

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 6383/2016

(SUNIL WADHURAM ARYA **VERSUS** THE DIVISIONAL RAILWAY MANAGER (CATERING) CENTRAL RAILWAY, NAGPUR)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri A.S. Kilor, counsel for the petitioner.
Shri N.P. Lambat, counsel for the respondent.

CORAM : SMT. VASANTI A NAIK AND
MRS. SWAPNA JOSHI, JJ.

DATE : DECEMBER 20, 2016.

By this writ petition, the petitioner challenges the tender floated by the respondent on 13.10.2016 inviting bids for permission to run the miscellaneous and curio stall on Platform No.1 on the Nagpur Railway Station.

According to the petitioner, in the Miscellaneous Articles Stall/Trolley Policy, 2012, there is a condition for renewal of the permission for a period of three years.

Shri Kilor, the learned counsel for the petitioner, states that the issue involved in this case stands answered in favour of the petitioner in view of the judgment of the Hon'ble Supreme Court reported in **(2016) 3 SCC 582** (*Senior Divisional Commercial Manager, South Central Railways & Others Versus S.C.R. Caterers, Dry Fruits, Fruit Juice Stalls Welfare Association & Another*), that is followed by this Court in Writ Petition No.1770 of 2016. It is stated that the action on the part of the respondent of floating a tender and inviting the bids for auction of the

miscellaneous stalls is bad in law inasmuch as it contravenes the policy of the year 2012 and the directions issued by the Hon'ble Supreme Court in the judgment reported in **(2016) 3 SCC 582**. It is stated that after the writ petition was filed by the petitioner, without prejudice to the rights of the petitioner to challenge the tender notice, the petitioner had applied in pursuance of the tender notice. It is submitted that since the petitioner has a right to seek the renewal of the license for the miscellaneous stall for a period of three years after completion of license period of five years, the action on the part of the respondents of floating a tender is liable to be set aside. It is submitted that a similar order like the one passed in several other matters needs to be passed in this writ petition also.

Shri Lambat, the learned counsel for the respondent, opposes the prayer made in the writ petition. It is submitted that the Hon'ble Supreme Court had considered the catering policy of the year 2010 in the judgment is reported in **(2016) 3 SCC 582** (*Senior Divisional Commercial Manager, South Central Railways & Others Versus S.C.R. Caterers, Dry Fruits, Fruit Juice Stalls Welfare Association & Another*). It is stated that the miscellaneous policy of the respondent was not under consideration of the Hon'ble Supreme Court. It is stated that this Court has, in the judgment, dated 04.08.2016 in Writ Petition No.1770 of 2016, considered the catering policy of the year 2010 and has followed the judgment of the Hon'ble Supreme Court. It is stated that as per the initial agreement, the term of five years has expired.

The relief sought by the petitioner needs to be granted. It would be necessary to quash and set aside the tender notice in the circumstances of the case. The catering policy of the year 2010 and the miscellaneous policy of the year 2012 are almost identical. Each and every clause in the said policies are similar. There is a renewal clause, i.e. Clause No.8, in the miscellaneous policy of the year 2012, just like the clause for renewal in the catering policy of the year 2010. The Hon'ble Supreme Court has referred to the catering policy of the year 2010 and has held in the judgment reported in **(2016) 3 SCC 582** (*Senior Divisional Commercial Manager, South Central Railways & Others Versus S.C.R. Caterers, Dry Fruits, Fruit Juice Stalls Welfare Association & Another*) that the licenses of the eligible licensees were liable to be renewed by the respondent. We do not find any reason to refuse a similar relief to the petitioner herein as the catering policy of the year 2010 is similar to the miscellaneous policy of the year 2012. The petitioner has only completed five years of the license period and the petitioner is eligible for renewal of the license as per the judgment of the Hon'ble Supreme Court. We are not inclined to accept the submission made on behalf of the respondent that since the judgment of the Hon'ble Supreme Court refers to the catering policy of the year 2010 and since the petitioner is concerned with the miscellaneous policy of the year 2012, the petitioner is not entitled to the relief as we find that both the policies are almost identical.

Hence, for the reasons aforesaid, the writ petition is allowed. The impugned tender notice is quashed and set aside. The respondent is directed to consider renewing the license of the petitioner for a period of three years from the date of expiry of five years license period on such terms and conditions, as directed by the judgment of the Hon'ble Supreme Court.

Order accordingly. No costs.

JUDGE

JUDGE

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