

GAHC010016072014



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

Case No. : WP(C)/5313/2017

N.F.RAILWAY VENDING AND CATERING CONTRACTORS ASSOCIATION
LUMDING DIVISION
REP. BY ITS SECRETARY SRI RAKESH BARUA
S/O. LT. NALINI RANJAN BARUA
R/O. THANA ROAD
LUMDING BAZAR
P.O. LUMDING
DIST. NAGAON
ASSAM
PIN-782447.

VERSUS

THE UNION OF INDIA and 3 ORS.
REP. BY THE GENERAL MANAGER
N.F. RAILWAY
MALIGAON
GUWAHATI
ASSAM.

2:THE DIRECTOR

TOURISM AND CATERING BOARD
RAILWAY BOARD
NEW DELHI
INDIA.

3:THE CHAIRMAN and MANAGING DIRECTOR

INDIAN RAILWAY CATERING AND TOURISM CORPORATION LTD.
NEW DELHI
INDIA.

4:DIVISIONAL RAILWAY MANAGER C

N.F. RAILWAY
LUMDING DIVISION
LUMDING
DIST. NAGAON
ASSAM.

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH

For the Petitioner : Mr. T.H. Hazarika ... Advocate

For the respondent nos. 1, 2 to 4 : Mr. B. Sharma,
Dr. B.N. Gogoi Advocates

For the respondent no.3 : Mr. A.N. Singh ... Advocate

Date of hearing & judgment : 24.01.2023

JUDGMENT AND ORDER

Heard Mr. T.H. Hazarika, learned counsel appearing on behalf of the petitioner. Mr. B. Sharma and Dr. B.N. Gogoi, learned counsels appearing for the respondent nos.1, 2 & 4 and Mr. A.N. Singh, learned counsel appearing for the respondent no.3.

2. The instant writ petition has been filed by an Association representing the Vending and Catering Contractors of N.F. Railway challenging the Commercial Circular No.20/2017 formulated as Catering Policy 2017 dated 27.02.2017.

3. It is the case of the petitioner association that the respondent authorities had demanded upon the members of the petitioner association that they would accept Licence Fee only at a rate of 12% per month of the total sale, which was very high rate for which the petitioner association had instituted a proceeding before this Court which was registered and numbered as WP(C) No.1506/2016. This Court vide an order dated 16.03.2016, while issuing notice had directed that in the interim no coercive measures should be taken for realisation of the enhanced arrear as the same would be subject to the outcome of Arbitration Appeal No.21/2015. It was further directed vide the said order that the non-payment of the arrear licence fee should not be made the justification for removal of the vendors. It is further the case of the petitioner that in order to circumvent the said order, the Commercial Circular No.20/2017 was brought into force with immediate effect. The petitioner association has assailed the Commercial Circular No.20/2017 on the ground that the said Circular was brought into effect in order to circumvent the judgment and order dated 29.01.2016, passed in Civil Appeal No.618-620/2016, arising out of SLP(C) No.9921-9923/2014. Further to that, it is the case that if the Commercial Circular No.20/2017 is implemented, the same would violate the right to livelihood of the members of the petitioner association which have been guaranteed under Article 21 of the Constitution of India apart from violation of Article 39(A) and 41 of the Constitution which casts an obligation upon the State to secure the citizens an adequate means of livelihood followed by right to work and in that manner the members of the petitioner association are vested with a right to livelihood through their respective businesses. Therefore, it is the case of the petitioner that the policy decision i.e. that Catering Policy No.20/2017 is bad for nullifying the present legal proceedings i.e. WP(C) No.1506/2016 and

throwing the existing licencees out of employment while transferring all units connected to food to IRCTC Limited. It is in the above premise that the Catering Policy of 2017 have been put to challenge.

4. It appears on record that this Court vide an order dated 30.08.2017 issued notice and in the interim directed that no coercive action would be taken by the railway authorities against the members of the petitioner association without the leave of this Court. It has been submitted at the bar that on the basis of the interim order dated 30.08.2017 which have been extended from time to time, the members of the petitioner association are continuing with the vending units within the jurisdiction of the Lumding Divison, N.F. Railway till date.

5. It appears on record that the respondent nos.1, 2 & 4 have filed an affidavit-in-opposition. In the said affidavit-in-opposition, it has been mentioned that the Railway Board formulates Catering Polices from time to time for making improvement in quality of food served to customers. Keeping in view the objective to provide quality food to the customers, Catering Policy, 2017 was issued vide Commercial Circular No.20/2017. It was further stated that the Catering Policy of 2017 is applicable Pan India over all Indian Railways and the said policy has already been implemented over Indian Railways. Catering Policy of 2017 was issued for betterment in catering services and without any malafide intention. It was further mentioned that the said catering policy was not issued to defeat the proceedings before this Court in WP(C) No.1506/2016. Further to that, it has been mentioned that as per Catering Policy of 2017, mobile catering units, Base Kitchens, Cell Kitchens, Refreshment Rooms at A1 and A category of stations, Food Plazas, Food Courts, Train Side Vending, Jan Ahaars would be

managed by IRCTC and all other catering units like Refreshment Rooms at B and below category of stations, AVMS, Milk Stalls, Trolleys shall be managed by the Zonal Railways. It was mentioned that apprehension of the petitioner association that moving under the control of IRCTC would deprive their rights is not true as IRCTC and the Zonal Railways are duty bound to follow the provisions of Catering Policy of 2017. It was further mentioned that the Catering Policy is a policy decision of the Railways and as such, the question of interference under Article 226 of the Constitution is limited.

6. It further appears on record that the respondent no.3 had also filed an affidavit-in-opposition. In the said affidavit-in-opposition, the respondent no.3 had taken the preliminary objection as regards the maintainability of the writ petition on the ground that the petitioner herein is not a person aggrieved to initiate the proceedings under Article 226 of the Constitution. It was further mentioned that the IRCTC to provide better services, was regulated by the Catering Policy of 2005 wherein according to the policy, IRCTC, the tourism and the catering wing of the Railways was given catering responsibility for all trains. However, pursuant to a Cabinet decision, the catering business of Indian Railways was being progressively hived off to the Indian Railways Catering and Tourism Corporation (IRCTC) through provisions in the Catering Policy of 2005. Accordingly there were modifications to the policy after the experience gained and public perception since the operation of this policy. The modifications pertain to establishing good governance standards and improving the standards of these services for providing food and beverage services to passengers travelling on trains through mobile catering services and operation and management of the static catering contracts dealing with provision of food and

beverages to passengers travelling on train, on railway premises like platforms, concourses etc. and therefore, in 2010 the Government of India was pleased to introduce a new catering policy vide Commercial Circular No.35/2010 dated 21.07.2010 and a new Catering Policy of 2010 came into force. It has been further mentioned that pursuance to the Catering Policy 2010, the catering responsibility was taken away from the IRCTC and the Zonal Railways were awarded the management of all the existing major and minor catering units except Food Plaza, Food Courts, Fast Food units, which would be primarily managed by the IRCTC. The said policy also reflected that after the expiry of all the contracts of the major and minor catering units would be renewed by the Zonal Railways and not the IRCTC. The base kitchens and the mobile catering services would also be taken over by the Zonal Railways in phased manner. Considering all the major changes in the Catering Policy, 2010, it was clear that the catering services were taken away from IRCTC and the Zonal Railways were vested with more responsibility than the IRCTC. Thereafter, again in the year 2017, the Government of India vide Commercial Circular No.20/2017 dated 27.02.2017 introduced a new and revised Catering Policy known as Catering Policy, 2017 vide which the major part of the catering services were transferred to the IRCTC and the Zonal Railways was relieved of that part. It was further mentioned that the Catering Policy of 2017 had been formulated by the Ministry of Railways, Railway Board and Government of India with an objective to provide quality food to the customers. The policy superseded other policies and IRCTC, by virtue of this policy is mandated to carry out unbundling of services by creating a distinction primarily between food preparation and food distribution. It was further stated that the main focus areas are in respect of mobile catering units, base kitchen, cell kitchen, refreshment room at A1 and A

category stations, food plaza, food court, train side vending, Janahars are given to IRCTC and units which are with Railways were reassigned to IRCTC through tripartite agreement. It was mentioned that new policy of 2017 was not introduced to cause prejudice to the members of the petitioner association and other licencees.

7. In paragraph 16 of the said affidavit it has been mentioned that the Ministry of Railways on the basis of Cabinet Note, incorporated IRCTC as an extended arm of Railways to upgrade and professionalize catering services, hospitality and tourism segment of the Railways. It was mentioned that IRCTC was having skilled persons in the profession and thus the mandate again was given to the IRCTC. It was denied that assignment of the unit would result into unemployment as alleged in the writ petition. It was further stated that paragraph 3.8.2 of the Catering Policy of 2017 specifically mentioned about the reassignment of the contracts awarded by the Zonal Railways on the same terms and conditions. It was denied that the implementation of the policy is to abort the proceedings in WP(C) No.1506/2016. Further to that, it has been mentioned that the Catering Policy of 2017 replaced the Policy of 2005/2010 which was an administrative decision of the Ministry of Railways for which this Court ought not to interfere in exercise of its powers of judicial review.

8. In the backdrop of the above pleadings, let this Court take into consideration the respective contentions made by the counsels for the parties.

9. Mr. T.H. Hazarika, learned counsel appearing on behalf of the petitioner association has submitted that if the Catering Policy of 2017 is being

implemented the right to livelihood of the members of the petitioner association would be taken away inasmuch as, there is no scope for renewal in terms with the Catering Policy of 2017 and the petitioner association would have to then again compete with new bidders. He submitted that the same would effect the right to livelihood of the members of the petitioner association as they are carrying out small petty businesses.

10. On the other hand, Mr. B. Sharma, learned counsel appearing for the respondent nos.1, 2 & 4 has submitted that the scope of judicial review in respect to policy matters is extremely limited. He submitted that the policy of 2017 has been brought into effect in order to streamline and for improvement in the quality of food and the food served to the customers and as such, the question of interference to the policy of 2017 ought not to be made in the facts and circumstances of the instant case. He further submitted that Ministry of Railways, Government of India have been from time to time, in order to provide improvement in quality of food have come up with various policies i.e. the Catering Policy of 2005 and thereafter the Catering Policy of 2010 and presently the Catering Policy of 2017. He submitted that the said Catering Policy of 2017 already been implemented in Pan India and as such, any interference at this stage would effect the administrative exigencies in respect to the food being served to the customers as well as the functioning.

11. Dr. B.N. Gogoi, learned counsel appearing for the respondent Railways had further submitted that the instant petition is completely misconceived inasmuch as, the instant writ petition stands on the basis of a proceedings initiated by the petitioner before this Court i.e WP(C) No.1506/2016 which have been withdrawn

by the petitioner on 12.09.2022. Under such circumstance, nothing survives in the instant petition. Further to that, the learned counsel has submitted that the question of livelihood which have been contended by the learned counsel on behalf of the petitioner is completely misconceived, taking into account that the rights of the members of the petitioner association are based upon the contracts i.e. the licences which are being issued and they cannot have a right to continue vending after their licences have expired.

12. Mr. N.A. Singh, learned counsel for the respondent IRCTC has submitted that initially with the coming into effect of the Catering Policy 2005, IRCTC was given the responsibility to take steps as regards providing quality food to the customers. Pursuant to the Catering Policy of 2005, the Catering Policy of 2010 have come into being whereby the responsibility which was given to the IRCTC vide the Catering Policy of 2005 was taken over by the Railways. However, the Ministry of Railways, Government of India finding that the IRCTC has specialised professionals to deal with the situation have again reinstated the responsibility upon the IRCTC for providing quality food in the Railways by implementing the Catering Policy 2017.

13. Upon hearing the learned counsel for the parties, let this Court take into consideration the contentions which arises for consideration before this Court. From a perusal of the writ petition, it appears that the first contention is on the basis that Catering Policy of 2017 was brought into effect in order to circumvent the order in the proceedings i.e. WP(C) No.1506/2016. The said contention cannot be sustained at the present stage in view of the fact that vide order dated 12.09.2022 the said writ petition i.e. WP(C) No.1506/2016 was withdrawn

by the petitioner.

14. The second contention pertains to as to whether the Catering Policy of 2017 is at all required to be interfered with in exercise of power of judicial review. It is the well settled principle of law that a Courts, in exercise of power of judicial review do not ordinarily interfere with the policy decision of the Executive unless policy can be faulted on the grounds of malafide, unreasonableness, arbitrariness or unfairness. Indeed arbitrariness, irrationality, perversity and malafide would render the policy unconstitutional. However, if the policy cannot be faulted in any of these grounds, the mere fact that it would hurt the business interest of the party, do not justify invalidating the policy. In the instant case it would be seen that the members of the petitioner association claim their right to run the vending units in the Lumding Division, N.F. Railways on the basis of licences being issue to them. Admittedly, these licences were issued for a particular period of time, meaning thereby the members of the petitioner association does not have a right to the said licence in perpetuity. In terms with the Catering Policy of 2005, there was no scope of renewal. However, by the Catering Policy of 2010, a right to seek renewal had been included. In terms with the Catering Policy of 2017, the right to renew had been taken away and the allotment of the various vending units would be based upon open tender. The question as to whether the Railway authorities are right in adopting a scheme to have open tender, is completely an administrative decision of the Railway authorities and this Court cannot interfere with the same in exercise of the powers of judicial review. The petitioner in the instant case have failed to show that the decision to come up with this Catering Policy of 2017 is actuated by any malafide, unreasonableness, arbitrariness or unfairness. Under

such circumstances, the question of interference with the Catering Policy of 2017 in the opinion of this Court does not arise.

15. This Court would also like to take note of that the Catering Policy of 2017 have already been implemented throughout India and as stated by the learned counsel appearing on behalf of the respondent nos.1, 2 & 4, the Catering Policy of 2017 have yielded good results. Under such circumstances the question of interfering with Catering Policy of 2017 does not arise at all.

16. Considering the above, this Court finds no merits in the instant petition for which the instant petition stands dismissed. The interim order passed earlier also stands vacated.

JUDGE

Comparing Assistant