$~J-1 to 41

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment pronounced on: 29.05.2024

\+ **W.P.(C) 2501/2023**, CM APPL. 9571/2023 - STAY

(1) URMILA DEVI & ORS. ..... Petitioners
versus
UNION OF INDIA & ORS. ..... Respondents

\+ **W.P.(C) 7177/2024**, CM APPL. 29978/2024 - STAY

(2) ALEX SELESTIN MARTIN ..... Petitioner
versus
UNION OF INDIA & ORS. ..... Respondents

\+ **W.P.(C) 7180/2024**, CM APPL. 29995/2024 - STAY

(3) SHRI SANHJAY BAPU TIWATANE ..... Petitioner
versus
UNION OF INDIA & ORS. ..... Respondents

\+ **W.P.(C) 2855/2023**, CM APPL. 11029/2023 - STAY

(4) SH. GOPAL PARSAD AGARWAL & ANR. ..... Petitioners
versus
UNION OF INDIA & ORS. ..... Respondents

\+ **W.P.(C) 7250/2023**, CM APPL. 28231/2023 - STAY

(5) RAMESH CHAND JAIN & ORS. ..... Petitioners
versus
UNION OF INDIA & ORS. ..... Respondents

\+ **W.P.(C) 9746/2023**, CM APPL. 37348/2023 - STAY

(6) LAXMAN PRASAD & ORS. ..... Petitioners
versus

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UNION OF INDIA & ORS. ..... Respondents

\+ **W.P.(C) 3461/2024**, CM APPL. 14143/2024 - STAY

(7) M/S HARISHANKAR AJAY AGRAWAL AND SONS..... Petitioner
versus
UNION OF INDIA & ORS. ..... Respondents

\+ **W.P.(C) 4235/2024**, CM APPL. 17255/2024 - STAY

(8) BASANT KUMAR SHUKLA ..... Petitioner
versus
UNION OF INDIA & ORS. ..... Respondents

\+ **W.P.(C) 10757/2023**, CM APPL. 41680/2023 - STAY

(9) MOHAMMAD SALEEM ..... Petitioner
versus
UNION OF INDIA & ORS. ..... Respondents

\+ **W.P.(C) 10758/2023**, CM APPL. 41683/2023 - STAY

(10) ISHWARLAL JAWARLAL JOSHI ..... Petitioner
versus
UNION OF INDIA & ORS. ..... Respondents

\+ **W.P.(C) 10763/2023**, CM APPL. 41694/2023 - STAY

(11) RITESH SIGH RAJPUT ..... Petitioner
versus
UNION OF INDIA & ORS. ..... Respondents

\+ **W.P.(C) 10847/2023**, CM APPL. 42040/2023 - STAY

(12) RAJESH JESWANI ..... Petitioner
versus
UNION OF INDIA & ORS. ..... Respondents

\+ **W.P.(C) 11215/2023**, CM APPL. 43682/2023 - STAY

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(13) R.K. AND SONS ..... Petitioner

versus

UNION OF INDIA & ORS. ..... Respondents

\+ **W.P.(C) 11339/2023**, CM APPL. 44108/2023 - STAY

(14) SHIV PRASAD SAHU ..... Petitioner

versus

UNION OF INDIA & ORS. ..... Respondents

\+ **W.P.(C) 11888/2023**, CM APPL. 46447/2023 - STAY

(15) THE NORTHERN RAILWAY BOOK STALL WORKERS VENDORS COOPERATIVE SALE AND SUPPLY SOCIETY LIMITED RAILWAY STATION LUDHIANA ..... Petitioner

versus

UNION OF INDIA AND ORS & ORS. ..... Respondents

\+ **W.P.(C) 12541/2023**, CM APPL. 49473/2023, CM APPL. 56627/2023

(16) M/S DJ SHINGRANI AND RT PARIYANI ..... Petitioner

versus

UNION OF INDIA & ORS. ..... Respondents

\+ **W.P.(C) 12542/2023**, CM APPL. 49476/2023 - STAY

(17) SUDHAKAR TRIPATHI ..... Petitioner

versus

UNION OF INDIA & ORS. ..... Respondents

\+ **W.P.(C) 12650/2023**, CM APPL. 49876/2023 - STAY

(18) BEROJGAR HARIJAN YUVA KALYAN SAMITI ..... Petitioner

versus

UNION OF INDIA & ORS. ..... Respondents

\+ **W.P.(C) 13614/2023**, CM APPL. 53715/2023 - STAY

(19) M. ZIYAUDDIN ..... Petitioner

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versus

UNION OF INDIA AND ORS. ..... Respondents

\+ **W.P.(C) 14003/2023**, CM APPL. 55367/2023 - STAY

(20) ANKIT JAIN & ORS. ..... Petitioners

versus

UNION OF INDIA & ORS. ..... Respondents

\+ **W.P.(C) 14723/2023**, CM APPL. 58578/2023 - STAY

(21) OM PRAKASH ..... Petitioner

versus

UNION OF INDIA & ORS. ..... Respondents

\+ **W.P.(C) 14837/2023**, CM APPL. 59019/2023 - STAY

(22) DILIP KUMAR SINGH & ANR. ..... Petitioners

versus

UNION OF INDLA, & ORS. ..... Respondents

\+ **W.P.(C) 15142/2023**, CM APPL. 60494/2023 - STAY

(23) SUNIL SHUKLA & ANR. ..... Petitioners

versus

UNION OF INDIA & ORS. ..... Respondents

\+ **W.P.(C) 15222/2023**, CM APPL. 60939/2023 - STAY

(24) M/S SIKSHIT BEROJGAR MUDRAN AVAM PRAKASHAN SAHKARI SAMITI ..... Petitioner

versus

UNION OF INDIA & ORS. ..... Respondents

\+ **W.P.(C) 16178/2023**, CM APPL. 65047/2023 - STAY

(25) MS S VEER AND COMPANY GRADUATE PARTNERSHIP CONCERN THROUGH DEEPAK JAIN GENERAL POWER OF AUTTORNY HOLDER ..... Petitioner

versus

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UNION OF INDIA MINISTRY OF RAILWAY BOARD AND ORS
..... Respondents

\+ **W.P.(C) 16446/2023**, CM APPL. 66239/2023 - STAY

(26) M BHUMIAJI AND COMPANY GRADUATE PARTNERSHIP CONCERN ..... Petitioner

versus

UNION OF INDIA MINISTRY OF RAILWAYS RAILWAY BOARD AND ORS ..... Respondents

\+ **W.P.(C) 16535/2023**, CM APPL. 66637/2023, CM APPL. 22183/2024

(27) SHASHIKANT SHUKLA & ANR. ..... Petitioners

versus

UNION OF INDIA & ORS. ..... Respondents

\+ **W.P.(C) 16544/2023**, CM APPL. 66660/2023 - STAY

(28) RAJIV RANJAN RAI & ORS. ..... Petitioners

versus

UNION OF INDIA & ORS. ..... Respondents

\+ **W.P.(C) 16558/2023**, CM APPL. 66752/2023 - STAY

(29) PRAVEEN KHATRI & ORS. ..... Petitioners

versus

UNION OF INDIA & ORS. ..... Respondents

\+ **W.P.(C) 16583/2023**, CM APPL. 66803/2023 - STAY

(30) SH. SUNIL KUMAR KOMALCHAND JAI ..... Petitioner

versus

UNION OF INDIA & ORS. ..... Respondents

\+ **W.P.(C) 205/2024**, CM APPL. 966/2024 - STAY

(31) ZIYAUDDIN MANGLORE ..... Petitioner

versus

UNION OF INDIA & ORS. ..... Respondents

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+ **W.P.(C) 945/2024**, CM APPL. 3912/2024 - STAY

(32) NARESH KUMAR KINGER & ANR. ..... Petitioners
versus
UNION OF INDIA & ORS. ..... Respondents

+ **W.P.(C) 4938/2024**, CM APPL. 20220/2024 - STAY

(33) TIWARI AND SONS ..... Petitioner
versus
UNION OF INDIA & ORS. ..... Respondents

+ **W.P.(C) 5031/2024**, CM APPL. 20577/2024 - STAY

(34) GANESH PUJARI ..... Petitioner
versus
UNION OF INDIA & ORS. ..... Respondents

+ **W.P.(C) 5597/2024**, CM APPL. 23075/2024 - STAY

(35) SMT PARMILA SHRMA ..... Petitioner
versus
UNION OF INDIA AND ORS. ..... Respondents

+ **W.P.(C) 6215/2024**, CM APPL. 25892/2024 - STAY

(36) GOPAL KRISHAN SHARMA ..... Petitioner
versus
UNION OF INDIA & ORS. ..... Respondents

+ **W.P.(C) 6409/2024**, CM APPL. 26623/2024 - STAY

(37) SHRI ASHOK M. SHAH ..... Petitioner
versus
UNION OF INDIA & ORS. ..... Respondents

+ **W.P.(C) 6413/2024**, CM APPL. 26632/2024 - STAY

(38) M/S MAHESHCHAND AND CO. ..... Petitioner

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versus
UNION OF INDIA & ORS. ..... Respondents

\+ **W.P.(C) 6418/2024**, CM APPL. 26647/2024 - STAY

(39) M/S MUKUNDILAL AND SONS ..... Petitioner
versus
UNION OF INDIA & ORS. ..... Respondents

\+ **W.P.(C) 6574/2024**, CM APPL. 27357/2024 – STAY, CM APPL. 27359/2024, CM APPL. 27360/2024

(40) RUMANA SURESH SHAH ..... Petitioner
versus
UNION OF INDIA & ORS. ..... Respondents

\+ **W.P.(C) 6214/2024** and CM APPLs.25889/2024, 25891/2024

(41) MATHRA DEVI ..... Petitioner
versus
UNION OF INDIA AND ORS. ..... Respondents

Presence:

Mr. Neeraj Malhotra, Sr. Adv. along with Mr. Jitender Mehta, Mr. Lalit Kumar, Mr. Nimish Gupta, Mr. Shivam Pahal, Mr. Pankaj Mishra and Mr. Ambuj Singh, Advs. for Petitioner/s in W.P.(C) 7177/2024, W.P.(C) 7180/2024, W.P.(C) 2501/2023, W.P.(C) 2855/2023, W.P.(C) 7250/2023, W.P.(C) 9746/2023, W.P.(C) 4235/2024, W.P.(C) 10757/2023, W.P.(C) 10758/2023, W.P.(C) 10763/2023, W.P.(C) 10847/2023, W.P.(C) 11215/2023, W.P.(C) 11339/2023, W.P.(C) 11888/2023, W.P.(C) 12541/2023, W.P.(C) 12542/2023, W.P.(C) 12650/2023, W.P.(C) 13614/2023, W.P.(C) 14003/2023, W.P.(C) 14723/2023, W.P.(C) 14837/2023, W.P.(C) 15142/2023, W.P.(C) 15222/2023, W.P.(C) 16178/2023, W.P.(C) 16446/2023, W.P.(C) 16535/2023, W.P.(C) 16544/2023, W.P.(C) 16558/2023, W.P.(C) 16583/2023, W.P.(C) 205/2024, W.P.(C) 945/2024, W.P.(C) 4938/2024, W.P.(C) 5031/2024, W.P.(C) 5597/2024, W.P.(C) 6215/2024, W.P.(C) 6409/2024, W.P.(C) 6413/2024, W.P.(C) 6418/2024 and W.P.(C) 6574/2024.

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Ms. Garima Sachdeva, SPC alongwith Ms. Archana Surve, GP, and Ms. Divyanshi Maurya, Adv. for UOI in W.P.(C) 2855/2023.

Mr. Sandeep V. Priya Mishra, SPC for UOI in W.P.(C) 7250/2023.

Mr. Sushil Raaja, SPC for UOI in W.P.(C) 9746/2023.
Mr. Tamim Qadri, Adv. for petitioner in W.P.(C) 3461/2024 and W.P.(C) 205/2024.

Mr. Pradeep Desodya, Adv. for petitioner in W.P.(C) 16535/2023 and W.P.(C) 16583/2023.

Mr. Ajay Bansal, Mr. Gaurav Yadav, Ms. Veena Bansal and Mr. Sourav Jindal, Advs. for petitioner in W.P.(C) 13614/2023, W.P.(C) 16178/2023, W.P.(C) 16446/2023 and W.P.(C) 5597/2024.

Mr. Vivek Sharma, Senior Panel Counsel alongwith Ms. Prernaa Singh, Adv. for UOI in W.P.(C) 11888/2023.

Mr. Vijay Kumar Shukla, Ms. Nupur Shukla, Mr. Anirudh Gulati and Mr. Yashwardhan Singh, Advs. for petitioner in W.P.(C) 4938/2024.

Mr. AkshayAmritanshu, Sr. Panel Counsel and Mr. Samyak Jain, Adv. for respondent in W.P.(C) 4235/2024.

Mr. Raj Kumar, CGSC for UOI in W.P.(C) 10757/2023 and W.P.(C) 10758/2023.

Mr. Srivats Kaushal, SPC and Mr. Bharat Singh, GP for respondent in W.P.(C) 7177/2024.

Mr. Mayank Sharma, SPC and Ms. Tanisha Verma, GP for R-1 in W.P.(C) 7180/2024.

Mr. Sushil Raaja, SPC for UOI (through VC) in W.P.(C) 9746/2023.

Ms. Manika Arora and Mr. SubradeepSaha, Advs. for UOI in W.P.(C) 3461/2024.

Mr. Vineet Dhanda, CGSC alongwith Mr. Abhijit SinghKadyan and Mr. Abhishrut Singh, Advs. for UOI in W.P.(C) 2501/2023, W.P.(C)

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12541/2023, W.P.(C) 5031/2024 and W.P.(C) 6418/2024.

Mr. Jagdish, SPC and Mr. Hussain Taqvi, Adv. for UOI in W.P.(C) 6413/2024.

Mr. Shoumendu Mukherjee, Sr. Panel Counsel along with Ms. Megha Sharma, Ms. Akanksha Gupta, Advs. and Mr. Vedansh Anand, GP for UOI in W.P.(C) 10847/2023.

Mr. Satya Ranjan Swain, SPC alongwith Mr. KautilyaBirat, GP for UOI in W.P.(C) 12542/2023.

Mr. Shrey Sharawat, SPC along with Mr. Sahay Garg, GP and Ms. Ishita Mishra, Ms. Priyanka Tomar, Ms. Bhanu Priya, Advs. for UOI in W.P.(C) 11215/2023.

Ms. Sarika Singh, SPC and Ms. Manpreet Kaur, GP for respondent in W.P.(C) 11339/2023.

Mr. Harsh Kadiyan and Ms. Aparajita Singh, Advs. in W.P.(C) 11888/2023.

Mr. Vivek Sharma, Sr. Panel Counsel, Mr. Aakash Meena, GP and Ms. Prerna Singh, Adv. for R-1 to 3/UOI in W.P.(C) 11888/2023.

Mr. Satya Ranjan Swain, Sr. Panel Counsel and Mr. KautilyaBirat, GP for UOI in W.P.(C) 12542/2023.

Mr. Nitinjya Chaudhary, Sr. Panel Counsel along with Mr. Gokul Sharma, GP and Mr. Rahul Mourya, Adv. for UOI in W.P.(C) 12650/2023.

Mr. Mukul Singh, CGSC and Mr. Jitender Kumar Tripathi, GP for respondent in W.P.(C) 13614/2023.

Mr. Mukul Singh, CGSC along with Ms. Ira Singh, Ms. Majjari Umesh, Advs. for UOI in W.P.(C) 14003/2023.

Ms. Shubhra Parashar, Mr. Virender Pratap Singh Charak and Mr. Dipesh Chaudhary, Advs. for R-1 to 3/UOI in W.P.(C) 14837/2023.

Ms. Garima Sachdeva, SPC and Ms. Divyanshi Maurya, Adv. for respondent in W.P.(C) 14723/2023 and W.P.(C) 15142/2023.

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Ms. Archana Gaur, SPC and Ms. Shivangi Kumar, GP for UOI in W.P.(C) 15222/2023.

Mr. Gigi C. George, Sr. Panel Counsel alongwith Mr. Amit Acharya, GP for UOI in W.P.(C) 15222/2023.

Mr. Anurag Ahluwalia, CGSC and Mr. Shivam Sachdeva, GP for UOI in W.P.(C) 16178/2023.

Mr. Ripu Daman Bhardwaj, CGSC for UOI in W.P.(C) 16446/2023.

Mr. Rahul Kumar Sharma, GP in W.P.(C) 16535/2023.

Mr. Mohan Shyam, SPC, Mr. Rahul Kumar Sharma, GP for respondent in Item No.115.
Ms. Archana Gaur and Ms. Ridhima Gaur,Adv., Mr. Kamaldeep, GP for UOI in W.P.(C) 16535/2023.

Mr. Sushil Raaja, SPC for UOI in W.P.(C) 16558/2023.

Ms. Sarika Singh, SPC and Mr. Gokul Sharma, GP for respondent in W.P.(C) 16583/2023.

Mr. Tarveen Singh Nanda, GP for respondent in W.P.(C) 205/2024.

Ms. Avshreya, Sr. Panel Counsel and Mr. Tarveen Singh Nanda, GP for respondent in W.P.(C) 205/2024.

Mr. Raj Kumar Yadav and Ms. Mehak Wadhwa, Advs. for UOI in W.P.(C) 945/2024.

Mr. Bhagwan Swarup Shukla, CGSC and Mr. Adarth Pandey, Adv. for UOI in W.P.(C) 4938/2024.

Mr. Umesh Kr. Burnwal, SPC,Mr. Kapil Yadav, GP, Ms. Shivani Ghosh, Mr. Devender Singh, Advs. for UOI in W.P.(C) 5597/2024.

Mr. Neeraj, SPC along with Mr. Vedansh Anand, Mr. Rudra Paliwal, Mr. Mahesh Kumar Rathore, Mr. Sanjay Pal, Advs. for UOI in W.P.(C) 6215/2024.

Mr. Theepa Murugesan, SPC along with Ms. Sanya Bhatia, Mr. Kaushal

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Kishor, Advs. for respondent in W.P.(C) 6409/2024.

Mr. Jagdish Chandra, SPC along with Mr. Hussain Taqvi, GP, Mr. Francis Fernandes and Mr. Prakhar Srivastava, Advs. for UOI in W.P.(C) 6413/2024.

Mr. Piyush Gupta, CGSC, Mr. Ravindra Vikram, GP, Mr. Karan Aggarwal and Mr. Himanshu Gupta, Advs. for UOI in W.P.(C) 6574/2024.

CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA

JUDGMENT

1. The present batch of petitions under Article 226 of the Constitution of India has been filed *inter alia* seeking the following reliefs :-

a. to declare the Clause No. 5 and Clause No. 11 of the Commercial Circular No. 61 of 2017 dated 05.09.2017 issued by the Railway Board as illegal, arbitrary, unconstitutional, null and void-ab-initio;

b. a direction to the respondents to renew the license of the petitioners' trolleys/stalls in terms of judgment passed by Supreme Court of India in ***South Central Railways v. S.C.R. Caterers, Dry Fruits, Fruit Juice Stalls Welfare Assn.***[1];

c. a direction to the respondents to extend the benefit of extension of license period to the petitioners in proportionate to the reduced license fee during the COVID 19 pandemic period, and as per the benefit given to other trolleys/stalls.

2. For sake of convenience, and as recorded in the order dated 10.05.2024, W.P.(C) 2501/2023 shall be treated to be the lead matter.

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3. Briefly stated, the facts in W.P.(C) 2501/2023 are that the petitioners are the licensees in respect of multipurpose stalls/trolleys ("**MPS**") at various railway stations. Petitioner no.1 is running/operating three MPS at Bareilly Railway Station. Petitioner no. 2 is running one MPS at Moradabad Railway Station. Petitioner no.3 is running one MPS at Haridwar Railway Station. It is averred in the petition that the petitioners were running their respective miscellaneous stalls/trolleys, governed by Commercial Circular No. 96 of 2007, however, in 2017, the respondent no.2/Northern Railway forced the petitioners to convert their stalls/trolleys to MPS in view of the Commercial Circular No. 61 of 2017 ("**2017 Policy**"). The petitioners and respondent no.2 have thereafter executed the following agreements to confirm the licence arrangement:

a. The petitioner no.1 and respondent no.2 have executed Master License Agreement dated 31.03.2021.
b. The petitioner no.2 and respondent no.2 have executed Master License Agreement dated 29.10.2021.
c. The petitioner no.3 and respondent no.2 have executed Master License Agreement dated 17.08.2020.

4. As per Clause 3 of the Master License Agreements, the tenure of petitioners' licenses was for five years from date of conversion of stall/trolley till 21.12.2022. The said clause expressly provides that there will be no extension and/or renewal of the agreement. However, in view of a *force majeure* event i.e., Covid-19 lockdown, *vide* letters dated 14.12.2022 sent by the respondent no.2, the said tenure was extended by a period of 68

[1] (2016) 3 SCC 582

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days i.e., till 27.02.2023. Vide the said letters, the petitioners were also directed to vacate their MPS on 27.02.2023. The said Master License Agreements and letters dated 14.12.2022 have also been impugned in W.P.(C) 2501/2023.

5. Learned senior counsel for the petitioners has broadly contended as under:

(i) Respondents ought to renew the license of the petitioners in terms of judgment passed by the Supreme Court of India in ***South Central Railways*** (supra). It is submitted that respondents are renewing the licenses of small catering units in terms of the said judgment however, refusing to renew the licenses of the small miscellaneous/multipurpose stalls/trolleys. The said action of the respondents is stated to be completely arbitrary and violative of the petitioners' fundamental right conferred under Article 21 of the Constitution of India.

(ii) Clause 11 of the 2017 Policy is stated to be arbitrary inasmuch as it extends the applicability of this policy to the existing stalls/trolleys. It is submitted that stalls/trolleys allotted before 05.09.2017 (i.e. date of issuance 2017 Policy) should continue to be governed as per past practice which existed prior to the 2017 Policy. Clause 5 of the 2017 Policy is stated be violative of Article 14, Article 19(1)(g) and Article 21 of the Constitution as the same takes away the right of renewal of license and compels the existing licensees to compete against big companies. In support of these submissions reliance has been placed on ***Olga Tellis v. Bombay Municipal***

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Corpn.[2]***, Consumer Education & Research Centre v. Union of India***[3]***, South Central Railways*** (supra) and ***Vendors Cooperative Society v. Union Of India***[4]***.***

(iii) The petitioners have a legitimate expectation that the respondents will permit them to sustain their business operations and renew their licenses throughout their lifetime and for future generations. This expectation arises from the fact that the petitioners have never been prompted to participate in any tender processes or submit renewal/continuation license applications since they were initially allocated stalls/trolleys. In support of these submissions reliance has been placed on ***Ram Pravesh Singh v. State of Bihar***[5], and ***State of Jharkhand v. Brahmputra Metallics Ltd***.[6].

(iv) The petitioners have converted their miscellaneous stalls to MPS units under coercion, economic duress and in view of unequal bargaining position between Vendors/petitioners and railways. In support of these submissions reliance has been placed on ***Central Inland Water Transport Corpn. v. Brojo Nath Ganguly***[7]***, Delhi Transport Corpn. v. D.T.C. Mazdoor Congress***[8]***, Shrilekha Vidyarthi (Kumari) v. State of U.P.***[9] and ***Sadhuram Bansal v. Pulin Behari Sarkar***[10]***.***

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[2] (1985) 3 SCC 545
[3] (1995) 3 SCC 42
[4] order dated 30.10.2018, passed by the Supreme Court in W.P. (C) 373/2017
[5] (2006) 8 SCC 381
[6] (2023) 10 SCC 634
[7] (1986) 3 SCC 156
[8] 1991 Supp (1) SCC 600
[9] (1991) 1 SCC 212
[10] (1984) 3 SCC 410

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(v) The 68-day extension of the contract provided by respondent no. 2 due to Covid-19 is arbitrary, particularly as other MPS units in different railway zones have been granted longer *dies non* period. It is further argued that following the lockdown, foot traffic at railway stations significantly declined, prompting the railway authorities to reduce license fees from June 2020 until March 2022. It is submitted that the petitioners should also be entitled to an extension of the license period proportionate to the reduction in fees.

(vi) Reliance has been placed on decisions in ***Jayaswals Neco Ltd. v. Union Of India***[11]***, Malini Mukesh Vora v. Union of India***[12]***, New India Assurance Co. Ltd. v. Union of India***[13]***, Magma Fincorp Ltd. v. Orbit Motors PrivateLtd***.[14] and ***KLG Systel Ltd. v. Operation Technology Inc.***[15], to submit that this court has jurisdiction to decide the present batch of petitions.

6. Learned counsel for the respondents has contended as under:

(i) A vague and a bald plea of the "use of force" is of no consequence and the petitioners ought to have stated how the respondents have allegedly used their position or coerced the petitioners into signing of the License Agreement. It is emphasised that the petitioners voluntarily submitted their applications to convert their stalls/trolleys to MPS units to be governed by Commercial Circular No.61 of 2017. It is submitted that the petitioners' licenses

[11] 2007 SCC OnLine Del 2094
[12] 2009 SCC OnLine Del 1776
[13] 2009 SCC OnLine Del 1764
[14] 2010 SCC OnLine Cal 1953
[15] 2012 SCC OnLine Del 786

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stand expired by efflux of time and the petitioners have no right to compel the respondent/s to extend the License.

(ii) The 2017 Policy is legally sound and non-arbitrary, applicable universally to stall/trolley owners without discriminatory treatment towards the petitioners. It is emphasised that the Karnataka High Court in judgment dated 19.02.2024 passed in W.P. (C) 24598/2023, dismissed a similar challenge against the 2017 Policy.

(iii) The judgement of the Supreme Court in ***South Central Railways*** (supra) is distinguishable inasmuch as in the present case the 2017 Policy clearly provides that there shall be no renewal or extension of licence. It is submitted that the petitioners' licences are governed by the 2017 Policy. It is emphasised that the petitioners having availed of the benefits of the 2017 Policy (i.e., tenure of five years) cannot now contest the same policy upon expiry of their license. In support of these submissions reliance has been placed on ***Senior Divisional Commercial Manager v. M. Mohamed Akbar***[16] and ***Rajasthan State Industrial Development & Investment Corpn. v. Diamond & Gem Development Corpn. Ltd.***[17]

(iv) The 2017 Policy strikes a balance between the right to livelihood and right to equal opportunity, echoing the Supreme Court's sentiments in ***South Central Railways*** (supra). It is emphasised that the 2017 Policy prevents monopolisation of the license and provides an opportunity of livelihood to similarly situated persons who also wish to participate and obtain these licenses at the

[16] 2020 SCC OnLine Mad 27308
[17] (2013) 5 SCC 470

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time of re-tendering. It is submitted that the licenses for reserved categories are exclusively re-tendered within that category, while those for the general category undergo a similar process.

(v) There is no fundamental right to trade at a particular public space, and the same is subject to reasonable restrictions. In support of these submissions reliance has been placed on ***Dharam Singh v. Municipal Corpn. of Delhi***[18]**.**

(vi) The petitions are not maintainable as all license agreements contain an exclusive jurisdiction clause which states that all disputes arising out of the said agreements shall be adjudicated by the courts of that particular zonal railway headquarters. Additionally, the 2017 Policy incorporates an arbitration clause at Clause 18. It is emphasised that mere *situs* of the Railway Board based in Delhi, which issued the 2017 Policy does not confer jurisdiction upon this court. It is submitted that even if a small part of clause of action has arisen in Delhi, the same by itself is not a determinative factor compelling this court to decide the matter on merits. Considering the doctrine of *forum conveniens,* it is submitted that, the petitioners should approach the court which has the most proximate connection to the disputes. In support of these submissions reliance has been placed on ***Kusum Ingots & Alloys Ltd. v. Union of India***[19]**, *Shiva Industries v. Union of India***[20] and ***Durgapur Freight Terminal (P) Ltd. v. Union of India***[21]**.**

[18] 2005 SCC OnLine Del 1073
[19] (2004) 6 SCC 254
[20] 2024 SCC OnLine Del 530
[21] 2023 SCC OnLine Del 1254

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Analysis and Findings

7. I have perused the record and heard learned counsel for the parties.

Maintainability

8. In the present batch of petitions, the petitioners have *inter alia* impugned Clause 5 and Clause 11 of the 2017 Policy framed by the Railway Board, seated in Delhi. They have further impugned the letter issued by the relevant zonal railways whereby they have asked to vacate the MPS units by a particular date. They are also seeking issuance of writ of mandamus to compel the respondents/ relevant zonal railways to renew and extend their license. In cases W.P.(C) 2501/2023, W.P.(C) 9746/2023, W.P.(C) 10763/2023, W.P.(C) 11888/2023, W.P.(C) 16178/2023, and W.P.(C)16446/2023, the relevant zonal railways is the Northern Railway, headquartered in Delhi. However, the remaining petitions concern zonal railways with their headquarters located outside of Delhi.

9. In ***Jayaswals Neco*** (supra), the petitioner therein impugned letter of demands raised by South East Central Railway, Chhattisgarh; they also impugned para 1744 of the Indian Railway Commercial Manual, framed by the Railway Board in Delhi. This Court held that even though no part of cause of action has arisen in Delhi since a writ striking down para 1744 of the Indian Railway Commercial Manual would have to be issued to the Railway Board which is in New Delhi, from the standpoint of Article 226 (1) of the Constitution, this Court would have jurisdiction inasmuch as the authority to whom the writ is to be issued is located within the normal

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territorial limits of this Court. Relevant extract from the said judgment is as under:

> ***"55.*** *In the light of the discussion above, it has now to be determined as to whether in the present case this Court has territorial jurisdiction to entertain the writ petitions. As noticed above, the question as to whether the Court has territorial jurisdiction to entertain a writ petition has to be arrived at on the basis of the averments made in the petition, the truth or otherwise thereof being immaterial. [see Kusum Ingots (supra) and ONGC v. Utpal Kumar Basu (supra)]. It has been averred in the petitions that paragraph 1744 of the Indian Railways Commercial Manual, which is an executive instruction issued by the Railway Board, is the root cause for the raising of the punitive demands, which are challenged in this petition. Mr Kaul submitted that if paragraph 1744 had not existed then the demands challenged herein would not have been raised. He submits that paragraph 1744 is violative of Section 73 and 79 of the Railways Act, 1989. Without going into the question of truth or otherwise of these averments and without examining the merits of the challenge to paragraph 1744 of the Indian Railways Commercial Manual, it is clear that the challenge exists and that the said paragraph 1744 forms part of the Indian Railways Commercial Manual, which was issued by the Railway Board at New Delhi. A writ striking down the said paragraph would have to be issued to the Railway Board which is in New Delhi. Therefore, from the standpoint of Article 226 (1) of the Constitution, this Court would have jurisdiction inasmuch as the authority to whom the writ is to be issued is located within the normal territorial limits of this Court. It is true that if the case rested only on a challenge to the demands de hors the question of validity of para 1744 then, only Article 226(2) would be applicable and this Court would not have territorial jurisdiction as no part of the cause of action has arisen in Delhi. But, that is not the case."*

10. In the present case, it cannot be said that this Court is devoid of the jurisdiction to entertain the present writ petitions, which assail Clause 5 and Clause 11 of the 2017 Policy. Considering that in many of these petitions the concerned zonal railways is Northern Railway, headquartered in Delhi and also considering that common issues arise for consideration in this batch of matters, this Court deems it apposite to entertain the present petitions and adjudicate the same on merits.

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11. Accordingly, the present petitions are held to be maintainable.

Renewal of License

12. I have given my anxious consideration to the matter. I am unable to agree with the contentions of the petitioners that they are entitled to renewal of license granted to them.

13. Clause 5 of the 2017 Policy provides as under:

> *"5. Tenure*
> *Allotment of all MPS shall be made for a period of only 5 years at all categories of stations subject to fulfillment of mutually agreed terms & conditions. There shall be no extension and renewal of the MPS units. However, the licensee can participate in the fresh bid, if otherwise eligible."*

14. Clause 11 of the 2017 Policy provides for applicability of the said policy on the existing stalls/trolleys, like that of petitioners. It reads as under:

> *"11 Applicability of this policy on the existing stalls.*
>
> *11.1 No new allotment, renewal, extension of the Bookstall/table (other than philanthropic), Misc. Stalls/ trolley, Chemist Stalls/corner etc. shall be done by the railways as of now. All such existing stalls/trolley etc. shall be allowed for conversion into MPS as the provisions of this policy. However, in case they do not opt for conversion into MPS, the same may be allowed to continue till expiry of the existing agreement/arrangement in vogue.*
>
> *11.2 After expiry of the current agreement period, space shall be standardized, identified and allotted by Zonal Railways for new MPS as per the extant procedure.*
>
> *11.3 The existing Bookstall/table (other than philanthropic), Misc. Stalls/trolley, Chemist Stalls/corner etc. shall be given an option to convert the MPS subject to payment of License Fee as quoted by the prospective bidder for similarly placed MPS unit at the station/platform. The tenure of 5 years shall commence from the date of conversion of existing into MPS.*
>
> *11.4 The one-time division-wise exercise of providing option of conversion to existing licensees and conversion of existing stalls into*

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MPS shall be completed by the Division within 90 days from the date of issue of this policy.

11.5 This Multi Purpose Stall policy will be applicable with immediate effect i.e. from the date of issue. This policy supersedes Misc. Article Policy 2012, Chemist Stall Policy 2000 & 2008 and Bookstall Policies of 2004 and their related instructions, unless specifically referred to in this policy document."

15. As per Clause 11, two options were given to the petitioners (existing licensees):

a. to convert their existing stalls/trolleys to MPS; in which case, petitioners will get a tenure of 5 years from the date of conversion.

b. to continue with their existing stalls/trolleys till expiry of the existing agreement/ arrangement in vogue.

16. In view of the advantages offered by the 2017 Policy, the petitioners opted for the former option. The petitioners (in W.P.(C) 2501/2023) have sent letters to the respondent no.2 seeking conversion of their miscellaneous stalls/trolleys to MPS. The same are reproduced hereunder:

a. Letter sent by petitioner no.1:

"To,

The Sr. Divisional Commercial Manager

N. Rly./Moradabad

Sub:- Regarding the conversion of Miscellaneous stall/trolley to Multipurpose stall as per policy of the Railway Board and renewal of the agreement which is going to be expired on 21.01.2018 at Bareilly Railway Station.

Sir,

With due respect that applicant is running one stall and two trolleys for selling of Miscellaneous items. Applicant has come to know to the knowledge that Railway Board launched the scheme for

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the conversion of miscellaneous stall/trolley into multipurpose stalls.

In view of above policy that applicant is agreed to all conditions and license fees. She will follow all conditions and rules if her trolleys and stall will be convert to Multipurpose Stalls. There is no complaint against her.

Applicant praised that one stall and two trolleys may be converted into Multipurpose stalls. Applicant is fully agreed.

-SD-
(Urmila Devi)
Miscellaneous Contractor Bareilly Jn., Bareilly"

b. Letter sent by petitioner no.2:

"To,
The Sr. Divisional Commercial Manager
N. Rly./Moradabad

Sub:- Regarding the conversion of Miscellaneous stall/trolley to Multipurpose stall as per policy of the Railway Board and renewal of the agreement which is going to be expired on 14.12.2017 at Moradabad Railway station Platform No.2&3.

Sir,

With due respect that applicant Nazir Hussain, Miscellaneous contract, Moradabad is running Miscellaneous stall at Platform No. 2 & 3. The applicant has come to the knowledge that Railway board has launched a new scheme for conversion of miscellaneous stall/trolley to multipurpose stall. Applicant is fully agreed to convert their stalls and trolleys as per the conversion and also pay the revised fees alongwith arrears etc. There is no complaint against him.

It is therefore requested to your honour that applicant's miscellaneous stall Platform no. 2&3 may be converted to MPS stall and agreement may be renewed which is going to expire on 14.12.2017.

Thanking you. "

c. Letter sent by petitioner no.3:

"To,
The Sr. Divisional Commercial Manager
N. Rly./Moradabad

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Sub:- Regarding the conversion of Miscellaneous stall/trolley to Multipurpose stall as per policy of the Railway Board and renewal of the agreement at Haridwar Railway Station.

Sir,

With due respect that applicant M/s Khanchand & Sons, Miscellaneous contractor, Haridwar is fully agreed to convert their stalls and trolleys as per the policy of Railway Board. The applicant will follow all rules and regulations of the conversion and also pay the revised fees alongwith arrears etc.

Thank you

-SD-
(M/s Khanchand & Sons)
Miscellaneous Contractor, Haridwar"

17. The aforesaid request of the petitioners was accepted by the respondent no.2 vide letters dated 21.12.2017. Thereafter, License Agreements were also executed between the parties.

18. The contention of the petitioners that they were compelled to convert their stalls/trolleys to MPS is untenable. At no stage in the last few years, have the petitioners protested as to such conversion. It is only at the fag end of the license tenure, that a bald plea in this regard has been raised, bereft of any particulars. It is well settled that a party alleging undue influence or coercion must plead the precise nature of the undue influence/coercion exercised. In the present case, the pleadings are bereft of necessary details. *Ex facie*, based on the aforementioned letters, it appears that the petitioners voluntarily converted their stalls/trolley to MPS. They have benefited from the 2017 Policy/Master License Agreement, specifically the five-year tenure, and now, upon the expiration of said tenure, they seek to contest certain clauses of the policy and request for renewal/extension, despite the absence of provisions for renewal or extension in the 2017 Policy/Master

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License Agreement. In ***Rajasthan State Industrial Development & Investment Corpn*** (supra), the Supreme Court has held "where one knowingly accepts the benefits of a contract, or conveyance, or of an order, he is estopped from denying the validity of, or the binding effect of such contract, or conveyance, or order upon himself."

19. Further, the Karnataka High Court in judgment dated 19.02.2024 passed in W.P. (C) 24598/2023 and other connected matters, titled as ***Gulfeeza Begum v. Union of India***, while dealing with a challenge to the same 2017 Policy, has rejected an identical challenge, observing as under:

> *"11. The submission of the learned senior counsel for the petitioner that the petitioner was forced to sign the new policy which depicted no renewal after the completion is unacceptable. The petitioner or the like are the huge beneficiaries in the new policy as it became operational for a period of 5 years from the conversion, continues to do business under the new policy and at the verge of completion of the tenure is seeking to turn around and challenge the conditions of policy. The petitioner was fully made aware that there would be no renewal under the new policy. The petitioner cannot feign ignorance as the letter of award quoted supra itself clearly indicated that it is for a period of five years which was non-renewable. With eyes wide open the petitioner has signed on the contract, enjoyed the fruits of the contract, for five years and now wants to go back to a policy that is no longer in existence or a Catering Policy that is not applicable to the petitioner."*

20. The Karnataka High Court also rejected the contention of the petitioner therein that non-renewal of license run counter to judgment of the Supreme Court:

> *"12. The learned senior counsel tried to place reliance upon the judgment rendered by the Apex Court which was with regard to Catering Policy and not the Multipurpose Stall Policy, which judgment, on the face of it, is inapplicable to the facts of the case. The petitioner cannot, after enjoying the fruits of the contract till its completion, put the clock back and take advantage by contending that she should be brought under the 2012 or the 2017 policy again. Those*

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are Catering Policies and petitioner's contract is not under Catering Policy, but under a different policy."

21. The petitioners have heavily relied on the case of ***South Central Railways*** (supra). In this case, the Supreme Court held that General Minor Unit or Special Minor Unit licensees, who were granted licenses before the implementation of the 2010 Catering Policy, were entitled to have their contracts renewed under that policy, which explicitly allowed for such renewals. In contrast, Clause 5 of the 2017 MPS Policy clearly states that there will be no extension or renewal of MPS units; however, existing licensees can participate in a fresh bid if they meet the eligibility criteria. The said action/policy of the railways cannot be said to be violative of Article 14 of the Constitution. There was no clause like Clause 5 of the 2017 Policy before the Supreme Court. The said judgment cannot be mechanically applied in the context of the factual background of these cases. As has been held by the Supreme Court, "One additional or different fact can make a world of difference between conclusions in two cases even when the same principles are applied in each case to similar facts"[22].

22. Accepting the contentions of the petitioners would tantamount to holding that they have a permanent, indefeasible and perpetual right to seek extension/renewal of their licenses for an indefinite period of time. This cannot be permitted. Accepting the plea of the petitioners would also have a deleterious impact on the railways as the same would tantamount to holding that once the railways has granted a license to any particular person, it is denuded of the power to bring the license to an end, despite contractual provision/s to the contrary. This would completely inhibit the railways from

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introducing fresh financial/public participation models and/or offering opportunities to another deserving set of persons to operate multi-purpose stalls in the railways.

23. It is also noticed that in line with constitutional principles of social welfare emphasized by the Supreme Court in ***South Central Railways*** (supra), the 2017 Policy ensures that the rights of marginalized minorities and members of weaker sections of society are safeguarded. Clause 9 of the 2017 Policy specifically provides for reservation in allotment for such sections of society. The clause states:

> *"9. RESERVATION IN ALLOTMENT:*
> *9.1 RESERVATION AT A1, A, B & C CATEGORY OF STATIONS*
> *9.1.1 There shall be 25% reservation for MPS at A1, A, B & C categories of stations with the following break up.*

S. No.	*Category*	*%age reservation*
1.	*Scheduled Caste*	*6%*
2.	*Scheduled Tribes*	*4%*
3.	*Other Backward Classes*	*3%*
4.	*Minorities*	*3%*
5.	*Divyang*	*2%*
6.	*Freedom Fighters/war widows and widows of railway employees, persons who have been dislocated/displaced due to their land having been taken over by the railways for its own use.*	*4%*
7.	*People below Poverty Line*	*3%*
	Total	*25%*
** the term minorities will include the communities as specified by the Constitution of India*		

[22] Regional Manager v. Pawan Kumar Dubey, (1976) 3 SCC 334

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9.2 RESERVATION IN D, E & F CATEGORY:

There shall be 49.5% reservation for allotment at D, E & F categories of stations with following break up.

S. No.	*Category*	*%age reservation*
1.	*Scheduled Caste*	*12%*
2.	*Scheduled Tribes*	*8%*
3.	*Other Backward Classes*	*20%*
4.	*Minorities*	*9.5%*
	Total	*49.5%***
** the term minorities will include the communities as specified by the Constitution of India*		
*** Out of this 49.5%, there will be sub quota of 10% for freedom fighters & war widows & widows of Railway employees and another sub quota of 2% will be physically challenged people. Within 49.5% of total reservation 2% sub quo will be provided to the person who have been dislocated/displaced due to their land having been taken over by the railways for its own use.*		
The sub quota of 10% for freedom fighters & war widows & widows of Railway employees; sub quota of 2% for physically & mentally challenged people will also apply in the general category of 50.5%		

9.3 There shall be a provision of 33% sub quota for women in allotment of each of the reserved category of MPS at all category of stations. The sub quota of 33% for women will also apply in general category.

9.4 For the purpose of reservation, one division will be considered as one unit for which a onetime station-wise exercise will be done for whole division and reservation will be progressively achieved."

24. The MPS units reserved for specific categories are exclusively allocated to eligible individuals from those reserved categories. Individuals from reserved categories are not competing against those from the general category (or corporations) for the allocation of MPS units. Further, as highlighted by learned counsel for the respondents, re-tendering of MPS

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units serves to rectify disparities in opportunities within the same group of individuals. This ensures a larger portion of the public (within their respective categories) has access to adequate livelihood opportunities. In facts of the present case, this court is unable to comprehend how the policy decision of the railway to re-tender "all" MPS units after expiry of the tenure would deprive right to livelihood to the petitioners. The petitioners are at liberty to participate in fresh tender that may be floated by the railways. They will be pitted against the individuals from the same category. For example, a person who is below the poverty line will be competing for a MPS unit against a person who is below the poverty line, and not against any corporations. Granting a license in perpetuity, as is sought by the petitioners, would be antithetical to equality of opportunity guaranteed under the Constitution. One of the objectives set out in the directive principles in Article 38 is that the State shall endeavour to eliminate inequalities in opportunities; this objective is fundamental in the governance of the country and which the State is under an obligation to realise. Hence, the argument that the 2017 Policy violates Articles 14, 19 and 21 of the Constitution of India is unfounded and is liable to be dismissed.

25. The contention of the petitioners that they have a "legitimate expectation" for the renewal of their licenses, lacks merit. Admittedly, the petitioners are licensees in respect of the MPS units. It is the essence of a licence that it is revocable at the will of the grantor. The petitioners cannot claim a vested right entitling them to perpetual renewal of the license

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granted to them. In ***Yazdani International (P) Ltd. v. Auroglobal Comtrade (P) Ltd***.[23], it has been held as under:

> *"43. As rightly pointed out by Shri Nariman, a licence by definition does not create any interest in the property. A licence only gives a right to use the immovable property of the grantor, to the grantee. There is no transfer of any interest in such property in favour of the grantee. On the other hand, under the Transfer of Property Act, an interest either limited or unlimited is created in favour of the transferee depending upon the nature of the transfer (sale, mortgage or lease, etc.). Under Section 60, a licence is revocable at the will of the grantor which is the essence of a licence. The Easements Act categorically declares that a licence can be revoked by the grantor except in the two contingencies specified under Sections 60(a) and (b). No such exceptions are pleaded or demonstrated by the appellants. Therefore, it must be held that none of the appellants have any indefeasible right of renewal either under the Easements Act or under the abovementioned policy.*
>
> *44. However, that does not mean that a public body like the respondent Board can arbitrarily decline to renew a licence. It is well settled by a catena of decisions of this Court that no public body under our constitutional system is vested with such arbitrary powers, as was pointed out by this Court in Ramana Dayaram Shetty v. International Airport Authority of India. If the Board decides not to renew any licence either with respect to a class of licences or with reference to a specific area of land, normally such a decision cannot be said to be either irrational or arbitrary unless there are other compelling reasons to indicate that the decision has no rational purpose to be achieved."*

26. Furthermore, in ***Ram Pravesh*** (supra), it has been held "a legitimate expectation, even when made out, does not always entitle the expectant to a relief. Public interest, change in policy, conduct of the expectant or any other valid or bona fide reason given by the decision-maker, may be sufficient to negative the "legitimate expectation".

27. In ***Brahmputra Metallics*** (supra), it has been reiterated that doctrine of legitimate expectation cannot be claimed as a right in itself, but can be

[23] (2014) 2 SCC 657

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used only when the denial of a legitimate expectation leads to the violation of Article 14 of the Constitution.

28. In the present case, the licenses held by the petitioners are subject to the terms and conditions outlined in the 2017 Policy. This policy explicitly renders the license non-renewable. Consequently, it is beyond the purview of this Court to mandate the renewal of a license in derogation of the 2017 Policy and in derogation of the express terms of license.

29. In the above conspectus, the challenge to Clause 5 and 11 of the 2017 Policy, is clearly unsustainable.

Extension of the License period on account of Covid-19

30. Vide letters dated 14.12.2022, the licenses of the petitioners were extended by a period of 68 days on account of a *force majeure* event i.e., government imposed lock-down due to Covid-19. The letter dated 21.05.2020 issued by the respondent no.3/Railway Board outlines the implementation of *force majeure*, as under:

"GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS
RAILWAY BOARD

No. 2020/Catering/600/03

The Principal Chief Commercial Managers,
All Zonal Railways.

New Delhi,
Dated 21.05.2020

The Chairman & Managing Director,
IRCTC, Statesman Building,
Barakhambha Road, New Delhi.

Sub:- Implementation of Force Majeure in Catering and Vending (MPS, Bookstalls,Chemist/Misc. Stalls etc.) contracts on account of Covid-19 pandemic. Ref:-

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(i) Board's Letter No. 2020/Catering/600/01/Pt.2 dated 20.05.2020
(ii) Ministry of Finance Memorandum dated 19.2.2020
(iii) WCR's letter no. WCR/HQ/C-930/Catering dated 14.05.2020
(iv) WR's Letter No. 45/15/1/Vol.II dated 13.05.2020

In view of the Ministry of Finance Memorandum dated 19.2.2020, it has been decided to invoke Force Majeure clause for the lockdown period due to Covid-19 in respect of static catering and vending units on all railway stations.

Zonal Railways have sought clarification regarding the applicability and period of Force Majeure. In this regard reference is also made to the instruction dated 20 May 2020 vide which all stalls have been permitted to he opened. However it is understood that there may be variations across stations regarding the actual date of opening of the stalls depending upon passenger traffic restoration in respect of individual stations. Hence determination regarding the period of non-operation of contract in respect of individual contracts and stations may be made by the respective Zonal/Divisional Railways keeping in view the restoration of passenger traffic pertaining to that particular station following due diligence.

It is advised that Force Majeure clause may be implemented in respect of all catering and vending contracts which were non-operational on account of lockdown, irrespective of whether their agreements incorporate the Force Majeure clause. The period for which the contracts were non- operational shall be treated as dies non and the contract period shall be extended accordingly.

Necessary action may be taken accordingly.

This issues with concurrence of the Finance Commercial Directorate of Ministry of Railways."

31. It is evident from the perusal of the aforesaid letter dated 21.05.2020 that it takes into consideration the ground reality that there were variations across the stations regarding the impact of Covid-19. The actual date on which the stalls could be made operational, and the timeline for restoration of passenger traffic, varied from station to station. It was directed that the

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period during which license was non-operational shall be treated as *dies non* period and the contract period shall be extended accordingly. As noticed above, the determination in this regard was left to be made by the respective zonal/divisional railways.

32. Taking into account the above, the concerned zonal/divisional railway had worked out the *dies non* period based on the ground realities prevalent at the concerned railway stations and have accordingly extended the license period. It cannot be said that the extent of extension to which the petitioners are entitled, has been worked out on a completely arbitrary basis. The contentions in this regard are devoid of merit.

33. The petitioners' reliance on a larger extension of tenure granted to certain licensees, is misplaced. The facts and circumstances which necessitate such action by the concerned zonal/divisional railways have to be tested independently. Notably, the petitioners have not impugned the aforesaid letter dated 21.05.2020 issued by the Railway Board. Instead, the petitioners have sought a writ of mandamus to be issued to the respondents to frame policy in a particular manner. Such a direction cannot be issued under Article 226 of the Constitution. In ***Rachna v. Union of India***[24], it has been held as under:

> *"48. Judicial review of a policy decision and to issue mandamus to frame policy in a particular manner are absolutely different. It is within the realm of the executive to take a policy decision based on the prevailing circumstances for better administration and in meeting out the exigencies but at the same time, it is not within the domain of the courts to legislate. The courts do interpret the laws and in such an interpretation, certain creative process is involved. The courts have the jurisdiction to declare the law as unconstitutional. That too, where it is called for. The court is called upon to consider the validity of a policy decision only when*

[24] (2021) 5 SCC 638

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a challenge is made that such policy decision infringes fundamental rights guaranteed by the Constitution or any other statutory right. Merely because as a matter of policy, if the 1st respondent has granted relaxation in the past for the reason that there was a change in the examination pattern/syllabus and in the given situation, had considered to be an impediment for the participant in the Civil Services Examination, no assistance can be claimed by the petitioners in seeking mandamus to the 1st respondent to come out with a policy granting relaxation to the participants who had availed a final and last attempt or have crossed the upper age by appearing in the Examination 2020 as a matter of right."

34. In ***Vivek Krishna v. Union of India***[25], it has been held as under:

"9. Even otherwise, a writ of Mandamus cannot be issued to direct the Respondents to enact law and/or to frame rules even under the wider powers conferred under Article 226 of the Constitution. A Mandamus lies for enforcement of a fundamental right or a statutory right, or the enforcement of a fundamental duty related to enforcement of a fundamental right or a statutory right. In exceptional cases, a writ may even lie for enforcement of an equitable right. The breach or threat to breach a fundamental, statutory or may be enforceable equitable right, is the sine qua non for issuance of a writ of Mandamus."

35. Once the respondents have disclosed the basis for working out the *dies non* period, this Court in exercise of the jurisdiction under Article 226 of the Constitution of India cannot get into intricacies of the factual situation subsisting at each railway station to virtually exercise appellate jurisdiction in respect of the extent of extension granted to individual licensees. It is noticed that individual license agreement executed between petitioner and the concerned railway authorities as well as the 2017 Policy (provisions of which are applicable to the licensees with whom the formal execution of the license agreement is yet to take place), contain an arbitration clause if the petitioners are aggrieved on account of insufficiency of extension on account of the Covid-19 situation or if they wish to claim damages on any

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account, they are at liberty to invoke the arbitration clause and initiate appropriate proceedings. The rights and remedies of the petitioners in this regard are kept open.

36. In the circumstances, this Court finds no merit in the present petitions and the same are accordingly dismissed. However, since the petitioners have been operating the concerned multi-purpose stall for a very long period of time, to enable the petitioners to make a transition and make alternative vending arrangement/s, this Court considers it apposite to grant a period of 3 months to the petitioners (from the date of the extended license period after taking into account the *dies non* period; OR from the date of this judgment, whichever is later) to vacate the stalls in questions. It is directed accordingly.

37. The present batch of petitions is disposed of in the above terms.

38. All pending application/s also stands disposed of.

SACHIN DATTA, J

MAY 29, 2024/*hg*

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