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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P. (MD) No.2331 of 2018

and

W.M.P. (MD) Nos.2531 & 2532 of 2018

M.Mohamed Akbar

... Petitioner

vs.

1. The Senior Divisional Commercial Manager
Divisional Office
Southern Railways
Commercial Branch
Tiruchirapalli

2. The Divisional Railway Manager
Southern Railway
Tiruchirapalli Division
Tiruchirapalli

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus calling for the records of the 1st respondent herein bearing Ref. No.T/C.79/Catering Stall/TPJ/SMU S-2 dated 17.1.2018, served on the Petitioner on 19.1.2018, in respect of the Catering Stall S2 (SMU/TPJ) on Platform No.4 and 5 at Tiruchirapalli Railway Junction, and quash the same and direct the Respondents herein to forthwith renew the licence for a further period of 3 years for the Catering Stall S2 (SMU/TPJ) on Platform No.4 and 5 at Tiruchirapalli Railway Junction, in favour of the Petitioner.

For Petitioner : Mr.AR.L.Sundaresan, Senior Counsel
for Ms.AL.Ganthimathi

For Respondents : Mr.S.Manohar

O R D E R

The case of the petitioner is as follows:

(i) The petitioner has been granted licence to run a Catering Stall in Platform Nos.4 and 5 at Tiruchirapalli Junction, vide proceedings of the second respondent, dated 24.08.2011. The provisional annual licence fee was fixed at Rs.1,25,000/-. In pursuance of the licence granted, the petitioner had set up a Catering Stall at the designated place. An agreement was also entered into between the petitioner and the



first respondent on 03.02.2015. The tenure of licence was for a period of five years from 21.01.2012 till 20.01.2017. After the award of licence, the petitioner has been running the Catering Stall, without giving any room for complaint.

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(ii) In terms of Clause 16.2.1 of the Catering Policy of the year 2010, on expiry of five years period of contract, the licensee is entitled to renew the same for a further period of three years on satisfactory performance, payment of all dues and arrears and withdrawal of the cases, if any. These facts were not disputed by the respondents, since they are borne out by records.

(iii) While matter stood thus, after expiry of the licence period during January, 2017, the petitioner was called upon to pay the monthly licence fee in the Railway Counter and accordingly, he had paid the same during February, March, April and May, 2017 and he was allowed to run the Stall. The said arrangement had come to an end on 20.01.2017. Thereafter, the petitioner submitted a representation, on 18.05.2017, requesting the first respondent to extend the licence period for a further period of three years as per the Catering Policy of the year 2010. A further representation was also submitted by the petitioner on 21.05.2017 to the first respondent. However, while the representations were pending, the officials of the Railways took coercive steps and closed the Stall on 20.05.2017. The petitioner was, therefore, constrained to approach this Court by filing a writ petition in W.P.(MD) No.66 of 2018 seeking direction to the respondents therein to renew the licence as per the Catering Policy of the year 2010. However, the said writ petition was disposed of, on 04.01.2018, directing the respondents therein to consider the petitioner's representation and pass orders on merits and in accordance with law.

(iv) In pursuance of the above direction of this Court, the first respondent herein has passed an order, on 17.01.2018, rejecting the petitioner's claim for renewal of contract stating that extension of contract period is at the sole discretion of the Railway Department and the performance of the petitioner, during the period of contract, was also not satisfactory. It was also mentioned that as per the order of the Honourable Supreme Court, dated 29.01.2016, in Civil Appeal Nos.618 to 620 of 2016, the



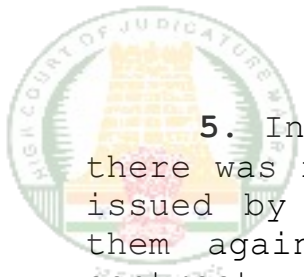
petitioner was not eligible for renewal of contract in terms of Clause 11.2 of the Catering Policy of the year 2017, which provides only for a limited period of five years and no further extension was envisaged in the new Policy. The said order rejecting the claim of the petitioner, dated 17.01.2018, passed by the first respondent is put to challenge in this writ petition.

2. Mr.AR.L.Sundaresan, learned Senior Counsel appearing for the petitioner would, at the outset, submit that the rejection of the petitioner's request for renewal of contract in terms of the Catering Policy of the year 2017 cannot be countenanced either in law or on facts for the simple reason that the original contract given to the petitioner was governed by the Catering Policy of the year 2010, which admittedly provides for renewal of contract for a further period of three years. In support of his contention, the learned Senior Counsel would draw the attention of this Court to Clause 16.2.1 of the Catering Policy of the year 2010, which is extracted hereunder:

"16.2.1 Special Minor Units at A, B, and C category stations shall be awarded for a period of 5 years with a renewal after every 3 years on satisfactory performance and payment of all dues and arrears and withdrawal of court cases, if any."

3. The learned Senior Counsel would further submit that as the original contract has been governed by the Catering Policy of the year 2010 and on the basis of which, the petitioner had invested money, he would be governed by the Catering Policy of the year 2010, since what is sought by the petitioner in 2017 is only a renewal of contract in terms of the Catering Policy of the year 2010 and therefore, it is not open to the respondents to apply 2017 Policy.

4. As regards the expression about the "unsatisfactory performance", which is mentioned in the above said Clause, is concerned, the learned Senior Counsel would submit that though initially the respondents had mentioned about the "unsatisfactory performance" of the petitioner during the first period of contract, but subsequently, vide their letter dated 17.01.2018, had removed the said allegation against the petitioner and he would draw the attention of this Court to the subsequent communication of the Railways, dated 17.01.2018, wherein the so-called unsatisfactory performance of the petitioner has not been mentioned at all. Therefore, it is not open to the Railways to rely on its earlier statement, which stood removed by the subsequent communication.



5. In any event, the learned Senior Counsel would submit that there was no complaint against the petitioner, since no notice was issued by the Railways on any such complaint being received by them against the petitioner during the period of the earlier contract.

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6. Upon notice, Mr.S.Manohar, learned counsel, entered appearance for the respondents. He would submit that the Honourable Supreme Court, in the above said Civil Appeals, has held that the persons, who are entitled to renewal of contract, have to establish the fact that they do not have any other Stall either in his name, family members' name or any benamy's name. In the absence of any such declaration, the petitioner is not entitled to renewal of contract. More over, the new Catering Policy, which came into force with effect from 2017, has clearly mentioned that the earlier Policy of the year 2010 has been superseded. Therefore, it is not open to the petitioner to hold on the Catering Policy of the year 2010 for the purpose of staking a claim to renew the contract period for a further period of three years as provided in Clause 16 of the Policy 2010, which is extracted supra. Therefore, the learned counsel for the respondents would submit that the petitioner is not entitled to any relief as prayed by him.

7. This Court has considered the submissions of the learned Senior Counsel appearing for the petitioner and the learned counsel appearing for the respondents and perused the materials and the pleadings placed on record.

8. As rightly contended by the learned Senior Counsel for the petitioner that the petitioner has been awarded contract in terms of the then existing Catering Policy of the year 2010 for a period of five years, in which case, in respect of renewal of contract, the petitioner is entitled to be governed by the same Policy of the year 2010. As admittedly, the petitioner had entered into a contract with the respondents thinking that he would be probably considered for a further period of three years on expiry of the five years contract. Therefore, as rightly contended by the learned Senior Counsel, the right has been accrued to the petitioner in terms of the then existing Policy of the year 2010 and such a right cannot be taken away by the subsequent implementation of the Catering Policy of the year 2017. At best, the Catering Policy of the year 2017 can be applied only to the fresh contracts and it cannot be applied retrospectively in respect of the earlier contracts being given to the persons under the old Catering Policy.

9. As regards the objections raised on behalf of the respondents that the petitioner is not entitled to renewal of contract in terms of the rulings of the Honourable Supreme Court



is concerned, this Court is of the considered view that such a contention cannot be applied to the claim of the petitioner, since admittedly he is governed by the then existing Catering Policy of the year 2010 and no such condition has been stipulated in the said Policy. Therefore, such a condition or stipulation can be applied only to the fresh contracts being issued by the Railways and cannot be applied to the petitioner's claim, which is governed by the earlier Catering Policy, 2010. In any event, the claim of the petitioner comes well within the four corners of the Catering Policy, 2010 and his claim cannot be considered with reference to the new Policy, which came into force with effect from 27.02.2017. After all, what the petitioner sought was only renewal in respect of the old contract and therefore, the Catering Policy of the year 2010 alone can be applied in respect of the petitioner's claim and not the new Policy of the year 2017. Further, this Court, after considering the materials, is also of the view that there is no material produced in support of the respondents' earlier statement that the petitioner's performance was not satisfactory and in any event, the respondents themselves removed the said statement against the petitioner vide their subsequent communication. In the said circumstances, this Court is of the view that the petitioner has made out a clear case to be granted the relief as prayed in all fours and therefore, he is entitled to succeed.

10. In the result, the writ petition is allowed and the impugned order bearing Ref. No.T/C.79/Catering Stall/TPJ/SMU S-2, dated 17.01.2018, passed by the first respondent, is hereby set aside. The respondents are directed to grant renewal of licence granted to the petitioner for the Catering Stall, which is run by him in Platform Nos.4 and 5 at Tiruchirapalli Junction, for a further period of three years, in terms of Clause 16.2.1 of the Catering Policy of the year 2010 and the respondents are directed to pass appropriate orders in this regard, within a period of two weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar(CS-IV)

+1cc to Mr.S.Manohar, Advocate Sr.No.83030

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