

GAHC010228532024



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

Case No. : WP(C)/5598/2024

RAILWAY CATERING AND VENDING CONTRACTOR ASSOCIATION
N. F. RAILWAY, TINSUKIA DIVISION, REGISTERED OFFICE AT- STATION
ROAD, MARIANI, DIST.- JORHAT, ASSAM, REPRESENTED BY ITS GENERAL
SECRETARY, SRI MILAN KISHORE PAUL, S/O- LATE BOLORAM PAUL,
AGED ABOUT 70 YEARS, R/O- STATION ROAD, MARIANI, P.O. AND P.S.-
MARIANI, DIST.- JORHAT, ASSAM

VERSUS

THE UNION OF INDIA AND 3 ORS
REPRESENTED BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY
OF RAILWAYS, RAIL BHAWAN, NEW DELHI- 110001

2:THE GENERAL MANAGER
N.F. RAILWAY
MALIGAON
GUWAHATI- 781011

3:THE DIVISIONAL RAILWAY MANAGER
N.F. RAILWAY
TINSUKIA DIVISION
P.O. AND DIST.- TINSUKIA
ASSAM
PIN- 786125

4:THE DIVISIONAL COMMERCIAL MANAGER
N.F. RAILWAY
TINSUKIA DIVISION
P.O. AND DIST.- TINSUKIA
ASSAM
PIN- 78612

Advocate for the Petitioner : MR T H HAZARIKA, MR A RASHID,MR M CHETIA

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

**BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

ORDER

30.10.2024

1. Mr. T. H. Hazarika, learned counsel appears for the petitioners, while Mr. H. Gupta, learned counsel appears for the Railways.

2. Mr. T.H. Hazarika, learned counsel for the petitioner submits that the members of the petitioner association at Mariani and Farkating Railway Stations were served with two notices dated 23.10.2024 separately, mentioning the names of each vendors of the railway stations, instructing them to clear their individual arrears against their respective stalls/vending units before 31.10.2024. They were also instructed to close their respective units and remove the temporary structures by 31.10.2024. The said notices were issued in reference to the common order dated 23.04.2024 passed by this Court in WP(C) 1131/2012, which was tagged along with the leading case i.e. WP(C) 2693/2012.

3. The petitioner's counsel submits that in terms of the said common order dated 23.04.2024 passed in the above cases, the basis for the actual turnover of the unit to be done in terms of Clause 18.3 and Clause 16.2.3 w.e.f. 01.11.2010 is not discernible. He submits that besides the above, the issue relating to eviction of similarly situated persons is pending before the Supreme Court and

as they have been protected by the Supreme Court in SLP(C) 17501-17502/2024, vide order dated 13.08.2024, the proposal to evict the petitioners in the present case should be stayed, till a decision is taken by the Supreme Court. He also submits that the livelihood of the petitioners being at stake, this Court should consider the case of the petitioners leniently.

4. Mr. H. Gupta, learned counsel for the Railways, on the other hand submits that the issue before the Hon'ble Supreme Court in SLP(C) 17501-17502/2024 is different from the present case. He submits that this Court, in similar matters, has already held that as the Catering Policy, 2017 did not provide for renewal of licence for catering vends/stalls, the petitioners whose agreements have expired in 2015, cannot have any legitimate right to have their catering vends/stalls extended beyond 5 years, in terms of the Catering Policy, 2017. He submits that the above decision of this Court in WP(C) 1828/2023 has been upheld by the Division Bench of this Court in WA 1214/2023, vide judgment and order dated 11.03.2024. The challenge made to the judgment and order dated 11.03.2024, passed in WA 1214/2023 in the Supreme Court, vide SLP(C) No. 17338/2024 with SLP(C) No. 23728/2024 stood dismissed. As such, the writ petition should be dismissed. He submits that the agreement executed between the petitioners and the Railways for running the railway stalls/vends has expired in the year 2015. As such, as the Catering Policy of 2017 does not provide for extension/renewal of the licence for catering vends/stalls, no right of the petitioner has been violated on account of the railways seeking to issue fresh licences, on the basis of fresh allotments to be made in terms of the Catering Policy, 2017, by first issuing a tender.

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

6. The admitted case is that the petitioners were granted licences for running catering vends/stalls till 2015. It is also a fact that the challenge made to the Catering Policy, 2017, which does not provide for renewal of licence for catering vends/stalls, has been dismissed by this Court in WP(C) 5313/2017, vide judgment and order dated 24.01.2023. The appeal against the judgment and order passed in WP(C) 5313/2017 vide WA 47/2023 was also dismissed by the Division Bench of this Court. The Special Leave Petition filed against the judgment passed by the Division Bench in WA 47/2023 was withdrawn by the appellant in WA 47/2023 without taking leave to file afresh and a review was filed against the order passed in WA 47/2023 before the Division Bench of this Court, vide Review Petition 117/2023. The Review Petition was dismissed by the Division Bench of this Court.

7. The dismissal of the Review Petition 117/2023 by the Division Bench of this Court was then again put to challenge in SLP(C) 17501-17502/2024. The Hon'ble Supreme Court in SLP(C) 17501-17502/2024 was of the view that when the earlier SLP has been withdrawn without liberty being taken to file the same afresh, a fresh SLP could not have been filed. However, as there was a contradictory order passed by a Bench of equal strength of the Hon'ble Supreme Court in another case, the said issue was referred to a larger Bench of the Supreme Court for a decision. It was in that context that the Hon'ble Supreme Court had directed that the members of those associations should not be dislodged from the places under their occupation till the next date.

8. The above being said, the judgment of the Division Bench of the High Court affirming the decision of the Single Bench shows that the Catering Policy, 2017 which is being applied in whole of India as on date has been upheld. There is no stay granted by the Hon'ble Supreme Court against any order of the Division Bench of this Court or Single Bench of this Court with regard to the Catering Policy, 2017, especially when the agreements of the persons running the catering vends/stalls have expired.
9. This Court has also been made aware of the fact that the judgment and order dated 11.03.2024 passed by the Division Bench of this Court in W.A. No.124/2023 was put to challenge in the Supreme Court vide SLP(C) No.17338/2024 with SLP(C) No.23728/2024. The same was dismissed on 25.10.2024.
10. The order dated 25.10.2024 passed by the Supreme Court in SLP(C) No. 17338/2024, ***M/s Deepak and Co. & another Vs. Union of India & others*** with SLP(C) No.23728/2024 states as follows:-

“We do not find any ground to interfere with the impugned order(s) passed by the High Court. However, considering the submissions made by the learned counsel for the petitioners, we are inclined to grant time for handing over the vacant possession till 27th December, 2024, subject to an undertaking to be given stating that the petitioners will vacate the premises on or before 27th December, 2024, as well as clear all rent/dues, if any, and shall not create any third party right therein.

The undertaking is to be filed within two weeks from today.

The Special Leave Petitions are, accordingly, dismissed.

Pending application(s), if any, also stand disposed of.”

11. In that view of the matter, this Court does not find any ground to allow the writ petition.

12. The writ petition is accordingly dismissed. However, in view of the fact that the Supreme Court in SLP(C) No. 17338/2024 has given time to the petitioners to vacate the premises on or before 27.12.2024 as well as to clear all the rents/dues, if any, besides directing the petitioners not to create any third party right, subject to an undertaking being given, this Court is of the view that a similar concession should be granted to the petitioner. Accordingly, the members of the petitioner Association are granted time for handing over the vacant possession till 27.12.2024, subject to an undertaking to be given, stating that the members of the petitioner Association should vacate the premises on or before 27.12.2024, as well as clear all the rents/dues, if any. They shall also not create any third party right therein. It is made clear that if the members of the petitioner Association do not give any undertaking on or before 10.11.2024, besides clearing the rents/dues and not creating any third party right therein, the grant of time till 27.12.2024, shall not be applicable to them and they would have to abide by the direction passed in terms of the two impugned notices dated 23.10.2024 issued by the Railways.

JUDGE

Comparing Assistant