

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18318 of 2017

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Vaishali Enterprises represented through it's partner Ranjeet Roy, son of Late Basant Roy, resident of village - Bidupurdi, P.S. Bidupur Bazar, District - Vaishali.

... .. Petitioner

Versus

1. The Indian Railway through it's Secretary Ministry of Rail, Rail Bhawan, New Delhi.
2. The Railway Board, Ministry of Railway, Government of India.
3. The Indian Railway Catering and Tourism Corporation Limited (I.R.C.T.C.), Eastern Zonal Office 3, Koyalaghat Street, Ground Floor, Kolkata-700001.
4. The Regional Manager, Indian Railway Catering and Tourism Corporation Limited (I.R.C.T.C.) 4th Floor, BISCOMAUN Bhawan, West Gandhi Maidan, Patna.
5. The Group General Manager, the Indian Railway Catering and Tourism Corporation Limited (I.R.C.T.C.) Eastern Zonal Office 3, Koyalaghat Street, Ground Floor, Kolkata – 700001.

... .. Respondents

with

Civil Writ Jurisdiction Case No. 18321 of 2017

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Kusum Devi wife of Late Shashi Kumar, resident of Maharaja Hata, Ara, P.S. Nawada, District- Bhojpur.

... .. Petitioner

Versus

1. The Indian Railway through it's Secretary Ministry of Rail, Rail Bhawan, New Delhi.
2. The Railway Board, Ministry of Railway, Government of India.
3. The Indian Railway Catering and Tourism Corporation Limited (I.R.C.T.C.), Eastern Zonal Office 3, Koyalaghat Street, Ground Floor, Kolkata-700001.
4. The Regional Manager, Indian Railway Catering and Tourism Corporation Limited (I.R.C.T.C.) 4th Floor, BISCOMAUN Bhawan, West Gandhi Maidan, Patna.



5. The Group General Manager, the Indian Railway Catering and Tourism Corporation Limited (I.R.C.T.C.) Eastern Zonal Office 3, Koyalaghat Street, Ground Floor, Kolkata – 700001.

... .. Respondents

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with

Civil Writ Jurisdiction Case No. 18335 of 2017

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Shivbalak Yadav son of Late Sanichar Yadav, resident of Village- Ashrari, Post- Bihat, P.S.- Barauni, District- Begusarai.

... .. Petitioner

Versus

6. The Indian Railway through it's Secretary Ministry of Rail, Rail Bhawan, New Delhi.
7. The Railway Board, Ministry of Railway, Government of India.
8. The Indian Railway Catering and Tourism Corporation Limited (I.R.C.T.C.), Eastern Zonal Office 3, Koyalaghat Street, Ground Floor, Kolkata-700001.
9. The Regional Manager, Indian Railway Catering and Tourism Corporation Limited (I.R.C.T.C.) 4th Floor, BISCOAUN Bhawan, West Gandhi Maidan, Patna.
10. The Group General Manager, the Indian Railway Catering and Tourism Corporation Limited (I.R.C.T.C.) Eastern Zonal Office 3, Koyalaghat Street, Ground Floor, Kolkata – 700001.

... .. Respondents

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with

Civil Writ Jurisdiction Case No. 18337 of 2017

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Rewati Ranjan Prasad Singh Son of Late Munishwar Prasad Singh, Resident at Ramna, P.s.- Mithanpura, near Devi Temple, District- Muzaffarpur.

... .. Petitioner

Versus

1. The Indian Railway through it's Secretary Ministry of Rail, Rail Bhawan, New Delhi.
2. The Railway Board, Ministry of Railway, Government of India.
3. The Indian Railway Catering and Tourism Corporation Limited (I.R.C.T.C.), Eastern Zonal Office 3, Koyalaghat Street, Ground Floor, Kolkata-700001.



4. The Regional Manager, Indian Railway Catering and Tourism Corporation Limited (I.R.C.T.C.) 4th Floor, BISCOMAUN Bhawan, West Gandhi Maidan, Patna.
5. The Group General Manager, the Indian Railway Catering and Tourism Corporation Limited (I.R.C.T.C.) Eastern Zonal Office 3, Koyalaghat Street, Ground Floor, Kolkata – 700001.

... .. Respondents

Appearance :

For the Petitioners	:	Mr. P.K. Shahi, Sr. Advocate Mr. Aditya Prakash Sahay, Advocate
For the Resp, IRCTC	:	Mr.R.K. Agarwal, Advocate Mr. Ravi Bhardwaj, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date : 19-02-2019

Heard Mr. P.K. Shahi, learned senior counsel as well as Mr. Aditya Prakash Sahay, learned Advocate representing the petitioners and Mr. R.K. Agarwal, learned counsel representing the Indian Railway Catering and Tourism Corporation Limited. With consent of the parties these Writ Applications are being disposed of under the heading “For Orders”.

It appears that earlier when these writ applications came for hearing before learned co-ordinate Bench of this court, this court was given to understand that similar issues involved in CWJC No. 18565/2017 which is pending consideration before the Hon’ble Division Bench of this court. The learned co-ordinate Bench therefore



directed for listing of these matters after disposal of CWJC No. 18565/2017.

Briefly stating, the Writ Applications have been preferred challenging the Commercial Circular No. 22 of 2017 dated 15th March, 2017 issued by the respondent Railway Board whereby and whereunder Catering Policy, 2017 was issued. The petitioner(s) also challenged the E-Tender Notice No. IRCTC/EZ/C-242/Static Tender/RR-HJP/2017 dated 05.12.2017 by which Tenders were invited for operation of Refreshment Room at Hajipur Junction, Railway Station for a period of six months.

During pendency of this Application, CWJC No. 18565/2017 along with other analogous matters came for consideration before the Hon'ble Division Bench of this court, however vide order dated 06.09.2018, as contained in Annexure-R/1 to the counter affidavit filed on behalf of the respondent no. 3, 4 & 5 the said Writ Application along with analogous matters were allowed to be withdrawn with liberty to the petitioners in those cases to approach the Hon'ble Supreme Court by way of separate petition.

It further appears that earlier when the matters



relating to the Catering Policy, 2010 came to be considered before the Hon'ble Supreme Court in the case of **Senior Divisional Commercial Manager, South Central Railway and others Vs. S.C.R. Caterers Dry Fruits, Fruit Juice Stalls Welfare Association and Another** reported in (2016) 3 SCC 582, taking note of the brief facts of the case which was involving the grant of licenses for running General Minor Units or Special Minor Units in Categories 'A', 'B' and 'C' railways stations, in paragraph-34 the Hon'ble Supreme Court held as under:-

“34. 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 licence of more than one shop or kiosk in their name or benami license at the railway station with periodical reasonable increase of licence fee. All pending applications are disposed of.”

Subsequently, when the matters challenging the 2017 Circular came for consideration, keeping in view the



earlier judgment of the Hon'ble Apex Court in the case of Senior Divisional Commercial Manager South Central Railways (supra), vide order dated October 30, 2018 the Hon'ble Supreme Court took a view that if the licensees are the cooperative societies, partnership firm and HUF and they hold more than one license, they would be entitled to renew all their existing licenses. Having said so in the concluding paragraph, the Hon'ble Supreme Court held as under :

“We accordingly direct that the aforesaid associations of persons viz., the co-operative societies, partnership firm and HUF, in respect of the units covered by the judgment in Senior Divisional Commercial Manager, South Central Railways and others (supra), shall be entitled to renewal of all the licences they hold as on the date of the expiry of those licences.”

The word 'units' mentioned in the concluding paragraph of the judgment of the Hon'ble Supreme Court has got significance in the facts of the present case.

In case of South Central Railways (supra) the Hon'ble Supreme Court in paragraph-2 of the judgment took note of the fact that all the members of the welfare



association who were respondents before the Hon'ble Supreme Court were having license of minor units or special minor units. The facts as mentioned in paragraph-2 of the said judgment would reveal that the Hon'ble Supreme Court was not considering a case of major units. To know the concept of major and minor units, the court would go into the Catering Policy, 2017, a copy of which is available with the writ application as part of Annexure-8. Annexure-1 to the said Policy, 2017 at Paragraph-18 defines the major units and in paragraph-19 defines minor units which are being quoted hereunder for a ready reference:

“18. Major Units:

- Fast Food Units, Food Plaza and Food Courts at all category of stations.
- Refreshment Rooms at 'A1' & 'A' category stations.
- Jan Ahaar
- Mobile catering units.
- AVMs at all category stations.
- Base kitchens.
- Cell Kitchens.
- Train Side Vending.

19. Minor Units:

All other units at A1, A, B, C, D, E & F category stations which are not covered in major units as above are known as minor units, i.e.:



- Stalls, Trolleys and Khomchas at all categories of stations.
- Refreshment Rooms at 'B' Below categories of stations.

In the present case, Mr. Aditya Prakash Sahay, learned counsel representing the petitioners has admitted at the Bar that so far as the petitioners are concerned, considering the category of the station in terms of the licenses they are holding licence of major units and not of a minor units but then Mr. Sahay has vehemently contended before this court that in W.P. No. 177/2015 which was heard along with Civil Appeal No. 3195/2016 when some of the licensees of major units moved the Hon'ble Supreme Court for extending same benefits which were allowed by the Hon'ble Apex Court in the case of Southern Railway (supra) even the licensees of the major units have been granted the same benefit.

It is contended that the railways had unsuccessfully preferred a Review Application against the order dated 29.03.2016 passed in Civil Appeal No. 3195/2016 and analogous matters. Learned counsel, however, hasten to add that he is not aware as to whether



the units covered under Civil Appeal No. 3195/2016, Civil Appeal No. 3196/2016, Writ Petition No. 848/2014 and Writ Petition No. 207/2015 were preferred by the petitioners/appellants holding license for major units, but he is sure that the petitioners of Writ Petition No. 177/2015 were the license holders of the major units. It is submitted that the Review Application was dismissed by the Hon'ble Supreme Court by order dated 17.11.2016, as contained in Annexure-16 to the writ application.

Mr. Sahay, learned counsel thus contended that once the Hon'ble Supreme Court has granted similar relief to the petitioners of Writ Petition No. 177/2015, there is no reason as to why the same benefit will not flow to the writ petitioners.

Mr. P.K. Shahi, learned senior counsel has appeared at this stage and supported the contentions raised by Mr. Aditya Prakash Sahay, learned Advocate.

On the other hand, Mr. Agarwal, learned counsel representing the I.R.C.T.C. submits that so far as the judgment of the Hon'ble Supreme Court in the case of Southern Railway (supra) is concerned, facts stated herein



clearly provide that the said judgment is in respect of the minor units and special minor units. Learned counsel submits that although learned counsel for the petitioners has contended that the petitioners in Writ Petition No. 177 of 2015 which came to be considered along with Civil Appeal No. 3195/2016 and was disposed of by common order, were holding license for major units but the order passed in those cases on 29.03.2016 nowhere mentions this fact.

It is submitted that from paragraph-3 of the order dated 29.03.2016 it would appear that the impression given to the Hon'ble Supreme Court by learned counsel for both the sides was that the issues in principle is covered by the decision of this court in Civil Appeal No. 618-620/2016 decided on 29th January 2016. Learned counsel submits that merely because Review Application was dismissed, it cannot be contended on behalf of the petitioners that the Hon'ble Supreme Court has held otherwise than what was decided earlier in the case of Southern Railway (supra). Learned counsel submits that apparently the order dated 29.03.2016 is based on concession inasmuch as both sides of the said case gave an impression that the principle



involved in those cases were covered by the earlier judgment.

Learned counsel further submits that his argument to the aforesaid effect finds strength in the order dated October 30, 2018 passed by the Hon'ble Apex Court in Writ Petition (C) No. 373/2017 (**Vendors Co-operative Societies Limited and others Vs. Union of India and another**). It is further pointed out that some of the writ petitioners who had withdrawn their writ applications from this court had also joined there in the Hon'ble Supreme Court by filing separate writ application and those writ applications were also clubbed with writ petition (C) No. 373/2017.

Learned counsel submits that the Hon'ble Apex Court took note of paragraph-34 of the judgment of this court in the case of **South Central Railway (supra)** reported in **(2016) 3 SCC 582**, discussed the issues involved in the matters relating to cooperative societies, partnership firm and HUF but then never extended the scope of the judgment so as to apply the same in respect of major units.



The Hon'ble Supreme Court made it very clear in the concluding part of it's judgment that only those cooperative societies, partnership firm and HUF who are having license in respect of the units covered by the judgment of this court in the case of Senior Divisional Commercial Manager South Central Railway (supra) shall be entitled to get their license renewed. It is submitted that the contention of learned counsel for the petitioner to extend the same benefit to major units is not covered by the judgment of the Hon'ble Supreme Court, thus, it is liable to be rejected.

Having heard learned counsel for the parties and on perusal of the records, this court finds that there is an admitted fact that the petitioner(s) in these writ applications are holding license for major unit. The relevant paragraph of the judgment of the Hon'ble Apex Court have been quoted in the preceding paragraphs. The court is convinced that in terms of the judgment of the Hon'ble Apex Court dated October 30, 2018 in Writ Petition (C) No. 373/2017 it is only those units which are minor units and special minor units which will be covered by the judgment of the Hon'ble



Apex Court. The petitioner is not entitled to draw any benefit out of the said judgment as the case of the petitioner is clearly distinguishable.

At this stage, learned senior counsel for the petitioners assisted by Mr. Sahay, learned Advocate submits that no doubt the existing license of the petitioner is of major units, but according to him, under new categorization it will come in the category of minor units except Muzaffarpur. In the opinion of this court, such issues are not to be considered by a writ court as the policy of I.R.C.T.C. was under challenge before the Hon'ble Supreme Court but the said challenge has failed before the Hon'ble Apex Court.

In the result, this court does not find any merit in the writ application.

These Writ Applications are dismissed. In the facts of the case there will be however no order as to cost.

(Rajeev Ranjan Prasad, J)

Rajeev/-

AFR/NAFR	
CAV DATE	
Uploading Date	21.02.2019
Transmission Date	

