

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2020

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THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA

W.P.Nos.1734, 1739 and 1744 of 2020
and W.M.P.Nos.2008, 2011, 2012, 2017, 2019, 2020,
2024 to 2026 of 2020

Hemant Kumar Shukla

.. Petitioner in all W.Ps

Vs.

1. The Senior Divisional Manager,
Chennai Division - Southern Railway,
2nd Floor, NGO Annexe,
Park Town, Chennai - 600 003.

2. The Divisional Manager / MAS,
Divisional Office,
Commercial Branch,
Chennai - 600 003

.. Respondents in all W.Ps

Prayer in W.P.No.1734 of 2020: Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records of the letter dated 16.11.2019 in letter No.M/C.79/GMU-70/MAS of the second respondent and the Tender Notification under Tender Notice No.COMML 19453-GMU 09 MAS dated 08.01.2020 issued by the second respondent and quash the same and consequently direct the respondents to renew the licence of catering stall GMU 70-MAS at Concourse Road, Chennai in favour of the petitioner for further period of 3 years from 06.03.2020.

Prayer in W.P.No.1739 of 2020: Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records with regard to the Tender Notification under Tender Notice No.COMML 19470-GMU 46 MS dated 08.01.2020 issued by the second respondent and quash the same and consequently direct the respondents to renew the licence of catering stall GMU 11-MS at Platform No.3 and 4 Near Higginbottam Stall at Chennai Egmore Station, Chennai in favour of the petitioner for further period of 3 years from 06.03.2020.

Prayer in W.P.No.1744 of 2020: Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records of the letter

dated 25.10.2019 in letter No.M/C.79/GMU-71/MAS of the second respondent and the Tender Notification under Tender Notice No.COMML 19454-GMU 10 MAS dated 08.01.2020 issued by the second respondent and quash the same and consequently direct the respondents to renew the licence of catering stall GMU 71-MAS at Concourse Road, Chennai in favour of the petitioner for further period of 3 years from 06.03.2020.

For Petitioners in : Ms.AL.Ganthimathi
all WPs

For Respondents : Mr.P.T.Ramkumar
in all WPs

C O M M O N O R D E R

These Writ Petitions have been filed for issuance of writ of certiorarified mandamus, calling for the tender notification of the second respondent under Tender Notice No.COMML 19453-GMU 09 MAS, No.COMML 19470-GMU 46 MS and No.COMML 19454-GMU 10 MAS dated 08.01.2020 respectively and quash the same and consequently direct the respondents to renew the licence of catering stalls at Chennai Central Station and Chennai Egmore Station in favour of the petitioner for further period of three years from 06.03.2020.

2. The petitioner has been running General Minor Unit (GMU) Stalls at Chennai Central Station and Chennai Egmore Station for the past several years upon licence taken from the Southern Railways. The petitioner had participated in the tender, pursuant to which, the second respondent granted Letters of Acceptance/Licences dated 04.02.2015 to run the stall - GMU 70, GMU 11 and GMU 71 respectively at Chennai Central Station and Chennai Egmore Station for a period of 5 years from 06.03.2015 to 05.03.2020. The annual licence fee payable was fixed at Rs.22,11,000/-, Rs.16,11,000/- and Rs.22,21,000/- respectively. After the payment of the said amounts, the petitioner had commenced the stalls and has been running for the past five years. Now, the petitioner seeks renewal under Clause 23 and Clause 1.3 of the Scope of work of the tender notice, which provides for further renewal for a period of three years on satisfactory performance and payment of all dues and arrears. The period of contract came to an end on 05.03.2020. Hence, the petitioner had given a letter dated 03.09.2019 to the first respondent seeking an extension / renewal of licence regarding GMU 70, GMU 11 and GMU 71 respectively.

3. The first respondent, in response, by letter dated 16.11.2019 had rejected the request of the petitioner and

advised the petitioner to handover the vacant possession of the catering stalls on 05.03.2020. Subsequent to the same, the first respondent had also invited tenders in respect of all the general minor units including the catering stalls at GMU 70 in Chennai Central Station, GMU 11 in Chennai Egmore Station and GMU 71 in Chennai Central Station, vide tender notices dated 08.01.2020 in COMML 19453-GMU 09 MAS, COMML 19470-GMU 46 MS and COMML 19454-GMU 10 MAS respectively. The said tender notices are now being challenged by the petitioner contending that he is entitled for renewal of licence as per Clause 23 and Clause 1.3 of the Scope of work of the tender notices.

4. It is stated by the respondents that when these Writ Petitions came up for admission on 24.01.2020, it was informed to the Court by the respondents that in the Catering Policy 2017, a decision had been taken and introduced that there cannot be any renewal of licence and there has to be an auction of every shop for a period of five years. This Court also had directed the petitioner to participate in the tender in respect of these stalls. Despite the opportunity granted by this Court, the petitioner did not participate in the tender, qua, these three stalls. It is also stated that the petitioner had preferred to participate in the same tender dated 08.01.2020 with respect to another Stall GMU 79 at Chennai Central Railway Station and he was a successful bidder and secured the licence for a period of five years.

5. The learned Standing Counsel for the respondents would point out that the Railway Administration has implemented the Catering Policy, 2017 from 27.02.2017, which supersedes earlier Catering Policy 2010. As per the new Catering Policy 2017, the allotment for GMU Stalls in A, B and C category stations will be done only through Open, Competitive, Two Cover tendering system and any renewal of license are not granted.

6. It is also specifically mentioned by the learned Standing Counsel for the respondents that in an identical situation, yet another licensee filed a Writ Petition before the Madurai Bench of Madras High Court in W.P.(MD)No.2331 of 2018, which came to be allowed on 06.09.2018. The Writ Appeal filed by the Railway Administration in W.A(MD)No.1566 of 2018 was allowed by a Division Bench of the Madurai Bench of Madras High Court Court, vide judgment dated 16.10.2020. The relevant paragraphs are extracted hereunder.

"11. It is, therefore, evident that the tenure of the licence does not result in any automatic renewal and it is the discretion of the Railways and correspondingly, the policy containing the terms and conditions openly declares that renewal will not be a matter of

right. The respondent - petitioner was therefore bound by the same.

12. We find that the learned Single Judge has completely overlooked these provisions contained in the terms and conditions governing the licence that was granted to the respondent - writ petitioner, even assuming for the sake of argument that the Policy of 2010 continued to be applicable on the facts of the present case.

13. Apart from this, it cannot be lost sight of that if the Catering Policy of 2017, through Commercial Circular No.20 of 2017, has discontinued the practice of any renewal of licence, then, in that event, it may not be permissible for this Court to give a direction for renewal of a licence which even otherwise is not a matter of right as concluded hereinabove."

7. The above judgment of the Division Bench is applicable to the relief sought for by the petitioner in these Writ Petitions also, which was also accepted by the learned counsel for the respondents.

8. As there is no renewal Clause in the new Catering Policy 2017, the claim of the petitioner cannot be entertained and hence, these Writ Petitions have to be dismissed.

9. Accordingly, these Writ Petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

srn

To

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WEB COPY

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GSM(CO)
SP(10/02/2021)



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