

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10829 OF 2017

Shaikh Afsar Shaikh Sattar,
Age 52 years, Occup. Business,
R/o Mastanpura, Purna,
Tq. Purna, Dist. Parbhani.

.. Petitioner

VS.

1. The Union of India,
Through its Secretary,
Ministry of Railways (Railway Board),
Room No.256-A, Rail Bhavan,
Raisina Road, New Delhi-110001.
2. The General Manager,
South Central Railway,
Zonal Office at Rail Nilayam,
Secunderabad (T).
3. The Chief Commercial Manager,
South Central Railway,
Zonal office at Secunderabad,
Secunderabad (T).
4. The Group General Manager,
Indian Railway Catering and Tourism
Corporation Ltd. (IRCTC),
South Central Zone,
2nd Floor, Amsri Classic,
S. D. Road, Secunderabad-500071.
5. The Divisional Railway Manager,
South Central Railway,
Office of Divisional Railway Manager
(DRM), Airport Road Nanded
Dist. Nanded.

6. The Senior Divisional Commercial Manager South Central Railway, Office of DRM, Commercial Branch, Airport Road Nanded, Dist.Nanded.
7. The Chief Commercial Inspector, South Central Railway, Its office at Railway Station Parbhani, Tq. and Dist. Parbhani.
8. The Station Superintendent, South Central Railway, Railway Station Purna, Tq. Purna Dist. Parbhani. .. Respondents

Mr. Gajanan G. Kadam, Advocate for the petitioner.
Mr. S. B. Deshpande, Assistant Solicitor General of India,
for respondents No.1 and 6.

WITH

WRIT PETITION NO. 10830 OF 2017

Sadrul Islam Asad Husain,
Age 58 years, Occup. Business,
R/o Khadakpura, Waghi Road,
Nanded, Tq. and Dist. Nanded
Through his Power of Attorney,

Mohammad Imtiyaz Khan
Mohammad Israiel Khan,
Age 43 years, Occup. Business,
R/o Khadakpura, Waghi Road,
Nanded, Tq. and Dist. Nanded. .. Petitioner

VS.

1. The Union of India,

Through its Secretary,
Ministry of Railways (Railway Board),
Room No.256-A, Rail Bhavan,
Raisina Road, New Delhi-110001.

2. The General Manager,
South Central Railway,
Zonal Office at Rail Nilayam,
Secunderabad (T).
3. The Chief Commercial Manager,
South Central Railway,
Zonal office at Secunderabad,
Secunderabad (T).
4. The Group General Manager,
Indian Railway Catering and Tourism
Corporation Ltd. (IRCTC),
South Central Zone,
2nd Floor, Amsri Classic,
S. D. Road, Secunderabad-500071.
5. The Divisional Railway Manager,
South Central Railway,
Office of Divisional Railway Manager
(DRM), Airport Road Nanded
Dist. Nanded.
6. The Senior Divisional Commercial
Manager South Central Railway,
Office of DRM, Commercial Branch,
Airport Road Nanded, Dist.Nanded.
7. The Chief Commercial Inspector,
South Central Railway,
Its office at Railway Station Parbhani,
Tq. and Dist. Parbhani.
8. The Station Superintendent,
South Central Railway,
Railway Station Mudkhed,

Tq. Mudkhed Dist. Parbhani.

.. Respondents

Mr. Gajanan G. Kadam, Advocate for the petitioner.

Mr. S. B. Deshpande, Assistant Solicitor General of India,
for respondents No.1 and 6.

WITH

WRIT PETITION NO. 11089 OF 2017

M/s. R & K Associates

A Registered Partnership Firm having

Its registered office at

M.H. No.1/576, S. No.342/A, 343,

V. M. Ward, Bhusawal

Through its authorized person

Shri Rajesh Narayandas Agrawal

Age: 54 years, Occupation: Business,

Resident Of : Mohammadiya road,

Khadka, Bhusawal,

Dist. Jalgaon.

.. Petitioner

VS.

1. The Union of India,
Through the Department of Railways,
Government of India,
New Delhi.
2. The Senior Divisional Commissioner,
Commercial Branch,
Central Railways,
Bhusawal, District Jalgaon.
3. The Indian Railway Catering
and Tourism Corporation Ltd.,
9th Floor, Bank of Baroda Building,
16, Parliament Street, New Delhi
Through Group General Manager

(West Zone), 2nd Floor, New
Administrative Building,
D. N. Road, CST, Mumbai.

.. Respondents

Mr. Mukul S. Kulkarni, Advocate for the petitioner.
Mr. M. N. Navandar, Advocate for respondents No.1 and
2.

**CORAM : R. M. BORDE &
SMT. VIBHA KANKANWADI. JJ.**

DATE : 25/09/2017

ORAL JUDGMENT : (Per Smt. Vibha Kankanwadi. J.)

1. In all three writ petitions, the petitioners are challenging the communication dated 15/06/2017, issued by respondent No.6, and they are praying for issuance of writ directing respondents No.2 to 8 to renew / extend the tea stall license of the petitioners.

2. The petitioner in Writ Petition No.10829 of 2017, is a tea stall license holder, who is running his shop on platform No. 2 / 3 at Purna Railway Station District Parbhani. The petitioner in Writ Petition No.10830 of 2017 is a tea stall license holder of platform at Mudkhed Railway Station in Nanded District. They were granted license till 31/10/2017, by a copy of renewal letter dated 14/10/2016. Thereafter, both the petitioners have made request in writing to the

respondents No.2 to 8 through respondent No.6 for the extension / renewal of their respective tea stall license for the further period of three years from 01/11/2017. However, they have received letter from respondent No.6 dated 15/06/2017 informing them that, as per the guidelines, issued from the headquarters and also taking into consideration the contract, there will be no further extension beyond 31/10/2017.

3. The petitioner in Writ Petition No.11089 of 2017 was operating the two canteens on the railway platform at Bhusawal Railway Station. The contract period in respect of his canteens was expired on 14/09/2017, and therefore, he had applied for the extension of period. In fact he had got the two canteens in response to the advertisement floated by respondent No.2 on 26/02/2009. At that time the period for running the canteens was up to 30/12/2014. Upon his communication for extension, the contract was extended till 13/09/2017. Therefore, taking into consideration the date on which his contract would come to an end, he had applied for extension of time on 14/02/2017. The reminder was issued by him on 12/07/2017, when he had not received any response. However, there was no response for the same also, and therefore, he has filed the writ

petition to direct respondents, more particularly respondent No.2, to decide the proposal of the petitioner for extension of period of contract.

4. It has been contended in Writ Petition No.10829 of 2017 that, a commercial circular No.22/ 2017 dated 15/03/2017, issued by Director (Tourism and Catering) Railway Board, New Delhi, it was informed by General Managers of Zonal Railways including IRCTC that, the licenses of the tea stall should be renewed/ extended, if such licensee is not having any other such tea stall, canteen etc. in any of the railway stations. The Judgment of the Hon'ble Supreme Court was quoted in the circular. However, a bid notice for allotment of tea stalls/ canteens at various railway stations in Nanded Division has been issued by respondent No.6 on 11/08/2017. It is inclusive of platform No.2 / 3, Purna Railway Station. Therefore, according to the petitioner, it is in contravention/ disobedience of the ambit of Judgment of the Hon'ble Supreme Court. The said action on the part of the respondent No.6 amounts to giving total bypass to the catering policy and commercial circulars issued from time to time. The entire livelihood of the petitioner and his family is dependent on the tea stall, he is ready to pay the necessary charges for the renewal, and

therefore, the respondent authorities are required to be directed to renew the license of the petitioners in view of the Judgment passed by the Hon'ble Supreme Court in S.L.P. (Civ) No.9921 – 23/ 2014.

5. The petitioner in Writ Petition No. 10830 of 2017 prayed for the renewal of his license in respect of tea stall at platform No.2 / 3 at Mudkhed Railway Station, in view of the Judgment of the Hon'ble Apex Court.

6. Heard learned counsels Mr. Gajanan Kadam, Mr. Mukul S. Kulkarni appearing for petitioners and Mr. S. B. Deshpande, Assistant Solicitor General of India, appearing for respondents as well as learned counsel appearing for respondents Mr. M. V. Navandar.

7. It has been vehemently argued on behalf of all the petitioners that, in view of the policy that was prevailing in 2010 and since they had been granted the licenses under the said policy, they were eligible for the renewal of licenses. It was also submitted that, there was no complaint against them regarding the business including the food quality which has been supplied by them. Earlier their licenses were renewed taking into consideration their performances. They also relied on the decision in *Senior Divisional Commercial*

Manager and Ors. Vs. S.C.R. Caterers, Dry Fruits, Fruit Juice Stalls Welfare Association and Ors., AIR 2016 Supreme Court 668. In this case it has been observed that,

“In Clause 16.1.3 of the 2010 Policy, there was a stipulation for allotment of all General Minor Units at A, B & C category stations shall be awarded for a period of five years with a provision for renewal after every 3 years on satisfactory performance and payment of all dues and arrears and withdrawal of court cases, if any. Allotment of all General Minor Units at D, E & F category stations will be for a period of 5 years with a provision for renewal after every 5 years for a further period of 5 years on satisfactory performance and payment of all dues and arrears and withdrawal of court cases, if any.”

And therefore, it was held that,

“19. The case of the Appellants, in nutshell, is that the railways had the right to enact the Catering Policy, 2010. In terms of the said Policy, only such licensees who were granted license under the 2010 Policy were entitled to get their contracts renewed and the same benefit could not be extended to those licensees who were granted license prior to the 2010 Policy. According to the Catering Policy 2010, no provision is made for the renewal of the existing catering units on the expiry of the term of the licenses. The renewal of the licenses of the licensee under para 16 of the Policy

would apply only to licensees allotted under the Catering Policy 2010. The Appellants have further submitted that the renewals of the licenses by the Zonal Railways upto 2013 was only meant to operate as a temporary arrangement till the bidding and allocation process was finally completed.”

8. Our attention has also been invited to the observations in a above said decision,

“26. Keeping in view the evolving concept of social justice, we allow the members of Respondents who are the licensees to continue their petty business, especially in the absence of employment potentiality in the country on account of non-governance and non-implementation of the constitutional philosophy of an egalitarian society, which provides the opportunity to all individuals to lead a life of dignity. The right to life with dignity has been interpreted to be a part of right to life by this Court in the case of Francis Coralie Mullin v. Administrator, Union Territory of Delhi and Ors. MANU/SC/0517/1981: (1981) 1 SCC 608.”

On the basis of those observations it has also been stated that, taking into consideration the fact that, it is the sole earning source for the petitioners, the respondents should be directed to renew the licenses in favour of the petitioners.

9. Our attention is also drawn to the decision in, *Shri*

Chotelal Soukhilal Mishra Vs. Union of India and others, in (Writ Petition No.1770 of 2016, decided on 4th August, 2016, by the Bench At Nagpur). This case is also based upon the decision by the Hon'ble Supreme Court for renewal of license referred above.

10. Per Contra, it has been argued on behalf of the respondents that, both the authorities on which reliance has been placed by the petitioners was in respect of the Catering Policy that was prevalent in 2010. However, now the Catering Policy has changed/ revised in 2017, it has come into force on 27/02/2017. It specifically contemplates that, there will not be an extension/ renewal of licenses. Policy Para No.9.3.1 is in respect of major static units and it prescribes,

“9.3.1. Allotment of all major static units (except units mentioned in Para 3.8.1) and of General Minor Units at A1, A, B & C category stations will be done through open, competitive, two-packet tendering system by divisions in accordance with the Standard Bid Documents issued vide Board's letters No. 2010-TG-III/ 600/ 12/ SBD/Pt.3 dated 05/09/2012 and No. 2010/TG-III/600/12/ SBD/ 1 Pt 05/07/2011, duly following all the procedures/ instructions issued by Government of India/ Railway Board from time to time.”

And further Para 9.3.2 provides for allotment of Special Minor Units at

A1, A, B & C category stations. It is specified that, it will be done by divisions through open tendering system. The petitioners can take part in the system, however they are not entitled for automatic renewal.

11. Further reliance has been placed on Para 11 of Catering Policy 2017, which prescribes for tenure. Para 11.1 prescribes for, tenure of all major units being handed over to Indian Railway Catering and Tourism Corporation Ltd. (hereinafter referred as 'IRCTC') will be governed as per Catering Policy 2010 till the expiry of the contracts. IRCTC shall further manage these units as per the provisions of this policy i.e. the Catering Policy 2017. Para 11.2 prescribes for, tenure of Food Plaza and specifically says that, there will not be further extension/ renewal, and therefore, the learned counsel appearing for the respondents prayed for dismissal of the writ petitions.

12. We agree with the submissions on behalf of the respondents. It is to be noted that, the petitioners before us were granted licenses to run the respective shops/ tea stalls in 2009 onwards, and therefore, the renewal was granted to them under the then existing Catering Policy of 2010. The said policy was before Hon'ble Supreme Court in *AIR 2016 SC 668* (supra). Though the

matter was decided on 26/01/2016 by the Hon'ble Apex Court, the question of renewal of license which was to end on 20/07/2013 was before the Hon'ble Supreme Court. Taking into consideration the stipulations in the policy, the observations have been made and concept of social justice was also evolved. Therefore, it appears that, the matter was relating to the provisions of the Catering Policy, 2010. Based upon the said decision, the Division Bench of this Court in Writ Petition No.5233 of 2013 and other connected matters, had taken the view and directed the extension of licenses.

13. The policy has been revised in 2017 and has come into effect from 27/02/2017. Present cases would be governed by this new Policy. It has come with an objective to provide quality food to the customers of the railway unbundling all catering services on trains. IRCTC has been mandated to carry out the unbundling by creating distinction primarily between food preparation and food distribution. It has further provided that, in order to upgrade quality of food preparation IRCTC shall be setting up new kitchens and upgrade existing ones. It has taken a note that, the precautions have been necessitated in the management of catering service on mobile and static units to implement social objectives of the Government besides

encouraging fair competition in allotment of catering units over stations. Therefore, the said scheme/ policy has been brought into force with a specific aim and the said scheme/ policy is not challenged by any of the petitioners in these petitions. The further allotments of the tea stalls/ units would be governed by the policy which has come into effect from 27/02/2017.

14. If we consider the scheme as a whole, it can be seen that, it prescribes for allotment procedure for static catering units, reservation in allotment its tenure, then fixation of licence fee for static units etc. In particular Para 9 deals with allotment procedure for static Catering Units and Para 9.2 specifically says that, no new licenses for Khomcha / Dallah / Chhabba / Wheel Barrow / Hand Barrow / Tray / Table / Tea Balta (or any other similar unit by a different name) shall be awarded by Zonal Railway. Para 9.3.1 specifically provides for allotments of all major static units will be done through open, competitive, two-packet tendering system.

15. Further as regards the tenure is concerned, it is provided under Para 11. Para 11.1 specifically says that, the tenure of all major units being handed over to IRCTC will be governed as per Catering Policy 2010 till the expiry of the contracts. That means, if the tenure

of any such unit is still existing as per Catering Policy of 2010 then it will exist till the expiry of the contracts only, and it is specifically further provided that the IRCTC shall further manage these units as per the provisions of this policy i.e. Catering Policy of 2017. Para 11.2 prescribes tenure of Food Plaza and it is stated that it should be for a period of nine years, but as regards all other Catering Units (Major Units and Minor Units) the tenure has been prescribed for a period of five years only, and it says that there will not be any further extension/renewal, except for units specifically referred to in para 3.8.1.

16. The Policy has not been challenged by the petitioners, and therefore, when no right has accrued to them to get the licenses renewed, the powers under Article 226 of the Constitution of India cannot be invoked. Hence, the writ petitions are rejected. No orders as to costs.

[SMT. VIBHA KANKANWADI]
JUDGE

[R. M. BORDE]
JUDGE

vjg/-.