

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1325 of 2017

In
Civil Writ Jurisdiction Case No.9971 of 2017

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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 the Board of Directors.
 2. M/s Nestle India Liited, Having Its Registered Office At M-5A, Connaught Circles, P.O- Box 611, New Delhi-110001 and its Regional Office At Tower “C”, 12th Floor, DLF IT park, 08, Major Arterial Road, Block-AF, New Town, Rajarhat, Kolkata-700156, through Pramod Sharma Son of Sri Bishram Sharma Authorized by the Board of Directors of the Company

... .. Appellant/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-10001.
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 Appellant/s : Mr. Munna Pd Dixit (M.P. Dixit)
For the Respondent/s : Mrs. Nivedita Nirvikar
Mr. Anil Kumar Sinha

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH)

Date : 18-08-2018

Aggrieved by the decision of a learned Single Judge of this Court rendered on 28.08.2017 in CWJC No. 9971 of 2017, whereby and whereunder the writ application filed on behalf of the appellants, has been dismissed, this appeal has been preferred under Clause X of the Letters Patent of this Court.

2. We have heard Mr. M.P. Dixit, learned counsel for the appellants and Mrs. Nivedita Nirvikar, learned counsel representing the respondents at length.

3. The facts are brief and not in dispute. The appellants/ writ petitioners were allotted licenses for management of Automatic Vending Machines (AVMs)/Dispensing Kiosks for sale of hot & cold beverages & pre-cooked/pre-packed snacks & food Items through Kiosks at 32 Stalls at Patna Junction,



Barauni Junction, Samastipur Junction, Sonpur Junction and Mugalsarai Junction Railway Stations under East Central Railway, Danapur Division, Sonpur Division, Samastipur Division and Mugalsarai Division, initially for a period of five years which was subsequently extended from time to time and remained valid till 31.07.2017. They are said to have approached the respondents for further extension of their tenure till new contracts/tenders in this regard were finalized, when they learnt about coming into force of the New Catering Policy of 2017 . As per the Railway Board's Commercial Circular No. 20/2017 dated 27.02.2017 (Annexure-5 to the writ application), the New Catering Policy has been formulated in supersession of Catering Policy, 2010, to be implemented with immediate effect. The claim of the petitioners that they had approached the Railways for extension of period of license through an application dated 12.06.2017, has been denied by the respondents.

4. Paragraph 7.2 of the New Catering Policy, 2017, reads thus:-

“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 till currency of the existing contract and no extension should be given.”

5. This is the background, in which the appellants/writ-petitioners filed a writ application, seeking following relief(s):-

“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 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, Sonepur 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.”

6. The learned Single Judge upon consideration of rival pleadings and submissions advanced on behalf of the parties,



has dismissed the writ application by the impugned judgment and order refusing to accept the plea that the period of contract of the appellants/writ-petitioners should be extended or they should be allowed to run the AVMs till appointment of fresh contractors since there was no legally enforceable right vested in the writ-petitioners. The learned Single Judge, however, while dismissing the writ application, observed that it would be open for the Chief Commercial Manager to dispose of representations of writ-petitioners which they claimed to have filed.

7. A second supplementary counter affidavit has been filed on behalf of the respondent in the present appeal, bringing on record the speaking order dated 25.05.2018 passed by the Chief Commercial Manager/Catering in the light of the observations made by the learned Single Judge in the impugned order dated 28.08.2017. It has specifically been recorded in the said order, that no application dated 12.06.2017, as claimed by the petitioners had been received in the office, and therefore, the application could not be considered by the competent authority. In the background of the instruction contained in paragraph 7.2 of the new Catering Policy, 2017, the decision for not granting any extension to such contracts was taken. The speaking order



indicates that though the representation of the appellants/writ-petitioners dated 12.06.2017, was never received by the respondents, contents of the representation as available at Annexure-6 of the writ application has been taken into consideration, for passing the speaking order..

8. This is to be noted that when the matter was taken up on 03.07.2018, the Court had taken note of the situation where settlement and award of contract under new Catering Policy notified in February, 2017 was not being made workable since the tenders were not being invited in terms of the new policy. Taking note of the situation, the Court had made following observations in the order dated 03.07.2018:-

“To say the least, we are not satisfied with the supplementary affidavit which has been filed by the Railways, as none of the statements made therein is supported by any kind of evidence or annexures.

It is also a matter of concern that 2017 Catering Policy notified in February, 2017 and is being used as the basis for future settlement and award of contract has not been made workable because the tenders have not been invited in terms of the new policy as yet and the old contractors are being



unnecessarily harassed and are being made to suffer by loss of business and lack of opportunity to bid under the new policy.

The Railways cannot have it both ways, therefore, what has been done in relation to such new policy for new settlement must be made known to this Court by authentic evidence or annexures by the next date.

List on 10th July, 2018.

The Court may be compelled to consider allowing the working of the contract of the appellant till final settlement is made if no satisfactory answer is made.”

9. When the matter was taken up on 13.08.2018, this Court expressed desire to know from the respondents the status of the matter in the light of the directions present in the order dated 03.07.2018. In the background of the said order dated 13.08.2018, a second supplementary affidavit has been filed on behalf of the Railways. It is clear stand of the Railways in the second supplementary affidavit, that in view of new Catering Policy, 2017, no tender would be floated for those AVMs that are not stand alone units and the AVMs of the petitioners do not fall under stand alone self dispensing unit. It has also been



stated that massive changes have been made with the introduction of new Catering Policy, 2017 which gives first priority for handing over of such major units including Mobile Catering Units to the India Railway Catering and Tourism Corporation (IRCTC), subsidiary of Indian Railways. The IRCTC has taken time to develop their own infrastructure for taking over such major units from the Railways. It has further been stated that a considerable time was consumed in the process of meetings. Several issues were arising out of introduction of new Catering policy and in the meanwhile, a general survey was also conducted by the Divisions at all Stations under their jurisdiction to review the requirements of Catering Stalls/Fruit, Juice Milk Stalls so as to prepare a blue print of catering stalls for taking approval from competent authority. Various other factors have been enumerated in the supplementary affidavit in order to explain delay in floating the tenders.

10. Mr. M.P. Dixit, learned counsel appearing on behalf of the appellants, has strenuously argued that it is against the public interest that the services of these appellants/writ-petitioners have been dispensed with without finalizing the future contracts after inviting tenders etc. He contends that had



new tenders been floated, the appellants/writ-petitioners could have had the opportunity to participate and continue with their business. Drawing our attention to Railway Board's letter dated 12.03.2013 available at Annexure-6 of the writ application, which was issued after implementation of Catering Policy, 2010, he has submitted that in order to provide uninterrupted Catering services to the passengers, the old AVMs were allowed to continue till finalization of contract for AVMs. He has also submitted that at various other places, the licenses earlier granted, have been extended and a reference in this regard has been made to Annexure-9 series.

11. Mrs. Nivedita Nirvikar, learned counsel representing the respondents, on the other hand, has contended that there is no dispute about the fact that the contract awarded in favour of the appellants came to an end with the lapse of time, in accordance with the terms of the license. Once the period of contract came to an end, the appellants/writ petitioners cannot claim any legally enforceable right to continue any further and that the decision of the learned Single Judge is based on sound and legal principles. On the question of the reasonableness of the provision under Paragraph 7.2 of the New Catering Policy, 2017, she has contended that no interference by this Court is



warranted, the provision being beyond the pale of discrimination or arbitrariness, as evident from the language.

12. We find substance in submission made on behalf of the Respondents. In the absence of any challenge to the power of the Government to frame or change a policy, framing or changing of the policy cannot be questioned on the ground that the earlier policy was better and more suited in the given situation. A policy decision can't be successfully challenged unless it is shown to be arbitrary, unreasonable and capricious or it is in breach of any constitutional or statutory provision. There is no ground available on record for this Court to go into the correctness of the policy of the Respondents under Paragraph 7.2 of the New Catering Policy, 2017.

13. There is no scintilla of any doubt that the appellant do not have any legal right to continue with their business under their licenses which expired in 2017 itself, nor any legal obligation on the respondent to extend the life of the licenses which have already expired. It is true that even a policy decision of state instrumentality cannot be claimed to be immune from the judicial review but no such case has been made out, warranting this Court's interference with the policy present under Paragraph 7.2 of the new Catering Policy, 2017.



In the absence of any legal right available to the appellants/writ-petitioners to seek mandamus of the nature sought in the writ application, in our considered view, the writ application has rightly been dismissed by the learned Single Judge.

14. We do not find any merit in this appeal which is, accordingly, dismissed.

15. There shall be no order as to cost(s).

(Jyoti Saran, J)

(Chakradhari Sharan Singh, J)

Ashish/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	21.08.2018
Transmission Date	

