

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9971 of 2017

- =====
1. M/s Surya Food & Agro Limited, having its Registered office D-I, Sector-2, Noida- 201301 (U.P.), through its Manager, Pramod Sharma, Son of Sri Bishram Sharma Authorized by th Board of Directors.
 2. M/S Nestle India Limited, having its Registered Office at M-5A, Connaught Circles, P.O. Box 611, New Delhi- 110001 and its Regional Office at Tower 'C' 12 th Floor, DLF IT Park, 08, Major Arterial Road, Block- AF, New Town, Rajarhat, Kolkata- 700156, through Pramod Sharma, Son of Sri Bihsram Sharma, Autorized by the Board of Directors of the Company.

.... Petitioner/s

Versus

1. The Union of India through the Secretary, Railway Board, Ministry of Railway, Rail Bhawan, New Delhi- 110001.
2. The Financial Commissioner, Railway Board, Ministry of Railway, Rail Bhawan, New Delhi- 110001.
3. The Executive Director (T&C), Railway Board, Ministry of Railway, Rail Bhawan, New Delhi- 110001.
4. The Director (T&C), Railway Board, Ministry of Railway, Rail Bhawan, New Delhi- 110001.
5. The Chairman and Managing Director, Indian Railway Catering & Tourism Corporation Limited, Corporate Office, 9th Floor, Bank of Baroda Bhawan, 16 Sansad Marg, New Delhi- 110001.
6. The General Manager, East Central Railway, Hajipur, P.O.- Digghi Kala, P.S.- Hajipur, District- Vaishali at Hajipur (Bihar).
7. The Chief Commercial Manager, East Central Railway Hajipur, P.O.- Digghi Kala, P.S. Hajipur, District- Vaishali at Hajipur (Bihar).
8. The Financial Advisor & Chief Accounts Officer, East Central Railway, Hajipur, P.O.- Digghi Kala, P.S. Hajipur, District- Vaishali at Hajipur (Bihar).
9. The Group General Manager, Indian Railway Catering & Tourism Corporation Limited, Eastern Zone, 3 Koylaghat Street, Ground Floor, Kolkata- 700001.
10. The Divisional Railway Manager, East Central Railway, Sonapur, P.O.- Sonapur, District- Saran at Chapra (Bihar).
11. The Divisional Railway Manager, East Central Railway, Samastipur, District- Samastipur (Bihar).
12. The Divisional Railway Manager, East Central Railway, Danapur, P.O.- Khagaul, P.S.- Danapur, District- Patna (Bihar).
13. The Divisional Railway Manager, East Central Railway, Mugalsarai, P.O.- Mugalsarai, P.S.- Mugalsarai, District- Chandauli (U.P.).
14. The Senior Divisional Commercial Manager, East Central Railway, Sonapur, P.O.- Sonapur, District- Saran at Chapra (Bihar).
15. The Senior Divisional Commercial Manager, East Central Railway, Samastipur, District- Samastipur, (Bihar).
16. The Senior Divisional Commercial Manager, East Central Railway, Danapur, P.O.- Khagaul, P.S.- Danapur, District- Patna (Bihar).
17. The Senior Divisional Commercial Manager, East Central Railway, Mugalsarai, P.O.- Mugalsarai, P.S.- Mugalsarai, District- Chandauli (U.P.).

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Kamal Narayan Choubey, Sr. Adv.
Mr. M.P. Dixit, Adv.



Mr. S.K. Dixit, Adv.
Mr. Sanjay Kr. Choubey, Adv.
Mr. Shailendra Kumar, Adv.
Mr. Sunil Kumar, Adv.

For the Respondent/s : Mrs. Nivedita Nirvikar, Adv.

=====

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT
Date: 28-08-2017

In the present case, the petitioners have prayed for following relief:-

- “1A. To issue an appropriate writ/order/direction in the nature of Certiorari for quashing and setting aside the Order dated 27.02.2017 issued by the Respondent-East Central Railway in view of para-7.2 of new Catering Policy-2017 as contained in Annexure-5 whereby 32 Automatic Vending Machines running on extension basis over Danapur, Mugalsarai, Sonapur & Samstipur Divisions have now been Ordered that no further extension shall be granted to the existing Automatic Vending Machines beyond 01.08.2017 which is contrary to the Order passed by Hon'ble High Court of Judicature at Madras on 01.10.2012 in W.P. No. 13914 of 2012 and M.P.S. No.1 to 3 of 2012 as contained in Annexure-7 and also the said decision/Order of Respondent No.7 dated 15.06.2017 as contained in Annexure-4 is contrary to the Orders in Annexure-4 is contrary to the Orders dated 12.03.2013, 25.04.2013 & 18.10.2013 issued by the Railway Board as contained in Annexure-6 Series which authorized the continuance of old Automatic Vending Machines through Kiosks till allotment of new Automatic Vending Machines under Catering Policy-2010.*
- B. To issue an appropriate writ/order/direction in the nature of Mandamus commanding the Respondents to continue the old Automatic Vending Machine*



(hereinafter referred to as “the AVM”) Dispensing Kiosks for sale of Hot & Cold Beverages & Pre-cooked/ Pre-packed Snacks & Food Items through Kiosks at Patna Junction, Barauni Junction, Samastipur Junction, Sonapur Junction & Mugalsarai Junction Railway Station till allotment of new AVMs following the Catering Policy-2010 and SBD Guidelines issued on 05/07.09.2012 as directed by the Apex Authority i.e. Railway Board dated 12.03.2013, 25.04.2013 & 18.10.2013 as contained in Annexure-6 Series which has also been upheld by Hon’ble High Court of Madras on 01.10.2012 in W.P. No. 13914 of 2012 and M.P. Nos. 1 to 3 of 2012 as contained in Annexure-7.”

The petitioners are Companies which has established Automatic Vending Machines at different railway stations throughout India. The work orders were issued on various dates for the various destination. The present writ application is confined to the Central Eastern Zone.

As per statement made in the writ application, the petitioners have been allotted the valid license for management of Automatic Vending Machines Dispensing Kiosks for sale of Hot & Cold Beverages & Pre-cooked/Pre-packed Snacks & Food Items through Kiosks at 32 Stalls at Patna Junction and other stations for a period of five years with different dates. The present dispute with respect to the contract is for five years which has ended by efflux of time on 31.7.2017.



As per petitioners, they have filed an application dated 12.06.2017 for extension of period of contract beyond 1.8.2017 for one year but, the order dated 15.6.2017 has been passed in terms of para 7.2 of the New Catering Policy, 2017 refused to extend the period which the petitioners have attacked as unreasonable, illegal, not sustainable on equitable consideration period should be extended. By that decision, after the expiry of period of contract i.e. 31.7.2017, it will be treated to have been discontinued and as per the policy decision, no further extension would be granted to extend the period of contract to run the A.V.Ms.

Learned counsel for the petitioner submits that the Railway Board, vide letter dated 12.3.2013, has issued direction that in order to provide uninterrupted catering service to the passengers, the old contractors be allowed to continue till finalization of the new Contractor to run the A.V.Ms. He has further submitted that the Southern Railways, vide letter dated 29.6.2017, has extended the period of contract to run the A.V.Ms. at Coimbatore Junction from 1.7.2017 to 30.9.2017. In such view and circumstances, the petitioner should also be allowed to continue the operation of A.V.Ms. till the new Contractor is selected to establish his or their Automatic Vending Machines and the closure of the A.V.Ms. will cause great hardship and inconvenience to the general public



including passengers on board. It has further been argued that in a similar situation, the Madras High Court in W.P. No. 13914 of 2012 has granted relief of continuation of contract to run Automatic Vending Machines till new licensee (Contractor) comes into the picture after finalization of the contract. So in the same term, this Court should issue a mandamus that Railway Administration should not close down the A.V.Ms. rather the period of contract be extended till the new contractor is selected. Learned counsel for the petitioner has further submitted that they have filed representations before the East Central Railway for extension of period of contract which are pending consideration, no final decision has been taken as yet. He further submits that in the year 2010, the Railway Administration had come with the lofty policy with regard to appointment of Contractor, but remained in the file, never acted upon. Though the 2017 new policy has come but, till appointment of new Contractor, they should be allowed to operate the A.V.Ms.

Learned counsel for the petitioner has placed reliance on two judgments as in the case of *United India Insurance Co. Ltd. Vs. Consumer Education & Research Society & Ors.* reported in *AIR 2009 SC 446*, para-35 and in the case of *Food Corporation of India & Anr. Vs. SEIL Ltd. & Ors.* reported in *AIR 2008 SC 1101* on the principle that the policy decision cannot be said to be immune from the judicial



review.

Per contra, learned counsel for the Railway Administration submits that the period of contract is over and neither the petitioner has a vested right or contractual right or any right to claim extension of the period of contract and in terms of para 7.2 of the new government Policy Decision of the year 2017 which provides that A.V.Ms. would be allowed to operate up to the currency of existing contract and no extension should be granted. In such circumstances, the petitioner cannot be granted extension of period of the contract. Learned counsel for the Railway further submits that the petitioner established A.V.Ms. in different railway stations falling in different zone, after expiry of the period of contract, they approached to the Allahabad High Court as also in Delhi High Court in Writ Case No. 20519 of 2016 and W.P.(C) No. 6007/2016 & C.M. Nos. 24752-24754 of 2016. In both the cases, Company lost the battle as both the High Courts refused to grant relief to the petitioner.

Having considered the rival contentions of the parties, learned counsel for the petitioners have tried but to persuade this Court that the period of contract should be extended or the petitioners should be allowed to run A.V.Ms. till the appointment of fresh contractor. He has further submitted that the policy matter cannot be said to be immune from the judicial review which is not the subject



matter in the present case, here the petitioner has not challenged the policy decision but, he is seeking a relief that the Company should be allowed to run the A.V.Ms. till the appointment of fresh contractor. In such circumstances, the judgment which has been relied on the point that policy decision cannot claims immunity from judicial review has no relevance in the present case as this issue is not under consideration.

The second point has been raised by the petitioner that 2010 Policy Decision with the lofty object was never implemented but, it has remained on the paper and it has been substituted by the 2017 Policy Decision, till it comes to the ground reality or contractor is appointed, petitioners should be allowed to run the A.V.Ms.

The period of contract has already expired, there is no novation of contract between the parties but the petitioners are seeking extension of period of contract and the relief claimed is in the nature of mandatory injunction, as during the argument, it was submitted by the learned counsel for the petitioners that A.V.Ms. have been locked and it is not in operation and, therefore, this Court, in order to give a complete relief, give direction to allow the Company to operate A.V.Ms. In a case where there is no vested right or contractual right, merely on the basis that the Southern India D.R.M. has allowed the petitioner company to run the A.V.Ms. till 30.9.2017 will not ipso



facto create any right to obtain order to allow the Company to operate the A.V.Ms.

Learned counsel for the petitioners has further placed reliance on the letter of the Railway Board wherein it has been mentioned that in order to provide uninterrupted catering service to the passengers, the old Contractor be allowed to continue till the finalization of new Contractor of A.V.Ms. This circular is only enabling to make an assessment by the respective Zonal Heads that there should be uninterrupted service to the passengers if it required, the older Contractor be allowed to run the A.V.Ms. This letter does not give any right or vested right to the petitioners to seek a mandamus from this court to extend the period of contract when 2017 Policy Decision prohibits such extension, is clear from the stipulation of Para 7.2 wherein it has been provided on completion of the period of contract, no extension would be granted. It will be relevant to quote Para 7.2 of the 2017 policy decision which reads as follows:-

“7.2 The AVMs that are not stand alone self dispensing units should be closed down forthwith taking into account the provisions of contract. Other existing AVMs would be allowed to continue only until the currency of the existing contract and no extension should be given.”

In a situation, subsequently when new policy decision has been framed, whatever may be the provisions mentioned in the earlier Policy Decision or in the circular, lost its relevance and will be treated



to be have been substituted by the current policy decision. As learned counsel for the petitioners has placed reliance on the judgment of the Madras High Court, there also the Court, on equitable consideration, granted relief. Two other judgments of Allahabad High Court and Delhi High Court are very much clear on completion of period of contract, the petitioners cannot seek relief for extension of contract in view of fact that the Policy Decision has been taken by the Railway Administration, A.V.Ms. will be allowed to be operated till currency of contract and no extension would be given.

In such circumstances, the relief which has been sought cannot be granted to the petitioners but, as the petitioners have submitted that they have filed representations on different dates to the Chief Commercial Manager, East Central Railway, in the opinion of this Court, it is the Chief Commercial Manager who will dispose of the representations, if any filed. This Court is not giving any direction or recording any opinion for extension of contract period.

With the aforementioned observation, this writ application is dismissed.

(Shivaji Pandey, J)

Rishi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	04.09.2017
Transmission Date	NA

