IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: September 13, 2018
Judgment delivered on: April 05, 2019

\+ W.P.(C) 9864/2017, CM No. 40141/2017

M/S STELLING TECHNOLOGIES PVT. LTD. (RAILYATRI.IN) AND ANR.

..... Petitioners

Through: Mr. Jayant Bhushan, Sr. Adv. with Mr. Hardeep Singh Anand, Mr. Jiten Mehra, Ms. Vandana Sehgal, Mr. Anand Daga, Ms. Gunjan Ahuja and Mr. Iqram Govind Singh, Advs. for R3.

versus

INDIAN RAILWAY CATERING AND TOURISM CORPORATION LTD. ..... Respondent

Through: Mr. Nikhil Majithia, Adv. for IRCTC

AND

\+ W.P.(C) 8562/2017, CM No. 35240/2017

MR. ANAND PUROHIT ..... Petitioner

Through: Mr. Sanjay Jain, Sr. Adv. with Mr. Mandeep Singh Vinaik, Mr. Yuvraj Sharma and Ms. Sneh Suman, Advs.

Versus

INDIAN RAILWAY CATERING AND TOURISM CORPORATION LTD. AND ORS. ..... Respondents

Through: Mr. Nikhil Majithia, Adv. for IRCTC.
Mr. Arjun Garg and Mr. Manish Yadav, Advs. for R2.
Mr. Jayant Bhushan, Sr. Adv. with Mr. Hardeep Singh Anand, Mr. Jiten Mehra, Ms. Vandana Sehgal,

Mr. Anand Daga, Ms. Gunjan Ahuja and Mr. Iqram Govind Singh, Advs. for R3.

AND

\+ W.P.(C) 8570/2017, CM No. 35264/2017

MR. SANDEEP NIRWAL ..... Petitioner

Through: Mr. Sanjay Jain, Sr. Adv. with Mr. Mandeep Singh Vinaik, Mr. Yuvraj Sharma and Ms. Sneh Suman, Advs.

Versus

INDIAN RAILWAY CATERING AND TOURISM CORPORATION LTD AND ORS. ..... Respondents

Through: Mr. Nikhil Majithia, Adv. for IRCTC Mr. Jayant Bhushan, Sr. Adv. with Mr. Hardeep Singh Anand, Mr. Jiten Mehra, Ms. Vandana Sehgal, Mr. Anand Daga, Ms. Gunjan Ahuja and Mr. Iqram Govind Singh, Advs. for R3.

AND

\+ W.P.(C) 8598/2017, CM No. 35340/2017

MR. AVINASH TIWARY ..... Petitioner

Through: Mr. Sanjay Jain, Sr. Adv. with Mr. Mandeep Singh Vinaik, Mr. Yuvraj Sharma and Ms. Sneh Suman, Advs.

versus

INDIAN RAILWAY CATERING AND TOURISM CORPORATION LTD AND ORS. ..... Respondents

Through: Mr. Nikhil Majithia, Adv. for IRCTC Mr. Jayant Bhushan, Sr. Adv. with Mr. Hardeep Singh Anand, Mr. Jiten Mehra, Ms. Vandana Sehgal, Mr. Anand Daga, Ms. Gunjan Ahuja and Mr. Iqram Govind Singh, Advs. for R3.

AND

\+ W.P.(C) 8613/2017, CM No. 35398/2017

MRS. GEETIKA SURI ..... Petitioner

Through: Mr. Sanjay Jain, Sr. Adv. with
Mr. Mandeep Singh Vinaik,
Mr. Yuvraj Sharma and Ms. Sneh
Suman, Advs.

versus

INDIAN RAILWAY CATERING AND TOURISM CORPORATION LTD. AND ORS.

..... Respondents

Through: Mr. Nikhil Majithia, Adv. for IRCTC.
Ms. Isha Bhalla, Adv. for R2
Mr. Jayant Bhushan, Sr. Adv. with
Mr. Hardeep Singh Anand, Mr. Jiten
Mehra, Ms. Vandana Sehgal,
Mr. Anand Daga, Ms. Gunjan Ahuja
and Mr. Iqram Govind Singh, Advs.
for R3.

AND

\+ W.P.(C) 8625/2017, CM No. 35431/2017

MR. DEEPAK SURI

..... Petitioner

Through: Mr. Sanjay Jain, Sr. Adv. with
Mr. Mandeep Singh Vinaik,
Mr. Yuvraj Sharma and Ms. Sneh
Suman, Advs.

Versus

INDIAN RAILWAY CATERING AND TOURISM CORPORATION LTD. AND ORS.

..... Respondents

Through: Mr. Nikhil Majithia, Adv. for IRCTC
Ms. Isha Bhalla, Adv. for R2
Mr. Jayant Bhushan, Sr. Adv. with
Mr. Hardeep Singh Anand, Mr. Jiten
Mehra, Ms. Vandana Sehgal,
Mr. Anand Daga, Ms. Gunjan Ahuja
and Mr. Iqram Govind Singh, Advs.
for R3.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

W.P.(C) 9864/2017

1. This petition has been filed by M/s Stelling Technologies Pvt. Ltd., which operates the website known as Railyatri.in.

2. There are two petitioners in this writ petition. It is the case of the petitioners that petitioner No.1 is an e-commerce entity providing digital platform services to act as a facilitator between e-ticket booking passenger and authorized Retail Service Providers (hereinafter referred to as RSPs). Petitioner no.2 is a shareholder of petitioner no.1. It is stated by the petitioners that petitioner No.1 is not in the business of actually booking railway tickets. It is their case that petitioner No.1 hosts a website called *"RailYatri.in"* and a related phone app. It is with the help of this digital platform that the petitioner No.1 provide what is called an e-market place for potential buyers, i.e., train travelers and sellers to come together for ticket booking. It is their case that on the digital platform potential buyers of products and services amongst them those seeking to book railway e-tickets from the authorized RSPs get in touch with legitimate third party / sellers / vendors and RSPs who have

voluntarily and contractually associated with petitioner no.1 on the said digital platform including the service of booking e-tickets through the respondent IRCTC's booking engine / interface after following all extent rules of the respondent. It is stated that the RSPs have contractually warranted to the petitioners for such contractual relation.

3. It is stated that the respondent (IRCTC) enjoy a monopolistic position for issuing railway e-tickets. Pursuant to which it has floated various schemes for their sale. Under one such scheme, which is B2B Scheme, the respondent has appointed several Principal Service Providers (hereinafter referred to as PSPs) for the purpose of booking railway tickets on its web portal. Each PSPs would in turn have several hundred agents working under it as Retail Service Providers (for short 'RSPs'). These RSPs, for the purpose of booking railway e-tickets on the respondent's (IRCTC) booking engine / interface, are provided a unique identification number and a dongle which is their access credential to the said booking engine / interface. The RSPs are required to follow certain rules and regulations as mandated by the respondent (IRCTC) in relation to this activity.

4. The petitioner No.1 having set up its digital platform somewhere in the year 2015 entered into contractual agreements with several RSPs in 2017 governing the use of its digital platforms and the service to be

provided by the contracting parties thereto, i.e., RSPs. It is stated that the said agreements contained specific clauses ensuring compliance with IRCTC's rules and regulations about payments and adherence to RBI's notifications governing digital payments. It was agreed therein that every potential e-ticket booking rail traveler (customer) using petitioner No.1's digital platform would be directed to the RSPs for them to book the said e-ticket using authorized booking credential / access code only through the respondent's booking engine / interface.

5. It was on June 19, 2017, that a complaint was filed with the Deputy Commissioner of Police, Railways and Crime, Delhi ostensibly on charge of the petitioner No.1 carrying on illegal booking and providing meals in trains. The said complaint is said to be presently subject matter of CS (OS) 519/2017 filed by the respondent (IRCTC) against the petitioner. On July 27, 2017, the respondent (IRCTC) also filed a complaint with the Cyber Crime Cell, Delhi Police bearing DD No. 675 alleging therein that the petitioner No.1 was involved in procuring e-tickets without authorization of the respondent.

6. It is stated that despite the said complaints pending, on August 8, 2017, 8-9 personnel of the respondent IRCTC along with a Sub-Inspector of Delhi Police one Mr. Ajit Singh barged into the petitioner's office in NOIDA and threatened the petitioner's

management with jail if they did not stop their allegedly illegal activities and also procured under pressure the only copy of the agreement that the petitioner had with one of the RSPs. It was vide letter dated August 11, 2017 that the petitioner No.1 recorded the respondent's illegal and high-handed conduct and conveyed the same to the respondent's CMD with copies to the Minister of Railways, Minister of State for Railways, DG Railway Protection Force, Deputy Commissioner of Police, Crime and Railways and the Group GM and Assistant Manager of the respondent (IRCTC). On the same day the respondent (IRCTC) also issued a notice to the petitioner calling upon them to stop booking e-tickets and stop directing passengers to the RSPs while also claiming damages of ₹50 lacs.

7. It is stated that the respondent (IRCTC) has also complained to and pressurized One97 Communications Pvt. Ltd. (Paytm) to suspend their e-payment gateway services which were being provided to the petitioner No.1 following which Paytm vide its letter dated August 11, 2017 sought a response from the petitioner No.l. The petitioner explained to Paytm that all the petitioner's business activities were legitimate.

8. Vide letter dated August 16, 2017, the petitioner No.1 sent a

detailed reply to the DCP Cyber Crime Cell setting out its business operations and showing how the petitioner's business activities surrounding the e-ticket booking services were all legitimate and within ambit of all laws. In response to the petitioner No.1 letter dated August 11, 2017, the respondent (IRCTC) vide letter August 23, 2017 is said to have stated that its alleged illegal entry into the petitioner No.1 office in NOIDA on August 8, 2017 was merely a preventive check based on a complaint of non-refund of money against a PNR and it was during that check that the petitioner shared a copy of their commercial agreement with an RSP. It was further stated therein that no company or organization not registered with the respondent (IRCTC) could book e-tickets and therefore called upon the petitioner to provide certain documents.

9. It is stated that the respondent (IRCTC) unilaterally de-activated the access credentials of several RSPs associated with the petitioner's rail e-tickets business without affording any opportunity of being heard to them supposedly for booking tickets through the petitioner's digital platform. Four such RSPs having been de-activated abruptly have filed petitions being WP(C) nos. 8570/2017, 8562/2017, 8613/2017 and 8598/2017 before this court and another RSP apprehending such de-activation filed a petition being W.P.(C) 8562/2017 seeking interim

protection against such action. It is stated that action on part of the respondent (IRCTC) has only resulted in loss of business reputation of the petitioners and has also brought great amount of suffering to potential passengers who would have booked tickets through these RSPs.

10. The petitioner No.1, vide counter notice dated September 5, 2017, replied to the respondent's (IRCTC) letters dated August 11 and 23 of 2017 and set out therein, its business; how the respondent (IRCTC) had perhaps not understood the nature of petitioner's business; that the petitioner No.1 had not violated any provisions of the Railways Act, 1989; its reply to the Cyber Crime Cell and illegal pressurizing of Paytm. The petitioner No.1 further called upon the respondent (IRCTC) to recall its complaints made to the Cyber Crime Cell and Paytm, restoration of de-activated RSP's access credentials and not to issue any further threats or disruptive letters to any associate of the petitioner while also claiming damages of ₹2 Crores. It is also stated that sometime in October, 2017, the petitioner No.1 also learnt that M/s. Payworld a PSP appointed by the respondent IRCTC had put up a notice online stating that the petitioner's digital platforms were illegal and not authorized by the respondent IRCTC. The petitioners have initiated separate legal action against them.

11. According to the petitioners the arbitrary and illegal actions of the respondent (IRCTC) and the coercive steps being taken by them to pressurize and dismember all business associates of the petitioner No.1 there is real likelihood that the very running of the business of the petitioner No.1 would be at stake. It is stated that the above mentioned coercive actions of the respondent IRCTC have already had the effect of causing serious loss to business reputation as well as financial losses and grave harassment to the petitioners which might ultimately even lead to the petitioner No.1 being forced to close down its business.

12. It is the case of the petitioners that IRCTC's action is in gross violation of the petitioner's fundamental rights guaranteed under Article 14, 19(1)(g) and 21 of the Constitution of India as they have been singled out for such coercive treatment whereas other digital platforms hosts like Google, Justdial, Sulekha, Quikr who also provide similar lead generating services to authorized RSPs continue to do so without hindrance from the respondent. According to them respondent IRCTC has lost sight of the fact that it, being a Government enterprise has a higher duty cast upon it to not act in the arbitrary manner as it has been alleged to have been doing.

13. It is their case that the petitioner No.1 does not stock any product or service but simply acts as a facilitator or a go-between entity and

through its digital platforms simply bring together a potential customer with a seller of the products / service, which the said potential customer using the petitioner's digital platforms may express interest in purchasing. The petitioner No.1 additionally provides certain value-added services to the customers to use its digital platforms such as provision of e-payment gateway facilities for which the petitioner No.1 tied up with service providers such as Paytm, Airtelmoney etc. for providing such services; the petitioner No.1 charges a nominal amount equivalent to 1.25% of the ticket price as a convenience fee for use of its e-commerce market place which is also transparently and prominently disclosed to the said customers in the terms and conditions displayed on the digital platforms and also noted as a separate entry on the receipt issued to the customers. It is the petitioners' case that petitioner No.1 being a largely foreign funded entity, it is covered by the guidelines for FDI in e-commerce issued vide press note – 3 dated March 29, 2016, issued by the Ministry of Commerce and Industry and is therefore permitted to undertake all such activities as noted above.

14. It is further their case that in no condition does the RSP charge over and above the railway authorized ticket charge and the convenience fee is to the benefit of the petitioners and not the RSP which is also agreed to be paid by the customer. According to the petitioners it has

prominently disclaimed on its portals that it is an independent self-funded entity and is in no way connected with the respondent (IRCTC) or the Railways. The petitioner No.1 endeavours to make railway ticket booking and rail travel accessible easily and a pleasurable exercise for the masses. The services as provided through the petitioner No.1's digital platforms cater to real needs of train travelers, wherein they get access to genuine e-ticket booking agents, real time train position, likelihood of a wait-listed ticket getting confirmed, facilities available in and around railway station, hotel rooms, taxi and bus booking facilitation etc. and also providing their digital platforms to book online food and other articles from the petitioner's associated vendors.

15. The petitioners' business model helps potential rail travelers find genuine authorized agents (RSPs) who can assist in booking the rail tickets in a quick, efficient and transparent manner while also protecting them from being overcharged, from the comfort of their homes. The petitioner's website and mobile application are stated to have been designed in such a manner that any potential traveler may even be connected to an RSP having the preferred language skills as preferred by the customer. The traveler is put in touch with such RSP through mobile phone which is also stated to be the preferred mode by a large number of travelers who may otherwise be unable or unwilling to undertake a

purely online transaction.

16. It is their case that the petitioner No.1 conducts its business strictly in compliance with the extent rules and regulations set in place by the respondent IRCTC as well as by other Govt. / regulatory entities. They ensure digital safety and security of all their customers by following all RBI regulations in relation to online payment services. It is stated that the RSPs follow a strict protocol while issuing Electronic Reservation Slip to the customers which conforms to prescribed IRCTC format. In other words, there is no difference between the manner in which the RSPs book e-ticket, whether for physical walk-in customers or for customers that are directed to the RSPs through the petitioner's digital platforms.

17. It is further stated that the RSPs using the petitioner No.1's digital platform never solicit the customer as is prohibited by the respondent's rules. It is only the potential ticket purchaser who on expressing interest to purchase a railway ticket is directed through the petitioner's platform to contact the authorized RSPs, who are associated with the petitioner No.1. The booking procedure as followed by the petitioner No.1 is that when contacted by a potential customer, the RSP confirms the availability of the ticket sought for and upon confirmation by the passenger books the same using its own access credential on the

respondent's booking engine / interface. The petitioner No.1 does not book any ticket but merely facilitates such booking and payment therefor. The petitioner No.1 charges a nominal *"market access fee"* on the tickets so purchased and in case of cancellation, the cancellation charge as stipulated by the respondent IRCTC is refunded to the customer.

18. It is their case that action of respondent (IRCTC), as noted above smacks of arbitrariness, malafides and high-handedness apart from being illegal and have caused grave loss both of reputation and money to the petitioners. The loss of business reputation is not only limited amongst its associates but also among the large number of consumers, who use the petitioner No.1's platform. Nowhere in any of the respondent's rules is a RSP prohibited from using his own initiative and enterprise to expand his business by seeking legitimate lead generating avenues.

19. According to the petitioners the respondent has failed to see the public good done by them and is acting as if all aspects of railway ticket booking howsoever remote they may be from the respondent's mandate under the MOU entered into with the Ministry of Railways are its personal fiefdom and is intimidating and bullying the petitioners.

20. In the affidavits dated November 10, 2017 the petitioners have mentioned cases of certain RSPs associated with them that have been

targeted by the respondent on several grounds mainly (i) booking through unauthorized website / app Railyatri.in and (ii) sharing ID credentials with Railyatri.in and consequently their respective accounts have been de-activated. It is also stated that no show cause notice was issued to any of the RSPs prior to such action.

21. The petitioners have additionally filed an affidavit dated November 14, 2017 wherein case of Mr. Deepak Suri, an RSP operating under the RSP, ITZ Cash has been brought to light. It is stated that the said RSP has already filed W.P. (C) 8625/2017 before this court wherein an interim order dated September 25, 2017 was passed whereby he was protected against de-activation by the respondent. It is stated that on October 9, 2017, the said RSP received a ticket booking enquiry through the petitioner No.1's website from one Mr. Vishal Singh. An Electronic Requisition Slip was electronically filled out and electronically signed by him and accordingly, a ticket was booked and sent to the customer. Additionally, the said RSP also asked the customer to provide a copy of his ID proof via e-mail. Despite efforts, the said RSP could not obtain a copy of the customer's valid ID. It is stated that said customer was only a decoy and a ploy of the respondent IRCTC with an ulterior motive of leading the said RSP into violating one of the rules of the ticket booking policy whereby RSPs are mandated to maintain customer IDs. It is

stated that nowhere in any of the respondent's policies is it mandated that a ticket would be supplied by an agent only on production of an ID proof by the concerned passenger. It is stated that following the inability of the RSP to maintain the said customer's ID, his access credentials were de-activated w.e.f November 9, 2017. This action of the respondent according to the petitioner is in clear violation of the undertaking given and recorded in this court's order dated September 25, 2017. Further on November 13, 2017, another RSP associated with the petitioners namely Ms. Annu Kumari has been blacklisted and prevented from accessing her booking account seemingly on similar grounds. An RTI query was filed with the respondent by another RSP namely Ms. Geetika Suri asking about the specific rule that prohibits an RSP from booking tickets for online customer. In response dated September 22, 2017, the respondent has stated that an RSP can only *"book ticket in the normal flow in which customer will physically approach at the outlet of the RSP and RSP should maintain the written / electronic requisition slip at their outlet and copy of ID proof of the customer is to be kept for six months"*. A further follow up RTI query regarding specific rule prohibiting a customer from booking a ticket with an RSP without actually being physically present evoked the response that *"ticket can only be booked when customer approaches"*. It is stated that no such specific rule exists whereby a customer is mandated to approach the concerned RSP physically.

22. In the affidavit dated December 22, 2017, the petitioners have brought to light similar cases of other RSPs whose accounts have been de-activated on one pretext or the other by the respondent / IRCTC.

Counteraffidavit by IRCTC

23. The case of the Respondent IRCTC in its counter-affidavit is that it is a wholly owned Public Sector Enterprise of the Indian Railways which operates Railways in India and permits carriage of passengers on the railway trains by way of licence issued to them in the form of railway tickets as prescribed in Chapter-VIII of the Railways Act, 1989. The respondent managed e-commerce business on behalf of the Ministry of Railways and has been given the mandate to issue e-ticket / i-ticket through its e-commerce website. It is stated that for the said purpose the respondent has set up its web portal, i.e., *irctc.co.in* which is in addition to the physical counters which are still operated by the Railways. It is stated that the petitioner No.1 does not offer any independent e-ticket to passengers through its platform due to lack of an independent relationship with the Ministry of Railways but seeks to sell the respondent's property, i.e., e-tickets owned by the respondent IRCTC from its website by charging an additional fee from the passengers. It is

pointed out that the petitioner No.1 has not obtained any permission from the respondent IRCTC to book / sell its e-tickets.

24. According to the respondent it does not owe any public or statutory duty towards the petitioners arising out of any previous commercial relationship and therefore the present writ petition is not maintainable for lack of an underlying foundation in law to maintain an action under Article 226 of the Constitution. Further, *locus standi* of the petitioners to challenge the respondent's action in safeguarding its own property from third parties is challenged. It is also stated that the facts as averred in the writ petition are highly disputed in nature and can be tested only by way of evidence in appropriate proceedings and the same cannot be determined in proceedings under Article 226.

25. The respondent is stated to have entered into an MOU with the Railways for carrying out certain functions as noted above and with the employment of advanced technologies, the respondent has expanded its operations to provide more ways and means for booking a railway ticket to members of the public. For the said purpose respondent has put in place various business models through the following three schemes:

1. Internet Café Scheme (ICS)
2. Business to Business Scheme (B2B)
3. Business to Customer (B2C)

Under the ICS Scheme, the respondent appoints a PSP who in turn appoints an RSP acting as an agent of the PSP and functions as a retail outlet offering e-ticket booking facility from its premises to customers who do not wish to travel all the way to a railway station to physically obtain a ticket for travelling on trains. It is therefore stated that a direct contractual relationship / understanding exists between the respondent and the PSP by virtue of which a PSP is authorized to deal with the respondent's property, i.e., access to its website and to carry out the e-ticketing business on its behalf. Further certain rules and regulations are also incorporated into the said commercial contracts by way of annexures which prescribed the permissible activities that can be carried out by service providers, i.e., PSP/RSP.

26. It is stated that according to the respondent's rules and regulations and contractual stipulations as referred to above, a PSP / RSP cannot share his ID (access credentials) with any third person as this is essential to maintain the integrity of the system being operated by the respondent as well as to prevent misuse of any confidential information to the benefit / advantage of any third party. This is in light of the fact that the respondent's website is connected to Indian Railways Information System maintained by CRIS (Central Railway Information System) which is confidential in nature.

27. Access to the respondent's website is given by a PSP to an RSP under a separate agreement but with the essential condition remaining that a PSP has to ensure that all activities of an RSP are also within the ambit of the principal grant by the respondent to the PSP as well as in compliance with the Railways Act, 1989 and various commercial circulars issued by the Railway Board. As such a PSP is bound under the agreement to control the activities of its RSPs. RSPs associated with the respondent's website through a PSP are required to follow certain mechanism for booking tickets, which includes accepting and maintaining electronic requests alongwith copy of ID proof from customers for both booking and cancellation of tickets. An RSP is further required to issue an Electronic Reservation Slip (ERS) according to the prescribed format; a receipt for the amount collected from the customer on its own stationery (including the railway fare); IRCTC service charges; agent service charges; and payment gateway charges etc.

28. It is stated that a complaint was received on the twitter handle of the then Railway Minister from one Mr. Raj Kumar Gupta who claimed to have booked a ticket from the petitioner's app, but a refund for the same had not been received back upon cancellation despite a significant period having been passed. Upon enquiry the respondent found that the

said ticket had been booked by an RSP M/s. Sahara Tours and Travels Hub registered in the name of Mr. Vijay Tiwary and registered with the PSP M/s. G.I. Technology Pvt. Ltd. It was further found that the said RSP was sharing its access credentials with the petitioner for the purpose of booking tickets. Consequently in accordance with e-ticketing service provider policy a penalty was imposed upon the PSP for sharing access credentials with the petitioner and for the non-refund of cancellation amount to the customer by its RSP. It was at this stage that the respondent became aware of the misappropriation of its property by the petitioner in collusion with several RSPs.

29. It is stated that the respondent conducted a check of the ticket booking process flow on Railyatri.in and a ticket was booked on its website by respondent's team. During further investigation by the respondent's anti-fraud team several instances of misuse of access credential by various RSPs came to surface and the natural step of safeguarding its own property was carried out by the respondent, i.e., de-activation of IDs (access credentials) of various RSPs. In this context, it is the respondent's case that all concerned PSPs have accepted the penalty as imposed and have also deposited the same.

30. A preventive check is stated to have been carried out by the respondent along with CIB/RPF, Delhi (E) on August 8, 2017 at the

petitioner's office on the basis of complaint of non-refund of cancellation amount against a booked ticket. Subsequently a notice was issued to the petitioner on August 23, 2017 asking it to stop the unauthorized service immediately. A complaint was also lodged with the Cyber Crime Cell, New Delhi.

31. It is stated that the petitioner No.1 itself is unauthorized for conducting the e-ticketing business and therefore all the content displayed on its digital platform is without permission of the railways and the respondent. The petitioner is therefore stated to be deriving undue commercial gains and benefits from property of the respondent. The information as used and displayed are the sole property of Indian Railways and the respondent and use without any prior permission amounts to misinterpretation / fraud and overcharging to the customer. Further, information regarding rail e-tickets given on the petitioner's platforms is false and misleading and in such eventualities the respondent becomes responsible to address the customer's complaints. The respondent's action of imposing penalty on PSP and de-activation of RSP's IDs is stated to have been taken to avoid situations of non-refund cases to customers and safeguard interest of the respondent / railways.

32. The average cost of a ticket is said to be ₹1,200/- and on a daily

basis 20-25% of e-tickets are said to be cancelled which leads to the involvement of a huge amount of money which has to be refunded to the customers. Significant finances are at the disposal of RSPs and other agents booking on behalf of the respondent and therefore the chances of fraud in case of unauthorized agencies getting involved in collection of money for ticket booking process and non-refunding in case of cancellation are enormous. Since the respondent is currently responsible for the e-ticket booking process, the action of permitting an unauthorized agency to accept money from the customer would tantamount to fraud being played on member of unsuspecting public. Non refund of concession amount at a large scale would lead to serious financial fraud the magnitude of which would only surface at a later stage when a large number of customers have been cheated of their money.

33. Reliance is placed on Section 143 of the Railways Act, 1989 to state that all activities pertaining to sale of railway tickets including the activities of procuring and supplying them is barred and consequently any arrangement providing for procurement of railway tickets would also be illegal. According to the respondent, the petitioners business model even as contended by them would be barred as is expressly covered by the said provision. It is the case of the respondent that it would be incorrect to state that the petitioner is merely providing a digital platform

to facilitate market place based e-commerce business activity and is in no way involved in the business of actual booking of railway tickets. According to the respondent, the petitioner provides for railway tickets to be booked on its website as opposed to the booking being done by a potential passenger with the concerned RSP independently. Further, a potential customer is required to call a landline number which is maintained by the petitioner and after giving the necessary details he has to make a decision based on ticket availability and price information as collected by the petitioner No.1 and not by an authorized RSP. Moreover, the booking confirmation for the concerned ticket is also issued by the petitioner via email and SMS and not by the concerned RSP; the entire commercial activity right from advertising its business of booking tickets to actually selling it to a potential customer and the consequent collection of consideration for the sale is also being done by the petitioner. It is in light of these facts that the respondent states that the activity of booking a railway ticket is actually being outsourced by the concerned RSP to the petitioner which is completely impermissible under the extent of Rules and Regulations.

34. It is stated that RSPs are not permitted or authorized to associate engage or interact with any third party or for dealing, transacting or selling the respondent's property i.e. e-tickets and any contractual

relation entered into with regard to such activities would be void ab initio and illegal. It is further stated that the petitioner is also offering certain value added services without having obtained due permissions and authorization from Indian Railways or the respondents namely live train status, PNR status, confirmation chance, live arrival / departure and seat availability etc. According to the respondent, such information is based on dynamic data depending on the number of tickets booked or cancelled all over India on an hour to hour basis and accurate data in this regard cannot be provided without having access to either the railway information system or the respondent website. The petitioner is also stated to be overcharging the customers using the nomenclature 'convenience fee' which is over and beyond the maximum permissible fee as has been fixed by Ministry of Railways. Yet another activity that is stated to be illegally carried out by the petitioner No.1 is the delivery of food items to passengers in train compartments and railway platforms which activity cannot be undertaken without having obtained due permission from the railways in the form of license for utilization / usage of their sole and exclusive property.

35. It is stated that the petitioner's business model is completely illegal being entirely based on using the respondent's property and the said activity is in direct competition with the respondents business

activities causing serious loss to them and other PSPs who have entered into commercial arrangements with them having paid valuable consideration for the same. Moreover, the petitioners activity is also stated to deceive members of the general public by creating an impression that such activities are being carried out with prior permission and sanction of the railways and respondents. The respondent has put in place B2B, B2C, and its own website IRCTC.CO.IN to cater to such segment of customers who would want to book e-tickets without having to physically go to a railway station or a retail outlet. According to the respondent, the fact that the petitioner is conducting its activity through a website while in compliance with extent RBI Regulations relating to online payments would not confer any legitimacy on its operations and it would still amount to usurping and misappropriating the respondent's property as also the enormous goodwill generated by them.

36. The respondent is stated to have taken only necessary steps to safeguard its own property as well as to protect its financial interests by taking such actions including deactivation of credentials of RSPs, who were found to have been indulging in activities as noted above. It is stated that the respondent does not have any direct contractual relationship with an RSP and therefore, the question of an RSP being

mandated to maintain a minimum balance with the respondent would not arise in any manner. Certain financial arrangements for the purpose of facilitating booking of e-tickets do exists between the respondent and a PSP in terms of the commercial contracts entered into between them. However, the same cannot be read to mean that the respondent would also be privy to the financial arrangements exiting between a PSP and its RSP. It is further denied that the respondent has pressurized any payment gateway service provider into discontinuing its services as provided to the petitioner.

37. In conclusion it is stated that during the pendency of present writ petition, the respondent through the course of its investigations has found evidence of illegal activities as referred to above on part of several RSPs and appropriate action has also been initiated against them.

<u>Rejoinder</u>

38. The petitioners have filed rejoinder affidavit on February 22, 2018 wherein it is stated that a railway ticket does not constitute 'property' of the respondent in any manner and it is merely a license issued by the railways, and not the respondent, to travel on a train. It is further pointed out that in terms of the MOU entered into between the respondent and the railways more particularly Commercial Circular No. 73/2001, the respondent is, amongst others the promoter and facilitator

for IT related ticketing services. It is reiterated that the petitioner No.1 is in no manner involved in the business of procurement and supply of railway ticket in any manner and is in fact an e-commerce market place facilitator providing a platform for a prospective traveler and a ticket booking agent to get in touch and that such activity can not fall within the ambit of Section 143 of the Railways Act, 1989 in any manner. It is stated that the actual booking of the ticket in every condition happens only on the respondent's website / portal.

39. It is their case that there are no disputed questions of facts involved and the only legal issue that remains to be determined is whether the respondent could arbitrary deactivate access credentials of any of the RSPs associated with it without having first given them an opportunity to make their case, thereby crippling the petitioner's e-commerce business even when there has been no express violation of any prevailing law, Rule or Regulation.

40. According to the petitioners rather than hindering business of the respondent it is in fact widening the reach and availability of railway tickets to all sections of society even in places where there are no brick and mortar ticket outlets or places without access to internet. Moreover, the petitioner No.1's services assist those who may not be tech savvy or even educated and ultimately it is the revenue of the respondent that is

optimized as more genuine passengers are booking tickets by connecting with the respondent's authorized agents. The petitioners have further denied that there is any sharing of access credential with any of the RSPs or that there is any improper access or use of the respondent's website. The petitioners further state that despite repeated allegations of the same, the respondent has failed to ever reveal or prove the manner in which such unauthorized sharing of access has been done. In any case, it is stated that the petitioner would not require sharing of subject access credential as only the initial interaction takes place between them and a prospective customer / the purchaser is directed to an RSP. The RSP is stated to provide its services to a customer directed through the petitioner much in the same way as it does to one who approaches it directly. The petitioner is merely a 'lead' generating service engaged by an RSP.

41. In response to the instances of violations of the respondent's Rules and Regulations by various RSPs the petitioners state that as on date more than 97% of the refunds are processed by RSPs and paid through the petitioner's platform within 24 hours of cancellation as opposed to two / three days taken by the respondent IRCTC itself. The petitioners state that it has clearly mentioned on its website that it is not associated in any manner with the respondent and further that prospective customers would be liable to pay a *'convenience fee'* over

and above the cost of the ticket. The respondent is therefore, seeking to justify its illegal and arbitrary action against the petitioner and the RSPs under the guise of suspicion and scare mongering without there actually being a violation of any terms / conditions / rules or law.

42. The petitioners further deny that prospective customers are required to call a landline phone number maintained by them. It is stated that the petitioner in fact provide a virtual cloud telephony PBX service for the benefit of RSPs to automatically connect incoming call from a potential customer. Therefore, a call made by a customer is never handled by the petitioner but is in fact automatically routed to any RSP that might be available at the given time. Further, the ticket confirmation / status messages as sent by the petitioner are in addition to those sent by the respondent. Merely because payment facility, call Centre, telephony services or hosting of the product for sale is handled by an intermediary it cannot mean that it is the intermediary that has sold the product itself. As regards the averment of the respondent that provision of accurate data with regard to live train status, booking confirmation chances etc. is based on dynamic data which can be obtained only with access to railway information systems or the respondent's own network, it is the petitioners case that such information is provided, based on mathematical probability algorithms which have further been refined by

the petitioner by using techniques such as artificial intelligence and machine learning.

43. The petitioners state that the respondent is presuming the existence of a monopoly in its favour and by the impugned actions seeks to crush all competition. Moreover, once an RSP is blocked / deactivated / blacklisted it automatically results in money of the RSP also being blocked and frozen indefinitely. RSPs are nothing but sub agents of the respondent and this is in nature of an agency coupled with the subject matter which cannot be terminated to the prejudice of the sub agent in terms of the Section 202 of the Indian Contract Act, 1872. The petitioner further refers to Annexure P-12 which is a legal notice dated August 11, 2017 sent by paytm to the petitioner wherein the respondent's role is clearly spelled out.

W.P.(C) 8562/2017, W.P.(C) 8570/2017, W.P.(C) 8598/2017, W.P.(C) 8613/2017 and W.P.(C) 8625/2017

44. W.P.(C) 8562/2017, W.P.(C) 8570/2017, W.P.(C) 8598/2017, W.P.(C) 8613/2017, and W.P.(C) 8625/2017 have been filed by RSPs associated with RailYatri.in (Stelling Technologies), whose RSP agencies (and related access credentials) have either been terminated / suspended, or are apprehending such action on part of IRCTC. The petitioners are all similarly placed, except for the fact that the petitioner

in W.P.(C) 8625/2017, i.e. Mr. Deepak Suri has approached this Court apprehending such action, while the petitioner in all other petitions have already been deactivated. For the purpose of convenience, and as agreed to by all counsels appearing, Mr. Deepak Suri's petition is treated as the lead matter, in the cases pertaining to RSPs.

<u>W.P.(C) 8625/2017</u>

45. The petitioner herein is an RSP duly appointed by M/s Interactive Tradex Pvt. Ltd. respondent No.2 (a PSP) since August 2017 and is involved in the business providing e-ticket booking services. The respondent No.2 is a PSP under an agreement with the respondent No.1 in terms of its B2B scheme for the said purpose. The respondent No.3 herein is the petitioner No.1 in W.P.(C) 9864/2017, it is stated that in September 2016 the petitioner and the respondent No.3 entered into an agreement whereby the respondent No.3 was to assist the petitioner in its e-ticketing business and was to direct any enquires in that regard to the petitioner. Consequent thereto, the petitioner was to directly book railway tickets for concerned passengers according to their need and specifications. Respondent No. 3 is stated to simply bring together proposed sellers and purchaser of products, and in the instant case, the booking of e-tickets by a passenger, with a duly authorized e-ticketing agent, such as the petitioner herein. Respondent No. 3 also additionally

provides support services on its digital platforms, such as logistics and payment collection. The respondent No.3 is therefore stated to be merely a facilitator of business while not actually involved in the ticket booking process.

46. It is stated that under the aforesaid B2B scheme, the respondent IRCTC appoints certain PSPs who in turn have to pay a sum of ₹25 Lacs for such appointment along with an annual deposit of ₹6.25 Lacs. The PSP may in turn further appoint 250 to 500 RSPs who also deposit amounts varying from ₹6,000/- to ₹10,000/- for such appointment. The contractual relationship as existing between the PSP and respondent IRCTC also mandates that the PSP has to ensure that all RSPs appointed by it must follow all the extent rules and regulations and commercial circulars issued by the respondent No.1 and the Ministry of Railways. As such there is no direct privity of contract between respondent No.1 and an RSP such as the petitioner herein. It is stated that even though the subject Rules provide for a show cause notice to be issued for an irregularity, the same are quiet as to whom the said notice was to be issued i.e. the PSP or the RSP who is alleged to have committed the irregularity.

47. It is stated that in actual practice even for allegations against an

RSP respondent No.1 takes refuge in the fact that there exists no privity of contract between them and therefore, a show cause is issued only to the concerned PSP without even informing the RSP about the allegation and the action proposed to be taken against him. Ultimately, punitive action be it fine or deactivation is visited on the RSP who is condemned unheard.

48. It is stated that upon being appointed as an RSP a digital certificate also called the 'access credential' in the form of a dongle is provided and the machine ID of the RSP is also registered by the registering authority appointed by respondent No.1. This is to check wrongful access of the respondent's system and misuse of the credential by any third party. Using the said credential an authorized RSP such as the petitioner herein can directly log on to the respondent No.1's web portal for booking a ticket. A prospective ticket buyer is directed by respondent No.3 to the mobile phone of the petitioner and following further interaction a ticket is booked by the petitioner directly according to the needs of the customers.

49. It is categorically denied that the petitioner has ever shared his access credentials with the respondent No.3 or transferred his ID. The petitioner only charges the rates as prescribed by respondent No.1. The electronic reservation slip as also the receipt of the money paid are

issued to the customers in the prescribed format. The petitioner is stated to have associated with the respondent No.3 only to augment his income by making use of the opportunity to expand his business and book more tickets even while strictly adhering to the extent rules and regulations as prescribed by respondent No.1. It is stated that at every step of the process disclaimers are displayed to the effect that respondent No.3 is in no way associated with the railways or respondent No.1 and that a nominal market access fee would be imposed upon the customers for facilities such as online payment gateway services being provided.

50. It is stated that the petitioner learnt that several RSPs associated with respondent No.3 were proceeded against by the respondent No.1 in the form of deactivation of concerned RSP agency without affording them any hearing whatsoever. Certain fines were directed to be paid by the concerned PSPs and the RSPs were to be permanently deactivated and debarred. Apprehending such action without following due procedure of law, from respondent No.1 the petitioner herein has filed the present writ petition. Respondent / IRCTC has not filed a counter-affidavit to the petitions filed by the respective RSPs, however, detailed submissions as addressed by Mr. Majithia, learned counsel for IRCTC have been dealt with below in succeeding paragraphs.

Counter-affidavit by respondent no.2 in W.P.(C) 8625/2017

51. The respondent No.2, who is the concerned PSP associated with the petitioner herein has taken the stand in its counter affidavit that its own contract and agreement with respondent No.1 is not a subject matter of the present writ petition and that respondent No.3 and the petitioner had clandestinely entered into a commercial agreement thereby creating an agency which was prejudicial to the interest of the other respondent. It is stated that the respondent No.3 while styling itself as a facilitator of e-commerce market place business is in fact an authorized entity trading and earning revenue in connivance with the petitioner. An impression is sought to be created wherein the petitioner is portrayed as an agent of respondent Nos.1 and 2 when in fact it is acting like a sovereign. Further, it is stated that development of an app without express authorization of the respondent No.1's portal is a glaring illegality and may have severe privacy issues.

52. The petitioner having diverted from the specified procedure for the purpose of booking tickets was issued notices by respondent No.1 informing him of the deactivation of his access credential and therefore, the respondent No.2 is stated to have no role to play in the matter. Moreover, all the commercial contracts involved in the matter i.e. PSP/respondent No.1 and PSP/petitioner have incorporated arbitration

clauses and therefore, the maintainability of the present petition is challenged. The dispute at hand is an ordinary commercial dispute and would fall under the domain of private law.

Submissions of Mr. Jayant Bhushan

53. Mr. Jayant Bhushan, learned Sr. Counsel appearing for the petitioner in W.P.(C) 9864/2017 i.e. M/s Stelling (in short) would submit that the notice of the IRCTC to it, asking it to stop booking of tickets on its website and stating that its activities in running the website are illegal and further suspension of access credentials of RSPs associated with the petitioner has had a direct effect on its business and therefore the present petition is certainly maintainable. He reiterates that M/s Stelling is not involved in the business of directly booking train tickets and merely operates an e-commerce platform i.e Railyatri.in for bringing together a purchaser and an RSP to book tickets. The payment made by the customer is forwarded by M/s Stelling (Railyatri) to the RSP who then further forwards the same to the respondent IRCTC. The ultimate booking is done by the RSP concerned. All electronic payments involved are done in accordance with Govt. of India guidelines for FDI on e-commerce and extend RBI guidelines.

54. He would state that none of irregularities as contemplated by IRCTC e-ticketing policy are attracted by the business model as set in

place by M/s Stelling. There is merely an unsubstantiated charge of sharing of access credentials by the concerned RSPs with M/s Stelling (Railyatri), however, nothing has been put on record in support of same. The price charged for every ticket is exactly according to the rates prescribed by IRCTC and only a small commission is charged to the customer by M/s Stelling for the convenience of using its website, which is a contractual relationship.

55. It is his submission that IRCTCs argument of interpreting the mandate, *"ticket should be booked only when the customer approaches"* to mean that a customer must physically approach an RSP for booking a ticket is totally misconceived in today's day and age specially when Government is promoting the concept of Digital India. It would be absurd to suggest that the policy must be read in a restricted and unreasonable manner as indicated above. He would point to the counter-affidavit filed by IRCTC wherein it has been stated that the B2B and B2C Models have been specifically envisaged to cater to such passengers who wish to book e-tickets from the comfort of their homes. Further the contention that booking receipt must be issued on the RSPs own stationary would not hold much water once it is accepted that a ticket can be booked even over the internet from a, remote location. According to him a reasonable view has to be taken while interpreting

the subject clauses of concerned policies while leaving out small formal requirements contrary to the main spirit thereof.

56. As regards the contention that M/s Stelling is usurping the role of Service Providers under the B2C Scheme, it is his submission that there is a fundamental difference between the operations undertaken by such Service Providers (for example Makemytrip, Justdial etc.) and M/s Stelling (Railyatri) inasmuch as the Service Providers booked tickets themselves whereas M/s Stelling has a platform (Railyatri) for bringing together the customer and the RSP. Further a Service Provider is paid ₹20 to ₹40 for every ticket booked, whereas M/s Stelling charges only a small convenience fee to the extent of 1.25% of the ticket amount.

57. He would state that Railway tickets are only a licence to travel on trains and by no stretch can such tickets be construed to mean to be property of IRCTC. Further assuming that M/s Stelling does get some profit indirectly through the sale of Railway Tickets it cannot mean that such benefits arise out of unauthorized use of IRCTCs property. In support he would present a hypothetical situation wherein an employee of an RSP benefits by getting salary. In such a scenario the employee is benefitting indirectly from the business of sale of tickets but it cannot be said that the said employee is benefitting on account of sale of IRCTCs

property or that IRCTC's permission would be required prior to hiring any such employee.

58. Mr. Bhushan would reiterate and emphasize that a ticket is only booked by an authorized agent and that the full value of the ticket is paid to IRCTC. As regards allegation of violations in terms of Section 143 of Railways Act, he would submit that M/s Stelling does not carry on the business of procuring and supplying tickets for travel on Railways. Further the context under which the said provision was framed makes it clear that it was to prevent touting of railways tickets and then reselling to customers later on. It would not apply in a situation where the customer is genuine and a request is made by him for booking a ticket, which is ultimately done by an authorized agent only. Even as per commercial circular no. 64 of 2002 issued by the Railway Board a person is permitted to purchase a ticket through an attendant or an authorized person and he does not himself have to be physically present at the point of booking. In such circumstance, according to him, a violation under Section 143 would never be made out. He would rely on a judgment of Kerala High Court in ***Mathew K. Cherian v. State of Kerala, 2016 SCC Online Ker 31556***.

59. According to him the thrust of IRCTCs case is that any booking even though done by an RSP at the behest of a customer through M/s

Stelling would be illegal and the allegation that M/s Stelling itself is booking tickets through misuse of access credentials of authorized RSPs is merely a supplementary submission to defend its case. A simple investigation can easily be undertaken to pin point IP addresses of computer systems used for the purpose of booking tickets. In case, it is actually found that an unauthorized computer system has been used for the purpose of booking tickets, access credentials having been illegally shared, such misuse would be actionable and IRCTC would be within its rights to take action against such illegal sharing of access credentials. However, in the present matter no specific instance of such illegal sharing has been shown.

60. He would state that Railyatri provides a virtual cloud telephony PBX service for benefit of RSPs to automatically connect an incoming call from a potential customer. Such a call is not attended by M/s Stelling and is automatically routed to any RSP that might be free at that time. According to him this service is similar to that of a "Call Centre" as envisaged in Govt. of India Guidelines on FDI. According to him FDI Policy, effective from August 28, 2017, provides for 100% FDI in market place model of e-commerce and M/s Stelling's Railyatri would be covered under the same. Moreover, restrictions as envisaged in Clauses 5.1 and 5.2 would not apply to M/s Stelling because the phrase

"Railway Operations" would necessarily mean integral processes involved in running of railways.

61. As regards complaint of non-refund of cancellation amounts as raised by IRCTC, he would submit that delayed refunds have been a perennial problem plaguing IRCTC. Specific instances as re-counted by the respondent IRCTC have duly been answered by M/s Stelling mainly on the ground that delays happened only in few cases depending on specific facts and circumstances of each case. He would submit that live train status, seat availability, PNR information and other such data is not proprietary to IRCTC and that such data is openly available on indianrail.gov.in which is managed by CRIS. Moreover, M/s Stelling has its own technology for the purpose of obtaining live train running status. Information with respect to PNR confirmation probability as presented by M/s Stelling to a customer is based on algorithms using historical data of tickets booked for the concerned period and is in no way accessed from confidential internal networks of the respondent IRCTC.

62. Mr. Bhushan would state that the petitioner cannot be excluded from entering into any ancillary or side business venture which has not been declared as a state monopoly under Article 19 (6) of the Constitution of India. IRCTCs stand that M/s Stelling's business has

caused a decline in the footfall on IRCTC's website cannot be a ground to impose restrictions on its business model. Further any such restriction would be contrary to the provisions of the Competition Act, 2002.

63. In conclusion he would state that the present matter does not involve any disputed questions of fact but in fact rests upon disputed principles namely whether a market place based e-commerce entity can carry on a business incidental to a sector declared as state monopoly and whether M/s Stelling's business model is in fact violative of any of the extent policies of the respondent IRCTC.

Submissions of Mr. Sanjay Jain.

64. Mr. Sanjay Jain, learned Sr. Counsel as briefed by Mr. Mandeep Singh Vinaik, Adv. appearing for the petitioners in W.P.(C) Nos. 8562/2017, 8570/2017, 8598/2017, 8613/2017 & 8625/2017, apart from reiterating the stand taken in the respective petitions would submit that the crux of the respondent IRCTC's case is that ticket bookings were being undertaken through the Railyatri app, which is not an authorized app. Upon such allegations being leveled by the respondent IRCTC and without having given an opportunity to the respective RSPs punitive action was taken against concerned RSPs thereby de-activating their access credentials and debarring them from accessing the respondent's network for the purpose of booking of railway tickets. Moreover, in

certain cases IRCTC had already blocked access credentials of RSPs even before show cause notices were issued to them.

65. He would endeavour to portray the ticket booking process as conducted by an RSP as follows:

i. Upon entering into a contract with a PSP an RSP is given access credentials in the form of a pen drive / dongle. When a customer approaches the RSP the said dongle is attached to the RSP's own PC and using such credentials he is able to log onto the respondent's website using a unique user ID and password as provided by the PSP.

ii. He would point out that such booking is done on a website created by a PSP which is in fact a mirror image of IRCTC's website. The payment system is embedded in the PSPs website, which functions as an online wallet.

iii. Having logged into the website the RSP fills up the necessary details of the passenger and proposed itinerary based on which the website shows the real-time options of trains available at that point of time.

iv. The RSP then interacts with the traveler to ascertain the final choice and thereafter submits the details and seeks to pay through the wallet.

iv. At this stage, the PSP's site directs the RSP to log-in using the IRCTC id and Password (which is also unique to every RSP). Once the RSP has entered the correct user id and password the payment is instantaneously done and the ticket is booked. A PNR number is generated and the same is forwarded to the customer through SMS.

66. Mr. Jain would submit that the process undertaken by an RSP is much simpler than the one that is available to a prospective customer, i.e., by logging on to IRCTC's website and following several steps in pursuance of booking a ticket successfully. According to him, the fewer steps as undertaken by an RSP (as opposed to the multiplicity of steps in the process undertaken by an individual customer) would in fact lead to lowering the burden on the respondent's network. Moreover, an RSP also helps reduce the number of simultaneously logged in customers seeking to book tickets.

67. Mr. Jain would submit that "access credentials" is not a software which can be hacked or illegally shared but is in fact a physical dongle / pen drive provided by PSP to an RSP. Being merely a platform developed to connect a customer with an RSP, it would be impossible for such credentials to be shared with M/s Stelling's website.

68. According to him, the petitioner / RSPs can also not be held to be guilty of using technology to gain unfair advantage. This is because as indicated in

the procedure stated above an RSP can perform only one booking at a given time and not multiple bookings simultaneously. He would also reiterate that nowhere in the respondent's rules is it mandated that a prospective customer must physically approach an RSP for the purpose of booking a ticket.

69. He would state that M/s Stelling charges a bare minimal amount of fee ranging from 0.07 percent to 1 percent of the total booking fee as "convenience fee". He points out the same is not collected by the RSP but is in fact charged by M/s Stelling and is not included as part and parcel of the ticketing fare. The mere representation of the fee so collected on the ticket, not forming part and parcel of the ticketing fare, cannot be said to be "overcharging". Moreover, such convenience fee is also charged by contemporary websites such as Cleartrip.com, Makemytrip.com etc.

70. According to him, the respondent's action in de-activating the petitioner RSPs access credentials even prior to issuance of show cause notice smacks of malafides and it is contrary to the principle of natural justice and therefore the entire process would stand vitiated. In this regard he would rely on ***Gorkha Security Services v. Govt. of NCT of Delhi 2014 9 SCC 105, Reliance Telecom ltd. v. Union of India 2017 4 SCC 269*** and ***Smt. S.R. Venkataraman v. Union of India and Anr. 1979 2 SCC 491.***

71. He would state that there is no privity of contract between an RSP and IRCTC, but even in such a case RSP is in the nature of a sub-agent. The RSP

may seek relief with respect of any decision of IRCTC which affects the RSP. Reliance is placed on ***Tashi Delek Gaming Solutions Ltd. and Anr. V. State of Karnataka and Ors. 2006 (1) UJ 209 (SC).*** He would further rely on ***Kamgar Sabha v. State of Goa and Ors. W.P. No. 243/1995*** and ***Gulam Abbas and Ors. v. State of Uttar Pradesh and Ors. 1982 1 SCC 71*** to state that this court in exercise of its power in writ jurisdiction can declare an RSP such as the petitioner to be sub-agent of IRCTC.

72. It is further submitted that the respondent IRCTC's stand that it has an exclusive right as regards supply of e-tickets on payment of fare on account of such tickets being its "exclusive property" with proprietary rights attached thereto is erroneous and misconceived inasmuch as IRCTC has no right to refuse supply of tickets except in circumstances as prescribed under Section 56 of the Railway Act, and in terms of Section 50 of the Railway Act, IRCTC is obligated to supply tickets on payment of fare and has no discretion to decide whether such ticket is to be sold or not. He would also draw reference to Clause 8 of the API agreement entered into between IRCTC and concerned PSP to submit that in terms of the said Clause no intellectual property or any other proprietary rights would accrue to either party and that a PSP will not sue IRCTC for any claim (a) pertaining to intellectual property that the PSP might develop being based on or related to the PSP agreement and (b) which may arise in connection with use by PSP for purposes covered under the

agreement. According to him, the said clause therefore merely secures an undertaking from the PSP against legal action. The said clause further states that all IP rights on API Specifications and IRCTC websites (besides services and any derivative work created thereof) would vest with IRCTC alone. Said rights are not sub-licensable, transferrable or assignable unless otherwise stated in the PSP agreement. Mr. Jain would further fault the respondent's reliance on clauses 3.1, 3.4 and 3.7 of the PSP agreement inasmuch as according to him the said clauses merely mandate that IRCTC's website would only be accessed for lawful purposes and that a PSP would not in any manner alter, reproduce, license or create any derivative work from sale or transfer of any information, products or services obtained therefrom. It is further mandated that a PSP shall not create any hyperlink to the website and that in terms of clause 3.4 any obligation placed on the PSP would also be an obligation placed on a customer thereof. It is therefore his submission that such obligations therefore relate only to the PSP's customers and not its agents. As regards clause 3.7 Mr. Jain would submit that only activities which are premised on deceit, misrepresentation, misfeasance, inducement, cheating etc. are contemplated to be covered and it in no way deals with infringement of any IP rights. According to him in the regime of online ticket booking where the fare amount is either pre-paid or simultaneously credited to the account of PSP on purchase of each ticket, the possibilities visualized in clause 3.7 do not arise. Moreover, according to him nothing would turn out of clause 3.1 of the PSP agreement in the present context since there has been no modification, copying, distribution, transmission, display, performance, reproduction, publication, licensing, assignment or creation of derivative work from the transfer or sale of any information, product or services obtained from IRCTC's website. This is not even the case in the show cause notice issued to the PSPs.

73. It is Mr. Jain's submission that the allegation of violation of IP rights is therefore only vaguely referred to without identifying the exact nature of the alleged right being violated and the manner in which such violation is alleged to have occurred. Moreover, details of any financial loss having occurred have also not been furnished. It is submitted that data used by Railyatri.in is either self-generated or otherwise available in public domain and in any event RSPs do not provide Railyatri any access to the IRCTC website nor is there any sharing of access credentials. In terms of IRCTC's B2B model, a PSP appointed thereunder pays a pre-determined amount to IRCTC for appointing sub-agents like RSPs and it is in this manner that IRCTC expands its network of providing de-centralized customer points to facilitate ticket booking. According to Mr. Jain, it is therefore, none of IRCTC's concern as to whether third parties like Railyatri, who are not under any contract with them, provide ticket facilitation services on their own platform and monetize the information

available in public domain or that which is self-generated. He reiterates that respondent IRCTC has completely glossed over the fact that every information (PNR details, seat availability and real-time train position) is available in public domain namely, through the website indianrailways.gov.in. In conclusion, he would submit that the arrangement between RSPs and third party entities such as Railyatri is only a win-win situation for IRCTC because it is earning more revenue through RSPs and there is no guarantee that it would have earned the same additional revenue but from the customers added by the said third party entities. According to him, there appears to be no motive for IRCTC to step in, in the present scenario, apart from some collateral motive to eliminate the aforesaid third party entities at the behest of other players such as makemytrip.com.

74. As regards the question of maintainability of the present writ petition Mr. Jain would state that the writ petition has been filed against the respondent No.1/IRCTC over the illegal and unlawful deactivation of petitioner's ticketing account without having given a legal and lawful reason to do so and without having afforded a reasonable opportunity to make its case. It is submitted that respondent No.1 operates as a monopoly in the area of railway ticketing. It appoints PSPs as its agent who further appoint RSPs as sub agents and therefore no direct contractual relationship exist between an RSP and respondent No.1. In case of any alleged default by an RSP, action is

taken against the PSP by respondent No.1, however, the same is effective against the RSP as in the instant cases, they were deactivated without any show cause notice or hearing being afforded. It is stated that there is no other alternative and more efficacious remedy against the aforesaid action as the concerned rules of respondent No.1 do provide for a show cause notice to be issued prior to action being taken, however, it is not specified as to who it must be given to. In effect therefore, a sham show cause notice is issued to a PSP without the RSP ever being called upon for an explanation.

75. It is therefore submitted that it is in this context that the petitioner has approached under writ jurisdiction to safeguard his own employees and livelihood against the arbitrary, mala fide and illegal orders of deactivation being passed by respondent No.1 being in complete violation of principle of natural justice.

76. Reliance is placed on ***R.D. Shetty vs. the International Airport Authority, AIR 1979 SC 1628; Ajay Hasia vs. Khalid Mujib Sehravarddi, (1981) 1 SCC 722; Som Prakash vs. Union of India, AIR 1981 SC 212*** to state that respondent No.1 is an instrumentality of state and therefore, amenable to writ jurisdiction. Further, reliance is placed on ***Tata Cellular vs. UOI, (1994) 6 SCC 651, Harbanslal Sahnia vs. Indian Oil Corporation (2003) 2 SCC 107; ABL Intl. Ltd. vs. Export Credit Guarantee Corporation of India Ltd., 2004 (3) SCC 553*** to state that even where alternative remedy

in the form of arbitration clause is available the same may be subject matter of writ jurisdiction in cases were the subject action is in violation of principle of nature justice and fundamental rights. Reliance is also placed on (i) ***Chairman Railway Board and Anr. vs. Chandrima Das and Ors. (2000) 2 SCC 465***; (ii) ***Noble Resources Ltd. v. State of Orissa and Anr. (2006) 10 SCC 236***; (iii) ***M.P. State Agro Industries Development Corp. Ltd. and Anr. v. Jahan Khan (2007) 10 SCC 88***; (iv) ***Saraswati Deswal vs. State of Haryana and Ors. (2010) 2 SCC 126*** to state that availability of alternative remedy would not be bar to exercise of jurisdiction under Article 226 of the Constitution by this Court, if actions of the respondent are shown to be manifestly unfair, arbitrary, unjust, non-transparent and discriminatory.

77. According to him, respondent No.1 has taken / wants to take coercive action against the petitioners merely because they are accepting ticket booking requests from genuine travelers through the web portal / app of Railyatri (Stelling Technologies), which activity is not prohibited under any statue, law or rules / regulations of the respondent No.1 or the Ministry of Railways. Relying on ***Ambuja Hotels and Real Estate Pvt. Ltd. vs. IRCTC, W.P. (C) 726/2009***, decided on April 16, 2009; ***D.K. Yadav v. J.M.A. Industries Ltd. (1993) 3 SCC 259*** and ***Uptron India Ltd. v. Shammi Bhan 1998 (6) SCC 538***, Mr. Jain would submit that respondent No.1 being an instrumentality of state is bound to issue a show cause notice and duly follow

principle of natural justice even where there is automatic application of a norm / clause.

Submissions of Mr. Nikhil Majithia.

78. Mr. Nikhil Majithia, learned counsel appearing for the common respondent IRCTC would in addition to the stand already taken in the counter-affidavits state that IRCTC has invested ₹1171.05 Crores to develop the online eco system around its website for the purpose of conducting commercial transactions including sale of e-tickets for rail travel. IRCTC has the exclusive mandate to sell e-tickets having also been given the rights to authorize other persons / entities for the purpose. In order to further exploit the use of internet and increase its outreach to sell e-tickets, IRCTC has developed its business models namely ICS, B2B and B2C schemes. It is under these schemes that PSPs and RSPs are appointed with the objective of leveraging the internet and allied technologies to provide ease of access to potential customers. Where a customer is not comfortable booking tickets directly on IRCTC's website on his own he may resort to booking the tickets through such RSPs. To execute the aforementioned models, IRCTC has entered into commercial contracts with various commercial entities such as Cleartrip, Makemytrip, Paytm, Justdial, Kotak Mahindra Bank, ITZ Cash Card Ltd. and several others. He would submit that these commercial entities

have paid huge sums to be associated with IRCTC under the different business models which is a significant source of revenue for IRCTC.

79. He would submit that M/s Stelling's core activity is dependent upon sale of e-tickets and if there were no e-tickets to sell or no IRCTC website, it would have no business activity. M/s Stelling has not paid any fees for being associated with IRCTC or any other fee for being integrated into its network. According to him, M/s Stelling is unauthorizedly selling tickets and operating a business in open market by misutilizing IRCTC's property. M/s Stelling has approached this court without having established any legal right to deal with IRCTC's property seeking a declaration that its activities are legal. According to him M/s Stelling's action in associating with different RSPs is to the detriment of concerned PSPs who have set up their infrastructure but the fruits of investments made by PSPs are being reaped by M/s Stelling.

80. Mr. Majithia would state that the entire ticket booking process is carried out on M/s Stelling's platforms as it issues an e-ticket. The customer logs on to M/s Stelling's website, fills in all the requisite details, goes through information, availability of trains and then complete the process of booking the railway ticket on its website only. Moreover, M/s Stelling also accepts the money for booking the e-ticket directly from customer. In this regard, he would make a reference to a similar case before the European Court of Justice which had rule that Uber was not merely a phone application enabling a user

to connect with owner of a car, in fact the entire manner of process of booking a cab on Uber resembles an actual taxi service and would therefore be bound to comply with extent rules and regulations imposed on the traditional taxi owners.

81. He would draw my attention to a complaint regarding non-refund of ticket cancellation amount by M/s. Stelling on July 13, 2017. On further investigation it was found that several RSPs had been booking e-tickets for M/s Stelling in violation of rules and regulations set out by IRCTC and without due authorization either from IRCTC or PSP. The violations found were:

(i) RSPs were booking ticket without obtaining any requisition slip from the customers.

(ii) RSP was booking ticket without taking identity proof from the customer such as driving licence, PAN, Aadhar, etc.

(iii) RSP was not providing Electronic Reservation Slip (ERS) to the customers.

(iv) RSP was not providing any money receipt for sale of e-ticket on its letterhead.

It was after these violations being found by the anti-fraud team of IRCTC that show cause notices were issued to concerned PSPs on account of the fact that under the agreement between IRCTC and PSPs, a PSP was responsible for all activities of its own RSPs. The PSPs being unable to furnish information regarding tickets, booked by the anti-fraud team that a decision was taken to permanently de-activate the concerned RSPs. Consequently penalty was also imposed upon the concerned PSPs. During the investigation it was also found that several RSPs were found sharing their access credentials with M/s Stelling.

82. Mr. Majithia would also point out that the information regarding live train status, seat availability, ticket confirmation probability etc. as displayed on M/s Stelling was exactly the same as is visible on irctc.co.in. According to him this is a clear indication of the fact that M/s Stelling is accessing IRCTCs website and systems without due authorization or permission and such misuse of access credentials is completely illegal and amounts to theft and misappropriation of property.

83. Mr. Majithia has further challenged the very maintainability of the petition filed by M/s Stelling. He would state that IRCTC having entered into private arrangements with various PSPs with a view to expand its own business of sale of e-tickets cannot be said to be discharging a public or statutory duty. Further there is no privity of contract between IRCTC and M/s Stelling and therefore there is no corresponding duty or obligation owed to it. In such a case a writ petition cannot be used for the enforcement of a duty which does not exist. He would also state that the present petition arising out

of commercial relationships existing between various parties would not be maintainable on the same ground and the respective parties must be relegated to pursue their remedies under ordinary civil law.

84. He would state that the present petition involves highly disputed questions of facts concerning working of technical systems and other related technologies, the workings of which cannot be ascertained without the help of proper examination of systems by technical experts. According to him, the arrangement of booking e-tickets from M/s Stelling's website has to be examined with a view that in today's times technology permits control of one computer system from another system remotely. It is submitted that the manner of working as claimed by M/s Stelling is strongly disputed by IRCTC and the same can be verified only by leading evidence which would be dependent on forensic examination of M/s Stelling system along with the concerned RSP's systems. According to him, all this would ouster writ jurisdiction.

85. Mr. Majithia would submit that roughly 6.8 lac e-tickets are booked through IRCTC's systems everyday with the total amount in circulation being ₹816,000,000/-. It is therefore very important to control activities of unauthorized persons / entities. Absence of regulation of their activities would undoubtedly lead to situations where huge amounts of public money is

either siphoned off by other commercial entities or misappropriated.

86. He would draw my attention to Commercial Circular Nos. 56/2008 and 13/2010 issued by Railway Board which exempt only individual users booking their tickets directly through IRCTC's website from providing identify proof at the time of booking of the e-ticket. Such customers can book only up to 8 e-tickets a month whereas there is no restriction on the number of tickets that can be booked by an RSP. It is in this scenario that rules and regulations have been framed governing the activities of PSPs / RSPs and strict compliance is sought. It is pointed out that none of the policies, rules or regulations have been assailed by any of the petitioner and therefore it would not be open to anyone to obliquely avoid them.

87. Relying on Section 143 of the Railways Act, Mr. Majithia would submit that the arrangement as set up by M/s Stelling for the purpose of sale of e-tickets clearly involves procurement of tickets by an unauthorized person. Challenging M/s Stelling's reliance on FDI policies, he would submit that clauses 5.1 and 5.2 of the same clearly stipulates that no amount of FDI is permissible for railway operations. Sale of tickets is an integral process of railway operations and therefore no entity can indirectly deal with prohibited sectors.

88. In conclusion he would submit that IRCTC has been given the exclusive right to provide catering services on railway premises and trains

vide Commercial Circular No. 57/2015. According to him, M/s Stelling's claim of providing similar e-catering services is yet another example of their illegal and unauthorized activities indicative of an intruder seeking to unjustly enrich itself at the cost of the owner.

89. In response to the petitions filed by the RSPs Mr. Majithia would submit that in terms of the MOU entered into with the Railways IRCTC is the only entity that is authorized to not only act as an authorized agent of the Railways for the purpose of ticketing but is also vested with the rights and responsibilities of overall development, management and marketing of IT-based ticketing, e-commerce and allied services. Section 60 (g) of the Railways Act gives authority to IRCTC as an extended arm of the Railways for regulating the travelling upon, use, working and management of the Railways. Based on these duties and authority, IRCTC has the power to authorize a person / entity to engage in a business involving Railway property.

90. He would submit that the sale of e-tickets is strictly regulated by IRCTC in order to prevent any unauthorized and illegal access and usage of railways property for the conduct of any business whatsoever which solely thrives over the business of IRCTC, i.e., sale of e-tickets. IRCTC has, all through these years of service to its customers, built a goodwill and reputation in the regime of e-ticketing in India. Unauthorized and illegal usage of

IRCTC website and data available on it is most detrimental to its business interest because it is unchecked and can lead to substantial loss of goodwill and reputation of IRCTC. The conduct of sales of e-tickets is a subject that ought to be strictly regulated since it involves funds of the public, and in a welfare state, the core principle is that of the Government or State's liability towards public welfare. Therefore, the regulations must be airtight, in so far as to avoid any kind of misfeasance and defaults which may ultimately degrade and affect the quality of service offered to the public.

91. He would submit that whole nature of business of M/s Stelling mushrooms from years of research and hard work put in by IRCTC and Railways in developing an appropriate electronic ticketing experience. Website of IRCTC is its original creation and it ensues with it intellectual property rights and related protections against unauthorized usage of all information and data contained therein in the nature of copyright which exists on its own and the registration of which is not mandatorily required. According to him IRCTC would retain all IP rights including copyrights on API specifications and IRCTC websites besides IRCTC services and any derivative work created thereof. In this context it is absolutely clear that express permission / authorization of IRCTC is mandatorily required for any usage of its website and information available thereon to conduct a business restricted to the terms and conditions of such usage as agreed upon by IRCTC

and the authorized party or licensee.

92. Mr. Majithia while referring to RSP agreement, as relied upon by the concerned RSP, would submit that the RSP is under a clear obligation to not modify, copy, distribute, transmit, display, perform, reproduce, publish, license, assign, create derivate works from, transfer or sell any information, products or services obtained from the IRCTC website. According to him, the very act of RSPs engaging with M/s Stelling, whose whole business relies upon IRCTC's website and the data/information contained thereon, is directly in contravention of contractual obligations and terms of IRCTC. Even if RSPs were not actually sharing their access credentials with M/s Stelling, which is still a moot point, the mere fact that they were aware of the nature of business activity being conducted by M/s Stelling makes the RSPs liable for each breach of the obligations they were supposed to comply with.

93. Mr. Majithia would also point to a case wherein an RSP had been found to be misusing the access credentials issued to him as he was functioning as a tout. The concerned RSP also admitted to RPF that he had made some 15 fake IDs on IRCTC website for the purpose.

94. It is submitted that show cause notice was issued to respective PSPs when certain violations were found in the manner of operations of IRCTC website and access granted to respective RSPs. It is only after being unsatisfied with the responses furnished by PSPs that IRCTC took the action

of imposing penalty on them and permanently deactivating access credentials of the RSPs concerned. In conclusion he would submit that the role of an RSP is akin to a sub-licensee with whom there is no direct relationship with the owner / licensor. However, the licensor still retains the right to take action to secure the subject matter of the license which is being used by the sub-licensee if it finds that it is being used contrary to terms of the original license or contract.

95. Challenging the locus and maintainability of the petitions filed by the respective RSPs Mr. Majithia would submit that an RSP being appointed by a PSP is granted access to IRCTC's websites and systems by the PSP itself and the respondent No.1 has no role to play in the matter except that the PSP is required to ensure that all activities of the RSP remain within the ambit of principle agreement entered into between the PSP and the respondent No.1. Therefore, the nature of contract between IRCTC and PSP also defines and limits the nature of activities that can be undertaken by an RSP. It is submitted that the respondent No.1 took the natural step of safeguarding its property by deactivating the access credentials of the concerned RSPs upon coming to know they were also booking e-tickets for third parties without any prior permission or authorization.

96. There is no privity of contract between the RSP and IRCTC and all the rights accruing in favour of the RSP flow out of the commercial relationship

between the PSP and its RSPs. The alleged violation of any such right would result in civil remedy being resorted to where the nature of alleged right would first have to be established. In the absence of such a right existing expressly qua IRCTC, a writ petition cannot be resorted to, to first create and then enforce such a right. Even so under the existing commercial relationship among the parties involved civil courts of Delhi have been conferred exclusive jurisdiction. Reliance in this regard is placed on ***Rajasthan State Industrial Development and Investment Corporation vs. Diamond and Gem Development Corporation Ltd. (2013) 5 SCC 470.***

97. It is also submitted that the RSP would further not have any *locus standi* to file the present writ petition as the concerned PSPs have accepted the penalty imposed by respondent No.1 and have also willingly deposited the said amounts. Prior to deactivation of erring RSPs show cause notices were duly issued to the concerned PSPs and the PSPs having opted to comply with the order of respondent No.1, a third party such as the petitioner herein cannot assail the same before this Court. Reliance placed on ***K.K. Saxena vs. International Commissioner on Irrigation and Drainage (2015) 4 SCC 670*** to submit that in respect of a commercial activity being under taken even by state instrumentalities a writ petition would not be maintainable.

<u>Submissions of Ms. Isha Bhalla.</u>

98. Ms. Isha Bhalla, learned counsel appearing for respondent no.2 in

W.P.(C) 8625/2017 would submit that the present dispute is an ordinary commercial dispute subject to jurisdiction of a civil court. According to her the concerned RSP is hand in glove with M/s Stelling and is seeking enforcement of contract, which is not amenable to writ jurisdiction.

99. In the face of financial commitments made by a PSP for being associated with IRCTC, permitting a third party to avail commercial advantage through backdoor of private agreement with an RSP is abuse of the process of law and nothing short of jumping the queue for unjust enrichment at the cost of the concerned PSP.

100. She would submit that the RSP as well as M/s Stelling are seeking privileges of a tout, which is expressly forbidden by Section 143 of The Railways Act. Mere use of creative agreements would not change nature of the activities undertaken by them, and the same would clearly fall afoul of the extant Rules and Regulations of IRCTC and the Railways. According to her, the continuation of the arrangement as existing between the concerned RSPs and RailYatri is not only illegal, but also clearly opposed to public policy.

101. Ms Bhalla would rely on ***Joshi Technologies International Inc. Vs Union of India & Ors.*** to submit that the present disputes flow out of private agreements, and writ jurisdiction cannot be resorted to for enforcement of the same. Moreover, arbitration clauses being incorporated into the said agreements, the present petitions deserve to be dismissed.

102. In conclusion, she would submit that M/s Stelling, under the garb of "convenience fee", is imposing a levy on the general public, without the sanction of law as required by Article 264 of the Constitution. The present issue concerns highly disputed questions of fact, which cannot be decided in writ jurisdiction.

Reasons and conclusions.

103. Before I deal with the rival submissions advanced before me, it is necessary to delineate some relevant facts in brief, to appreciate the controversy, which arises in this batch of petitions.

104. The respondent IRCTC entered into an MoU with the Ministry of Railways to carry out functions related to booking of tickets by employing advanced technology. The IRCTC had put in place various models through the following three schemes:-

1. Internet Café Scheme (ICS)
2. Business to Business Scheme (B2B)
3. Business to Customer (B2C)

Under the ICS Scheme, the respondent appoints a PSP who in turn appoints an RSP acting as an agent of the PSP and functions as a retail outlet offering e-ticket booking facility from its premises to customers who do not wish to travel all the way to a railway station to physically obtain a ticket for travelling on trains. A contractual relationship / understanding exists between the respondent IRCTC and the PSP by virtue of which a PSP is authorized to deal with the respondent's property, i.e., access to its website and to carry out the e-ticketing business on its behalf. This relationship is regulated by Rules and Regulations and is also incorporated in commercial contracts by way of annexures which prescribe the permissible activities that can be carried out by PSP/RSP. In terms of the rules and regulations / policies, a PSP is authorized to appoint a particular number of RSPs. Their relationship is also governed by contract. Having said that, it is important to note some of the rules and regulations and also some provisions of the contracts executed between the IRCTC / PSP / RSP, as also some of the features of the circulars / policy guidelines issued by IRCTC.

MEMORANDUM OF UNDERSTANDING BETWEEN THE MINISTRY OF RAILWAYS AND IRCTC FOR TICKETING

X X X X X X

***AND WHEREAS** the **MOR** has identified certain areas of business interest viz IT enabled retail ticketing and other allied travel, tourism and ticketing products in transport sector. The expertise developed in this area will be useful for Indian Railways and can be marketed to other railway systems world over and any other transport companies like Bus companies or airlines, etc.*

***AND WHEREAS** the IRCTC will provide quality services and take marketing initiatives to raise revenues have reached an understanding as following:-*

MoU given below is for the purpose of IT enabled ticketing and marketing of passenger service / tourism products.

1.1 The purpose of this MoU is to set up the general principle of the Association for the development of IT enabled ticketing and related systems in transportation sector and jointly raise the resources for the same.

*1.2 **Role of MOR** - The MOR agrees to permit IRCTC to enter into the business of IT enabled services.*

*1.3 **Role of IRCTC**- IRCTC will act as a promoter and facilitator for all the IT related ticketing and allied products in transportation sector and may for this purpose enter into business agreements with service providers / corporate bodies etc.*

1.4 IRCTC will also develop marketing function for Indian Railways in customer related areas including ticketing for reserved segment and E-Commerce.

1.5 IRCTC will be permitted to charge a suitable premium on each ticket. However, the capital for this enhanced system will have to be arranged by IRCTC through suitable mechanism.

The entire hardware and software technology as well as maintenance, development and upgradation along with the kiosks will be looked after by IRCTC through suitable mechanism.

1.6 Separate working arrangements will be drawn up between MOR and IRCTC from time to time which would contain the modality and methodology of working, financing, revenue sharing (if any), respective responsibilities and roles, code of ethics, security and connectivity issues, and all other allied matters to provide e-services and Retail ticketing in customer interface areas and marketing of IT related *ticketing and other products for promoting mutual business or market it to third parties. The specific working arrangement would also specify manner of disbursement of receipts and revenue arising out of the activities as well as respective liabilities and deposit of the fare due to Railways in prescribed manner.*

Agreement between IRCTC and PSP

(Clause 3.7)

It is obligatory on the part of the Second Party to control the activities of their sub agent. The Second Party shall be equally liable for all civil and criminal liabilities of their sub-agent. If at any stage the sub-agent of the Second Party indulges in any fraudulent activity like (but not restricted to) collection of excess charges, alteration of fares on the tickets, issue of duplicate ticket etc. Then the second party shall also be liable for such activity of their sub agents and IRCTC shall be free to take any action under civil and criminal law.

Termination

*9.1 The Second Party will have to control the activities of their sub agents. In case of **any alteration or tampering with the ERP Slip the same is punishable U/s 420 Indian Penal Code** for which the second party as well as the agent are liable. The second party shall also be liable for the offence committed by their agent who indulge in any fraudulent activities including (but not restricted to) collection of excess charges, alternation of fares on the ticket(s), issue of duplicate tickets. The second party will have to control the activities of their sub-agents. On receipt any complaint against sub agents* *the action taken on sub agent shall also be taken on second party including deactivation of their user id.*

Agreement between PSP and RSP

1. *Both parties shall comply to all applicable rules / regulations of Indian Railway Catering and Tourism Corporation (IRCTC)*

Agreement between RSP and Railyatri

Recitals

1. *RailYatri is engaged in the business of providing information and technology solutions to its users through its websites and mobile application, and is operating as an E-commerce market place.*

2. *RailYatri under this agreement is an intermediary, and acts like a facilitator between the traveller (Buyer) and seller (Travel Agent), to provide support services on its digital and electronic platforms, like logistics, call center and payment collection, to the Travel Agent, as permitted by the Government of India's March, 2016 Guidelines for conducting E-commerce.*

3. *Travel Agent is in the business of booking bus ticket, train tickets, flight tickets, travel packages & related ancillary services / products as is a registered Retail Service Provider with IRCTC, and desires to use RailYatri's E-commerce market place platform to expand its business, which Travel Agent Warrants to RailYatri it is entitled to do.*

Agreement

1. RailYatri will provide its E-commerce marketplace and its attendant digital and electronic networks to the Travel Agent, and act as a facilitator between prospective traveller who may visit RailYatri's E-commerce website or mobile application, and the Travel Agent. The ticket will be booked by the Travel Agent (directly or through its affiliates) based on requirement specified by the Buyer, in terms of its license with IRCTC. RailYatri will only provide marketing information, payment, communication and support services to Travel Agent.

2. RailYatri will provide an online dashboard to the Travel Agent for performance management and monitoring.

3. Compliance with Indian Railway Catering and Tourism Corporation (IRCTC) Regulations

A. Travel Agent represents and warrants that he / she is an authorized ticket agent and is registered with IRCTC in this regard.

B. Travel Agent will be responsible for availing / renewing all applicable IRCTC licenses from time to time, and will ensure compliance to all IRCTC rules and regulations in relation to ticket booking.

C. Travel Agent will charge only prescribed IRCTC charges to users.

D. Travel Agent will book tickets only using IRCTC registration / license. In case any booking made other than this mechanism, then Travel Agent will be responsible for all commercial and statutory / governmental liabilities, including and not limited to *refund to RY User / RailYatri a penalty equivalent to gross ticket price (including all charges, commission, fee, etc.)*

E. *Travel Agent agrees to indemnify RailYatri in case travel agent violates any norm / rule / regulation of IRCTC and any directive / order is issued against RailYatri by any authority.*

F. *Travel Agent shall ensure that all Electronic Reservation Slips (ERS) issued by the Travel Agent using RailYatri's platform conform to the format prescribed by IRCTC.*

G. *Travel Agent shall ensure that cancellation procedures prescribed by IRCTC are followed.*

4. ***Payments***

A. *xxxxxxx*

B. *Travel Agent authorizes RailYatri to collect value of products / services from Buyer, which RailYatri will then remit to Travel Agent as Settlement Amount. RailYatri will pay the Travel Agent the ticket booking amount and all authorized amounts charged by the Travel Agent to the Buyer like IRCTC's service charges, agent's service charges.*

C. *Travel Agent authorises RailYatri to collect and retain with itself charges for marketplace services as per the guidelines issued by Government of India, Ministry of Commerce, Department of Industrial Policy and Promotion, Press Release Note No.3, dated March 29, 2016.*

D. *RailYatri will remit the settlement amount to Travel Agent within the time frame mentioned in RBI notification RBI/2009-10/231 DPSS.CO.PD.No. 1102/02.14.08/2009-10 dated November 24, 2009. RailYatri may extend line of credit or advance(s) to Travel Agent prior to sale of service / product, and the settlement amount will then be adjusted from such line of credit or advance(s).*

E. *In case of refund / cancellation, the amount owed by Travel Agent to RailYatri will be adjusted in settlement amount. RailYatri will directly make a refund to the Buyer.*

5. ***Bookings, Cancellations and RailYatri's Special Offer to Buyer***

A. *xxxxxxx*

B. *xxxxxxx*

C. *RailYatri, in the course of providing the above-mentioned E-commerce services, will also be offering Buyer choosing to book railway tickets, the added facility (Special Offer), of making partial payments for booked tickets, with the balance (Balance Payment) being paid to the Travel Agent by RailYatri for and on behalf of the Buyer, on terms and conditions entered into between RailYatri and the Buyer, where under the Travel Agent will receive its agreed settlement from RailYatri.*

i. *In case of cancellation of ticket as per contractual agreement between RailYatri and Buyer, the Travel Agent will be pre-authorized by the Buyer to deposit the cancellation refund to RailYatri, for onward transmission to the Buyer by*

RailYatri, after deduction of the Balance Payment, paid by RailYatri to Travel Agent, and any facilitation / financing fees, as may have been contracted between RailYatri and the Buyer.

ii. The contractually agreed cancellation schedule between the Buyer and RailYatri will be at least 5 days prior to the date of travel, in case the Buyer does not pay RailYatri the Balance Payment for the ticket which has been paid to the Travel Agent by RailYatri on behalf of the Buyer, at least 5 days before the date of travel.

D. In case the Buyer pays the Balance Payment for the ticket booking to RailYatri at least 5 days prior to the date of travel, then the cancellation rules of the railway authorities shall apply to any cancellation done by the Buyer between 5 days and the date / time of travel, and full refund money as per railway authorities rules, which shall be deposited by the Travel Agent to RailYatri, will be refunded to the Buyer. However, the financing / facilitation fees will still be deducted for the availed Balance Payment made by RailYatri for and on behalf of the Buyer.

*7. **Communication***

A. RailYatri will notify the Ticket Agent through dashboard, SMS and E-mail. Such notifications may be service request of new booking cancellations, changes to existing ticket, etc.

12. The parties are entering this Agreement as independent contractors, and this Agreement will not be construed to create a partnership, joint venture, or employment relationship between them. Neither Party will *represent itself to be an employee or agent of the other or enter into any agreement or legally binding commitment or statement on the other's behalf or in the other's name.*

A. *It is clearly agreed and understood by the Parties that Travel Agent is not creating any sub agency with RailYatri and RailYatri has no liability or privity of contract with IRCTC, merely by reason of entering this agreement and providing its platforms to the Travel Agent.*

B. *The Travel Agent is neither providing RailYatri access credentials to the web services of IRCTC, nor transferring Travel Agent's ID to RailYatri.*

C. *The Travel Agent is merely using RailYatri's platform to enhance its rail ticket booking capacity, and Travel Agent will be solely responsible for following all Rules and Regulations stipulated by IRCTC for its Retail Service Providers, including ensuring that using RailYatri's platform does not interfere with the software provided to the Travel Agent by IRCTC.*

D. *The Travel Agent understands and agrees that the covenants agreed to herein, including the provisioning of the special offer by RailYatri to Buyer booking on RailYatri's E-commerce platforms, does not violate or breach any of its contractual / license obligations with IRCTC*

13. ***Confidentiality***

A. *xxxxxxx*

B. *It is expressly provided that login credentials (username – password) issued by IRCTC to Travel Agent shall never be disclosed or shared or provided by Travel Agent to any party including and not limited to RailYatri and it's employees.*

C. *No license or conveyance of any rights to the Receiving Party under any discoveries, inventions, patents, trade secrets, copyrights, or other form of intellectual property is expressly granted or implied by the disclosure or exchange of information between the parties.*

Extant Rules and Regulations

Do's for the Service providers

Mandates for Registration

- *Registration as an RSP (Retail Service Provider) in IRCTC is issued for booking of E-Tickets only (except RTSA agents, who are authorized by Railways).*

  It is essential to prevent sharing of IDs by PSP/RSP. Hence, Digital certificate and machine ID of RSP will be mandatory for registration.
- *IRCTC's rules and regulations are to be read properly and followed strictly. Ignorance of the same cannot be considered as a valid reason. The Principal Service Provider (PSP) / RSP must be fully aware of the extant rules.*

  Mandates for Booking / Cancellation of Tickets
- *The RSP must ensure that the transaction (Booking or cancellation) is done with the complete knowledge and acceptance of the customer.*

- *It is mandatory for all RSPs to maintain the written / electronic requests and a copy of the ID proof from the customers for both booking and cancellation of the tickets.*
- *The ERS issued by all the PSPs / RSPs should be strictly in the format prescribed by IRCTC. ERS issued by the PSP / RSP should contain name and full address contact details of the same RSP and the name of the PSP.*
- *RSPs must issue receipt of their own stationary for the amount collected from the customers.*
- *The receipt should contain details like* ***Railway Fare, IRCTC's service charges, agents service charges, payment gateway charge*** *etc. (The service Tax as applicable on the agents service charges should be shown separately in the receipt).*
- *Service charges of PSP / RSP includes booking as well as cancellation transaction.*

<u>Mandates for the PSP</u>

- *PSP should ensure proper antecedent and character / credential verification before appointing RSP and keep a record of these documents and should be able to provide them to IRCTC as and when required. A declaration to this effect has to be submitted by the PSP at the time of registration.*
- *It will be obligatory on the part of the PSP to control the activities of their RSP. The PSP will be equally liable for all civil and criminal liabilities of their RSP.*
- *PSPs with or without web services should keep a close watch on the conduct of their RSPs and in case of receipt of complaint against any*

RSP by the customers then the agent ID should be deactivated at the operators end immediately under intimation to IRCTC.

- *PSP must monitor each RSPs activity. PSPs will have to conduct decoy checks on 1% of its RSPs every month. Penalty of Rs.50,000/- multiplied by shortfall of decoy checks in a month will be imposed on PSPs.*
- *PSPs should educate their RSPs regarding rules and regulation of IRCTC or about ticket booking software (in case of web services agents) etc.*

Dont's for the Service providers

- *Sharing of access credentials to web services is strictly prohibited. Transfer of agent ID given to RSPs by IRCTC or PSPs is Prohibited and IRCTC will initiate action against the agent group if found guilty in such matters. Punitive action will be initiated as mentioned in the Annexure 'A'.*
- *RSPs should not book tickets using any other wrong ID except only through IRCTC provided agent ids. RSPs if found to be using wrong id, then their ids will be deactivated immediately. Punitive action will be initiated as mentioned in the Annexure 'A'.*
- *Book of benami e-tickets is strictly prohibited (anybody doing so will be prosecuted).*

As per clause 3.7 (B2B) and 4.5 (Internet café) agreement(s) which inter alia provides that the PSP shall be equally liable for all civil and criminal liabilities of their RSP. If at any stage the sub-RSP of the PSP indulges in any fraudulent activity like (but not restricted to) collection of excess charges, alteration of fares on the tickets, issue

of duplicate ticket etc. Then the PSP shall also be liable for such activity of their RSPs (and IRCTC) shall be free to take any action under civil and criminal law". The said clause will be applicable if the mandates are not followed by the PSP / RSP, and following punitive action will be taken by also invoking the clause 9 (B2B) and 10 (Internet café) of agreement(s):

i) Irregularities Committed by PSPs

S.No.	*Nature of Irregularities*	*Rule*
Major Irregularities		
1.	*X*	*X*
2.	*Un-authorised access Sharing of access credentials to web services, Unauthorised Sale of Agency, etc.*	*1.A penalty of Rs.20,000/- per complaint will be imposed and* *2. The RSP ID of such outlet will be permanently deactivated and* *Cases involving cyber act violations will be reported to Cyber Crime Police as well as RPF*
3.	*Point of sale fraud-complaints of*	*1.A penalty of Rs.20,000/- per complaint will be imposed*
4.	*Non compliance of Booking/cancellation mandates – For other fraudulent activities such as faking as a normal user and booking on website using multiple user IDs, Manipulation of ERS, sale of 1 Tickets, Booking of benami tickets, Transfer or resale of tickets, blocking accommodation giving fictitious names, cancellation of ticket without the knowledge of customer, Non filing of TDR on request of Customer*	*1.A penalty of Rs.20,000/- per complaint will be imposed and* *2. The RSP ID of such outlet will be permanently deactivated* *3. Case will also be referred to RPF if found indulge in touting activity using personal ID*
Minor Irregularities		

1.	*Non compliance of other mandates Any agent outlet, if found without proper display of sign board indicating the IRCTC instructions viz Service charges, Payment gateway charges, without registration certificate being displayed, non issuance o money receipt etc.,* *In the case "Address Mis-match" of the agent* *Any advertisement in print or press media without prior permission from IRCTC in writing. Misuse of IRCTC LOGO without prior permission from IRCTC*	*A penalty of upto Rs.5,000/- per complaint and in the first instance RSP will be given a warning and in the second instance RSP ID will be permanently deactivated.*
2.	*If any of the RSPs found not booking tickets (non-transacting agents) for six months after registration*	*IRCTC will deactivate such Sub user ID permanently with the consent of the PSP*
3.	*If PAN No is not provided by any existing PSP or RSP within the stipulated time.* *If verified details like address, PAN No. along with ID Proof is not provided by New PSP or RSP*	*Such RSP agency will be disabled till such time the PAN No. is provided to IRCTC.* *Registration will not be processed.*
4.	*Other provisions*	*If complaints are received and proved against 5 different RSPs of PSPs in 01 month then a show cause notice will be issued.* *If between 6-10 complaints are received and proved against different RSPs of a PSPs in 01 month then a PSP will be deactivated for 01 month.* *If between 11-15 complaints are received and proved against different RSPs of a PSPs in 01 month then a PSP*

		will be deactivated for 03 month. If two such incidences are reported, the PSP will be permanently deactivated. *If more than 20 complaints are received and proved against different RSPs of a PSPs in 01 month then the services of the PSP will be terminated for 06 months. If two such incidents are reported, the PSPs will be permanently deactivated.* *However, i) the number of instances for imposing penalty will be counted based on date of occurrence of incidence as against date of reporting.* *ii) The complaints arising out of bookings made through PSPs IDs will only be counted for penal action against PSPs* *iii) the complaints arising out of bookings made through Personal IDs will be taken up through RPF under Railway Act for touting activity. Such complaints for tickets booked on personal ID will not be counted for the purpose of suspending PSPs on the criteria of number of complaints.*

ii) Irregularities Committed by RSPs

For irregularities committed by RSP, necessary action will be taken against respective PSP also in addition to whatever action (like deactivation of RSP as decided by competent authority) taken against RSP. However, in case of criminal activity of RSP, necessary action will be taken by IRCTC through RPF against RSP.

105. From the above, it can therefore be concluded that IRCTC has been mandated by the Ministry of Railways (MOR) with a sole aim of developing and implementing advanced technologies for the purpose of modernizing its ticketing processes. MOR is further seen to be interested in developing its business in the said area by utilizing technology and further aims to market the expertise so developed. IRCTC has been authorized to sell tickets on its digital platforms and for the same, it may develop suitable systems and processes while also engaging third party entities to maximize business. The responsibility to maintain, operate and with time upgrade the said systems and processes rests solely with IRCTC. IRCTC has been given the exclusive mandate to sell tickets to prospective travelers (which is in addition to MOR operated ticket counters).

106. Under concerned policies, IRCTC has been permitted to engage certain PSPs, who act as its agents, in furtherance of the stated objectives being the provision of IT enabled ticketing services to the masses. The PSP is mandated to follow all the extant rules and regulations relating to rail ticketing set in place by IRCTC. The PSP may further appoint RSPs to maximize its own reach while also further acting on and aiding the aforenoted objective.

107. It is, however, seen that IRCTC obligates the PSP to control the activities of its RSPs while also ensuring that the RSP complies with the

extant rules and regulations set in place by IRCTC. Accordingly, in their agreement PSPs and RSPs mutually agree that both parties shall at all times comply with applicable rules and regulations of IRCTC.

108. IRCTC has set in place detailed guidelines with regard to the standards of confidentiality to be followed by both the PSPs and RSPs relating to login and access credentials provided to them, the violation of which entails various penalties and punitive action. It is to be noted that even in case of a violation by an RSP, a PSP would be held equally liable and proceeded against.

109. In the agreement between RSPs and M/s Stelling (RailYatri) it is recorded M/s Stelling is merely a business facilitator that provides an e-commerce platform to its customers for efficient transaction of business and wider reach and access into the market. For the said purpose, M/s Stelling has developed its own set of technologies and processes and now markets the same to prospective customers, which are the RSPs in the present matter.

110. RailYatri and the RSP have also mutually agreed that the RSP shall at all times comply with extant IRCTC rules and regulations and that under no circumstances shall the RSP ever share or disclose its login IDs or access credentials provided to it by IRCTC.

111. Having noted the relevant provisions of the Rules / Regulations and the Contract, before I answer the rival contentions of the learned counsel for the parties on merit, it is necessary to deal with the submission raised by Mr.

Majithia on the maintainability of the writ petition in the absence of any privity between the petitioners herein and the IRCTC.

112. The pleas advanced by the petitioners including M/s Stelling Technologies Pvt. Ltd. and RSPs are that (1) the IRCTC has made the agreement executed by them ineffective and (2) the access credentials of RSPs to do the e-ticket booking are being / have been deactivated by IRCTC by giving a sham notice to PSP. It is clear, both the pleas of the petitioners are directed against the IRCTC. I note complaints have been filed by IRCTC against M/s Stelling Technologies Pvt. Ltd. with the Delhi Police alleging that they are carrying on illegal activity of booking and providing meals in trains and e-ticket booking. That apart, lot of correspondence was exchanged between M/s. Stelling Technologies Pvt. Ltd. and the IRCTC, which includes a notice issued by the IRCTC calling upon M/s Stelling Technologies Pvt. Ltd. to stop booking e-tickets and stop directing passengers to RSPs.

113. Similarly, with regard to the RSPs, there is no dispute that there is no privity between IRCTC and RSPs. But at the same time, it cannot be denied that the relationship between IRCTC, PSP and RSP is regulated by the Rules and Regulations and the do's and don'ts issued by IRCTC. It cannot be denied that the access credentials have been deactivated by imposing a penalty on the PSP by the IRCTC and the effect thereof is being felt by the RSPs. In effect, the petitioners have a grievance against IRCTC. So, surely if

they have grievance, they are within their right to approach against IRCTC, which they have done in these petitions. There is no dispute that IRCTC is a *"State"* within the meaning of Article 12 of the Constitution of India and a writ petition is maintainable. In so far as the reliance placed by Mr. Majithia on the Judgments of the Supreme Court, in the case of ***Joshi Technologies International Inc. (supra)*** is concerned, the Supreme Court held that if the rights are purely of private character, no mandamus can be issued, even if the respondent is a State within the meaning of Article 12 of the Constitution of India as the other condition which has to be satisfied is that there should be a public duty involved. In the case in hand, it is the IRCTC's own case that the rules / regulations / policy and guidelines have been violated. So, the violation of the rules / regulations and policy surely suggest a public law element. In so far as the judgment in the case of ***Anandi Mukta Sadguru Shree Mukatajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Ors. v. V.R. Rudani and Ors. and Ors. 1989 2 SCC 691*** is concerned, the same is not of any help to IRCTC as in that case, the Supreme Court held no limitation can be put on the High Courts to issue writ of mandamus as the power under Article 226 of the Constitution of India is wide enough to include issuance of writs in the nature of prerogative writs. Similarly, in ***Mani Subrat Jain Jain and Ors. v. State of Haryana and ors. 1977 1 SCC 486***, the issue was relatable to appointment of appellants as Additional

District and Sessions Judge. The Supreme Court has held that they had no *locus standi* to file the petitions as they were not appointed and they had no right to be appointed. In other words, the Supreme Court held that there has to be a judicially enforceable as well as legally protectable right in existence, before a writ of mandamus can be issued. The Judgment in ***Kotak Mahindra Bank v. Bank of Baroda and Ors. MANU/DE/0214/2016*** has no relevance to the facts of this case inasmuch as this court held whether the Kotak Mahindra Bank has any cause of action is doubtful and this court has also held when the case is not free from factual disputes for which reason also the invocation of writ remedy is not an appropriate remedy. Similarly in ***Rajasthan State Industrial Development and Investment Corporation (supra)*** the Supreme Court held that a writ cannot be issued to enforce contractual obligations and moreover when there is an alternative statutory remedy available, a writ petition cannot be entertained. In so far as ***K.K. Saxena (supra)*** is concerned, the said judgment is distinguishable on facts, inasmuch as it was held by the Supreme Court that it was not funded by the Government nor it was discharging any function under any statute. Suffice it to state that IRCTC is a *"State"* within the meaning of Article 12 of the Constitution of India and is involved in the process of e-ticketing pursuant to an authorization given by the Railways and has framed rules and regulations for the said purpose and it is also their case that the said rules / regulations and policies have been violated by the RSPs and M/s. Stelling. Hence the petitions *per-se,* are maintainable and the plea of Mr. Majithia in that regard needs to be rejected.

114. A plea of alternative remedy of Arbitration has also been taken by Mr. Majithia inasmuch as there is an arbitration clause between the RSPs and M/s. Stelling and if there is any inter se dispute, the RSP must invoke the said arbitration clause. Such a plea does not appeal to the Court. Firstly there is no inter-se dispute between them as they both are contesting the action of IRCTC, to order de-activation of access credentials of the RSPs. Secondly, even if the matter goes to the arbitration, it is the action of the IRCTC which needs to be tested and IRCTC being not a party to arbitration agreement, there cannot be any adjudication of that aspect in any arbitration proceedings between M/s. Steeling and RSP as IRCTC is a third party. I am of the view that such a plea needs to be rejected.

115. Having answered the objections regarding maintainability, the issue which needs to be decided is whether the petitioner (M/s Stelling Technologies Pvt. Ltd.) through its e-commerce platform Railyatri.in, is merely bringing RSP and the customer together for the purpose of booking of e-tickets as contended by the M/s. Stelling and as such is a permissible activity. The case of M/s. Stelling is that it acts as a facilitator or go between the customer and seller of the tickets (RSPs) through its digital platform. It is not involved in the business of booking train tickets. The payment made by

the customer is forwarded by the M/s. Stelling to the RSP, who then forwards it to the IRCTC. The ultimate booking is done by the RSP concerned. The M/s Stelling's platform charges nominal amount equivalent to 1.25% of the ticket as a convenience fee for use of its e-commerce market place. The price of this ticket is exactly according to the rates prescribed by the IRCTC. It is the case of M/s Stelling that the RSP does not charge over and above what is prescribed by the Railways and M/s Stelling's platform has prominently disclaimed on its portal that it is an independent self funded entity and is in no way connected with IRCTC. It conducts its business directly in compliance with the extant Rules and Regulations set in place by the Government / Regulatory entity.

116. The case of the RSPs is on similar lines that the M/s Stelling is only a facilitator of business which is not actually involved in the ticket booking process. They state that there is no privity of contract between RSPs and IRCTC. They deny that they have shared the access credentials with M/s. Stelling or transferred their IDs. They also charge the rates as prescribed by the IRCTC. The electronic reservation slip as also the receipt of the money paid are issued to the customers in the prescribed format.

117. Having noted the case of the petitioners, assuming that the platform railyatri.in of M/s Stelling is only a facilitator and the access credentials are not shared with M/s. Stelling, still the creation of a platform by M/s Stelling

for a customer to use and access, through RSP, the network created by IRCTC from where the ticket is booked, would be impermissible. There is also no dispute that IRCTC has entered into an MoU with the Railways for the purpose of e-ticketing. The MoU authorizes the IRCTC to exploit the internet and increase its outreach to sell e-tickets. The IRCTC has developed various business models in that regard. There is no dispute that to operate the Scheme, IRCTC had entered into contracts with commercial entities. The entities have paid money to be associated with IRCTC. The entities are called PSPs. These PSPs appoint RSPs. The RSPs are the retail outlets as the name itself suggests. It is not disputed that the petitioner M/s Stelling which has a platform railyatri.in is neither a PSP nor an RSP and has no privity of contract with IRCTC. No money has been paid by M/s Stelling to IRCTC / PSP to be involved in the process of e-ticket booking or to be integrated in the network initiated / developed by the IRCTC, which according to this Court is a pre-requisite to be involved in any manner in the process of e-ticketing and for which integration fee and Annual maintenance fee is required to be paid. Neither the petitioner M/s Stelling nor the RSPs have challenged the MoU / relationship between the Railways / IRCTC on any ground. Further, the RSPs have not challenged, the policy and the rules framed by IRCTC for governing the e-ticketing Scheme. So, this Court proceeds on the premise that IRCTC has the exclusive right with regard to e-ticketing. The IRCTC has framed rules / regulations / policy, to govern the relationship between it and a commercial concern in that regard. It is the case of M/s. Stelling's that it has provided a virtual cloud telephony PBX service for the benefit of RSPs to automatically connect incoming call from a potential customer. The petitioner clarifies that the call made by the customer is never handled by the petitioner but is in fact automatically routed to an RSP that might be available at a given time also suggest that, through the e-commerce platform created by the M/s. Stelling a customer is connected to the RSP therefrom to PSP and the network of the IRCTC, which is impermissible as there is a use of Technology for gaining unfair advantage. That even otherwise, it is conceded / admitted by petitioner M/s. Stelling that railyatri.in also accepts money for booking the e-ticket directly from the customer. The fact that M/s. Stelling through railyatri.in is collecting money itself suggests, selling of ticket by it. The scheme evolved by the IRCTC, as stated by Mr. Jain, appearing for RSPs, is that e-ticket booking is done on the website created by a PSP which is a mirror image of IRCTC website and the payment is made on the PSPs website, which functions as an online wallet, whereas, the payment in the Railyatri app is made in the wallet of M/s Stelling. In fact, it was the submission of Mr. Bhushan that the payment made by the customer is forwarded by M/s. Stelling (Railyatri.in) to the RSP who then forwarded it to IRCTC. So, it is clear that there is a deviation from the procedure as contemplated under the scheme evolved by the IRCTC. This I say so, in view of the following clauses in agreement executed between the RSPs and the M/s. Stelling:-

> *xxx xxx xxx*
>
> *2. RailYatri under this agreement is an intermediary, and acts like a facilitator between the traveller (Buyer) and seller (Travel Agent), to provide support services on its digital and electronic platforms, like logistics, call center and **payment collection**, to the Travel Agent, as permitted by the Government of India's March, 2016 Guidelines for conducting E-commerce.*
>
> xxx xxx xxx
>
> *RailYatri will only provide marketing information, payment, communication and support services to Travel Agent.*
>
> xxx xxx xxx
>
> *B. Travel Agent authorizes **RailYatri to collect value of products / services from Buyer**, which RailYatri will then remit to Travel Agent as Settlement Amount. RailYatri will pay the Travel Agent the ticket booking amount and all authorized amounts charged by the Travel Agent to the Buyer like IRCTC's service charges, agent's service charges.*
>
> *xxx xxx xxx*
>
> *D. **RailYatri will remit the settlement amount to Travel Agent** within the time frame mentioned in RBI notification RBI/2009-*

10/231 DPSS.CO.PD.No. 1102/02.14.08/2009-10 dated November 24, 2009.

xxx xxx xxx

E. In case of refund / cancellation, the amount owed by Travel Agent to RailYatri will be adjusted in settlement amount. ***RailYatri will directly make a refund to the Buyer."***

118. That apart, even as per the agreement between M/s Stelling and RSPs the bookings, cancellations and railyatri special offer to buyer stipulate as under:-

"5. ***Bookings, Cancellations and RailYatri's Special Offer to Buyer***

A. xxxxxxx

B. xxxxxxx

C. RailYatri, in the course of providing the above-mentioned E-commerce services, will also be offering Buyer choosing to book railway tickets, the added facility (Special Offer), of making partial payments for booked tickets, with the balance (Balance Payment) being paid to the Travel Agent by RailYatri for and on behalf of the Buyer, on terms and conditions entered into between RailYatri and the Buyer, where under the Travel Agent will receive its agreed settlement from RailYatri.

i. In case of cancellation of ticket as per contractual agreement between RailYatri and Buyer, the Travel Agent will *be pre-authorized by the Buyer to deposit the cancellation refund to RailYatri, for onward transmission to the Buyer by RailYatri, after deduction of the Balance Payment, paid by RailYatri to Travel Agent, and any facilitation / financing fees, as may have been contracted between RailYatri and the Buyer.*

ii. The contractually agreed cancellation schedule between the Buyer and RailYatri will be at least 5 days prior to the date of travel, in case the Buyer does not pay RailYatri the Balance Payment for the ticket which has been paid to the Travel Agent by RailYatri on behalf of the Buyer, at least 5 days before the date of travel.

D. In case the Buyer pays the Balance Payment for the ticket booking to RailYatri at least 5 days prior to the date of travel, then the cancellation rules of the railway authorities shall apply to any cancellation done by the Buyer between 5 days and the date / time of travel, and full refund money as per railway authorities rules, which shall be deposited by the Travel Agent to RailYatri, will be refunded to the Buyer. However, the financing / facilitation fees will still be deducted for the availed Balance Payment made by RailYatri for and on behalf of the Buyer."

119. The said stipulation is contrary to the mandate of Rules and Regulations framed by the IRCTC inasmuch as it is RSP, who must refund the money as per cancellation rules to the customer immediately in all cases. The Rules and Regulations also stipulate whenever the cancellation ticket amount / the TDR refund amount which is credited back in the PSP's / RSP's

account used for ticket booking, could not be refunded to the customer due to various reasons, the money must be returned to IRCTC. The refund should be made to the customer within3-5 days from the date of receipt from the IRCTC.

120. Mr. Majithia is justified in saying that unauthorized agents getting involved in collection of money for ticket booking process and non-refunding in case of cancellation are enormous is appealing. The plea of Mr. Majithia that if such activities are not controlled, huge amounts of public money are susceptible of being siphoned of / misappropriated, is also appealing. In fact, a reference is made to the case of one Raj Kumar Gupta who claimed to have booked a ticket from railyatri.in app, but the refund for the same had not been received back upon cancellation despite a significant period having passed and during enquiry it was found that the said ticket had been booked by an RSP M/s. Sahara Tours and Travels Hub registered in the name of Mr. Vijay Tiwary and registered with the PSP M/s. G.I. Technology Pvt. Ltd. In fact, it is conceded by M/s. Stelling that delays have happened only in few cases depending upon specific facts and circumstances. The IRCTC has also given reference of the case of Mr. Keppuvergan, who booked ticket from Madras to Nizammuddin, but later on after canceling it, was not given the refund by the petitioner Deepak Suri. In effect, a further retail outlet has been created by the RSPs with their tie up with the M/s. Stelling. As per the Rules and

Regulations, the retail outlet can be at the level of the RSP only.

121. The plea of Mr. Bhushan that the facility provided by M/s. Stelling is to avoid the botheration of the customer to go to the RSP physically and book the ticket as the same can be booked from the confines of his house appears appealing on a first blush, but on a deeper consideration of the methodology evolved by M/s Stelling, through its platform railyatri.in connecting the customer to the RSPs and booking tickets by collecting money in its wallet and earning revenue, is surely unauthorized. No such arrangement is contemplated as per the Rules and Regulations / Policy.

122. Insofar as the submission of Mr. Sanjay Jain, on the plea of Mr. Majithia that the supply of e-tickets on the payment of fare on account of such tickets being its exclusive property with proprietary rights, that the same is erroneous and misconceived as IRCTC has no right to refuse supply of tickets except in circumstances as prescribed in Section 56 and Section 50 of the Railway Act is concerned, the plea of Mr. Majithia has to be understood from the perspective that in terms of authorization given by the railways to IRCTC, it is IRCTC which has the exclusive right to supply e-tickets on payment of fare to the public at large but discretion of IRCTC is only to the extent, to whom the task of supply of e-tickets be delegated to, on its behalf, in terms of the Rules and Regulations / Policy framed by it. At the same time, it must be said that the IRCTC has no right to choose the customer / consumer for

supply of e-tickets to travel in the railways.

123. At this stage, I may also deal with one of the plea of Mr. Majithia that IRCTC has intellectual property right over the website as it is the original creation of the IRCTC. In this regard, Mr. Sanjay Jain had, by referring to the PSP Agreement and API Agreement, contended that IRCTC's website is not accessed by the railyatri.in as, no access credentials are shared by the RSPs and the IPR are not assignable and Clauses 3.1, 3.4 and 3.7 contemplate, the website can be accessed for lawful purposes and in no way deal with infringement of IPR rights. Suffice it would be to state, the said argument of Mr. Majithia would only hold good if it is proved that the access credentials are shared by the RSPs and M/s Stelling is unauthorizedly accessing the website of IRCTC and booking the tickets, as the booking of the tickets would mean that they are accessing the website of the IRCTC.

124. The stand of Mr. Majithia that M/s Stelling is usurping the role of Service Providers under the B2C Scheme, has been controverted by Mr. Bhushan by stating that there is a difference between the operations undertaken by such Service Providers and M/s Stelling through Railyatri as the Service Providers book tickets themselves whereas M/s Stelling is merely a platform for bringing together the customer and the RSP and the ticket is booked by the RSP. This submission of Mr. Bhushan is not at all appealing. In effect, by resorting to the process of providing the platform to the

customers to reach the RSP, and also M/s Stelling through railyatri.in is in fact collecting the ticket fare, the same shall have the effect of booking the tickets, that too without paying integration charges / AMC to IRCTC. Surely, this shall undermine the role of service providers under B2C.

125. The plea of Mr. Bhushan that the Railway tickets are only license to travel in trains and by no stretch of imagination can be construed to be the property of IRCTC and if M/s Stelling get some profit indirectly through the sale of tickets, it cannot mean such benefit arise out of unauthorized use of IRCTC's property, is a fallacious argument, overlooking the factual aspect that IRCTC has evolved the network for booking tickets to travel in Railways, pursuant to an exclusive authorization by the Railways. The same has to be in the manner, stated by IRCTC, through its rules and regulations / Policy and not by way of an arrangement entered into by the RSPs. The Railways, having also outsourced the process of ticketing to IRCTC, the IRCTC has stepped into the shoes of the Railways, the activity of booking of tickets and earning revenue, therefrom, cannot be done without authorization from Indian Railways / IRCTC. It would be an irrelevant plea that full value of the ticket is being paid to IRCTC, when such an activity itself is unauthorized. It is also relevant to note the submission of Ms. Isha Bhalla, appearing for respondent no.2 (PSP) in W.P.(C) 8625/2017, that in the face of the financial commitments made by a PSP for being associated with IRCTC permitting a

third party to avail commercial advantage through back door of private agreement with an RSP is a case of unjust enrichment at the cost of PSP, is appealing.

126. The plea of Mr. Bhushan that the petitioner cannot be excluded from entering into any ancillary or side business venture, which has not been declared as a State monopoly under Article 19(6) of the Constitution of India is concerned, suffice it to state that there is no restriction imposed on the right of the petitioner to carry out any business, trade or profession. In fact, the petitioner M/s Stelling, if it chooses to carry out the trade of e-ticket booking, it can do so, subject to it fulfilling all the conditions that have been put by the IRCTC under the Rules and Regulations / Policy framed by it. But it cannot unauthorizedly do it, in terms of agreement with RSPs, by collecting the money itself.

127. Insofar as the submission of Mr. Sanjay Jain, justifying the RSP's contract with M/s Stelling Technologies Pvt. Ltd, by stating that the process undertaken is simpler than the one that is available to a prospective customer i.e. by logging on to IRCTC website, is concerned, the same in any case cannot justify the relationship when the same is in violation of the Rules and Regulations and Policy of IRCTC, which the RSPs are required to adhere to. The two violations, pointed by Mr. Majithia in this case are (1) the customer is not approaching the RSP directly, and (2) the payment is being collected by

the petitioner M/s Stelling itself.

128. Insofar as the plea of Mr. Jain that the *"access credential"*, is not a software, which can be hacked or illegally shared, is concerned, the said plea is inconsequential, when the relationship as entered into between M/s Stelling Technologies Pvt. Ltd and RSPs could not have been entered into at all. The plea of Mr. Jain that it is nowhere provided that a prospective customer has to approach the RSP for the purpose of booking a ticket, is factually incorrect inasmuch as the rules and regulations clearly provide that *"ticket should be booked only when the customer approaches"*. The word "approaches" must be understood in terms of the rules / regulations / Policy framed by IRCTC to mean only when a customer approaches the RSPs physically and not by online through app railyatri.in. This I say so when a customer approaches the RSP physically, it is the RSP, who books the ticket by collecting the payment in the wallet of PSP unlike when he approaches online, in which case, the payment is collected by M/s Stelling, which is impermissible.

129. On the plea of violation of principle of natural justice, there is no dispute that any action, which entails civil consequences must be preceded by a show cause notice, eliciting reply from the effected party. But in these writ petitions, in view of the admitted position that the RSPs do not deny, they have entered into an arrangement with M/s Stelling Technologies Pvt. Ltd in the manner depicted above, which, according to this Court, is impermissible

and also the fact, this Court has not given any finding that RSPs have shared access credentials with M/s. Stelling, it may not be necessary to remand the matter back to IRCTC, for a fresh consideration, when the factum of agreement between RSPs and M/s. Stelling has not been disputed.

130. In view of aforesaid conclusion, the reliance placed by Mr. Sanjay Jain on the judgments of the Supreme Court in the case of ***Gorkha Security Services (supra), Reliance Telecom Ltd. (supra)*** and ***Smt. S.R. Venkataraman (supra)*** are distinguishable on facts.

131. In view of my conclusion above, I am of the view that the present writ petitions are without any merit and the same are dismissed.

CM No. 40141/2017 in W.P.(C) 9864/2017
CM No. 35240/2017 in W.P.(C) 8562/2017
CM No. 35264/2017 in W.P.(C) 8570/2017
CM No. 35340/2017 in W.P.(C) 8598/2017
CM No. 35398/2017 in W.P.(C) 8613/2017
CM No. 35431/2017 in W.P.(C) 8625/2017

Dismissed as infructuous.

V. KAMESWAR RAO, J

APRIL 05, 2019/*ak/aky/jg*