

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

TUESDAY, THE 15TH DAY OF SEPTEMBER 2015/24TH BHADRA, 1937

WP(C).No. 22734 of 2015 (N)

PETITIONER :

**N.ISMAIL, AGED 55 YEARS, S/O.LATE CHOKRU,
RESIDING AT 302/B/BLOCK, BLOOMSBERRY,
23/4, BENSON TOWN, BENGALURU-46.**

BY ADV. SRI.P.A.SALIM

RESPONDENTS :

- 1. THE UNION OF INDIA
REPRESENTED BY ITS SECRETARY TO GOVERNMENT,
MINISTRY OF RAILWAYS, RAIL BHAVAN, 1 RAISINA ROAD,
NEW DELHI-110011.**
- 2. THE INDIAN RAILWAY BOARD
REPRESENTED BY ITS CHAIRMAN, MINISTRY OF RAILWAYS,
RAIL BHAVAN, 1 RAISINA ROAD, NEW DELHI-110011.**
- 3. THE GENERAL MANAGER
SOUTHERN RAILWAYS, POONAMALLY HIGH ROAD, PARK TOWN
CHENNAI, TAMILNADU-600003.**
- 4. THE DIVISIONAL RAILWAY MANAGER,
PALAKKAD DIVISION, DRM COMPLEX, OLAVAKKODE,
PALAKKAD, PIN 678002.**
- 5. THE SENIOR DIVISIONAL COMMERCIAL MANAGER
SOUTHERN RAILWAYS, PALAKKAD DIVISION, PALAKKAD
PIN 678002.**
- 6. THE INDIAN RAILWAY
CATERING AND TOURISM CORPORATION LIMITED (IRCTC)
HAVING REGISTERED
OFFICE AT BANK OF BARODA BUILDING
16 PARLIAMENT STREET, NEW DELHI
REPRESENTED BY JOINT GENERAL MANAGER
REGIONAL OFFICE, CONVENT JUNCTION, ERNAKULAM-682035.**

R1 TO R5 BY SRI.C.S.DIAS,SC, RAILWAYS

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 15-09-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT-P1: TRUE COPY OF THE RELEVANT PAGES OF TENDER DOCUMENT PREPARED BY GGM/IRCTC/SZ/CHENNAI DATED: NIL.
- EXHIBIT-P2: TRUE COPY OF THE AGREEMENT EXECUTED BETWEEN PETITIONER AND THE 6TH RESPONDENT DATED 19.9.2008.
- EXHIBIT-P3: TRUE COPY OF THE RELEVANT PAGES OF THE CATERING POLICY ISSUED BY THE 2ND RESPONDENT BEARING NO.2009/TG-111/600/25 DATED 21.7.2010.
- EXHIBIT-P4: TRUE COPY OF THE COMMUNICATION ISSUED BY THE 4TH RESPONDENT BEARING NO.JC 79/CS/GMU, DATED 11.1.2011.
- EXHIBIT-P5: TRUE COPY OF THE NOTIFICATION ISSUED BY THE 2ND RESPONDENT BEARING NO.213/TG-111/6000/19, DATED 26.11.2014.
- EXHIBIT-P6: TRUE COPY OF THE COMPUTER PRINTOUT OF THE TENDER NOTIFICATION ISSUED BY THE 5TH RESPONDENT BEARING NO.J/C.90/GENL./2015 DATED 24.6.2015.
- EXHIBIT-P7: TRUE COPY OF THE REQUEST DATED 23.7.2015 SUBMITTED BY THE PETITIONER TO THE 5TH RESPONDENT.
- EXHIBIT-P8: TRUE COPY OF THE RECEIPT ISSUED BY THE RAILWAY DATED 6.7.2015.
- EXHIBIT-P9: TRUE COPY OF THE RECEIPT ISSUED BY THE RAILWAY DATED 23.6.2015.
- EXHIBIT-P10: TRUE COPY OF THE RECEIPT ISSUED BY THE RAILWAY DATED 22.6.2015.
- EXHIBIT-P11: TRUE COPY OF THE RELEVANT PAGE OF THE INDIAN RAILWAY CODE ISSUED BY THE 2ND RESPONDENT DATED 7.11.2014.
- EXHIBIT-P12: TRUE COPY OF THE INTERIM ORDER IN W.P.(C) NO.8271/2014 OF THIS HON'BLE COURT DATED 28.3.2014.
- EXHIBIT -P13: COPY OF THE EXTENSION ORDER DT 11/2/2015 ISSUED BY THE SENIOR DIVISIONAL COMMERCIAL MANAGER.

RESPONDENT(S)' EXHIBITS

:

- EXT.R5(1): COPY OF AGREEMENT EXECUTED BETWEEN THE PETITIONER, THE RAILWAYS AND THE R6 IN RESPECT OF CATERING TROLLEY NO. 106.
- EXT.R5(2): COPY OF LETTER DT 13/1/2012 ISSUED BY THE R5 TO ALL LICENSEES.
- EXT.R5(3): COPY OF OPTION FORM SUBMITTED BY THE PETITIONER DT 7/11/2013.

//TRUE COPY//

P.A. TO JUDGE

A.MUHAMED MUSTAQUE, J.

W.P.(C) No.22734 of 2015

Dated this the 15th day of September, 2015

JUDGMENT

The petitioner is a Catering Contractor. He challenges Ext.P6 tender notification. Ext.P6 tender notification includes for running Catering Stall No.68 and Trolley 106 of Palakkad Junction and also Trolley 109 of Shoranur Junction. The above Catering Stall and Trolleys are now run by the petitioner.

2. The petitioner has been awarded to run the above Trolleys and Stall based on 2005 policy of the Railway Board.

3. The above Trolleys installed are now being awarded based on Catering Policy 2010, which is produced as Ext.P3. The petitioner's case is that by virtue of Catering Policy, he is entitled for renewal. Particularly, the petitioner points out to Clause 26.1.1 of Catering Policy 2010. The above Clause refers that 2005 policy would apply in respect of existing catering licensees upto the validity of their contractual period.

4. The petitioner submits that during the currency of the contractual period, the above Trolleys and Stall cannot be awarded

to any persons. The petitioner also questions the awarding contract by way of tender in violation of Ext.P11 Policy of the Railway Board. Ext.P1 is the general conditions of licence. Clause 3.1 of Ext.P1 reads as follows:

“Total tenure of Licence: Term of Licence for Refreshment Room/Stall/Trolley will be five years, from the date of commencement of services, one extension upto 3 years can be considered subject to satisfactory performance and payment of all dues.”

5. The petitioner refers to Ext.P5 issued by the Government of India based upon the legal opinion received from the Legal Department with reference to Clause 3. Clause 3 of Ext.P5 reads as follows:

The issue of the meaning of contractual period in this context was examined by the Board in consultation with Finance Dte. and Legal Dte. The opinion of Legal Dte. has given following opinion:-

“the contract period of +3 years extension is the part of the contract, which is subject to fulfilment of certain conditions and only referring department can vouch for its fulfilment. Though contract period is mentioned as 5+3 years, its continuation is depended on administrative satisfaction of the fulfilment of all its conditions”.

6. The contractual period referred in Clause 26.1.1 of the Catering Policy 2010. Therefore, it is contended that the contractual period as referred in Ext.P3 in Clause 26.1.1 must be understood the extended three years period.

7. The learned counsel would submit that the original five years period expired in the year 2013 and therefore, by three years extension, it would expire only in the year, 2016. Thus, it is submitted that any invitation of tender during the currency of the petitioner's licence, is illegal.

8. Learned standing counsel points out to Clause 3.1 of Catering Policy 2010 and submits that ie., only a discretionary power given for extension. The three years period is not an automatic extension and they have extended time only upto 30.9.2015. Therefore, the petitioner cannot as a matter of right claim a extension of three years based on Clause 3.1. The learned Standing Counsel further points out to Clause 19.2 of Catering Policy 2010. It reads as follows:

“Minor Units: An individual/firm/company will be allowed to hold maximum two minor catering units at a station and a maximum of ten units per Zonal Railway. In

case of suburban section, ceiling limit of two units per division would be applicable.”

9. Therefore, it is submitted that in the light of Clause 19.2 of Catering Policy 2010, the petitioner exercised option. In Ext.R5, it can be seen that the petitioner has given up by the right in respect of the Stalls and Trolleys referred as above. Therefore, it is contended that the petitioner is estopped for claiming that he is entitled for continuation of the licence till 2016.

10. It is to be noted that the renewal of licence as contemplated under Clause 3.1 is based on discretion of the authority. The maximum period of extension is up to three years. The petitioner has no case that he was given three years extension. Admittedly, the petitioner's present extended period would expire on 30.9.2015. In that view of the matter, there is no extended contractual period of licence. Therefore, the petitioner cannot contend that he is entitled for continuation till 2016.

11. Admittedly, as per Clause 19.2 of Catering Policy 2010, an individual/firm/company will be allowed to hold maximum two minor catering units at a station and a maximum of ten units per

Zonal Railway. It is apparently that the petitioner has exercised option based on the above Clause by executing Ext.R5. Therefore, this Court is of the view, the petitioner is governed by Catering Policy of 2010 and the petitioner cannot again claim otherwise than under Clause 19.2.

12. The petitioner also challenges regarding the method of invitation of tender. The petitioner's case is that invitation of tender is against Ext.P11. The Clause 703 of Ext.P11, which reads as follows:

“Catering/vending licences should be awarded by calling applications. Tender system for selection of licenses shall not be followed. Applications should be invited only from professional and reputed caterers through press advertisement.”

This Court is of the view that if the petitioner has any grievance regarding the method of invitation of tender, he is free to bring to the notice of higher authorities and it is for the higher authorities to take appropriate decision in accordance with law.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

In