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

% *Judgment delivered on: 18<sup>th</sup> May, 2015*

+ **W.P.(C) 7095/2014**

M/S R.K. ASSOCIATES & HOTELIERS PVT. LTD. .... Petitioner

Represented by: Mr.Arun Bhardwaj, Senior  
Advocate with Mr. Manish Bishnoi and  
Mr. Jitender Kumar, Advocates.

Versus

INDIAN RAILWAYS CATERING & TOURISM CORPORATION  
(IRCTC) & ORS. .... Respondents

Represented by: Mr. Amit Sibal, Senior  
Advocate with Mr. D.P.Pande, Mrs. Bhawana  
Pande, Mr. Rajesh Pande, Mr. Sourabh Gupta  
and Mr. S.J. Pandey, Advocates.

**CORAM:**  
**HON'BLE MR. JUSTICE SURESH KAIT**

**SURESH KAIT, J.**

**W.P.(C) 7095/2014**

1. Vide the present petition, the petitioner seeks directions thereby directing the respondent/Indian Railways Catering and Tourism Corporation (for short 'IRCTC') to extend the existing catering licence of the petitioner for the operation and management of Quick Service Food Kiosk (for short 'QSFK') at Vijaywada Station upto 09.11.2016

in terms of Clause 3.1 of General Conditions of license as contained in the tender document.

2. Facts of the case are that the petitioner was a successful bidder in the tender floated in the year 2007 by the respondent for award of catering work for the operation and management of QSFK in question. A letter of award was issued on 26.03.2008 followed by an agreement between the petitioner No.1 and respondent/IRCTC on 05.06.2009. The said QSFK was handed over to the petitioner on "as is where is" basis without any infrastructure as is provided in Clause 3.1 of Special Conditions of the tender document. The petitioner created the requisite infrastructure and equipment at its own cost by making huge investment of about Rs.50 lakhs and commissioned the Kiosk on 10.11.2008. Clause 2.1 of the General Conditions of license provided for payment of license fee and it specifically required the bidders to quote license fee for 8 years' tenure of the license.

3. Mr. Arun Bhardwaj, learned senior counsel appearing on behalf of the petitioner submitted that petitioner had quoted a significantly higher license fee since the clear understanding between the licensees/bidders and the respondent at that stage was that the extension would be automatically granted in all cases unless some exceptional circumstances disentitle the licensee's claim for extension. The contract period was to be extended for a further period of three years as is clear from Clause 5.3 of the General Conditions of license which provided that the respondent/IRCTC shall issue a letter of award

(LOA) to the selected bidder for a period of "5+3" years. Since the petitioner was entitled for extension of three years' period under Clause 3.1, therefore, when five years period was about to come to an end on 09.11.2013, the respondent asked the petitioner for its willingness on 10.10.2013 for extension. The petitioner, accordingly, gave its willingness on 14.10.2013.

4. Mr. Bhardwaj submitted that thereafter, the Competent Authority nominated a three members' committee of GGM/DCS, GGM/infra and GGM/finance to consider renewal of petitioner's license. As per the Committee's report as obtained under Right to Information Act, 2005, the Committee invited details of complaints and inspections from GGM/SCZ, which is the concerned Railway Zone supervising the QSFK. The Committee examined all the concerns raised by the GGM/SCZ and found the petitioner's performance was satisfactory and there was no breach of the tender.

5. Further submitted that with regard to allegations of GGM/SCZ that the petitioner had not installed the Data Capturing System (DCS), the Committee found that it cannot be considered a fault on licensee's part since SCZ itself was not sure about the system to be put in place for sales capturing. The Committee also found that there was only one complaint of overcharging in 5 years which too has been condoned by imposition of fine. It also noted that there was no outstanding license fee against the petitioner, except service tax of Rs.16,068/-which was also paid by the licensee. With regard to SCZ's view that fresh

tendering will increase revenue of IRCTC, the Committee's relevant observations are as under:-

*"Regarding SCZ's view that fresh tendering will increase the earning of IRCTC, it may be true that with fresh tendering IRCTC may get higher revenue as compared to the presently generated from the unit. However, there could be an argument that in case IRCTC takes up tendering of this unit or for that matter any other unit after two or three years, the revenue will definitely be more than what we are expecting in the present scenario. Most importantly, the fact needs to be considered is to honor tender conditions, agreed between IRCTC and licensee, which provides for one time extension of three years and denying the extension on account other than outstanding and poor performance will give wrong message to the perspective bidders. It is not only for the licensee to honor the tender conditions but it is the obligation of the licensor as well."*

6. Mr. Bhardwaj submitted that in terms of the decision of the Committee, respondent wrote a letter dated 08.11.2013 intimating the petitioner about the conditions suggested by the committee, to which the petitioner responded in affirmative vide letter dated 10.01.2014 and further complied with all the conditions within the stipulated period of three months. The letter dated 10.01.2014 also stated that the petitioner got the online data connectivity installed as per the Committees' condition and this fact was also verified by IRCTC official, Mr. Bhujang Rao.

7. Mr. Bhardwaj further submitted that the Committee has noted without any basis and merely upon report of the GGM/SCZ that sales are being under reported without affording any opportunity to the petitioner. As regards installation of online data capturing, the Committee's stand is factually incorrect because the online data capturing had been fully implemented by the petitioner which is clear from the letter dated 10.01.2014 and this fact had also been verified by IRCTC official, Mr. Bhujang Rao. This fact is further clear from emails dated 24.06.2014 and 18.09.2014 sent by petitioner confirming online connectivity. Since the petitioner was not afforded any opportunity of explaining its position, the Committee was not made fully aware of the correct and relevant facts. Apart from this, this is in complete contrast to the earlier recommendations wherein the Committee categorically found that the licensee cannot be held responsible for non-implementation of online data capturing system since the IRCTC had itself failed to evolve a proper mechanism for it.

8. It is submitted that with regard to Condition No.4, namely, operation of Kiosk as IRCTC branded kiosk, the Committee found that same has not been done which is again contrary to letter dated 10.01.2014 of the petitioner, whereby stated that this has been fully complied with and that the Kiosk is being run as per IRCTC directives and approved signage as per Clause 2.4. However, there is no discussion as to how this Clause is being breached especially in view of the earlier recommendation dated 08.11.2013 of the very same

Committee wherein it was noted that IRCTC has not advised any signage plans to licensee to display. The recommendations are inherently contradictory and wrong. With regard to condition No.6, the finding is absolutely wrong as the petitioner has paid the service tax amount vide letter dated 22.04.2013 which is clear from letter dated 10.01.2014 and TDS certificate has also been supplied.

9. Mr. Bhardwaj further submitted that thereafter, the respondent issued a letter dated 28.03.2014 informing the petitioner that the Competent Authority has decided not to renew the license beyond 09.05.2014 and directed the petitioner to handover possession of the premises. Immediately thereafter, the respondent issued fresh tenders for this unit in April, 2014, which was instantly protested by the petitioner by filing an appeal to the Managing Director, and also issued legal notice. On 09.05.2014, the respondent, after considering the appeal as well as the legal notice, did not give effect to the rejection letter dated 28.03.2014 and abandoned the tender process and granted extension of three months followed by yet another extension on 08.09.2014 upto 09.12.2014. The petitioner wrote to the respondent to grant extension for the entire remaining duration of three-year period instead of *ad hoc* extensions of three months. However, without taking a final decision on the request, the respondent yet again suddenly floated a fresh tender for this unit on 25.09.2014 compelling the petitioner to file the present writ petition.

10. Learned senior counsel further submitted that the respondent has sought to argue as though Clause 3.1 gives unfettered and unbridled powers to the respondent to reject the request for extension on whatever consideration which may be wholly irrelevant or extraneous. Such a contention from an instrumentality of State ought to be rejected at the very outset in view of settled legal position.

11. Mr. Bhardwaj submitted that the impugned action is in complete violation of principles of natural justice inasmuch the impugned action has been taken without issuing any show cause or affording any opportunity to petitioner to explain its stand or after granting hearing. The recommendations of the Committee are one sided, contradictory and incorrect findings. No final decision has been taken regarding extension and, therefore, action of the respondent to invite fresh tender is baseless.

12. Mr. Bhardwaj further submitted that the earlier order dated 28.03.2014 was not given effect to by the respondent since thereafter, the appeal as well as legal notice of the petitioner was considered and two extensions were granted. Thereafter no order rejecting the request for extension was ever passed after complying with the principles of natural justice and affording hearing to the petitioner, however, straight away tenders were called.

13. Learned senior counsel for the petitioner submitted that the respondent granted extension in as many as 21 cases. The most of these

cases are Food Plazas which are bigger units in which the total tenure is of  $9+3=12$  years and so called prospect of revenue loss if legitimate is much more in these units. The respondent has granted extension to petitioner in its QSFK at old Delhi apart from other QSFKs to different licensees. This shows that respondent is following a pick and choose policy and exercising its discretion to grant extension in an arbitrary and discriminatory manner.

14. Learned senior counsel submitted that non-grant of extension to the petitioner on the ground of revenue loss is a decision based on irrelevant and extraneous considerations. The grant of extension to the petitioner has to be based on relevant considerations germane to the licensee only and not on other considerations which are beyond the control of Licensee and, therefore, cannot be attributed to it. The respondent was conscious of revenue loss when the policy was framed and the tender conditions were framed yet the respondent, in its wisdom incorporated a renewal clause, therefore, the respondent cannot be allowed to go back on its promises/representations made to the licensees on irrelevant and extraneous considerations.

15. Mr. Bhadwaj further submitted that the petitioners are attempting to import words into Clause 3.1 to contend that there is an obligation on the part of the respondent to grant extension to the petitioner. There is no vested or accrued right in favour of petitioner to get extension. Complying with the terms of the contract is not a relevant consideration because the present case is not a case of

termination, but only a case of renewal/extension, which is a decision within the discretion of the respondent.

16. To strengthen his arguments, learned senior counsel has submitted that in *Tata Cellular vs. UOI (1994) 6 SCC 651*, the Supreme Court has held that even in contractual matters, judicial review will lie to investigate as to whether the decision making process has been fair and proper or not. It is further held that procedural infirmity is one of the grounds which may occasion interference by Court.

17. Learned senior counsel submitted that the present case is clearly a case covered under this ground since there is a procedural irregularity inasmuch not only the recommendations of the Committee are erroneous and patently contradictory and passed in violation of principles of natural justice but also once the appeal of the petitioner was considered by the higher authorities and decision dated 28.03.2014 was not given effect to and tender process was also not pursued, the respondent cannot thereafter again turn around and seek to remove the petitioner.

18. Regarding the contentions raised by the respondent that the petition is not maintainable in view of the arbitration clause, the dispute is purely of contractual nature and the Writ Court cannot interpret a contractual provision. Mr. Bhardwaj submitted that the Supreme Court has held in number of cases that writ petition is

maintainable against the State as well as its instrumentalities, which are public sector enterprises completely owned and controlled by the State even in contractual matters even where there exists an alternative remedy in the form of an arbitration clause provided the impugned action is violative of principles of natural justice and fundamental rights.

19. To strengthen his submission, learned senior counsel has relied upon a case of *Harbanslal Sahnia vs. Indian Oil Corporation (2003) 2 SCC 107*, whereby the Apex Court set aside the termination of dealership agreement by Indian Oil Corporation in a writ petition after reversing the judgment of the High Court dismissing the writ petition on the ground that there existed an arbitration clause. The Supreme Court held that the remedy of writ is available despite arbitration clause where there is violation of principles of natural justice or infringement of fundamental rights.

20. Also relied upon the case of *ABL Intl. Ltd. vs. Export Credit Guarantee Corporation of India Ltd. 2004 (3) SCC 553*, whereby the Apex Court held that writ petition is not only maintainable in contractual matters of a Corporation but also went further and held that writ can be issued even in cases of disputed facts and where the effect of mandamus is akin to a money decree provided the actions of the State are unfair and contrary to contractual clauses.

21. On the other hand, Mr. Amit Sibal, Ld. Sr. Counsel appearing on behalf of the respondents submitted that the petitioner was awarded licence for running Quick Service Food Kiosk (QSFK) at Vijaywada for a period of 5 years in terms of Clause 3.1 of the tender document. As per the said clause, respondent / Corporation may extend the licence of the petitioner for a maximum of another 3 years at IRCTC's sole discretion and the decision of the respondent in this regard would be final. Also, respondent was not required to give any reasons whatsoever for not extending the term of licence. Moreover, letter of award dated 26.03.2008 clearly states that the award is subject to old terms and conditions mentioned in the bid document. The petitioner vide letter dated 17.04.2008 accepted the terms and conditions of the licence.

22. Ld. Sr. Counsel further submitted that in accordance with the terms and conditions of the tender, Para (b) of recitals to the Agreement for Licence dated 05.06.2009, between the petitioner and IRCTC provides and reiterates that licence shall come into force from 10.11.2008 and shall be valid for a period of 5 years, i.e., up to 09.11.2013. However, the petitioner never challenged the draft Agreement alleging that the terms of the Agreement for Licence should be 5 + 3 years and not merely 5 years and proceeded to sign and execute the said Agreement. Moreover, the deficiency in performance of Kiosk was found by way of inspection carried out on 21.11.2013 and a penalty of Rs.5,000/- was imposed on the petitioner.

23. Learned senior counsel submitted that after expiry of 5 years licence period, IRCTC floated a new tender for running the Kiosk. In the tender, the highest bid received is Rs.1,16,00,000/- (Rupees One Crore Sixteen Lac only) per annum by ARENCO Catering, which is approximately Rupees One Crore more than the petitioner, who is paying a minimum licence of Rs.14,30,000/- per annum. Therefore, the IRCTC cannot continue to bear loss.

24. Ld. Sr. Counsel submitted that clause 7.15 and 10.1 of the terms and conditions of tender provides for arbitration clause. Therefore, petitioner should have raised his grievance before the Arbitrator.

25. Ld. Sr. Counsel further submitted that the petitioner seeks Mandamus thereby directing the respondent to extend the licence of the petitioner till 09.11.2016 in terms of Clause 3.1 of the General Terms and Conditions of the licence. The same are as under:

**Clause 3 : Period of License**

**3.1 : Total Tenure of License: Term of License of Quick Service Food Kiosk will be Five (5) years. The licence may be extended for another three (3) years at the discretion of IRCTC and the decision of IRCTC in this regard shall be final. Total tenure of licence shall not exceed 8 years in any case. IRCTC will not be obliged to assign any reasons whatsoever for not extending the licence.**

26. Mr. Sibbal submitted that on perusal of aforesaid clause, it is established that the terms of licence is 5 years and not 8 years as the

petitioner has tried to project before this Court. The aforesaid Clause clearly uses word “*may*” and not “*shall*” for extension of the licence. Thus, the said clause does not create any vested right for extension of the licence in favour of the petitioner. Moreover, the said clause clearly provides that the discretion to extend licence is solely with IRCTC and its decision on extension is final. Thus, IRCTC is not obliged to assign any reason whatsoever to the licensee for not extending the licence.

27. On bare reading of Clause 3.1, it becomes evident that the language of the clause is clear and unambiguous and hence the words and phrases in the said Clause have to be read in a manner as they have been used in the clause and no other interpretation can be given to the said Clause. There is no vested right to an extension and the decision is solely at the discretion of IRCTC, whose decision is final and for which it has to give no reasons whatsoever.

28. Ld. Sr. Counsel further submitted that the contract between the State and the party has not been terminated by the State before the expiry of the term of contract. However, in the present case, licence is not being extended after expiry of the contract period at the sole discretion of the IRCTC, which is incomplete in consonance with Clause 3.1 of the terms and conditions of tender. Moreover, letter of award dated 26.03.2008 clearly states that the award is subject to old terms and conditions mentioned in the bid document and the petitioner

vide letter dated 17.04.2008 accepted the terms and conditions of the licence.

29. To strengthen his arguments, Id. Counsel has relied upon a case of ***R.C. Goel vs. Indian Railways Catering and Tourism Corporation & Ors. (2008) 149 DLT 55***, whereby this Court had an occasion to interpret a Clause identical to Clause 3.1 in the instant case and held that the contract was only for 5 years and extension clause was purely discretionary and hence created no right whatsoever in favour of the plaintiff therein. In view of the said finding, this Court declined to grant any relief as was prayed by the plaintiff therein. In the said case, one of the parties was the present respondent.

30. Ld. Sr. Counsel further submitted that the disputes relating to interpretation of terms and conditions of contract cannot be agitated in a Writ Petition as a contract is in the realm of private law. It has been held in the case of ***State of UP and Ors. v. Bridge & Roof Company (India) Ltd. (1996) 6 SCC 22*** as under:

*“16. Firstly, the contract between the parties is a contract in the realm of private law. It is not a statutory contract. It is governed by the provisions of the Contract Act or, may be, also by certain provisions of the Sale of Goods Act. Any dispute relating to interpretation of the terms and conditions of such a Contract cannot be agitated, and could not have been agitated, in a writ petition. That is a matter either for arbitration as*

*provided by the contract or for Civil Court, as the case may be..... ”*

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*21. There is yet another substantial reason for not entertaining the writ petition. The contract in question contains a clause providing inter alia for settlement of disputes by reference to arbitration (Clause 67 of the Contract). The Arbitrators can decide both questions of fact as well as questions of law. When the contract itself provides for a mode of settlement of disputes arising from the contract, there is no reason why the parties should not follow and adopt that remedy and invoke the extra-ordinary jurisdiction of the High Court under Article 226. The existence of an effective alternative remedy - in this case, provided in the contract itself - is a good ground for the court to decline to exercise its extra-ordinary jurisdiction under Article 226, The said Article was not meant to supplant the existing remedies at law but only to supplement them in certain well- recognised situations. As pointed out above, the prayer for issuance of a writ of mandamus was wholly misconceived in this case since the respondent was not seeking to enforce any statutory right of theirs nor was it seeking to enforce any statutory obligation cast upon that appellants. Indeed, the very resort to Article 226 -whether for issuance of mandamus or any other writ, order or direction - was misconceived for the reasons mentioned supra.”*

31. Ld. Sr. Counsel further submitted that doctrine of fairness or duty to act fairly cannot be imported to modify and alter the terms of a

contract. To strengthen his arguments, Id. Counsel has relied upon a case of ***Assistant Excise Commissioner and Anr. vs. Issac Peter and Ors. (1994) 4 SCC 104***, wherein the Apex Court has held as under:

*“26. Learned Counsel for Respondents then submitted that doctrine of fairness and reasonableness must be read into contracts to which State is a party. It is submitted that the State cannot act unreasonably or unfairly even while acting under a contract involving State power. Now, let us see, what is the purpose for which this argument is addressed and what is the implication? The purpose, as we can see, is that though the contract says that supply of additional quota is discretionary, it must be read as obligatory - at least to the extent of previous year's supplies - by applying the said doctrine. It is submitted that if this is not done, the licencees would suffer monetarily. The other purpose is to say that if the State is not able to so supply, it would be unreasonable on its part to demand the full amount due to it under the contract. In short, the duty to act fairly is sought to be imported into the contract to modify and alter its terms and to create an obligation upon the State which is not there in the contract. We must confess, we are not aware of any such doctrine of fairness or reasonableness. Nor could the learned Counsel bring to our notice any decision laying down such a proposition. Doctrine of fairness of the duty to act fairly and reasonably is a doctrine developed in the administrative law field to ensure the Rule of Law and to prevent failure of justice where the action is administrative in nature. Just as principles of natural justice ensure fair decision*

*where the function is quasi-judicial, the doctrine of fairness is evolved to ensure fair action where the function is administrative. But it can certainly not be invoked to amend, alter or vary the express terms of the contract between the parties. This is so, even if the contract is governed by statutory provisions, i.e., where it is a statutory contract - or rather more so. It is one thing to say that a contract - every contract - must be construed reasonably having regard to its language. But this is not what the licencees say. They seek to create an obligation on the other party to the contract, just because it happens to be the State. They are not prepared to apply the very same rule in a converse case, i.e., where the State has abundant supplies and wants the licencees to lift all that stocks. The licencees will undertake no obligation to lift all those stocks even if the State suffers- loss. This one-sided obligation, in modification of express terms of the contract, in the name of duty to act fairly, is what we are unable to appreciate. The decisions cited by the learned, counsel for the licencees do not support their proposition. In *Dwarkanadas Marfatia v. Board of Trustees of the Port of Bombay* : [1989]2SCR751 , it was held that where a public authority is exempted from the operation of a Statute like Rent Control Act, it must be presumed that such exemption from the statute is coupled with the duty to act fairly and reasonably. The decision does not say that the terms and conditions of contract can be varied, added or altered by importing the said doctrine. It may be noted that though the said principle was affirmed, no relief was given to the appellant in that case. *Kumari Shrilekha Vidyarthi and Ors. v. State of U.P. and Ors.* : AIR1991SC537 was a*

*case of mass termination of District Government Counsel in the State of U.P. It was a case of termination from a post involving public element. It was a case non-government servant holding a public office, on account of which it was held to be a matter within the public law field. This decision too does not affirm the principle now canvassed by the learned Counsel. We are, therefore, of the opinion that in case of contracts freely entered into with the State, like the present ones, there is no room for invoking the doctrine of fairness and reasonableness against one party to the contract (State), for the purpose of altering or adding to the terms conditions of the contract, merely because it happens to be the State. In such cases, the mutual rights and liabilities of the parties are governed by the terms of the contracts (which may be statutory in some cases) and the laws relating to contracts. It must be remembered that these contracts are entered into pursuant to public auction, floating of tenders or by negotiation. There is no compulsion on anyone to enter into these contracts. It is voluntary on both sides. There can be no question of the State power being involved in such contracts. It bears repetition to say that the State does no guarantee profit to the licencees in such contracts. There is no warranty against incurring losses. It is a businesses for the licencees. Whether they make profit or incur loss is no concern of the State. In law, it is entitled to its money under the Contract. It is not as if the licencees are going to pay more to the State in case they make substantial profits. We reiterate that what we have said hereinabove is in the context of contracts entered into between the State and its citizens pursuant to public auction, floating of tenders or by*

*negotiation. It is not necessary to say more than this for the purpose of these cases. What would be the position in the case of contracts entered into otherwise than by public auction, floating of tenders or negotiation; we need not express any opinion herein.”*

32. The petitioner contended that the licensee has a right to an extension unless he breaches the contract. However, it is not permissible as held by **Bombay High** Court in the case of ***Oil and Natural Gas Corporation Ltd. vs. M/s. Streamline Shipping Co. Pvt. Ltd. AIR 2002 Bombay 420*** whereby the Court held that the duty to act fairly is sought to import into the contract to modify and alter its terms and create an obligation upon the appellant which is nowhere in the contract. If a clause of contract gives right to a party to terminate the contract without assigning any reason, then the same clause is not unconscionable or opposed to public policy.

33. Ld. Counsel has further submitted that where contract provides for arbitration clause, party should be relegated to Arbitration. The present Agreement also contains Arbitration Agreement between the parties for settlement of their disputes arising out of the present contract. The same has been set out in the tender document under clause 7.15 which is as under:

**Clause 7.15: All Questions / disputes and or differences:**

**All questions, disputes and or differences arising under or in connection with this agreement or in touching or relating to or concerning the construction or affect of**

**present (excepts as to matter decision whereof is otherwise herein before, expressly provided for) shall be referred to the sole arbitration of the officer / officers or persons nominated by the Managing Director / IRCTC whose decision in this regard shall be binding on the licensee.**

34. Ld. Sr. Counsel further submitted that on perusal of the said clause, it is clear that the Agreement contains a valid Arbitration Clause which is widely worded and hence the present petition is not maintainable. To strengthen his arguments, ld. Counsel has relied upon a case of ***Bridge & Roof Company (India) Ltd. (Supra)*** wherein the Apex Court has held that any dispute relating to interpretation of the terms and conditions of such a contract cannot be agitated and could not have been agitated, in a Writ Petition. This is a matter either for arbitration as provided by the Contract or the Civil Court as the case may be.

35. Also relied upon a case of ***ABL International (Supra)*** wherein the Apex Court has observed as under:

*“13. We do not think this Court in the above case has, in any manner, departed from the view expressed in the earlier judgments in the case cited hereinabove. This Court in the case of Life Insurance Corporation of India (Supra) proceeded on the facts of that case and held that a relief by way of a writ petition may not ordinarily be an appropriate remedy. This judgment does not lay down that as a rule in matters of contract the court's jurisdiction under Article 226 of the*

*Constitution is ousted. On the contrary, the use of the words "court may not ordinarily examine it unless the action has some public law character attached to it" itself indicates that in a given case, on the existence of the required factual matrix a remedy under Article 226 of the Constitution will be available. The learned counsel then relied on another judgment of this Court in the case of State of U.P. and Ors. v. Bridge & Roof Company (India) Ltd. AIR1996SC3515 wherein this Court held:*

*"Further, the contract in question contains a clause providing inter alia for settlement of disputes by reference to arbitration. The arbitrators can decide both questions of fact as well as questions of law. When the contract itself provides for a mode of settlement of disputes arising from the contract, there is no reason why the parties should not follow and adopt that remedy and invoke the extraordinary jurisdiction of the High Court under Article 226. The existence of an effective alternative remedy - in this case, provided in the contract itself - is a good ground for the court to decline to exercise its extraordinary jurisdiction under Article 226."*

*14. This judgment again, in our opinion, does not help the first respondent in the argument advanced on its behalf that in contractual matters remedy under Article 226 of the Constitution does not lie. It is seen from the above extract that in that case because of an arbitration clause in the contract, the court refused to invoke the remedy under Article 226 of the Constitution. We have specifically inquired from the parties to the present appeal before us and we have been told that there*

*is no such arbitration clause in the contract in question. It is well known that if the parties to a dispute had agreed to settle their dispute by arbitration and if there is an agreement in that regard, the courts will not permit recourse to any other remedy without invoking the remedy by way of arbitration unless of course both the parties to the dispute agree on another mode of dispute resolution. Since that is not the case in the instant appeal, the observations of this Court in the said case of Bridge & Roof Co. (supra) is of no assistance to the first respondent in its contention that in contractual matters, writ petition is not maintainable.”*

36. Ld. Counsel further submitted that in case of a valid arbitration clause in a contract, a writ petition will not be maintainable where disputed questions of facts are required to be adjudicated and which requires both oral and documentary evidence to be led by both the parties to the contract as held in ***Empire Jute Company Ltd & Ors. vs. Jute Corporation of India Ltd. &Anr. [(2007) 14 SCC 680.***

37. Ld. Sr. Counsel further submitted that case of ***Kishan Freight Forwarders vs. UOI 181 (2011) DLT 547*** does not support the case of the petitioner for the reasons that in the aforesaid judgment a Writ Petition was stated to be mandatory on the ground that respondent therein had deviated from their policy of automatic extension, whereas in the present case, the petitioner is not claiming deviation from the policy and there is no policy of automatic extension.

38. In the present case, under Clause 3.1 of the terms and conditions, the respondent may extend the license at its discretion and the decision of the respondent in this regard shall be final and for which the respondent shall not be obliged to give any reason whatsoever. Therefore, there is no provision or policy of automatic extension.

39. In the case of *Harbansal Sahania (Supra)*, the contract of appellant was terminated on the grounds which did not form part of show cause notice and the Court held that the termination of appellant's contract was for an irrelevant and non-existent cause. In view of above, the Apex Court observed that the High Court would have granted relief to the petitioner in Writ jurisdiction and should not have relegated them to Arbitration and therefore, granted relief to the appellant therein. Whereas, in the present case, there is no termination of license of the Petitioner and there is merely non-renewal of license after expiry of the term of license.

40. Learned senior counsel contended that the respondent has exercised its discretion available to it pursuant to clause 3.1 for not renewing the license of the Petitioner and for which the Respondent is not obliged to give any reasons whatsoever.

41. As argued by the counsel for the petitioner, there was no deficiency on the part of the petitioner in performing the contract, Id. Sr. Counsel appearing on behalf of the respondent submitted that clause 2.3 of the tender document requires the licensee to maintain the

record of the gross sale turnover and same has been made mandatory for the licensee because as per Clauses 2.1 and 2.2, the license fee is proportionate to sales turnover. That is to say that in case the gross turnover is more than the quoted licence fee, then on assessment of the same, the license fee shall be enhanced by the respondent 12% of the assessed sales turnover. However, the petitioner has never reported the sales to the respondent. Thus, the petitioner failed to comply with the tender conditions as contained under Clause 2.7, wherein the licensee was required to make arrangements for centralized sales monitoring system by providing data connectivity to IRCTC so that the sales data is instantly updated in the system of IRCTC and would have enabled IRCTC to assess correct sales and would have further helped the IRCTC in fixing license fee in consonance to clause 2.2. Thus, the petitioner has violated the aforementioned clause.

42. Moreover, the petitioner was informed by the respondent of this deficiency in correspondence during the 5 years term of the license, however, the petitioner failed to comply with the same during the subsistence of 5 years term of license.

43. The petitioner was again informed of deficiency vide several letters including letters dated 08.11.2013 and 03.12.2013 respectively.

44. Ld. Counsel further submitted that petitioner was granted six months extension on the basis of recommendations made by the competent authority, however, it was very categorically mentioned

therein that extension was subject to compliance of clause 2.7 of tender document. The petitioner was duly informed by the respondent vide its letter dated 28.03.2014 regarding refusal of extension by competent authority. Although, respondent was not obliged to give reasons for refusal of extension in terms of clause 3.1, however, respondent in the most reasonable manner assigned reasons for refusal of extension to the petitioner.

45. Mr. Sibal, further submitted that the principle of natural justice cannot be put in a straight jacket formula. In the present case, as per the terms of Clause 3.1 of the contract, IRCTC is not duty bound to give any reason whatsoever for a decision not to extend the contract. So, the petitioner cannot modify this by importing a duty to give reasons under Article 14. To strengthen his arguments on the aforementioned issue, Id. Counsel has relied upon a case of ***Competition Commission of India vs. Steel Authority of India Ltd. and Anr. (2010) 10 SCC 744*** wherein held as under:

*68. Generally, we can classify compliance or otherwise, of these principles mainly under three categories. First, where application of principles of natural justice is excluded by specific legislation; second, where the law contemplates strict compliance with the provisions of principles of natural justice and default in compliance therewith can result in vitiating not only the orders but even the proceedings taken against the delinquent; and third, where the law requires compliance with these principles of natural justice,*

*but an irresistible conclusion is drawn by the competent court or forum that no prejudice has been caused to the delinquent and the non-compliance is with regard to an action of directory nature. The cases may fall in any of these categories and therefore, the Court has to examine the facts of each case in light of the Act or the Rules and Regulations in force in relation to such a case. It is not only difficult but also not advisable to spell out any straight jacket formula which can be applied universally to all cases without variation.*

*69. It is difficult to state as an absolute proposition of law that in all cases, at all stages and in all events the right to notice and hearing is a mandatory requirement of principles of natural justice. Furthermore, that non-compliance thereof, would always result in violation of fundamental requirements vitiating the entire proceedings. Different laws have provided for exclusion of principles of natural justice at different stages, particularly, at the initial stage of the proceedings and such laws have been upheld by this Court. Wherever, such exclusion is founded on larger public interest and is for compelling and valid reasons, the Courts have declined to entertain such a challenge. It will always depend upon the nature of the proceedings, the grounds for invocation of such law and the requirement of compliance with the principles of natural justice in light of the above noticed principles.*

*82. The exclusion of principles of natural justice by specific legislative provision is not unknown to law. Such exclusion would either be specifically*

*provided or would have to be imperatively inferred from the language of the provision. There may be cases where post decisional hearing is contemplated. Still there may be cases where 'due process' is specified by offering a full hearing before the final order is made. Of course, such legislation may be struck down as offending due process if no safeguard is provided against arbitrary action. It is an equally settled principle that in cases of urgency, a post-decisional hearing would satisfy the principles of natural justice. Reference can be made to the cases of Maneka Gandhi v. Union of India (1978) 1 SCC 48 and State of Punjab v. Gurdayal: AIR 1980 SC 319.*

46. Ld. Sr. Counsel further submitted that there is no discrimination being done by the respondent against the petitioner that the respondent has extended as many as 21 licenses, whereas the petitioner himself has been granted renewal in 5 other cases. Hence, there is no hostile discrimination or malafide against the petitioner.

47. It is pertinent to mention here that during the arguments, original files of IRCTC were produced before this Court which show that the said report was placed before the competent authority and on the basis of the said report, IRCTC took a decision on 26.02.2014 and decided not to extend license further and same was duly communicated to the petitioner vide letter dated 28.03.2014, which is at Page 142 of the paper book. The contents of said letter would reflect that the report was placed before the competent authority as the letter contains a summary of the contents of the said report dated 26.02.2014.

48. Undisputedly, the petitioner has been paying a license fee of Rs.14,30,000/- per annum as compared to new bid amount of Rs.1,16,00,000/- per annum and as a result of which the petitioner is wrongfully gaining an amount of Rs.8,47,500/- per month at the expense of the respondent. The license of the petitioner has expired on 09.12.2014, however, the petitioner continues to run the Kiosk by the order of this Court.

49. I have heard the learned senior counsel for the parties.

50. The QSFK was handed over to the petitioner on "as is where is" basis without any infrastructure as is provided in Clause 3.1 of Special Conditions of the tender document. The petitioner created the requisite infrastructure and equipment at its own cost by spending an amount of Rs.50 lakhs as alleged and commissioned the Kiosk on 10.11.2008. Clause 2.1 of the General Conditions of license provided the bidders shall pay license fee for 8 years' tenure of the license. The contract was for five years to be extended for a further period of three years as has been provided in Clause 5.3 of the General Conditions of license. The said condition proved that the respondent/IRCTC shall issue a letter of award to the selected bidder for a period of "5+3" years. Accordingly, since the said five years' period was about to come to an end on 09.11.2013, the respondent asked the petitioner for its willingness on 10.10.2013 for extension. The petitioner, accordingly, gave its willingness on 14.10.2013. The Competent Authority nominated a three members' committee of GGM/DCS, GGM/infra and

GGM/finance to consider renewal of petitioner's license. The Committee examined all the concerns raised by the GGM/SCZ and found the petitioner's performance was satisfactory and there was no breach of the tender. The Committee also found that the petitioner had not installed the Data Capturing System (DCS), however, it cannot be considered fault on licensee's part since SCZ itself was not sure about the system to be put in place for sales capturing. The Committee also found that there was only one complaint of overcharging in 5 years which too has been condoned by imposition of fine.

51. With regard to SCZ's view that fresh tendering will increase revenue of IRCTC, the Committee made observations as under:-

*"Regarding SCZ's view that fresh tendering will increase the earning of IRCTC, it may be true that with fresh tendering IRCTC may get higher revenue as compared to the presently generated from the unit. However, there could be an argument that in case IRCTC takes up tendering of this unit or for that matter any other unit after two or three years, the revenue will definitely be more than what we are expecting in the present scenario. Most importantly, the fact needs to be considered is to honor tender conditions, agreed between IRCTC and licensee, which provides for one time extension of three years and denying the extension on account other than outstanding and poor performance will give wrong message to the perspective bidders. It is not only for the licensee to honor the tender conditions but it is the obligation of the licensor as well."*

52. Accordingly, the Committee explicitly rejected the view of SCZ for fresh tendering by stating that this cannot be a ground for not honouring the tender condition by IRCTC. The committee also observed that denying of extension on account other than outstanding and poor performance will send wrong message. Hence, the Committee recommended extension initially for a period of six months, i.e., from 10.11.2013 to 09.05.2014 subject to licensee fulfilling certain conditions within a period of three months, i.e., up to 09.02.2014 and directed the GGM/SCZ to submit a report by 25.02.2014 to enable further decision in the matter failing which fresh tender be called.

53. In terms of the decision of the Committee, the respondent wrote a letter dated 08.11.2013 intimating the petitioner about the conditions suggested by the Committee, to which the petitioner responded in affirmative vide letter dated 10.01.2014 and further complied with all the conditions within the stipulated period of three months. The letter dated 10.01.2014 also established that the petitioner got the online data connectivity installed as per the Committee's condition and this fact was also verified by IRCTC official, Mr. Bhujang Rao.

54. During the arguments on 13.04.2015, counsel for the respondent has informed that a subsequent meeting of the Committee was convened on 26.03.2015 and its recommendations are against the petitioner. Thereafter, the said report dated 26.02.2014 was supplied to the petitioner after the directions of the Court. Petitioner has filed additional affidavit in its opposition pointing out inherent

contradictions and factually incorrect recommendations. While in the earlier minutes dated 08.11.2013, the Committee had categorically found that the petitioner was not guilty of any breach of the clauses of the contract by giving detailed and sufficient reasons and after due application of mind and recommended extension for six months till 09.05.2014 but the Committee took a completely contrary stand just about three months later, i.e., on 26.03.2014 even before the expiry of the aforesaid period of six months.

55. The petitioner is entitled for extension as per Clause 3.1 since the respondent/IRCTC, being an instrumentality of State in terms of Article 12 of the Constitution, is mandated to act in a fair, non-arbitrary, just, transparent and non-discriminatory manner. The respondent is, therefore, bound by Article 14 of the Constitution of India and its action cannot result in infringement of right to equality as enshrined in the Constitution. Thus, the respondent cannot take umbrage under the language and words used in Clause 3.1, namely, "at the discretion", "not obliged to assign any reasons whatsoever" since the Constitutional Courts have repeatedly interpreted these words to mean that the discretion has to be exercised in a fair, reasonable, non-arbitrary and non-discriminatory manner. The words "without assigning any reason" have also been interpreted by the Supreme Court in *Kumari Shrilekha Vidyarthi vs. State of UP (1991) 1 SCC 212*, whereby held that reasons must exist on the file even if not communicated to the concerned party.

56. In case of *Tata Cellular (supra)*, the Supreme Court held that even in contractual matters, judicial review will lie to investigate as to whether the decision making process has been fair and proper or not. It is further held that procedural infirmity is one of the grounds which may occasion interference by Court.

57. The petitioner had a legitimate expectation to be treated fairly in matters of grant of extension in view of the clear cut tender clauses as well as the past practice and the understanding at the time of quoting of bids and also in view of the fact that extension has been granted in as many as 21 other cases. The doctrine of legitimate expectation has been recognized by the Supreme Court as constituting substantive and enforceable right in appropriate cases to import principles of natural justice in favour of party whose civil rights are likely to be affected if Government departs from and takes decision contrary to legitimate expectation of a party. In case of *M.P. Oil Extraction and State of M.P. (1997) 7 SCC 592*, the Apex Court held that with respect to a renewal clause in an agreement that same constitutes legitimate expectation that the Government should give effect to such clause in its usual manner and as per past practice.

58. It is trite that writ petition is maintainable against the State and its instrumentalities as well, which are public sector enterprises completely owned and controlled by the State even in contractual matters even where there exists an alternative remedy in the form of an

arbitration clause provided the impugned action is violative of principles of natural justice and fundamental rights.

59. In case of *Harbanslal Sahnia (supra)*, the Apex Court held remedy of writ is available despite arbitration clause where there is violation of principles of natural justice or infringement of fundamental rights.

60. In case of *Kishan Freight Forwarders (supra)*, this Court in an almost identical situation, issued a writ of mandamus to the Railways to grant extension of the contract of the petitioner therein. This Court rejected the argument on the maintainability of the writ despite the arbitration clause in the contract after relying on various decisions of the Apex Court. The Court also rejected the argument of the Railways that fresh tender would fetch more revenue. In this case also, the Court found that the respondent acted in an arbitrary manner in granting extension in some cases while rejecting in others. This decision squarely covers all the issues raised in this petition.

61. It is pertinent to mention here that vide order dated 16.10.2014, this Court directed the respondent to proceed with the process of selection with respect to Vijayawada license, however, it shall not be finalized. Thereafter, vide order dated 09.12.2014, the petitioner was permitted to run the Kiosk from existing premises till the next date of hearing, however, the said interim protection is still continuing.

62. It is clear from Clause 2.1 of the General Conditions of license that the petitioner paid the license fee for 8 years' tenure of the license. As per Clause 5.3 of the General Conditions of license, the contract was for five years to be extended for a further period of three years and the respondent/IRCTC shall issue a letter of award (LOA) to the selected bidder, that is, petitioner for a period of "5+3" years. No doubt, it is the discretion of the respondent to extend the licence or not and extension may be denied by the respondent even without giving any reason, however, the decision should be rational and on some solid ground. There has been legitimate expectation of the petitioner as he had spent a huge amount in establishing the infrastructure. If there has been no infirmity on the part of the petitioner, then, in such an eventuality, the respondent/IRCTC had to give extension for three years. Moreover, the respondent had already granted three extensions for a period of six months, three months and three months and thereafter, this Court granted protection to the petitioner. Resultantly, the petitioner is still continuing.

63. It is also not in dispute that as per Clause 3.1 of General Conditions of license, total tenure of licence shall not exceed eight years in any case.

64. In view of the above discussion, I am of the considered opinion that the petitioner is entitled for the remaining period of its tenure, i.e., '5+3' years.

65. With the above observations, the present petition is allowed with no order as to costs.

**CM No. 16639/2014 (for stay)**

With the disposal of the petition itself, the present application has become *infrctuous*. The same is accordingly dismissed.

**SURESH KAIT  
JUDGE**

**MAY 18, 2015**  
**sb/jg/RS**