

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.06.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.A.Nos.700 & 701 of 2016

P.K.Shefi ... Appellant in both the writ appeals/
Petitioner

-vs-

1. The Senior Divisional
Commercial Manager
Divisional Office
Commercial Branch
Southern Railway
Chennai 600 003

2. The Deputy Southern Manager (Commercial)
Tambaram
Southern Railway
Chennai

... Respondents in both the writ/
appeals

Appeals under Clause 15 of the Letters Patent, against the order dated 08.06.2016 made in W.M.P.Nos.16795 & 16797 of 2016 in W.P.Nos.19316 & 19317 of 2016.

WP.No.19316 of 2016: This Petition is filed Under Article 226 of Writ of Certiorarified Mandamus Calling for the records relating to the order dated 4.6.2016 in TBM/PKS/1/16 of the 2nd respondent and quash the same and consequently extend the licence in favour of the petitioner for a further period of 3 years in respect of the Stall No. MAS/S64 on platform 8/9 at the Tambaram Railway Station.

WMP.No.16795/2016: This Petition prayed to grant an order of Interim direction directing the 2nd Respondent to forthwith permit the Petitioner to operate the stall No.MAS/S64 on Platform 8/9 at the Tambaram Railway Station.

WP.No.19317 of 2016: This Petition is filed Under Article 226 of Writ of Certiorarified Mandamus Calling for the records relating to the order dated 4.6.2016 of the 2nd respondent and quash the same and consequently extend the licence in favour of the petitioner for a further period of 3 years in respect of the Stall No. MAS/S51 on platform 1/2 at the Tambaram Railway Station.

WMP.No.16797 of 2016: This petition prayed to grant an order of interim direction directing the 2nd Respondent to forthwith permit the petitioner to operate the stall NO.MAS/S51 on platform 1/2 at the Tambaram Railway Station.

For Appellant :: Mr.AR.L.Sundaresan
Senior Counsel for
Mrs.AL.Ganthimathi

For Respondents :: Mr.P.T.Ramkumar

JUDGMENT

(Judgment of the Court was made by HULUVADI G.RAMESH, J.)

The appellant/writ petitioner, having been aggrieved by the order passed by the learned single Judge dismissing the interlocutory applications seeking for an interim direction to the second respondent to forthwith permit the appellant/writ petitioner to operate the Stall No.MAS/S64 on platform 8/9 and Stall No.MAS/S51 on platform 1/2 at the Tambaram Railway Station, has filed these writ appeals.

2. Heard the learned senior counsel for the appellant and the learned standing counsel taking notice on behalf of the respondents.

3. Paragraph-7 of the impugned order reads thus:-

"7. Admittedly, the Catering Policy 2010 is not put to challenge by the petitioner in these writ petitions. As per Clause 17, renewal is not automatic and Clause 19 also stipulates ceiling limits on holding of catering licenses and as per Clause 19.2, in respect of minor units, an individual/firm/company will be allowed to hold maximum two minor catering units at a station and a maximum of 10 units per Zonal Railway and in case of suburban section, ceiling limit of 2 units per division would be applicable. However, the petitioner is the licensee of 15 minor units in Chennai and 43 units in Zonal Railways and therefore,

under that clause, prima facie the petitioner may not be entitled to get renewal of license. That apart, as per Clause 26.1, the revised catering policy will be applicable with immediate effect i.e., from the date of issue and therefore, the policy governing as on date is the Catering Policy 2010 and not the Catering Policy 2005 and the petitioner will not come under the exception to Clause 26.1 for the reason that the original contract period came to an end in the year 2014 and by way of temporary arrangement, the license was periodically extended and that too came to an end on 31.05.2016."

4. It appears that as per the Catering Policy 2005 pertaining to the grant of licenses to run the catering services in the respondent-Southern Railway, the appellant/writ petitioner, having several stalls i.e., more than 23 stalls, secured the license in the year 2009 for a period of five years with a further extension upto three years subject to satisfactory performance, as per the 2005 policy conditions. However, it is not in dispute that the five years period got expired in the year 2014 and for the remaining period of three years also, the licence was renewed from time to time upto the period 31.5.2016. At this juncture the appellant, pending the writ petitions challenging the order of refusal of licence, sought for an interim direction as per the 2005 policy conditions on the ground that he is entitled to run the stalls for another two more years, i.e., five years plus three years to be extended on satisfactory performance. According to the learned senior counsel for the appellant, when the appellant had successfully completed the five years period and one more year of extension was also granted by the Railways on satisfactory performance, then it is the prerogative of the appellant to have the extension for two more years and as such, the learned single Judge failed to accept the prima facie case made out by the appellant/writ petitioner for renewal of license.

5. Per contra, the learned standing counsel for the respondents, referring to the latest judgment of the Apex Court in the case of Senior Divisional Commercial Manager, South Central Railways and others v. S.C.R.Caterers, Dry Fruits, Fruit Juice Stalls Welfare Association and another, (2016) 3 SCC 582, more particularly, the penultimate paragraph upholding the provisions of the new Catering Policy 2010, and also clauses 26.1 and 26.1.4 of the Catering Policy 2010, has submitted that the appellant is not entitled for the renewal of license and therefore the learned single Judge has rightly rejected the prayer of the appellant/writ petitioner.

6. The Apex Court, in the case of Senior Divisional Commercial Manager, South Central Railways and others v. S.C.R.Caterers, Dry Fruits, Fruit Juice Stalls Welfare Association and another, (2016) 3 SCC 582, while upholding the provisions of the new Catering Policy 2010, has held as follows:-

"33. Therefore, we have to hold that the provisions of the Catering Policy 2010 are applicable to the respondents concerned. The action of the Railways in not granting renewals of the licences to the members of the respondents is arbitrary, unreasonable, unfair and discriminatory, and the same cannot be allowed to sustain in law.

34. For the reasons stated supra, this Court cannot interfere with the impugned judgment and order of the High Court. The civil appeals are dismissed. The order dated 11.4.2014 granting stay of the impugned order shall stand vacated. We, however, make it clear that only those licences may be eligible for renewal of their licences who can declare on affidavit that they do not have the licence of more than one shop or kiosk in their name or benami licence at the railway stations with periodical reasonable increase of licence fee. All pending applications are disposed of."

Likewise, clauses 26.1, 26.1.1 and 26.1.4 of the Catering Policy 2010, which would speak to the applicability and tenure of the existing contractors, read as follows:

"26.1. The revised catering policy will be applicable with immediate effect i.e. from the date of issue. This policy supersedes all prior policy circulars issued from time to time unless specifically referred to in this policy document.

26.1.1. All existing operational catering licences awarded by IRCTC and transferred to Zonal Railways will be governed by the existing Catering Policy 2005 upto the validity of their contractual period.

26.1.4. This policy will also apply in case of award of fresh licences and licences awarded in the event of termination, non-renewal, vacation etc. of the existing licences."

7. As per the ratio laid down by the Apex Court in the aforesaid judgment in paragraph-33, the provisions of the Catering Policy 2010 are applicable to the respondents concerned

and the action of the Railways in not granting renewals of the licences to the members of the respondents is arbitrary, unreasonable, unfair and discriminatory and the same cannot be allowed to sustain in law. But the fact remains that even as per clause 26.1.1 of the 2010 policy, in the case on hand, it is still open to the respondent-Railways to consider the application submitted by the appellant/writ petitioner for the remaining period without being influenced by any external factors. However, so far as the extension of the 2005 policy is concerned, we are of the view that it is the discretion of the respondent-Railways to do the needful in accordance with law by a reasoned decision, taking note of the fact that the appellant/writ petitioner had successfully completed the period of five years and also further one more year on satisfactory performance. With these observations, both the writ appeals are disposed of. Consequently, C.M.P.Nos.9224 & 9226 of 2016 are closed. No costs.

-s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

ss
To

1. The Senior Divisional
Commercial Manager
Divisional Office
Commercial Branch
Southern Railway
Chennai 600 003

2. The Deputy Southern Manager (Commercial)
Tambaram
Southern Railway
Chennai

+2 ccs to Mr.P.T.Ramkumar Advocate sr.32139,32140
+1 cc to Mrs.AL.Ganthimathi Advocate sr.32386

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jsv(co)
aa21/06/2016