



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.02.2020

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THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

W.P.(MD)No.1575 of 2020
and W.M.P.(MD)Nos.1280 & 1281 of 2020

S.Nagarajan

.. Petitioner

Vs.

1. The Senior Divisional Commercial Manager,
Divisional Office, Southern Railway,
Commercial Branch, Chennai-600 003.

2. The Divisional Railway Manager,
Southern Railway, Chennai Division,
Chennai-600 003.

.. Respondents

* * *

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus to call for the records on the file of the first respondent in his proceedings in Ref.No.M/C.79/SMU-4/MAS, dated 16.11.2019, in respect of the catering stall SMU-4/MAS on platform No.2A and 3 at Chennai Central Railway Junction and quash the same as illegal and further direct the respondents to forthwith renew the license for a further period of 3 years for the catering stall SMU-4/MAS at platform No.2A and 3 in Chennai Central Railway Junction and pass consequential orders.

* * *

For Petitioner : Mr.S.Ramesh
for M/s.S.Muthukumar

For Respondents : Mr.S.Manohar
Standing Counsel

O R D E R

This petition is laid before this Court questioning the legality of the order passed by the first respondent in his proceedings in Ref.No.M/C.79/SMU-4/MAS, dated 16.11.2019, in respect of the catering stall SMU-4/MAS on platform No.2A and 3 at Chennai Central Railway Junction and seeking further direction to the respondents to forthwith renew the license for a further period of 3 years for the said stall and to pass the consequential orders.

2. The claim of the petitioner, as culled out from the



affidavit filed in support of this petition, is as follows :

(i) The petitioner is involved in the business of catering and he applied for the tender for running Special Minor Unit (SMU) catering stall earmarked to Scheduled Tribe at Chennai Central Junction floated by the respondents. He, being the successful bidder, was awarded licence to run SMU-4 at Platform 2A and 3 for a period of five years from 19.02.2015 to 18.02.2020 on certain terms and conditions and the same is governed by Catering Policy 2010.

(ii) The claim of the petitioner is that he maintained good quality of the food served in the stall and he never violated any rules and conditions and gave chance for any complaint from any quarters. As directed by the respondents, he entered into an agreement dated 07.02.2018. He also claimed that from the Financial Year 2017-18, he has been paying a sum of Rs.11,20,000/- as the annual license fee, which includes GST.

(iii) According to the petitioner, Clause 16.2.1. of the 2010 Policy speaks of tenure, as per which, the initial award made for a period of 5 years can be renewed for every 3 years on satisfactory performance and payment of all dues and arrears and withdrawal of court cases, if any. Thus, invoking the renewal clause contained in the 2010 Policy, he submitted a representation dated 25.09.2019 seeking renewal of license for a further period of three years. But the order dated 16.11.2019 came to be passed rejecting his request and directing him to handover the vacant possession of the Catering Stall on 18.02.2020, after clearing all the arrears, if any. Impugning the said order, the petitioner is before this Court.

3. Repudiating the claim of the petitioner, the respondents filed counter-affidavit dated 03.02.2020, wherein, *inter alia*, it is claimed that the petitioner is very much aware of the tenure of the licence, as the same is borne out by each of the documents furnished to him, and also the fact that the renewal is not a matter of right. It is stated that in view of the implementation of Catering Policy 2017, which supersedes Catering Policy 2010, the tenure of all catering units is five years without any provision for renewal, with a rider for certain units and the stall allotted to the petitioner is now converted from reserved category into the General Minor Unit (GMU) category, based on detailed study and hence, the petitioner is not entitled to claim renewal as a matter of right. It is also claimed that fresh tenders were floated based on the 2017 Catering Policy and the petitioner, having failed to participate in the tender, cannot seek any remedy from this Court and thus, the respondents seek dismissal of this writ petition.

4. Placing heavy reliance on the order of this Court in W.P. (MD)No.2331 of 2018 dated 06.09.2018, learned counsel for the petitioner seeks similar relief.

<https://hcservices.courts.gov.in/hcservices>, learned Standing Counsel for the respondents



contended that the Catering Policy 2017 superseded the Catering Policy 2010 and hence, the petitioner is estopped from seeking any relief relying upon the 2010 Policy and without any valid ground, the petitioner seeks to quash the impugned order of the respondents, which is not permissible in the eye of law.

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6. This Court considered the rival submissions of the learned counsel on either side and perused the materials available on record.

7. Admittedly, the impugned order is a cryptic and non-speaking order without assigning any valid reason, by merely stating that the Competent Authority carefully considered the letter of the petitioner, but not approved for renewal.

8. It is not in dispute that the petitioner was awarded license under the 2010 Catering Policy and Clause 16.2.1. of the said policy, which deals with the tenure of SMUs, stipulates that the initial award made for a period of 5 years can be renewed for every 3 years on satisfactory performance and payment of all dues and arrears and withdrawal of court cases, if any. It is also not in dispute that there is no complaint from any quarters against the petitioner and hence, it has to be presumed that he performed his part of the licence to the satisfaction of the respondents, unless the contrary is alleged. In such circumstances, the renewal can be granted, though clause 17 says that the renewal is not a matter of right.

9. The stand of the respondents before this Court is that in view of the implementation of 2017 Catering Policy, which superseded 2010 Catering Policy, the renewal is not permissible. The said contention was negatived by this Court in the order dated 06.09.2018 in W.P.(MD)No.2331 of 2018 (M.Mohamed Akbar V. The Sernior Divisional Commercial Manager and another), wherein, a similar order passed by the first respondent was set aside and the respondents were directed to renew licence of the petitioner therein.

10. Reliance was placed on the judgment of the Hon'ble Apex Court in **Senior Divisional Commercial Manager V. S.C.R. Caterers, Dry Fruits, Fruit Juice Stalls Welfare Association and Others, (2016) 3 SCC 582**. In the said judgment, challenge was laid by the Railways qua the judgment of the Division Bench of the High Court of Judicature of Andhra Pradesh upholding the order of the learned Single Judge of the said Court granting the similar relief to the respondents therein. The Hon'ble Apex Court dismissed the appeal of the Railways. Though the learned Standing Counsel for the Railways contended that the Apex Court in the said appeal held that the persons, who are entitled to renewal of contract, have to establish the fact that they do not have any other stall either in his name, family members' name or any benami's name, the learned Single Judge



of this Court in the said order distinguished the said judgment and held in favour of the licensee.

11. At this juncture, it is to be stated that what was challenged before the Apex Court in the said case was the action of the Railways based on 2005 Catering Policy at the time of implementation of 2010 Catering Policy. It is relevant to note that Clause 19 of the 2010 Policy titled "Ceiling limits on holding of catering licenses", provides maximum units an individual/firm/company can be allowed to hold. Clause 19.2. reads as follows :

"19.2. MINOR UNITS : An individual/firm/company will be allowed to hold maximum two minor catering units at a station and a maximum of 10 units per Zonal Railway."

Even assuming without admitting that the said judgment of the Hon'ble Apex Court is applicable to the petitioner, in view of Clause 19.2. of the 2010 Catering Policy, the petitioner is not barred from seeking extension of the subject SMU. On the other hand, he is entitled to seek extension based on the 2010 Catering Policy, in terms of which license was granted in his favour.

12. As held by the learned Single Judge of this Court the 2017 Catering Policy has no application to the case of the petitioner for the simple reason that Clause 20.2 of the 2017 Catering Policy protects his interest. It is relevant to extract the said clause as hereunder :

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

As the saving clause protects the interest of the tenderers, whose tenders have been finalized and LoA issued prior to the notification of the said policy, the petitioner is entitled to have the benefit of, at least, the first renewal for a period of three years.

13. In the result, the impugned order of the first respondent does not have any merit and the same is liable to be interfered with. Accordingly, this writ petition is allowed and the impugned order dated 16.11.2019 is set aside.

14. Consequently, the respondents are directed to pass appropriate orders renewing the license of the petitioner for the catering stall SMU-4/MAS at platform No.2A and 3 in Chennai Central Railway Junction, for a further period of three years, in tune with Clause 16.2.1. of the Catering Policy 2010, within a period of four weeks from the date of receipt of a copy of this order. There shall



be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

To

1. The Senior Divisional Commercial Manager,
Divisional Office, Southern Railway,
Commercial Branch, Chennai-600 003.
2. The Divisional Railway Manager,
Southern Railway, Chennai Division,
Chennai-600 003.

+1 CC to M/s.S.MUTHUKUMAR, Advocate (SR-8723[F] dated 27/02/2020)

+1 CC to M/s.S.MANO HAR, Advocate (SR-8621[F] dated 27/02/2020)

Order in
W.P. (MD)No.1575 of 2020
& W.M.P. (MD)Nos.1280 & 1281 of 2020
26.02.2020

JMN(05.03.2020) 5P : 5C