

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

**WRIT PETITION NO.2753 OF 2013
WITH
NOTICE OF MOTION NO.491 OF 2015**

Central Railway Caterer's Association and another	... Petitioners
v/s	
Union of India and others	... Respondents

**WITH
WRIT PETITION NO.2745 OF 2015**

Jitendra Kumar P. Jain and another	... Petitioners
v/s	
Union of India and others	... Respondents

**WITH
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.653 OF 2014
WITH
WRIT PETITION NO.652 OF 2014**

M/s M.B. Agarwal and Co.	... Petitioners
v/s	
Union of India and others	... Respondents

**WITH
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3942 OF 2015**

M/s S.A. Pai and Co.	... Petitioners
v/s	
Union of India and others	... Respondents

Mr Y.S. Jahagirdar, Sr. Counsel i/b M/s Vidhi Partners for Petitioners in WP No.2753 of 2013.
Mr K. Talukdar i/b M/s M.P. Rege and Co. for Petitioners in WP No.2745 of 2015.
Mr T.J. Pandian for Respondents in WP Nos.2753 of 2013, 652 of 2014 and 653 of 2014.
Mr Anil Singh, ASG alongwith Mr Suresh Kumar for Respondents in WP No.2745 of 2013.
Mr K. Talukdar i/b Mr Krishna Baruah for Petitioners in WP Nos.652 and 653 of 2014.
Mr K. Talukdar i/b Mr Siddharth Wakade for Petitioners in WP No.3942 of 2015.

**CORAM: S.C. DHARMADHIKARI &
B.P. COLABAWALLA JJ.**

**Reserved On : 9th December, 2015.
Pronounced On : 8th January, 2016.**

Judgment: [Per B. P. Colabawalla J.] :-

1. Rule. Respondents waive service. By consent of parties, rule made returnable forthwith and heard finally.

2. By these Petitions under Articles 226 and 227 of the Constitution of India, the Petitioners challenge the Railway Catering Policy 2010 to the limited extent that the classification and categorization of Railway Stations based on their annual earnings are per se illegal, arbitrary and unjust and have no nexus with the actual sales and/or footfalls on the catering units on such Railway Stations. The Petitioners also challenge the technical criteria, evaluation and selection process contained in the tender document dated 9th October, 2013 issued by the Railways for provision of refreshment rooms.

3. It is the case of the Petitioners that as a result of classification and categorization of Railway Stations on the basis of their annual earnings, the members of Petitioner No.1 (in Writ Petition No.2753 of 2013) who were originally allotted small static catering units have now become major static units and have thereby been affected by certain onerous, unjust and arbitrary evaluation criteria in Section B Chapter III of the tender document dated 9th October, 2013. It is in these circumstances that the Petitioners are before us in our writ jurisdiction under Article 226 of the Constitution of India. For the sake of convenience we shall refer to the facts in Writ Petition No.2753 of 2013.

4. The brief facts to decide the present controversy are that Petitioner No.1 is a Public Trust registered under sections 18 and 19 of the Bombay Public Trust Act, 1950 and is an organization that represents various catering licensees providing Railway catering services to the Central Railways. Petitioner No.2 is the secretary of Petitioner No.1. Respondent No.1 is the Union of India through the Ministry of Railways. Respondent No.2 is the General Manager, Central Railways and the person in-charge of the entire Central Railways. Respondent No.3 is the Chief Commercial Manager, Central Railways and looks into the day-to-day commercial affairs of the same. Respondent No.4 is the Executive Director (T & C) who formulates the catering policy, circulars etc. under instructions from the Railway Board and Respondent No.5 is Senior Divisional Commercial Manager, Bhusawal Division, Central Railways who has issued the tender document dated 9th October, 2013 for refreshment rooms. Respondent Nos.2 to 5 are in the employment, supervision and control of Respondent No.1.

5. The Indian Railways have the largest network of Railways divided into 17 zones and approximately 8056 Railway Stations. The Railway's main activity is plying goods and

passengers and the main source of revenue is passenger ticket fares, freight and transportation charges etc. Apart from providing the aforesaid services, the Railways also provide catering services to its passengers and ensure that good and wholesome food is supplied to the passengers using its services.

6. From time to time, the Railway Board issued catering policies to achieve the aforesaid objective. Presently, the Catering Policy 2010 issued under Commercial Circular dated 21st July 2010 is in force. Between 2005 to 2010 Railway Catering Services were managed by the Indian Railway Catering and Tourism Corporation Ltd. (IRCTC). In 2010 Respondent Nos.1 to 4 issued a catering policy wherein the entire catering work of Mobile and Major units of the Indian Railways was transferred back to the Railways and all the 17 zones of the Railways were entrusted with the said work.

7. As far as Writ Petition No.2753 of 2013 is concerned, the members of Petitioner No.1 are holding refreshment rooms at Kandwa Railway Station, Manmad Railway Station, Shegaon Railway Station, Akola Railway Station and Badnera Railway Station. The aforesaid Railway Stations are 'A' category Stations. It is the case of the Petitioners that the actual sales of the members of

Petitioner No.1 vary from Rs.2,500/- to Rs.5,000/- per day. It is thus the case of the Petitioners that the annual earnings of a Railway Station have no nexus to the earnings of the catering units on such Stations or with the actual footfall in that particular Station.

8. Be that as it may, on 9th October 2013, Respondent No.4 issued a notice inviting tenders containing the standard bid document for refreshment rooms at Kandwa Railway Station, Manmad Railway Station, Shegaon Railway Station, Akola Railway Station and Badnera Railway Station respectively. The said bid document provided for various technical and financial criteria that were required to be fulfilled by the prospective bidder. The said bid document is divided into two parts. Part A is the technical bid and Part B is the financial bid. According to the Petitioners, the terms of the technical bid regarding the evaluation criteria / selection process stipulated by the Respondents is illegal, arbitrary, discriminatory and unreasonable as it has the effect of virtually throwing out the members of Petitioner No.1 from the tendering process as they may not be able to fulfill the evaluation criteria.

9. To elaborate this point further, Mr Jahagirdar, learned

Senior Counsel appearing on behalf of the Petitioners, submitted that though under the minimum eligibility criteria, an individual / proprietor/ partnership firms are permitted to participate, they cannot fulfill certain criteria such as financial standing, annual turnover etc. In this regard, Mr Jahagirdar brought to our notice page 192 of the paper book which sets out the eligibility and evaluation criteria for the bidders. He laid much stress on clause 3.4.1 which provides that the bidder must have profit or loss plus accumulated reserves plus share capital of a minimum of Rs.20,00,000/- during each of the preceding five years. Mr Jahagirdar submitted that this clause would clearly oust proprietary concerns, individuals and partnership firms as they can never have a share capital. Mr Jahagirdar then submitted that the annual turnover criteria (clause 3.3.1) is to be calculated not only from the revenue generated from the Railway catering business but also from other catering businesses undertaken by the bidder such as at airports, restaurants, franchisee outlets etc. He submitted that due to this, the bidders who were exclusively catering for the Railways are put at the huge disadvantage and instead of showing loyalty to these caterers, they are now sought to be ousted by bidders who may not have any experience in catering for the Railway commuting public.

10. Mr Jahagirdar, by drawing our attention to page 203 of the paper-book, then submitted that undue consideration / weightage is given in the tender document to the number of base kitchens and average number of meals prepared per day by the prospective bidder. According to Mr Jahagirdar, this weightage is arbitrary and totally inapplicable to refreshment rooms. Refreshment rooms consist of a kitchen and a sitting area and therefore the refreshment room licensees do not require any separate kitchen. Also, according to Mr Jahagirdar, meals are prepared based on the average footfall and/or sales and only lunch and dinner are considered as meals as per the tender document, whereas refreshment room licensees also serve breakfast and snacks. It was therefore his submission that even this criteria and weightage given to the number of base kitchens and the average number of meals is totally arbitrary and has no nexus to inviting tenders for refreshment rooms in 'A' category Railway Stations.

11. Mr Jahagirdar next submitted that as per the tender document, each bidder is required to give himself marks / scores as set out in the tender document and the highest score obtained by a

bidder is considered as the base techno-commercial score **(HTS)**. All other bidders are required to obtain 50% or more of the said HTS in order to be technically qualified. In other words, the price bids of those bidders who do not obtain 50% or more of the HTS would not be opened. Mr Jahagirdar submitted that this criteria is also wholly arbitrary, onerous and unreasonable and would have the effect of ousting small caterers who wish to take part in the above tender. For all the aforesaid reasons, Mr Jahagirdar submitted that the tender document as well as the tendering process is vitiated and the same be quashed and set aside by us in our writ jurisdiction under Article 226 of the Constitution of India.

12. On the other hand, Mr. Anil Singh, the learned Additional Solicitor General appearing on behalf of the Respondents, submitted that the scope of judicial review of Government Policies is extremely restricted. It is impermissible for the Court to enter upon any exercise of ascertaining the wisdom of a policy decision of the Government or to examine the same with a fine toothcomb. He submitted that it is immaterial if a better and more comprehensive decision could have been taken and it is equally irrelevant even if it can be demonstrated that the policy

decision is unwise or is likely to defeat the purpose for which the decision has been taken. The learned Additional solicitor General submitted that a policy decision can be interfered with only if it is demonstrably capricious or completely arbitrary and not informed by any reason whatsoever. He submitted that by no stretch of the imagination can the Catering Policy 2010 be termed as arbitrary or capricious and in any event no such case has been made out in the Writ Petition.

13. The learned Additional Solicitor General was at pains to point out that the fundamental challenge in the Writ Petition was to the limited extent regarding the classification and categorization of Railway Stations into A-1, A, B, C, D, E and F categories on the basis of annual passenger earnings of that Railway Station. He submitted that it is the Petitioners' contention that this policy is per se illegal, arbitrary and unjust as the annual earnings of the Railway Station have no nexus with the actual sales and/or footfalls on the catering unit and as a result of such classification / categorization, the members of Petitioner No.1 who were originally allotted small static catering units, have now become major static units and have been subjected to the tender process. In this regard, the learned Additional Solicitor General submitted that the aspect

of classification / categorization of Railway Stations on the basis of annual passenger earnings has been in existence since the time of the Catering Policy 2000 as also in the Catering Policy 2005. Notably, a similar challenge to the classification of Railway Stations on the basis of its annual passenger earnings inter alia amongst other aspects of the 2005 Policy, was made before this Court in a group of Writ Petitions, the first of which was Writ Petition No.569 of 2006 filed by the Indian Railways Caterers' Association. A Division Bench of this Court by its order dated 12th April, 2006 was pleased to uphold the classification of Railway Stations on the basis of annual passenger earnings and negated each of the contentions of the Petitioners therein. The learned Additional Solicitor General submitted that the contentions raised in the present Writ Petition are also similar to the ones raised in Writ Petition No.569 of 2006 and other connected Writ Petitions that were disposed of by this Court on 12th April, 2006. Even the Special Leave Petition filed against the order of this Court dated 12th April, 2006 was dismissed as withdrawn by the Supreme Court vide its order dated 18th February, 2011. In view of the aforesaid, the learned Additional Solicitor General submitted that there was no merit in the challenge to the Catering Policy 2010.

14. As far as the challenge to certain terms and conditions of the tender document are concerned, the learned Additional Solicitor General submitted that the tender conditions cannot be said to be in any way arbitrary. The tender conditions are formulated keeping in mind the Catering Policy 2010 and seek to achieve the objectives under the said policy which is to improve the quality of service and to ensure the supply of wholesome and hygienic food to the expectation and satisfaction of the Railway commuting public. To achieve this very objective, tender conditions have been imposed to ensure that reputed players and with adequate experience and financial backing as well as other infrastructural facilities are persons who participate in the tendering process. One such condition can be found in clause 3.3.1 (pg 192 of the paperbook) which stipulates that the bidder must have a minimum turnover of Rs.50.00 lakhs during the preceding five years. This minimum turnover is to be calculated not only from the Railway catering business but also from other catering services, if any, undertaken by the tenderer such as at airports, bus stations, industrial / institutional kitchens / mess, restaurants, franchisee outlets etc. The learned Additional Solicitor General submitted that this particular condition would in fact ensure that persons not only catering for the Railways but also elsewhere, are given an

opportunity to take part in the tender process. This would increase competition and which is always healthy in a democratic set up.

15. As far as clause 3.4.1 is concerned, the learned Additional Solicitor General submitted that this clause stipulates that the bidder must have profit or loss plus accumulated reserves plus share capital of a minimum of Rs.20.00 lakhs during each of the preceding five years. He submitted that if a bidder is an individual, he can show profits of a minimum of Rs.20.00 lakhs for the preceding five years in order for him to fulfill this criteria. This clause does not in any way mean that an individual or a partnership firm that cannot have a share capital is ousted from the bidding process. In other words, a bidder who is an individual / partnership firm having a minimum profit of Rs.20.00 lakhs for the preceding five years would certainly qualify as per clause 3.4.1 and could not be ousted merely because he does not have a share capital. He submitted that these conditions are being totally misconstrued and misread by the Petitioners to somehow set up a challenge to the tender conditions. Equally, the concerns of the Petitioners regarding the evaluation criteria provided under clause 3.5.1(c) and clause 3.5.1(d) is totally ill-founded. The learned Additional Solicitor General submitted that clause 3.5.1(c) inter alia stipulates

that the highest techno-commercial score (HTS) secured by any bidder will be the base techno-commercial index. Clause 3.5.1(d) stipulates that all bids whose techno-commercial score is more than or equal to 50% of the HTS will be techno-commercially qualified. In other words, if the highest score secured by any bidder is 60, then all other bidders, in order to be techno-commercially qualified, have to score 30 or above. The learned Additional Solicitor General submitted that there is absolutely nothing arbitrary or unreasonable about the aforesaid condition. The aforesaid condition has been imposed in order to ensure that the bidders whose financial bids would be opened are competent enough to meet the standards and the increasing level of expectations of the Railway commuting public. Merely because the said condition, according to the Petitioners, would have the effect of significantly reducing their chances of success in the tender process, cannot be a ground to interfere with the tender conditions under Article 226 of the Constitution of India, was the submission. The learned Additional Solicitor General submitted that in any event this so called apprehension of the Petitioners is totally misplaced inasmuch as in the facts of the present case, the tenderer who has secured the highest marks is an individual and who exclusively caters for the Railways. This would clearly demonstrate that all

these so called apprehensions of the Petitioners have no basis. The learned Additional Solicitor General submitted that the tender conditions have been stipulated keeping in mind the overall Catering Policy 2010 and to ensure that applicants who take part in the tender process would be able to fulfill the object sought to be achieved thereby. For all the aforesaid reasons, the learned Additional Solicitor General submitted that there is no merit in the Writ Petition and the same ought to be dismissed with costs.

16. We have heard learned counsel at length and with their assistance perused the papers and proceedings in the Writ Petition along with the Catering Policy 2010 as well as the terms and conditions of the tender document dated 9th October, 2013. It is common ground before us that in 1992, the Railways decided to privatize the existing departmental units regarding catering/vending and framed the Catering Policy 1992. The main aim for privatization was to ensure that Railway passengers are provided with good quality food and professional service. Under the 1992 policy, the applications received were scrutinized by a Screening Committee keeping in mind the reputation/business standing of the applicant, the turnover of the applicant's business, catering experience of the applicant, financial standing of the

applicant, size of establishment of the staff etc. After the 1992 policy, there were new catering policies that were framed by the Government in the year 2000, 2005 and 2010. These policies have undergone changes essentially in line with the increased number of passengers using the Railways and with a view to provide better quality of catering services in a more professional manner by more professionally run units. This is to ensure that the overall service imparted to the Railway commuters is improved and meets the ever increasing demand of the Railway commuting public. The terms and conditions of each of these policies have been modified from time to time in the wisdom of its framers so as to better cater to the needs of the ever increasing number of Railway passengers. As far as the Catering Policy 2010 is concerned, the fundamental challenge is to the classification and categorization of Railway Stations into different categories such as A1, A, B, C, D, E and F on the basis of its annual passenger earnings. It is not in dispute that the aspect of classification/categorization of a Railway Station on the basis of its annual passenger earnings had been in existence since the time of the Catering Policy 2000 and also in the Catering Policy 2005. In fact, this very aspect of classification/categorization of Railway Stations in the 2005 policy was subjected to a challenge before this Court in a group of Writ Petitions, the first of which was Writ

Petition No.569 of 2006. A Division Bench of this Court, by its order dated 12th April 2006, upheld the classification / categorization of Railway Stations on the basis of its annual passenger earnings as the same was held to have a direct nexus to the objectives sought to be achieved under the policy. Even though in the present case, what is challenged is the Catering Policy 2010, we find from the averments in the Writ Petition that the challenge to the classification/categorization of Railway Stations is on the basis of the annual passenger earnings of that Station. This is the exact same challenge that was repelled by a Division Bench of this Court, albeit in relation to the Catering Policy 2005. It is to be noted that even though the order of the Division Bench dated 12th April, 2006 (which upheld the aforesaid classification/categorization) was subjected to an Appeal before the Supreme Court, the SLP was dismissed as withdrawn on 18th February, 2011. In this view of the matter, we do not find any substance in the challenge to the categorization/classification of Railway Stations on the basis of its annual passenger earnings as set out in the Catering Policy 2010. To be fair to Mr Jahagirdar, the main thrust of his argument was not on challenging the Catering Policy but on the validity and legality of the technical criteria as well as the evaluation and selection process contained in the tender document dated 9th

October, 2013. In fact, the points urged by Mr Jahagirdar were submitted to us in the form of a note which we have taken on record.

17. Before we deal with the arguments of Mr Jahagirdar on the different terms and conditions that he sought to assail before us, it would be apposite to reiterate some well settled legal principles. It is now well settled that fixation of a value of the tender is entirely within the purview of the executive and courts hardly have any role to play in this process except for striking down such action of the executive that is arbitrary or unreasonable. If the Government acts in conformity with certain healthy standards and norms such as awarding of contracts by inviting tenders, in those circumstances, interference by the courts is very limited. In the matter of formulating conditions of a tender document and awarding a contract, greater latitude is required to be conceded to the State authorities unless the action of such authorities is found to be malicious and a misuse of its statutory powers. Certain pre-conditions or qualifications for tenders have to be laid down to ensure that the contractor has the capacity and the resources to successfully execute the work. If the State or its instrumentalities act reasonably, fairly and in public interest in

awarding the contract, here again, interference by courts is very restricted and no person can claim a fundamental right to carry on business with the Government. The Government and their undertakings must have a free hand in settling the terms of the tender and only if it is demonstrably arbitrary, discriminatory, mala fide or actuated by bias, that the Courts would interfere. The Courts cannot interfere with the terms of the tender prescribed by the Government because it feels that some other terms in the tender would have been fairer, wiser or more logical. The Courts are not experts in this field and the Courts will be well advised not to substitute its own opinion for that of the experts in the field. These principles have been very succinctly set out by the Supreme Court in the case of **M/s. Michigan Rubber (India) Ltd V/s State of Karnataka and Others.**¹ Paragraphs 23, 24 and 35 of the aforesaid decision read thus:-

“23. From the above decisions, the following principles emerge:

- (a) The basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. These actions are amenable to the judicial review only to the extent that the State must act validly for a discernible reason and not whimsically for any ulterior purpose. If the State acts within the bounds of reasonableness, it would be legitimate to take into consideration the national priorities;*

¹ (2012) 8 SCC 216

- (b) *Fixation of a value of the tender is entirely within the purview of the executive and the courts hardly have any role to play in this process except for striking down such action of the executive as is proved to be arbitrary or unreasonable. If the Government acts in conformity with certain healthy standards and norms such as awarding of contracts by inviting tenders, in those circumstances, the interference by courts is very limited;*
- (c) *In the matter of formulating conditions of a tender document and awarding a contract, greater latitude is required to be conceded to the State authorities unless the action of the tendering authority is found to be malicious and a misuse of its statutory powers, interference by courts is not warranted;*
- (d) *Certain preconditions or qualifications for tenders have to be laid down to ensure that the contractor has the capacity and the resources to successfully execute the work; and*
- (e) *If the State or its instrumentalities act reasonably, fairly and in public interest in awarding contract, here again, interference by court is very restrictive since no person can claim a fundamental right to carry on business with the Government.*

24. *Therefore, a court before interfering in tender or contractual matters, in exercise of power of judicial review, should pose to itself the following questions:*

- (i) *Whether the process adopted or decision made by the authority is mala fide or intended to favour someone; or whether the process adopted or decision made is so arbitrary and irrational that the court can say: "the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached"? and*
- (ii) *Whether the public interest is affected?*

If the answers to the above questions are in the negative, then there should be no interference under Article 226.

35. *As observed earlier, the Court would not normally interfere with the policy decision and in matters challenging the award of*

contract by the State or public authorities. In view of the above, the appellant has failed to establish that the same was contrary to public interest and beyond the pale of discrimination or unreasonable. We are satisfied that to have the best of the equipment for the vehicles, which ply on road carrying passengers, the 2nd respondent thought it fit that the criteria for applying for tender for procuring tyres should be at a high standard and thought it fit that only those manufacturers who satisfy the eligibility criteria should be permitted to participate in the tender. As noted in various decisions, the Government and their undertakings must have a free hand in setting terms of the tender and only if it is arbitrary, discriminatory, mala fide or actuated by bias, the courts would interfere. The courts cannot interfere with the terms of the tender prescribed by the Government because it feels that some other terms in the tender would have been fair, wiser or logical. In the case on hand, we have already noted that taking into account various aspects including the safety of the passengers and public interest, CMG consisting of experienced persons, revised the tender conditions. We are satisfied that the said Committee had discussed the subject in detail and for specifying these two conditions regarding pre-qualification criteria and the evaluation criteria. On perusal of all the materials, we are satisfied that the impugned conditions do not, in any way, could be classified as arbitrary, discriminatory or mala fide.”

18. Keeping these principles in mind, we will now deal with the arguments advanced by Mr Jahagirdar in relation to certain terms and conditions of the tender, which according to him, are discriminatory and unreasonable. The first condition that was challenged by Mr Jahagirdar was the annual turn over criteria which stipulates that the bidder must have a minimum annual turnover of Rs.50,00,000/- during each of the preceding five years. According to Mr Jahagirdar this annual turn over is to be calculated not only from the revenue generated from the Railway

catering business but also from other catering businesses, if any, undertaken by the bidder such as at airports, restaurants etc. According to Mr Jahagirdar, this would clearly show that persons who were/are exclusively catering for the Railways are put to a huge disadvantage as now other applicants who have other catering businesses and not necessarily having any experience in catering for the Railways, would not only be allowed to bid, but probably outbid the caterers who exclusively cater to the Railways. We fail to see how this condition can be termed as arbitrary, discriminatory or unreasonable. In fact, this allows others also to participate in the tender process and promotes competition. If the Railways, in its wisdom, choose to give an opportunity and invite tenders from persons other than those who are exclusively catering for the Railways, we see nothing wrong in it. We did not think that such a decision is any way unreasonable, discriminatory or arbitrary requiring our interference under Article 226 of the Constitution of India. As mentioned earlier, to our mind, such a decision of the Railways would be in larger public interest as not only it would promote competition but would ensure participation of reputed players in the field. We, therefore, find no merit in this objection.

19. The next objection raised by Mr Jahagirdar was to Clause 3.4.1 which stipulates that the bidder must have profit or loss plus accumulated reserves plus share capital of a minimum of Rs.20,00,000/- during each of the preceding five years. He submitted that even though Clause 3.1 allows even an individual or a partnership firm to be a bidder, Clause 3.4.1 would effectively mean that an individual or a partnership firm would be ousted from the bidding process as admittedly they cannot have any share capital. We find this argument wholly without substance. Clause 3.4.1 is with reference to the financial standing of the bidder. Financial standing of an individual/partnership firm/company is the cumulative sum of the profit or loss + accumulative reserves + share capital. On a proper reading of Clause 3.4.1, it is clear that an individual/partnership firm would qualify even if the reserves + share capital is "Nil", provided the profit is Rs.20,00,000/- or more. In fact, after filing of this Writ Petition, the Government of India, Ministry of Railways, by its circular dated 22nd November, 2013 has clarified that in the case of an individual/partnership firm, share capital should mean the proprietor's/partner's capital. This capital account could consist of capital brought by them from outside or capital generated internally by the business i.e. retained profit, which is normally added to the capital account instead of

keeping it separately under reserves and surplus as in the case of a company/corporate. We, therefore, find that even this objection of the Petitioner is of no substance and stands rejected.

20. The next objection of Mr Jahagirdar was that undue consideration and weightage is given to the number of base kitchens and the average number of meals prepared per day by the bidder. He submitted that a refreshment room, for which the bids are invited, consists of a kitchen and a sitting area and therefore refreshment room licensees do not require a separate kitchen. Further, only lunch and dinner are considered as meals whereas the refreshment room licensees also serve breakfast and snacks which are not taken into consideration in the bidding process. Form Tech-4 deals with the details of base kitchens. A bidder, as per the said Form, has to mention the location of the base kitchen with the complete address along with average number of meals prepared per day. We find that this weightage has been given by the Respondents in the bid document to ensure that the person who bids in the tender has adequate number of kitchens so as to ensure that he is able to cope with supplying adequate meals at that particular Station. Applying the principles laid down by the

Supreme Court in **M/s Michigan Rubber (India) Ltd**,¹ we do not find this condition to be either arbitrary, discriminatory or unreasonable requiring interference in our limited jurisdiction under Article 226 of the Constitution of India. We find that all the terms and conditions including the present one, have been imposed in order to sub-serve larger public interest and to ensure good quality service to the passengers as well as provide hygienic and wholesome food to the Railway commuting public. Merely because a better criteria or a wiser condition could have been imposed by the Railways is no ground for the court to interfere in its writ jurisdiction. These conditions denote that the bidders who wish to cater for the Railways should be professional and competent enough to meet the constantly increasing level of expectations and needs of the Railway commuting public. They can by no stretch of the imagination be termed as unreasonable or arbitrary and/or discriminatory. We, therefore, find no substance even in this objection.

21. The last objection raised by Mr Jahagirdar is that the Petitioners have a serious concern about the evaluation criteria set out in Clause 3.5.1(c) and 3.5.1(d). Clause 3.5 deals with the

¹ (2012) 8 SCC 216

Selection process and can be found at page 213 of the paper book.

Clause 3.5 reads as under:-

“3.5 Selection Process

3.5.1. The responsive bids shall be evaluated in the following manner:-

- a) Scrutiny of bids for minimum Eligibility as per Chapter 3 of Section A. Such bids that meet with the eligibility criteria will be called “eligible bids”.*
- b) The eligible bidders will be evaluated techno-commercially and awarded Techno-Commercial Score to assess the capability of the bidder(s) on the basis of scrutiny of information provided in Annexure - A/5(Tech Form 1 to Tech Form 3) and the scoring scale at Annexure - A/5.*
- (c) The highest Techno-Commercial Score (HTS) secured by any of the bids will be the base **Techno-commercial index**.*
- (d) All bids whose techno-commercial score is more than or equal to 50% of HTS will be the “techno-commercially qualified” for consideration of Railway Administration.*
- (e) Price bids will be opened for “techno-commercially qualified” bids only. The date time and venue of opening of price bid will be intimated only to the “techno-commercially qualified bidders”*
- (f) Highest Priced bid will be selected for award of contract.*
- (g) In the event of highest price being the same for more than one bid, bid with higher techno-commercial score will be considered for award of contract.”*

22. What Clause 3.5.1(c) sets out is that the highest techno-commercial score (HTS) secured by any bidder will be the base Techno-Commercial Index. Clause 3.5.1(d) stipulates that all bids whose techno-commercial score is more than or equal to 50% of the HTS will be techno-commercially qualified and price bids of only the techno-commercially qualified bids would be opened [clause 3.5.1(e)]. In other words, a bidder who is not techno-commercially qualified would be eliminated and his price bid would not be opened. It was Mr Jahagirdar's submission that looking to these conditions, individual players would be edged out and would not have a level playing field in the tender process. We are unable to agree with the aforesaid submission. As mentioned earlier by the learned Additional Solicitor General, the highest tecno-commercial score (HTS) was secured by an individual who exclusively catered to the Railways. This fact has not been disputed by the Petitioners. This being the case, we are unable to agree with Mr Jahagirdar that these conditions would edge out an individual who wishes to take part in the tender process. Furthermore, we find that these conditions are aimed to attract reputed players in the field to achieve the objectives of the policy and therefore cannot be said to be unreasonable, discriminatory or arbitrary. These terms and conditions have been imposed after due deliberation and by an

expert body after taking all factors into consideration and we do not think the same require any interference by us. This is more so in the present case since there are no allegations of malafides or malice on the part of the authorities. This being the case, we find that even this objection is of no substance.

23. Having dealt with the arguments of Mr Jahagirdar, we shall now deal with the judgment of the Supreme Court relied upon by him in the case of **Reliance Energy Limited and Another v/s Maharashtra State Road Development Corporation Ltd and Others.**² Mr Jahagirdar placed heavy reliance on paragraph 36 of the aforesaid decision which reads as under:-

“36. We find merit in this civil appeal. Standards applied by courts in judicial review must be justified by constitutional principles which govern the proper exercise of public power in a democracy. Article 14 of the Constitution embodies the principle of “non-discrimination”. However, it is not a free-standing provision. It has to be read in conjunction with rights conferred by other articles like Article 21 of the Constitution. The said Article 21 refers to “right to life”. It includes “opportunity”. In our view, as held in the latest judgment of the Constitution Bench of nine Judges in I.R. Coelho v. State of T.N. [(2007) 2 SCC 1] , Articles 21/14 are the heart of the chapter on fundamental rights. They cover various aspects of life. “Level playing field” is an important concept while construing Article 19(1)(g) of the Constitution. It is this doctrine which is invoked by REL/HDEC in the present case. When Article 19(1)(g) confers fundamental right to carry on business to a company, it is entitled to invoke the said doctrine of “level playing field”. We may clarify that this doctrine is, however,

² (2007) 8 SCC 1

subject to public interest. In the world of globalisation, competition is an important factor to be kept in mind. The doctrine of “level playing field” is an important doctrine which is embodied in Article 19(1)(g) of the Constitution. This is because the said doctrine provides space within which equally placed competitors are allowed to bid so as to subserve the larger public interest. “Globalisation”, in essence, is liberalisation of trade. Today India has dismantled licence raj. The economic reforms introduced after 1992 have brought in the concept of “globalisation”. Decisions or acts which result in unequal and discriminatory treatment, would violate the doctrine of “level playing field” embodied in Article 19(1)(g). Time has come, therefore, to say that Article 14 which refers to the principle of “equality” should not be read as a stand alone item but it should be read in conjunction with Article 21 which embodies several aspects of life. There is one more aspect which needs to be mentioned in the matter of implementation of the aforesaid doctrine of “level playing field”. According to Lord Goldsmith, commitment to the “rule of law” is the heart of parliamentary democracy. One of the important elements of the “rule of law” is legal certainty. Article 14 applies to government policies and if the policy or act of the Government, even in contractual matters, fails to satisfy the test of “reasonableness”, then such an act or decision would be unconstitutional.”

24. There is no dispute about the proposition laid down by the Supreme Court in the aforesaid decision but we fail to see how the same applies to the factual matrix before us. We are clearly of the view that the conditions imposed in the tender document and specially those that have been challenged by the Petitioner, do not create a situation whereby there was no level playing field. In fact as mentioned earlier, the bidder securing the highest techno-commercial score (HTS) was an individual who catered for the Railways. This itself negates the contention of the Petitioners that

there has been any violation of the doctrine of “level playing field”. We, therefore, find that the reliance placed on the aforesaid decision of the Supreme Court is wholly misplaced.

25. Before parting, we must mention that it is not disputed that from time to time catering policies have been framed by the Government of India. Some of these policies have been challenged which have been repelled by judicial pronouncements. In fact, a Division Bench of the Orissa High Court, by its order dated 24th January 2006, had sought to interfere with the Catering Policy 2005 in respect of reservations. This judgment and order of the Orissa High Court was subjected to an Appeal before the Supreme Court in the case of **Indian Railways Catering and Tourism Corporation Limited v/s Indian Railway Major and Minor Caterers Association and Others.**³ The Supreme Court set aside the order of the Orissa High Court on the ground that policy decisions of the Government should not be interfered with in a routine manner unless the policy is contrary to the provisions of statutory rules or of the Constitution. In the facts of that case nothing was brought to the notice of the Supreme Court that the Catering Policy 2005 was contrary to the provisions of the

3 (2011) 12 SCC 792

statutory rules or the Constitution. On this ground alone, the order of the Orissa High Court interfering with the Catering Policy of 2005 was set aside.

26. In view of our discussion in this judgment, we find no merit in these Writ Petitions. Rule is accordingly discharged and the Writ Petitions are dismissed. However, in the facts and circumstances of the case, we leave the parties to bear their own costs.

(B.P. COLABAWALLA J.)

(S.C. DHARMADHIKARI J.)