THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT

WRIT PETITION No.15054 of 2015

ORDER:

Vide the present petition, the petitioner seeks Mandamus declaring the tender notification dated 16.07.2014 issued by the 1st respondent relating to 13 Automatic Vending Machines (AVMs) in Visakhapatnam and Vizianagaram Railway stations, as arbitrary, malafide, suffers from non-application of mind and unsustainable.

It is stated in the writ affidavit that the petitioner has the franchise of M/s Pepsi Foods Pvt., Ltd., for running AVMs in different railway stations of Waltair Division. The Pepsi Foods Pvt Ltd., is the existing licensee of the Indian Railways for running 13 AVMs in Visakhapatnam and Vizianargaram railway stations. The petitioner is running the said 13 AVMs having the franchise of Pepsi Foods Pvt. Ltd., with the approval of the railway authorities. After the expiry of licence period, the railway authorities have extended licence period upto the end of June 2015 for some stalls and upto the end of September 2015 for some other stalls. As on that date, the petitioner has been running the said 13 AVMs.

It is further stated that the 1st respondent has issued a tender notice on 16.07.2014, calling for tenders for the above said 13 AVMs with a specific stipulation that the AVMs shall be operated only by coin system and no manual interface is permitted, unlike the previous practice.

Learned counsel appearing on behalf of the petitioner submits that the 1st respondent has called for tenders for running AVMs, which are presently being run by the petitioner, and there was no stipulation that the AVMs shall be operated only by coins and no manual interface is permitted. It is impracticable to run coin operated AVMs, as coin operated machines are not manufactured in India, and nowhere in India such AVMs are in operation. The 1st respondent has not examined the feasibility of coin operated AVMs without human interface and did not make any experiment before issuing the tender notification and has mechanically imposed that impracticable condition.

In the counter-affidavit filed on behalf of the respondents, it is stated that M/s. Pepsi Foods Pvt. Ltd., has sought renewal of the stalls as per policy. Accordingly, the respondent-Railways vide its letter dated 24.04.2015 extended the licence. Some AVMs licences have already been expired and some are in force for another 3 or 4 months. It is further submitted that the respondent-Railways had issued tender notification dated 16.7.2014 calling for tenders with specific stipulation in terms of Catering Policy Circular No.35/2010. The present running of 13 AVMs were awarded by IRCTC but not by the respondent-Railway as contended in terms of Policy Circular existing at that time. Once the new circular policy has come into force, the earlier policy circulars will not be in operation. The awarding of licence/contracts of AVMs have to be done in accordance with new policy guidelines that is 2010 Catering policy lines alone.

Heard the learned counsel for both the parties.

In para-11 of the writ affidavit, it is stated that the similar writ petitions have been filed before Orissa High Court and interim orders have been passed ordering *status quo* regarding finalization of tenders. Accordingly, vide order dated 28.05.2015, this Court also granted interim stay as prayed for.

It is not in dispute that the petitioner's licence was up to the year 2015, and by virtue of the interim directions passed by this Court, it is continued till date.

As argued by the learned counsel for the petitioner, the respondents without application of mind, has brought the new policy into vogue, and fresh conditions were inserted, whereby the AVMs were to be operated by coins without any manual interface.

The fact remains that the petitioner vide letter dated 07.04.2015 has sought renewal of stalls as per policy. Pursuant to the Railway Catering Policy 2010, the AVMs shall be run by coin system only but not to be operated manually.

The petitioner licence was up to 2015 which has expired otherwise and its renewal application was considered and extended for another 3 or 4 months. Thereafter, the petitioner is running the said AVMs only due to the interim order passed by this Court.

Moreover, W.P(C) No. 124 of 2015 has been decided by a Single Judge of Orissa High Court, which held as under:

> *"12. Learned counsel for the Railway further submits that the mere apprehension of the petitioner firm that the successful bidders will not be able to set-up the coin operated stand Alone Automatic Vending Machine as has been prescribed in the Bid Document cannot be a ground to interfere in the matter and cancel the impugned Tender.*
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> *13. It is submitted that the petitioner firm is continuing to occupy and operate the AVM stalls at Cuttak and Bhubaneswar railway stations on the basis of the interim order of this Court dated 07.01.2015. Therefore the Railway authorities have not been able to handover possession of the said AVM stalls to the successful bidders till date causing huge financial loss to the Railway.*
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> *14. Judicial review of administrative action is intended to prevent arbitrariness irrationality unreasonableness bias and mala fides. Its purpose is to check whether choice or decision is made lawfully and not to check whether choice or decision is sound. When the power of judicial review is invoked in matters relating to tenders or award of contracts certain special features should be borne in mind. A contract is a*

commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bonafide and is in public interest courts will not in exercise of power of judicial review interfere even if a procedural aberration or error in assessment or prejudice to a tenderer is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil court. Attempts by unsuccessful tenders with imaginary grievances wounded pride and business rivalry to make mountains out of molehills of some technical procedural violation or some prejudice to self and persuade courts to interfere by exercising power of judicial review should be resisted. Such interferences either interim or final may hold up public works for years or delay relief and succour to thousands and millions and may increase the project cost manifold. Therefore a Court would interfere in a tender or contractual matters in exercise of its power of judicial review only if the process adopted or decision taken by the authority is found to be mala fide or arbitrary or irrational which affects public interest. (See Jagdish Mandal v. State of Orissa and others (2007) 14 SCC 517."

Consequently, the petition filed by the petitioner therein has been dismissed vide order dated 22.01.2016.

On a perusal of the paras, as noted above, the High Court of Orissa has justified insertion of the new policy that it has to be run by coin system but not manually. I also concur with the same.

In view of the above, I find no merit in the instant petition and the same is liable to be dismissed.

Accordingly, this Writ Petition is dismissed. No costs. Miscellaneous Petitions, if any pending, shall stand closed.

JUSTICE SURESH KUMAR KAIT.

Date: 17.09.2016
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