Para 21 being pertinent to the dispute involved is quoted hereinunder:-

"21 TRANSFER OF LICENSE:

Transfer of license to the spouse/legal heir would be allowed only in the event of death of the original licensee. The license can be transferred in the name of spouse/legal heir for the unexpired period of the agreement only, with personal approval of the Chief Commercial Manager/Divisional Railway Manager/MD, IRCTC as the case may be. Nomination of the legal heir should be obtained from the license holder at the time of entering into contract. The nomination should be only from amongst the family members. Renewal of license on transfer to the legal heir may be permitted only in the case of licensees belonging to reserved minor catering units as per existing instructions."

13. From a perusal of the said Para 21, it would show that the contents of

the said Para are paramateria to Article 19.4. Apart from the said, there is another stipulation in the said Para 21 which stipulates that the renewal of licence on transfer to legal heirs may be permitted only in the case of licences belonging to the reserved minor catering unit as per the existing instructions. The said stipulation therefore makes it clear that the renewal would only be permissible in respect to those reserved minor catering units and not others.

14. In the backdrop of the above, if this Court takes note of Para 15 of the Catering Policy, 2010, it would be seen that Para 15.1, 15.2 and 15.3 deal with reservation of Category A, B. and C stations. However, Para 15.4 relates to Category D, E and F stations. As the station in the instant proceedings pertains to Category D, the reservation is only applicable to SC/ST/OBC and minorities. It is also relevant to take note of the submission of Mrs. U. Charkaborty, the learned Standing Counsel appearing on behalf of the Railways to the effect that the Railway Administration are in the process of phasing out the wheelbarrows pursuant to the Catering Policy of 2017, and as such, no new licences have been issued in respect to wheelbarrows pursuant to the Catering Policy of 2017.

15. In the backdrop of the above, it would be seen that admittedly the petitioner could not submit any document entitling him for the transfer of the licence during the period when the licence was in operation, i.e. w.e.f. 01.11.2015 to 31.10.2020. It is also not known what steps the petitioner has taken thereafter in as much as it is only after the issuance of the notice inviting tender on 02.07.2021, the petitioner had approached this Court on 03.08.2021.

16. This Court had taken due notice of Article 19.4 which stipulates that a right is conferred for transfer of the licence subject to necessary approval for the unexpired period of the agreement only. The said Article 19.4 is based upon Para 21 of the Catering Policy of 2010. This aspect is clear from the fact that the

Catering Policy of 2017 does not contain any provision for renewal. Para 21 categorically mandates that the renewal of licence on transfer to legal heir is only permissible in case of the licensee belonging to the reserved minor catering unit as per the existing instructions. It further makes it clear that the right which is conferred upon the original licensee under Article 3.2 is not available to the legal heirs/the spouse of the original licensee upon his death, except those coming within the ambit of the reserved minor catering unit. In that view of the matter as the petitioner does not belong to the reserved minor units, the petitioner is not entitled to seek renewal.

17. Apart from the above, it is also clear that the exercise of the right has to be done as per the agreement. The materials on record show that the petitioner failed to exercise his right within the period when the agreement was valid, and as such, after expiry of the said agreement, the petitioner could not have exercised his right for transfer of the licence and thereupon seeking renewal. Under such circumstances, this Court finds no reason to interfere with the impugned orders as well as also the notice inviting tender.

18. Before parting, this Court however finds it relevant to take note of that the judgment delivered by the Delhi High Court in the case of ***Indian Railway Catering and Tourism Corporation Ltd.*** (supra) cannot be made applicable to the facts of the instant case taking into account that the said judgment was delivered in a proceeding under Section 34 of the Arbitration and Conciliation Act, 1996 wherein the Delhi High Court did not interfere with the arbitration award on the ground that the said award did not contravene the public policy. Further to that, the facts involved therein were different from the facts involved herein in as much as in the instant case, the petitioner failed to exercise his right of transfer by proceeding the documents within the period when the

original agreement was valid. Interim order stands vacated.

19. In that view of the matter, this Court finds no merit in the instant writ petition. Accordingly the writ petition stands dismissed.

JUDGE

Comparing Assistant