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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.04.2018

CORAM

THE HON'BLE MR. JUSTICE T.S.SIVAGNANAM

W.P.Nos. 5180, 5284, 5311, 5553 and 5718 of 2015
and Connected MPs

W.P.Nos. 5180/2015

A.K.Hamza ... Petitioner in Wp.NO.5280/15

A.K.Hamza ... Petitioner in Wp.NO.5284/15

1 K.NALLAPPA GOUNDER(DECEASED)... Petitioner in Wp.NO.5311/15

2 N.SUBBULAKSHMI

3 N.R.VIJAYA

4 MR.N.THANGAVEL

5 S.CHITRA

P2 TO P5 ARE SUBSTITUTED AS
LRS OF DECEASED P1:K.NALLAPPA GOUNDER AS PER
ORDER DT 4.8.2017 BY MDJ IN WMP.NO.
16782/2017 IN WP.NO.5311/2015.

1 C.K.K.Catering Service Rep by .. Petitioner in WP.5553/15
Mng Partner G.K.K.Moidoo P.B.No.1776
Hotel Shaziya Buldg South Railway Stn Rd
Cochin. Licensee: Catering & Bakery Stall
at Erode Railway Station

1 J.RADHA BAI (DECEASED ... Petitioner in WP.5718/15
W/o.Jagadeesan

2 MR.NAGARAJAN

3 R.PARIMALA

4 R.PAVITHRAN

P2 TO P4 ARE SUBSTITUTE AS LRS
OF DECEASED P1:J.RADHA BAI AS PER ORDER DT
28.7.2017 BY MDJ IN WMP.NO.16783/17 IN WP.NO.
5718/2015.



same and to direct the respondents to consider the petitioners representation dt 23.2.2015

WP.NO.5553/2015:

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the 3rd respondent dated 2.2.2015 in Bid. No. SA/C79/ catg/ GMU- Tender dated 2.2.2015 Catering & Bakery Stall at Erode Railway Station and to quash the same and to direct the respondents consider the petitioners representation dated 9.12.2014 and 26.2.2015

WP.NO.5718/2015:

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the 3rd respondent in Bid. No. SA/C79/ catg/GMU-Tender dated 02.02.2015 in respect of Snacks & Travel Accessories at Erode Railway Station and to quash the same and to direct the respondents to consider the petitioner representation dated 15.09.2014

For Petitioner : Prof.M.Udaya Bhanu

For Respondents : Mr.P.T.Raamkumar
Standing Counsel

COMMON ORDER

In all these writ petitions, the petitioners have challenged the tender notification issued by the 3rd respondent dated 02.02.2015. At the time when the writ petitions were entertained, the issue was pending before the Hon'ble Supreme Court and interim directions were given in identical writ petitions, viz., 4663/2015 etc., which was followed and an interim order was issued.

2. The learned counsel for the respondents-railway administration brought to the notice of this court that the Hon'ble Supreme Court had disposed of the main matter in the case of Senior Divisional Commercial Manager, South Central, Railways and Ors. v. S.C.R.Caterers, Dry Fruits, Fruit Juice Stalls Welfare Association and another [2016 (3) SCC 582]. The operative portion of the order reads as follows:

'34. For the reasons stated supra, this Court cannot interfere with the impugned judgment and order passed



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in W.A.Nos.1573-75 of 2013 dated 12.09.2013 of the High Court of Andhra Pradesh. 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 licences who can declare on affidavit that they do not have the licence of more than one shop or kiosk in their name or benami licence at the railway stations with periodical reasonable increase of licence fee. All pending applications are disposed of.'

3. Thus, by taking note of the above direction, the writ petitions were disposed of by order dated 13.04.2018 and also taking note of the submission of the respondents that tender notification dated 02.02.2015 has been cancelled by the respondents on 14.07.2017.

4. Subsequently, the learned counsel for the petitioners mentioned before this court stating that the matters may be listed under the caption "for being mentioned" as they require certain clarifications on account of subsequent developments.

5. The matter was heard today at length and the court took note of the submissions made by the learned counsel for the petitioners, the learned Standing Counsel for the Railways and the affidavit filed by the Senior Divisional Commercial Manager, dated 16.04.2018

6. With regard to these writ petitions, the stand taken in the affidavit is as follows:-

"H. Writ Petition No.5180 & 5284 of 2015 - A.K.Hamza

This petitioner filed an affidavit stating that he is having licences for running 12 stalls at various places in Indian Railways. Now he has filed an affidavit stating that his request for renewal of license should be considered for Stall at Tirupur and he is ready to surrender the licences of remaining 11 stalls. The contents of the affidavit filed by this petitioner is not in correct terms of the judgment of the Hon'ble Supreme Court. The Hon'ble Supreme Court has observed as "Only those licensees may be eligible for renewal of their licences who can declare an 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". If the request of



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the petitioner seeking renewal of license for Stall at Tirupur has to be considered, he ought to have closed the remaining 11 stalls and filed an affidavit stating he don't have any other licences. Hence the request of the petitioner could not be considered and the two stalls at Coimbatore and Tirupur were closed down on 14.04.2018 and taken possession by Railways.

I. Writ Petition No.5553 of 2015 - C.K.K. Catering

This petitioner was awarded license for stall at Erode. It is understood that the petitioner is having more number of stalls in Railways. The petitioner did not file any affidavit so far and hence the stall at Erode was closed down on 14.04.2018 and taken possession by the Railways.

J. Writ Petition No.5311 of 2015 - Nalappa Gounder

This petitioner who is the licensee of Stall at Karur expired on 07.05.2017. Hence the stall awarded to him was already closed down and already taken possession by the Railways few months back. The wife of the petitioner filed an impleading petition in the above writ petition. Mere filing of a impleading petition does not confer upon any right for transfer of license. The procedure for transfer of license is governed by Circular issued by Railway Board and it can be transferred only for unexpired period of the license. Whereas in this case the license period of (5+3) eight years already expired on 28.02.2015.

K. Writ Petition No.5718 of 2015 - J.Radhabai

This petitioner who is the licensee of Stall at Erode expired on 11.04.2017. Hence the stall awarded to licensee was already closed down and taken possession by the Railways few months back. The son of the petitioner filed an impleading petition in the above writ petition. Mere filing of impleading petition does not confer upon any right on him for transfer of license. The procedure for transfer of license is governed by Circular issued by Railway Board and it can be transferred only for unexpired period of the license. Whereas in this case the license period of (5+3) eight years already expired on 28.02.2015."

7. The stand taken by the respondents in the above mentioned affidavit would go to show the reasons as to why the petitioners are not entitled to the benefit of renewal of



one of the stall in terms of the observations made by the Hon'ble Supreme Court.

8. The learned counsel for the petitioners has referred to the additional common typed set of papers which has been filed before this court today and brought to the notice of this court that the petitioner in W.P.Nos.5180 and 5284 of 2015, A.K.Hamza, has filed an affidavit dated 14.04.2018, attested before Mr.C.Eswaramurthy, Notary Public at Erode, stating that as per the directions issued by the Hon'ble Supreme Court, the petitioner agrees to surrender his licences for 11 stalls, which the petitioner is at present enjoying in Chennai, Salem, Palakad and Guntakal Divisions. Further, in the affidavit, the petitioner states that he does not have any other stall either in his name or benami over Indian Railway. He undertakes to forgo the renewed contract of the single minor static catering unit, on which, the petitioner depends for livelihood. Further, the learned counsel has drawn the attention of this court to the letters written by the petitioner-A.K.Hamza, to the respective Divisional Railway Managers of Salem Division, Palakad Division, Chennai Division and Guntakal Division and submits that those letters, surrendering of stalls, have been sent by speed post and also produced the proof for the same. The petitioner-A.K.Hamza has requested the respective Divisional Managers to accept his surrender of the stall as per the Commercial Circular No.22 of 2017. Further, the petitioner has stated that he is ready to forgo the stall mentioned in the said letters.

9. Admittedly, as on date, the respective Divisional Railway Managers have not given any proceeding to the effect that the surrender made by the petitioner of the stalls mentioned in his letter has been accepted and proceedings to the said fact has been issued.

10. Thus, in my considered view, mere filing of an affidavit by petitioner-A.K.Hamza before the respondent would not suffice, as there should be adequate proof to show that the surrender has been accepted and there are no dues payable by the licensee to the Railways or any payment payable by the Railways to the licensee. Therefore, no objection certificate coupled with the acceptance of surrender of the licence is sine qua non for the petitioner being entitled to the direction issued by the Hon'ble Supreme Court. In my considered view since the directions issued by the Hon'ble Supreme Court have not been complied with by the petitioner-A.K.Hamza, no relief can be granted in these writ petitions. Apart from that, as noted above, the Tender Notification dated 02.02.2015 has already been cancelled on 4.07.2017, therefore, the writ petitions in W.P.Nos.5180 and 5284 of 2015, are dismissed as infructuous. Further, the petitioner is at liberty to comply



with the directions issued by the Hon'ble Supreme Court to the satisfaction of the respondents and proceed in accordance with law.

11. In so far as W.P.No.5553 of 2015 is concerned, no affidavit has been filed by the petitioner, therefore, the writ petition stands dismissed.

12. In so far as W.P.No.5311 of 2015 is concerned, the 2nd respondent has taken a stand that stall awarded to the petitioner has already been closed and possession has been taken by the Railways few months back and the wife of the petitioner filed a impleading petition in W.P.No.5311 of 2015 and the procedure for transfer of license is governed by the Circular issued by the Railway Board and it can be transferred only for unexpired period of the license. Whereas, in the case of the petitioner, the license period of (5+3) eight years expired on 28.02.2015. In the light of the above, the prayer sought for having become infructuous, no further order can be passed. Accordingly, this writ petition is dismissed.

13. In so far as W.P.No.5718 of 2015 is concerned, the 2nd respondent submitted that the petitioner's licence expired on 11.04.2017 and the petitioner's son has filed an impleading petition in the writ petition. The license period of (5+3) eight years has expired on 28.02.2015. That apart, the prayer sought for in the writ petition having become infructuous, no further order can be passed in the writ petition. Accordingly, this writ petition is dismissed.

No costs. Connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

Rj
To
1 The General Manager
Southern Railway
Park Town
Chennai-3.



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2 The Senior Divisional
Commercial Manager
Southern Railway
Salem Division
Salem.

3 The Divisional Commercial Manager
Salem Division
Southern Railway
Salem.

+ 5 cc to M/s.M.Udaya Bhanu Advocate,SR.28980 to 28983

+ 1 cc to Mr.P.T.Raamkumar Advocate,SR.29040

W.P.Nos. 5180, 5284, 5553 & 5718 of 2015

nr 26/04/2018