

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

Letters Patent Appeal No. 928 of 2019 (O&M)

Date of Decision: 16th July, 2019

M/s Doon Caterer, Railway Catering Contractor through its Proprietor
Shri Naveen Tandon

.....Appellant

versus

Union of India and others

.....Respondents

**CORAM: HON'BLE MR.JUSTICE KRISHNA MURARI, CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI, JUDGE**

Present : Mr. S.L.Chander Shekhar, Advocate, for the appellant.

KRISHNA MURARI, CHIEF JUSTICE (oral)

This intra-court appeal under Clause X of the Letters Patent is directed against the judgment and order dated 01.05.2019 passed by the learned Single Judge dismissing the writ petition seeking a writ of certiorari to quash the order dated 16.08.2017 passed by the Senior Divisional Commercial Manager, Northern Railway, Ferozepur Division, Ferozepur-respondent No.4 rejecting the application seeking extension of contract of Stall No.14 at Platform No.4/5 of Ludhiana Railway Station. A further writ of mandamus has been claimed to command the respondents to extend the period of licence which was to expire on 27.09.2017 till finalization of the new tender process.

2. Undisputed facts relevant for being noticed for proper adjudication of the controversy are as under:-

The appellant-petitioner was allotted vending contract of Stall No.14 situated at Platform No.4/5, Railway Station, Ludhiana for a period of

five years commencing w.e.f. 28.09.2009. The period of licence came to an end on 27.09.2014. Initially an extension was granted from 28.09.2014 to 22.02.2015. Subsequently another extension w.e.f. 23.02.2015 to 27.09.2017 was granted. Thus the appellant-petitioner operated the said stall for a period of three years on extension in addition to the initial licence granted for a period of five years.

3. An application dated 10.08.2017 was made by the appellant-petitioner requesting the Senior Divisional Commercial Manager, Northern Railway, Ferozepur Division, Ferozepur to extend the licence for a further period of three years. Vide order dated 16.08.2017 impugned in the writ petition passed by the Senior Divisional Commercial Manager, Northern Railway, Ferozepur Division, Ferozepur, the said request was declined.

4. Learned Single Judge relying upon an earlier judgment dated 14.09.2017 of this Court tendered in a bunch of writ petitions leading being Civil Writ Petition No. 7839 of 2017 ***M/s A.K.Roy v. Union of India and others***, raising identical issues dismissed the writ petition. Reliance was also placed on another judgment of Delhi High Court rendered in identical facts and circumstances in the case of ***M/s Deepak & Co. v. Union of India and others*** WP(C) No. 3188 of 2016 decided on 20.09.2016.

5. It is vehemently contended by learned counsel for the appellant that the reliance placed by the learned Single Judge on the judgment rendered in the case of *M/s A.K.Roy v. Union of India* (supra) is totally mis-founded. The facts of the said case are clearly distinguishable inasmuch as in that case the stalls were already closed and in the present case the stalls are still in operation. The distinction being sought to be drawn by learned counsel for the appellant appears to be without any basis inasmuch as in the case in hand as well the period of licence granted to the appellant-petitioner

stood expired on 27.09.2017 and the operation of the stall was continued under the interim directions of this Court. Otherwise in fact on expiry of the period of licence on 27.09.2017 the stall run by the appellant-petitioner would also have been closed. Thus the case of A.K.Roy (supra) is not liable to be distinguished on the ground urged by learned counsel.

6. It is next contended that the learned Single Judge has erred in dismissing the writ petition on the ground that clauses 16.1.3 and 16.2.1 of the Catering Policy-2010 are not applicable, though the said provisions are very much attracted in the case of the appellant-petitioner. It is also submitted that the learned Single Judge has further erred in law in holding that clause 17 of the Catering Policy-2010 is applicable for renewal. It is pointed out that the appellant-petitioner had applied for extension of the period of licence and not renewal of the same and hence clause 17 does not stand attracted.

7. We have given thoughtful consideration to the arguments raised.

8. Clause 16 of the Catering Policy deals with the tenure. Clauses 16.1.3 and 16.2.1 referred to by learned counsel for the appellant read as under:-

“16.1.3 : Allotment of all General Minor Units at A,B & C category stations shall be awarded for a period of 5 years with a provision for renewal after every 3 years on satisfactory performance and payment of all dues and arrears and withdrawal of court cases, if any. Allotment of all General Minor Units at D, E & F category stations will be for a period of five years with a provision for renewal after every 5 years for a further period of 5 years on satisfactory performance and payment of all dues and arrears and withdrawal of court cases, if any.

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.”

9. A perusal of the provisions of the policy extracted hereinabove go to show that clause 16.1.3 deals with the allotment of all general minor units at A, B & C category stations and provides that the contract shall be awarded initially for a period of five years with a provision for renewal after every three years on satisfying certain conditions. Clause 16.2.1 deals with the special minor units at A, B and C category stations providing an initial allotment for a period of five years with a renewal after every 3 years on satisfying certain conditions. It is to be taken note of that both the aforesaid provisions provide for the tenure as well as for the renewal of the licence. It is also relevant to point out at this stage that the learned Single Judge has nowhere held that clauses 16.1.3 and 16.2.1 are not applicable nor has made the same as basis for disposal of the writ petition. Rather the learned Single Judge has rightly relied upon clause 17 of the policy which provides that renewal shall not be as a matter of right and the licensee must apply for renewal minimum six months in advance before the expiry of the period of contract. The use of the word ‘*must*’ by the policy makers in clause 17 goes to show that the provision for making an application minimum six months’ in advance is mandatory in nature.

10. As a matter of fact clause 16 and its various sub clauses of the policy provide for the tenure of initial allotment with a provision for renewal on expiry of the fixed period in respect of major units and general minor units and Clause 17 prescribes the condition under which the renewal can be

applied for. We do not see any contradiction between the provisions of clauses 16 and 17 or that they deal with two different situations.

11. The argument advanced by learned counsel for the appellant that the appellant had only applied for extension of the period of licence and not for renewal is also without any substance inasmuch as on our asking learned counsel for the appellant has failed to point out any clause in the policy carrying a provision for extension nor we have been able to find anything after going through the policy which is on record of the writ petition. The policy only contains a provision for renewal.

12. As already observed earlier the use of word ‘*must*’ in clause-17 for making an application for renewal minimum six months’ in advance before the expiry of the period of contract is clearly indicative of the fact that it is to be mandatorily followed. Admittedly in the case in hand the application was not made by the appellant-petitioner six months’ in advance before the expiry of the period of contract. After the last extension the contract was to come to an end on 27.09.2017 and the pleadings go to show that the application was made for the first time on 10.08.2017. Thus the application was not made in accordance with the provisions of Clause 17 of the policy.

13. In our considered opinion the learned Single Judge has rightly non-suited the appellant-petitioner on the ground that the application was not made within the period prescribed as provided by clause 17 of the policy and thus has been rightly rejected.

14. Lastly learned counsel for the appellant relied upon the judgment of the Andhra Pradesh High Court in ***S.C.R. Caterers, Dry Fruits, Fruit Juice Stalls Welfare Association v. Senior Divisional Commercial Manager (Andhra Pradesh) 2013(5) Andh LD 553***, affirmed by the

Hon'ble Apex Court wherein a view was taken that the action of the railways in not granting renewal of the licenses to the members of the respondents therein is arbitrary, unreasonable, unfair and discriminatory. It is vehemently contended that in view of the aforesaid the appellant-petitioner was also entitled to similar benefits. However, the judgment of the Andhra Pradesh High Court as affirmed by the Hon'ble Apex Court being relied upon by learned counsel for the appellant is clearly distinguishable inasmuch as the said view was taken in the facts and circumstances where the caterers were working traditionally for a substantially long period at the railway stations in Andhra Pradesh before creation of the IRCTC. Taking into account the fact that they were working on the railway stations for long years, the Apex Court held that if they are not allowed to work, it would amount to deprivation of their right to livelihood. In the case in hand, no such fact is pleaded that the appellant-petitioner has been traditionally working on the platforms for a very long years as was in the case before the Andhra Pradesh High Court. It was further held that their cases would be covered under 2010 policy and have a right of being considered for renewal.

15. In the light of the judgment of the Hon'ble Apex Court in the case of ***S.C.R. Caterers, Dry Fruits, Fruit Juice Stalls Welfare Association v. Senior Divisional Commercial Manager*** (supra), though the case of the appellant-petitioner would be covered under the policy of 2010 providing for right of renewal, still it will not make any difference on the ultimate outcome of the application since it was not made within the time limit prescribed in clause 17 of the policy, thus had to be rejected for not being in accordance with the provisions of said clause. It is altogether different matter and it was rejected on a different ground by the authority concerned, nevertheless it only invited rejection.

16. In the light of the facts and circumstances discussed hereinabove, no ground for interference in the impugned judgment of the learned Single Judge is made out. Appeal is devoid of merits and accordingly stands dismissed.

(KRISHNA MURARI)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

16.07.2019
ravinder

Whether speaking/reasoned	√Yes/No
Whether reportable	√Yes/No