

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

Writ Appeal No.679 of 2018

Judgment: (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

This appeal, under Clause 15 of the Letters Patent, is preferred against the order passed by the learned Single Judge in I.A. Nos.1 and 2 of 2018 in W.P. No. 9819 of 2018 dated 23.3.2018.

The appellant herein filed the said Writ Petition seeking a mandamus to declare the notice dated 14.3.2018, issued by respondents 2 and 3, demanding that the appellant give a fresh affidavit agreeing to forego the 'A' category major unit licence awarded by the 4th respondent at Yadagir Railway Station which is under the supervision and control of the 4th respondent by foreclosing the licence, as illegal and arbitrary. By way of interim relief, the appellant sought stay of operation of the notice dated 14.3.2018, and to permit the appellant to carry on business as "D" Category minor unit at Krishna Railway Station.

In the order under appeal, the learned Single Judge noted the submission of Sri Prabhakar Peri, learned Standing Counsel for the Railways, that, in so far as 'D' category minor unit at Krishna Railway Station and 'A' category major unit licence awarded by the IRCTC at Yadigiri Station is concerned, the Railways would permit the appellant-writ petitioner to continue to carry on business, at the said two places, till the respective contract/licence periods come to an end. Recording this submission, the learned Single Judge made it clear that renewal of the application of the appellant-writ petitioner, in respect of the afore-stated 'D' category minor unit and 'A' category major unit, shall be considered by the authority concerned in strict accordance with the procedure established by law on their own merit. The learned Single Judge also made it clear that in the event the appellant-writ petitioner is aggrieved by any such decision, which the said authority may take on

the renewal applications, it was always open to the appellant-writ petitioner to assail the said decision of the authority.

The controversy in issue is short. The fact that the appellant-writ petitioner is running stalls at Nalwar, Krishna and Yadgir Railway Stations is not in dispute. It is also the admitted case of the parties that the stall at Yadgir Railway Station was allotted to the appellant-writ petitioner by the IRCTC. In **Senior Divisional Commercial Manager & Others vs. South Central Railways Caterers, Dry Fruits, Fruit Juice Stalls Welfare Association and another**¹, the Supreme Court held that, since the right of livelihood of these stall owners was at stake, they were entitled for renewal of one stall in the Railway Station.

Ms. G. Sudha, learned counsel for the appellant, would contend that the appellant is only required to make a choice, of taking either one of the two stalls at Nalwar and Krishna Railway Stations; the railway authorities were seeking to bring in the appellant's stall at Yadgir Railway Station, and was asking him to forego two stalls; the IRCTC is an independent legal entity; and since the judgment of the Supreme Court relates only to the South Central Railway, and not the IRCTC, the Railways cannot insist that the appellant should forego his stall at Yadgir Railway Station which was allotted to them by IRCTC.

On the other hand, Sri Prabhakar Peri, learned Standing Counsel for the respondent-Railways, would submit that the IRCTC is a wholly owned subsidiary of the Indian Railways; the aforesaid order of the Supreme Court makes it clear that a licence cannot be granted for more than one shop or kiosk in the Railway Stations; it is not in dispute that even the stall, leased out in the appellant's favour by IRCTC, is located at the Yadgir Railway Station which comes under the control of the South Central Railway; and, consequently, the Railways are justified in calling upon the appellant to forego two of the three stalls at the Railway stations from which he is carrying on business. Learned Standing

¹ Order in Civil Appeal Nos. 618 to 620 of 2016 dated 29.1.2016

Counsel would further submit that, in case the appellant seeks renewal of his license for one shop in the Railway station, he must necessarily forego two of the three shops in his possession; otherwise the Railways would permit him to carry on business till the expiry of the existing lease period, which for Nalwar and Krishna Railway Stations is to expire on 30.6.2018, and for Yadgir Railway Station thereafter.

As noted hereinabove, the learned Single Judge has, in the order under appeal, observed that the renewal applications of the appellant-writ petitioner, in respect of the 'D' category minor unit at Krishna and the 'A' category major unit at Yadgir, shall be considered by the authorities strictly in accordance with the procedure established by law; and, in the event the appellant-writ petitioner is aggrieved by the decision the authority may take on the renewal applications, it was always open to the appellant-writ petitioner to assail the same.

The respondent-Railways are said to have invited bids for Kiosks/stalls, at the Railway Stations in Krishna and Nalwar, on the ground that the appellant-writ petitioner did not exercise his option for retaining one of the three Kiosks at the Railway Stations. The fact, however, remains that the appellant's renewal applications have not yet been disposed of. Suffice it, therefore, to direct the respondents to pass orders on the appellant's application for renewal in accordance with law on or before 15.5.2018, and communicate the same to the appellant-writ petitioner. Even if the appellant-writ petitioner is aggrieved thereby, since the existing lease of both the stalls at Krishna and Nalwar Railway Stations are due to expire only on 30.6.2018, it is always open to him to question the order, passed by the Railways in this regard, in appropriate legal proceedings, before the date on which the existing lease period is to expire.

Ms. G. Sudha, learned counsel for the appellant-writ petitioner, would submit that this Court may make it clear that it is open to the appellant to submit his tender without prejudice to his rights in the Writ

Petition. Sri Prabhakar Peri, learned Standing Counsel for the Railways would submit that it is always open to the appellant to submit his tender. Needless to state that the tender, submitted by the appellant, shall be subject to the outcome of the order passed by the Railways on his renewal applications.

The Writ Appeal is, accordingly, disposed of. Miscellaneous Petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

27th April, 2018

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(KONGARA VIJAYA LAKSHMI, J)



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