

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.Nos.43226 and 43246 of 2018

COMMON ORDER:

Since the petitioner in these both the writ petitions is one and the same and the contentions raised in these writ petitions are also the same, this Court deems it appropriate to dispose of these writ petitions by way of a common order.

2. Petitioner herein is a licensee of the catering stall (Fruit Juice Stall) CS/New-3 on Platform No.4/5 and GMUCCS/New-2 catering stall CS/New-2 on Platform No.4/5 at Visakhapatnam Railway Station. In terms of the catering policy 2010 licenses were granted for the said stalls for the period 12-12-2013 to 11-12-2018. Petitioner submitted applications on 12.06.2018 for renewal of the said licenses. The Divisional Commercial Manager/third respondent herein, by way of the impugned proceedings dated 31.10.2018, rejected the request of the petitioner herein for renewal on two grounds viz., (1) no further extension/renewal except for units specifically referred to in Para 3.8.1 of 2017 policy, is permissible and (2) the Hon'ble Apex Court held that if a licensee holds more than one unit under a single or multiple license, he/she shall forego all other units except the unit he/she wishes to be renewed.

3. In these two writ petitions, the said orders dated 31.8.2018, rejecting the renewals passed by the third respondent are under challenge.

4. The following are the contentions raised by the learned counsel for the petitioner:

4.1. As per clause 16.1.3 of 2010 Policy, the petitioner is also entitled for renewal for a further period of 5 years and even as per Clause 20.2 of 2017 policy, clause in the new policy cannot be applied in the case of the petitioner herein.

4.2. The Judgment rendered by the Hon'ble Apex Court is not relevant to the facts and circumstances of the present case.

5. On the contrary, following are the submissions of the learned counsel for the Railways Sri P.Bhaskar:

5.1. Petitioner herein is only a licensee and has no vested right to request for renewal.

5.2. As per Clause 17 of 2010 policy, renewal is not a matter of right.

5.3. The object of 2017 policy is to provide quality food to the customers, unbundling of catering services on trains and it is also categorically stated in the said policy of 2017 that 2017 policy supersedes catering policy 2010 unless specifically referred to in the policy document

5.4. As per Clause 11.2 of 2017 policy, further extension/renewal is totally omitted.

5.5. Clause 20.2 of 2017 policy is applicable only to the cases where the tenders were under process and in transitional period before the advent of 2017 policy and not applicable to the contracts already concluded. As per the Judgment of the Hon'ble Apex Court, the petitioner is not entitled and that the petitioner did not file any affidavit also.

6. In the above background, now the issue that emerges for consideration in the present writ petition is "Whether the petitioner is entitled for renewal of his license?"

7. It is absolutely not a matter of controversy that under the Railway Policy 2010 the licenses in favour of the petitioner were granted for a period of five years, commencing from 12.12.2013 to 12.12.2018. According to Clause 16.1.3 of 2010 allotment of all General Minor Units at D.E & F Category would be initially for a period of five years with a provision for renewal after every five years for a further period of 5 years on satisfactory performance and payment of all dues and arrears and withdrawal of all court cases, if any. It is also significant to note that as per Clause 17 of 2010 Policy, renewal would not be a matter of right.

8. It is also not in dispute that 2017 policy superseded 2010 policy. Clause 1 of 2017 policy deals with the objectives. The first paragraph of the said Clause 1 reads as under:

“1.OBJECTIVES

With the objective to provide quality food to our customers unbundling of catering services on trains has been envisaged in Catering Policy 2017. This policy supersedes Catering Policy 2010 and related instructions, unless specifically referred to in this policy document.

IRCTC has been mandated to carry out the unbundling by creating a distinction primarily between food preparation and food distribution. In order to upgrade quality of food preparation IRCTC shall be setting up new kitchens and upgrade existing ones.

Modifications have been necessitated in the management of catering service on mobile and static units to implement social objectives of the Government besides encouraging fair competition in allotment of catering units over stations.

IRCTC shall be responsible for catering services through mobile catering units, Base Kitchens, Cell Kitchens, Refreshment Rooms at A1 & A category of stations, Food Plazas, Food Courts, Train Side Vending, Jan Ahaars. All other catering units like Refreshment Rooms at B and below category of stations, AVMs, Milk Stalls, trolleys shall be managed by the Zonal Railways.”

9. It is very much evident from a reading of the above Clause that Railways superseded the catering policy 2010 by catering policy 2017 and it cannot be the case of the petitioner herein that the earlier contracts under 2010 and the benefits arising thereunder are saved under 2017 policy. It is also significant to note Clause 11.2 of 2017 policy, which reads as under:

“11.2. Tenure of Food Plaza shall be for a period of 9 years. Tenure of all other catering units (Major Units & Minor Units) will be for a period of 5 years only. There will be no further extension/renewal, except for units specifically referred to in para 3.8.1.”

10. It is very much evident from a reading of the above clause that 2017 policy completely prohibits either extension or renewal beyond the original period of 5 years.

11. In order to examine the contention of the learned counsel for the petitioner that in view of Clause 20.2 of 2017 policy, the petitioner herein is entitled for renewal as per the old policy and new policy cannot be pressed into service, it may be appropriate to refer to Clause 20.1 and 20.2 of 2017 policy, which read as follows:

“20.1. The revised catering policy will be applicable with immediate effect i.e. from the date of issue. This policy supersedes all prior policy circulars

issued from time to time unless specifically referred to in this policy document.

20.2. Tenders that have been finalized and LoA issued prior to the date of notification of this policy, shall be allowed to continue as per policy guidelines prevailing at that time. Zonal Railways will cancel all such tenders and return the earnest money to the tenderers in cases, where LoA has not been issued before issuance of this circular.”

12. A reading of the above Clauses would indicate and demonstrate in clear and unequivocal manner that the said Clauses cannot be made applicable to the concluded contracts under the old policy and in the considered opinion of this Court the said clauses can be made applicable only in the cases where the tenders were under process and not concluded before commencement of 2017 policy.

13. It is also pertinent to note in this context that the Hon'ble Apex Court while dealing with the aspect of renewal in Civil Appeal Nos.618-620 of 2016 arising out of SLP (C) Nos.9921-9923 of 2014, at paragraph 28, held as follows:

“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.”

14. It is not the case of the petitioner in the present writ petitions that he filed any affidavit before the respondents herein, restricting his request for renewal in respect of only one item. Having regard to the facts and circumstances of the case and the reasons assigned *supra* the judgment of the Madras High Court, Madurai Bench in the case of *M.MOHAMED AKBAR v. THE SENIOR DIVISIONAL COMMERCIAL MANAGER AND ANOTHER (W.P.(MD) No.2331 of 2018 and W.M.P.(MD) Nos.2531 & 2532 of 2018, dated 06.09.2018)* would not render any assistance to the petitioner herein.

15. For the aforesaid reasons, the writ petitions are dismissed. As a sequel, the miscellaneous petitions, if any, shall stand disposed of. There shall be no order as to costs.

Date: 10.12.2018
Grk



A.V.SESHA SAI, J

THE HON'BLE SRI JUSTICE A.V.SESHA SAI



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Dated .12.2018

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