

HON'BLE SRI JUSTICE SURESH KUMAR KAIT

WRIT PETITION Nos.8364, 14632, 28281 and 31906 of 2014

and 28464 of 2016

COMMON ORDER:

Vide batch of petitions, petitioners seek a direction thereby directing respondents to renew license in respect of stalls/units in different railway stations in view of Railway Catering Policy, 2010.

The issue involved in these Writ Petitions being one and the same, the petitions are heard together and are being disposed of by a common order.

Facts in W.P.No.28464 of 2016 shall be discussed.

In the affidavit filed in support of the Writ Petition, it is stated that the petitioner has been running a stall duly paying license fee without any default or any complaint. The stall of the petitioner is a General Minor Unit (GMU), which comes under 'D' category. Petitioner claims to be entitled for renewal of license for another period of five years with effect from 01.11.2015 as per clauses 16 and 17 of the Railway Catering Policy, 2010. Accordingly, the petitioner applied for renewal of license in April, 2015. The railway authorities refused to renew the license of existing stalls as per Railway Catering Policy, 2010 on the ground that the said policy does not apply to the existing licencees.

Being aggrieved, the existing license holders filed W.P.No.14577 of 2013 and batch thereby prayed to issue a

mandamus to the railway authorities for renewal of licence as per Railway Catering Policy, 2010. By judgment dated 16.08.2013, this Court allowed batch of writ petitions declaring that all the existing licence holders of General Minor Unit stalls at the railway stations are entitled for renewal of their licences as per Railway Catering Policy, 2010 and directed the railway authorities to consider the applications of all the existing licence holders for renewal of licences.

Learned counsel appearing on behalf of the petitioners submits that, being aggrieved against the order dated 16.08.2013 in W.P.No.14577 of 2013 and batch, W.A.Nos.1573 to 1575 of 2013 were filed. By judgment dated 12.09.2013, Writ Appeals were dismissed confirming the order of the Single Judge. Again being aggrieved, Civil Appeal Nos.618-620 of 2016 were filed before the Supreme Court and the same were dismissed by judgment dated 29.01.2016. However, the Supreme Court made observation that the licencees are eligible for renewal of licences who declare on affidavit that they do not have licence of more than one shop or kiosk in their name or benami licence at the railway stations with periodical reasonable increase of license fee.

Learned counsel for the petitioners further submits that the petitioners are entitled for renewal of licence for another five years in terms of the order of the learned Single Judge, as confirmed by the Division Bench in Writ Appeals. However, the observations made by the Supreme Court are *Obiter dicta*

and have no binding effect on the petitioners. Even otherwise, petitioners are entitled for renewal of licence in view of Railway Catering Policy, 2010.

In the counter affidavit, respondents would state that the petitioner's contract expired on 31.10.2015, and it was under extension till 20.07.2016 due to pending SLP. It is further stated that, neither the Supreme Court, in its judgment, has given any leverage of surrendering one unit and retention of another nor Railway Catering Policy, 2010 does have a provision of choice on the above lines. Therefore, the licence could not be renewed.

In the counter, it is further stated that, on taking over stalls from IRCTC during 2010, as per CCM circular dated 23.08.2011, Vijayawada and Guntakal Divisions processed for renewal of stalls whose tenure is expiring/expired for a period of three years from 21.07.2010, date which catering policy, 2010 came into force, to 20.07.2013 subject to the conditions stipulated in paras 16.1.3 and 16.2.1 of Policy 2010. It is further stated that prior to expiry of renewal period, Sr.DCM/BZA floated tender notice dated 26.04.2013 for GMUs at A & B category Railway Stations on BZA Division and similar notification dated 03.05.2013 for SMUs at A1, A & B category stations. Against the said notices, tea stall and fruit juice stall contractors approached this Court in W.P.Nos.14577, 14888 and 15072 of 2013, and vide order dated 16.08.2013, allowed the writ petitions directing

respondents to consider renewal of licences. The said judgment has been upheld by the Division Bench. Consequently, the matter reached upto the Supreme Court. Vide para 28 of the judgment, the Supreme Court clarified that only those licensees may be eligible for renewal of their licenses who would declare on affidavit that they do not have the licenses of more than one shop/kiosk in their name or benami license at any Railway station with periodical reasonable increase of licence fee.

Learned Standing Counsel appearing for the Railways submits that some of the petitioners have two or more stalls, however, not submitted affidavit to that effect and, therefore, their licences were not renewed.

Learned Standing Counsel further submits that since the matter was sub judice before the Supreme Court, respondents never assured renewal of licence to petitioners and, on receipt of judgment in SLP, respondents have taken steps to implement Railway Catering Policy, 2010.

I have heard learned counsel for the parties.

It is pertinent to mention here that, in W.P.No.14577 of 2013, vide order dated 16.08.2013, this Court observed as under:

1. *The members of the petitioner – Association shall make applications for renewal of their licences within one month from today.*
2. *Respondent No.3 shall consider each of such applications with reference to paras 16.1.3 and 16.2.1*

as the case may be, and communicate its decision to the members of the petitioner – Association.

3. *In the event of rejection of the application of any of the licencees for renewal, respondent No.3 shall record reasons therefor and communicate the same to the licensee concerned.*
4. *Till completion of the above mentioned process, the members of the petitioner – Association shall be permitted to continue to run their respective GMUs and SMUs.*

As admitted, due to the pendency of the matter before this Court, petitioners have not filed applications. Therefore, there was no occasion for the Railways to decide the same.

It is pertinent to mention here that, in C.A.Nos.618-620 of 2016 filed by the Senior Divisional Commercial Manager against S.C.R. Caterers, Dry Fruits, Fruit Juice Stalls Welfare Association, the Supreme Court while affirming the judgment of this Court observed as under:

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

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 11.04.2014 granting stay of the impugned order shall stand vacated. We, however, make it clear that only those licensees may be eligible for renewal of their licenses who can declare on affidavit that they do not have the license of more than one shop or kiosk in their name or benami license at the railway stations with periodical reasonable increase of license fee.”

It is admitted fact that the petitioners herein are not parties either before the Single Judge or Division Bench or the Supreme Court. It is also admitted fact that the petitioners have not filed applications in terms of the judgment of this Court passed in W.P.No.14577 of 2013 and batch, dated 16.08.2013.

As stated by the counsel for the petitioners, the observations made by the Supreme Court, in C.A.Nos.618-620 of 2016, are *obiter dicta* and has no binding effect on the petitioners as it is not *ratio decidendi*. He submits that the judgment of this Court has been affirmed and has become final which is binding on the respondents.

I do not agree with the submission of the counsel for the petitioners that the observations made by the Supreme Court in paras 27 and 28, as noted above, are not binding on the petitioners since the petitioners are admitting the judgment rendered by this Court, whereby petitioners therein were directed to file applications. However, the petitioners herein have not filed applications for renewal of licence. The petitioners have no explanation as to what prevented them not to file renew applications.

Clause 17 of Catering Policy, 2010 relates to renewal. It reads as under:

Renewal will not be a matter of right. The licensee must apply for renewal minimum 6 (six) months in advance before

the expiry of the contract. Renewal will be based on the following:-

17.1 Satisfactory performance of the licensee during the tenure of the contract.

An imposition of fine/warnings on more than 5 occasions will result in rejection of the application for renewal.

17.2 Payment of all dues/arrears – No Dues Certificate from the concerned authority, must be attached along with the application for renewal.

17.3 The applicant must submit the documents afresh along with the renewal application regarding the details mentioned in para 14.2.1.1, 14.2.1.2 and 14.2.1.3 and in case of GMUs relevant documents as mentioned in the Standard Bid Documents will be required to be submitted afresh along with the above mentioned documents.

As admitted by the counsel for the petitioners, they were not parties either before this Court or before the Supreme Court. Therefore, they were supposed to file applications minimum of six months in advance before expiry of the period of licence.

Since the petitioners continue to enjoy possession of the stalls/units by the interim order of this Court, I hereby dispose of batch of writ petitions directing the petitioners to file applications for renewal with an affidavit, as directed by the Supreme Court, declaring that the applicant does not have more than one stall. The applications shall be filed by the petitioners within one week from the date of receipt of a copy of this order. Respondents are directed to decide the same within one week thereafter.

I hereby make it clear that the applications shall be decided in terms of the judgment of this Court as noted above, and the observations of the Supreme Court in Civil Appeal Nos.618-620 of 2016 dated 29.01.2016.

The Writ Petitions are, accordingly, disposed of.

Miscellaneous Petitions pending, if any, shall also stand dismissed. However, in the circumstances, without costs.

SURESH KUMAR KAIT, J

Dt:1 .09.2016
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