

CWP No.7839 of 2017

[1]

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No.7839 of 2017
Date of decision:14.09.2017**

M/s A.K.Roy

...Petitioner

Versus

Union of India and others

...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. S.L. Chander Shekhar, Advocate,
for the petitioner.

Mr. Amit Kumar, Advocate,
for respondent no.1-UOI.

Mr. Karamjit Verma, Advocate,
for respondents no.2 to4.

Rakesh Kumar Jain, J. (Oral)

This order shall dispose of six petitions bearing CWP Nos.7839, 8214, 11515, 12026, 13795 and 15246 of 2017 as the issue involved in all these cases is common. However, for the sake of convenience, the facts are being extracted from CWP No.7839 of 2017.

In brief, the petitioner is a railway contractor. It was allotted vending contract of stall nos.13 and 16 at platform no.2/3 at Ludhiana Railway Station, Punjab. An agreement for the license to manage the catering services was entered into between the petitioner and the Indian Railway Catering and Tourism Corporation Limited (hereinafter referred to as the "IRCTC"). It is not in dispute that the contract of the petitioner was for 5 years and was given extension of 3 years more. The period of the said contract, after expiry of extended 3 years, came to an end on 27.10.2016. After the contract period was over, the petitioner was asked to vacate the stalls, which led to the filing of the

present petition, in which the petitioner has prayed for a writ in the nature of *mandamus* seeking a direction to the respondents to extend the period of its license till the finalization of the new tender process.

The petitioner has basically relied upon a letter dated 13.11.2014, purported to have been issued by the Senior Divisional Commercial Manager, Northern Railway, Firozpur, in which it was provided that *“competent authority has decided to extend/renew the vending contract of stall no.13 at platform no.2/3 held by you at Ludhiana Railway Station from 23.02.2014 to 22.02.2015 or till finalization of fresh tenders of GMUs and applications of SMUs whichever is earlier with a revised license fee”*.

The case of the petitioner also hinges upon Clause 16.1.3 of the Catering Policy 2010 (hereinafter referred to as the “2010 Policy”), wherein it is provided that *“allotment of all General Minor Units at A, B & C category stations shall be awarded for a period of 5 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”*.

Counsel for the petitioner has submitted that a similar matter has been decided by the Andhra Pradesh High Court in the case of **S.C.R. Caterers, Dry Fruits, Fruit Juice Stalls Welfare Association vs. Senior Divisional Commercial Manager (Andhra Pradesh)**, 2013(5) Andh LD 553, when the South Central Railway caterers filed the writ petition, raising a plea that under the 2010 Policy, the existing licensees are entitled for renewal of

their licenses for a period of three years each time in respect of both the General Minor Units (GMUs) and Special Minor Units (SMUs) in A, B and C category railway stations subject to their satisfactory performance, payment of all dues and arrears and withdrawal of Court cases, if any. The said writ petition was contested by the Indian Railways and brought to the notice of the Court a Commercial Circular No.37/2010 dated 09.08.2011 issued in continuation of the 2010 Policy with respect to the existing licensees whose licenses have expired or going to expire and under para 1(d) of the Immediate Operating Instructions issued under the said circular, the Zonal Railway should have to renew all agreements which have expired or are due for expiry in the next six months by giving extension subject to a maximum extension of six months from the date of issue of the 2010 Policy. The Andhra Pradesh High Court had observed that the claims of the members of the petitioner-association for renewal of their licenses deserve to be considered on their own merits and that they are entitled for renewal subject to their satisfying the conditions stipulated in Paras 16.1.3 and 16.2.1 of the 2010 Policy and the writ petition was allowed in the following terms:-

- “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.”

The said decision of the Andhra Pradesh High Court was challenged by the Indian Railways before the Supreme Court by way of various Special Leave Petitions, which were converted into Civil Appeals, and the Supreme Court decided that the provisions of the Catering Policy, 2010 are applicable to the concerned respondents and the action of the railways in not granting renewal of the licenses to the members of the respondents therein is arbitrary, unreasonable, unfair and discriminatory, and the same cannot be allowed to sustain in law. However, while parting with the order, the Supreme Court recorded the following order:-

“28. 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. All pending applications are disposed of.”

The petitioner has admittedly applied for renewal of its license on 21.01.2017, as is evident from the document Annexure P-8, attached with the writ petition.

Learned counsel for the petitioner has also referred to the letter dated 30.03.2017, purported to have been issued from the office of West Central Railway, in which it was provided that *“few issues pertaining to affidavit has been referred to Board for clarification and hence the process of taking affidavits from existing licensees has been kept on hold. Also, the allotment of minor units is likely to take some more time. Hence, in order to*

provide uninterrupted services to passengers, it has been decided that the validity of contract of minor static catering units may be further extended for another three months beyond 31.03.2017 i.e. upto 30.06.2017 or till the process of allotment is completed at divisional level (i.e. after receipt of clarification from board), whichever is earlier”.

The sum and substance of the argument raised by the counsel for the petitioner is that the petitioner is entitled to renewal of its license much-less extension till the finalization of fresh tenders of GMUs or the application of SMUs, whichever is earlier.

On the other hand, counsel for the respondents have argued that the judgment of the Andhra Pradesh High Court in **S.C.R. Caterers' case (supra)** came to be delivered in favour of the caterers who were working traditionally on the railway stations before creation of the IRCTC and under the Catering Police, 2005, which has been revised with the 2010 Policy. Thus, taking into account of the fact that they were working for long years on the railway stations, the Supreme Court has observed that if they are not allowed to work, it would amount to deprivation of their right to freedom of occupation guaranteed under Article 19(1)(g) of the Constitution as well as the right to livelihood. Otherwise, it is submitted that the Andhra Pradesh High court, while disposing of the writ petition, laid down certain terms and conditions in which it was provided that the application shall be made by the members of the petitioner-association for renewal of their licenses within one month, which shall be considered in terms of the provisions contained in paras 16.1.3 and 16.2.1, as the case may be, and if the application is to be rejected, then reasons would have to be recorded. The Supreme Court, however, mellowed down the said direction and issued another direction that only those licensees would 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 submitted that the letter Annexure P-13 was issued in this background because the affidavits were awaited from the caterers to declare that they do not have the license of more than one shop or kiosk in their name or *benami* license at the railway stations.

Counsel for the respondents have further argued that even the Supreme Court has also held and the petitioner itself is claiming that the extension has to be given in terms of the 2010 Policy and in that policy, there is a provision for renewal, in which Clause 26.1.1 provides that “*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*”. It is also provided in Clause 17 of the said policy that “*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*”.

Counsel for the respondents have also relied upon a decision of the Delhi High Court rendered in the case of **M/s Deepak & Co. vs. Union of India & ors.**, WP(C) No.3188 of 2016, decided on 20.09.2016, in which similar issue was allegedly raised, which may be read as under:-

“2. Learned counsel for the petitioners contend that the licences were granted to the petitioners to operate and manage the said stalls initially for a fixed period. They further contend that the said licences were renewed from time to time. They also contend that the Railways has been issuing circulars whereby extensions have been granted till finalization of the new contracts. They, however, state that recently the petitioners have been asked to vacate the

stalls.”

And the Delhi High Court has observed as under:-

“10. It is settled law that where a benefit has been illegally or irregularly extended to someone else, a person who is not extended a similar illegal benefit cannot approach the Court for extension of a similar illegal benefit.

11. The Supreme Court of India in **Union of India vs. M.K.Sarkar; (2010) 2 SCC 59** has held that if such a request is accepted, it would amount to perpetuating the irregularity. It was further held that when a person is refused a benefit to which he is not entitled, he cannot approach the Court and claim that benefit on the ground that someone else has been illegally extended such benefit.

12. This Court is further of the view that the circulars do not confer any right of extension, as has been sought to be urged by learned counsel for the petitioners, as the contracts of the petitioners have already expired by efflux of time.

13. The unutilised portion of the licence fee deposited by the petitioners shall be refunded by the Railways within a period of four weeks.

14. With the aforesaid observations, the present writ petitions and the applications are dismissed.”

Counsel for the respondents have further submitted that the Revised Catering Policy, 2005 dated 21.12.2005 further provides in Clause 10.5 that *“the period of all units allotted by tender process will be 5 years. There will be no extension for major units. For General minor units, one extension upto 3 years can be considered subject to satisfactory performance and payment of all dues”*.

Counsel for the respondents have, thus, submitted that the petitioner does not have any vested right for the purpose of seeking renewal of the license.

I have heard learned counsel for the parties and examined the

available record with their able assistance.

There is no dispute that the petitioner had a vending contract/agreement with the IRCTC at a particular platform of the railway station of the Northern Railways for a period of 5 years. It is also not in dispute that an extension for a period of 3 years has already been consumed by the present petitioner. It is also not in dispute that the renewal of a catering agreement is not a matter of right rather the licensee must have to apply for renewal minimum six months in advance before the expiry of the contract. However, in the present case, the petitioner has not applied in terms of Clause 17 of the 2010 Policy.

The question, thus, would be as to whether the decision of the Andhra Pradesh High Court or the decision of the Supreme Court in **S.C.R. Caterer's case (supra)** would be of any help to the petitioner. In this regard, it requires pertinent notice that the aforesaid decision was pertaining to the South Central Railway caterers who were traditionally sitting over the platforms, engaged in the vending business, and had approached the Court for the purpose of extension of their licenses, which was allowed by the Court on the ground that they would apply for renewal of their licenses within a period of one month and then it shall be considered by the Railways in terms of the provisions of the 2010 Policy. However, when the Indian Railways went to the Supreme Court, the decision of the Andhra Pradesh High Court was though upheld and the SLPs were dismissed but with a rider that only those licensees would 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.

The case of the respondents is that the petitioner has not furnished

any such affidavit so far because according to them, the petitioner has got multiple shops/kiosks either in their name or *benami* at the various railway stations. In this regard, the time was stated to have been extended on 31.03.2017 for awaiting the affidavit but it cannot be made indefinite for the contractors to continue with their work, despite the expiry of contract period, in the name of filing of the affidavits.

Be that as it may, the precise matter, which is involved in this case, has been decided by the Delhi High Court where the writ petitions filed by the similarly situated persons including the present petitioner, who had filed WP(C) No.5356/2016 titled as “M/s A K Roy vs. Union of India & ors.”, were dismissed, in which the issue was raised that the licenses were granted to the petitioners therein for operating and managing their stalls initially for a fixed period. The said licenses were renewed from time to time and because of the circulars whereby extensions have been granted till finalization of the new contracts, they should have been allowed to work and not to vacate the stalls. The said writ petitions were dismissed by the Delhi High Court vide order dated 20.09.2016.

In view of the above, I concur with the view taken by the Delhi High Court in **M/s Deepak & Co.'s case (supra)**.

No other point has been raised.

Consequently, in view of the aforesaid discussion, all the writ petitions are hereby dismissed being denuded of any merit, though without any order as to costs.

September 14, 2017
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(Rakesh Kumar Jain)
Judge

Whether speaking / reasoned:
Whether Reportable:

Yes/No
Yes/No