



WEB COPY

W.A.(MD) No.1566 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.10.2020

CORAM:

THE HON'BLE MR.A.P.SAHI, THE CHIEF JUSTICE

and

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.A. (MD) No.1566 of 2018

and

C.M.P. (MD) No.11180 of 2018

Against W.P(MD) No.2331 of 2018

1.The Senior Divisional Commercial Manager
Divisional Office
Southern Railway
Commercial Branch
Tiruchirapalli

2.The Divisional Railway Manager
Southern Railway
Tiruchirapalli Division
Tiruchirapalli

... Appellants / Respondents

-vs-

M.Mohamed Akbar

... Respondent / Petitioner

Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 06.09.2018, passed in W.P.(MD) No.2331 of 2018, on the file of this Court.

Prayer in WP(MD). 2331/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the records of the 1st respondent herein bearing Ref.No.T/C.79/Catering Stall/TPJ/SMU S-2 dated 17.1.2018, served on the petitioner on 19.1.2018, in respect of the Catering Stall S2(SMU/TPJ) on platform No.4 and 5 at Tiruchirappalli Railway Junction, and quash the same and direct the Respondents herein to forthwith renew the license for a further period of 3 years for the Catering Stall S2 (SMU/TPJ) on Platform Nos.4 and 5 at Tiruchirappalli Railway Junction, and quash the same and direct the Respondents herein to forthwith renew the license for a further period of 3 years for the Catering Stall S2(SMU/TPJ) on Platform Nos.4 and 5 at Tiruchirappalli Railway Junction in favour of the Petitioner.

For Appellants : Mr.V.Radhakrishnan, Senior Counsel
Assisted by Mr.S.Manohar

For Respondent : Ms.AL.Gandhimathi



J U D G M E N T

[Delivered by the Hon'ble CHIEF JUSTICE]

We have heard Mr.V.Radhakrishnan, learned Senior Counsel, assisted by Mr.S.Manohar, learned counsel for the appellant - Railways and Ms.AL.Gandhimathi, learned counsel for the respondent - writ petitioner.

2. This is a dispute arising out of refusal by the appellant - Railways to grant renewal of licence for running a catering stall at Platform Nos.4 and 5 at Tiruchirapalli Junction. The order that was assailed before the learned Single Judge, dated 17.01.2018, is extracted hereunder:

Southern Railway

*No.T/C.79/Catering
Divisional Office*

Stall/TPJ/SMU

S-2

*Commercial Branch
Tiruchchirappalli
Dated:17.01.2018*

*Shri.Mohamed Akbar
No.137/18, St.Paul's Complex,
'A' Block, Bharathiyar Street,
Cantonment Road,
Trichy-620 001.*

*Sub : Writ Petition (MD) No.66 of 2018 filed before
The Hon'ble High Court of Madras - Madurai Bench
by Shri.Mohammed Akbar against Sr.DCM/TPJ &
DRM/TPJ-Reg.*

*Ref : 1.Your representation No.VC/TPJ/S/2/21/5/1,
dated*

*21.05.2017 addressed to The Chief Commercial
Manager, Southern Railway, Chennai.*

*2.CCM/MAS letter No.C.79/CU/TPJ Dn.Vol.I dt.
17.01.2018*

In compliance with the directions issued by the Hon'ble High Court of Judicature at Madras, Madurai Bench for your representation dated 21.05.2017 for renewal of Catering Stall S-2(SMU)/TPJ was considered in terms of the extant policy.

- The licence for Catering Stall No.S2(SMU/TPJ was awarded to you based on Catering Policy 2005. As per the Judgment of Hon'ble Supreme Court delivered on*



29.01.2016, in Civil appeal No.618-620 of 2016, "only those licensees may be eligible for renewal of their licenses who can declare on affidavit that they do not have the license of more than one shop or kiosk in their name or benami license at the railway stations with periodical reasonable increase of license fee".

- As per the affidavit submitted by you, you are holding more than one stall hence you are not entitled for renewal of Catering Stall S2 (SMU)/TPJ beyond the contract period.

Hence you should pay any pending dues and should peacefully vacate the railway premises, hand over all articles belonging to the Railway Administration and should remove the stall and any other temporary structure that might have been provided by you at your own cost without any compensation from the Railway administration within a period of one month.

Sr.Divisional Commercial Manager
Tiruchirappalli"

3. Learned Senior Counsel for the appellant - Railways contends that with the introduction of new Catering Policy 2017, all other previous Policies stood superceded and there is no clause of renewal henceforth and therefore, the respondent - petitioner was not entitled for renewal as a matter of right and even otherwise, it was stated, in the impugned order quoted above, that his performance in the operation was not satisfactory in the previous tenure of five years from 21.01.2012 to 20.01.2017.

4. The learned Senior Counsel further contends that no indefeasible right or vested right had accrued in favour of the respondent / writ petitioner so as to claim renewal of the licence and get it legally enforced through a writ and for which, he has also relied on the judgment of the Apex Court in the case of **Yazdani International (P) Ltd. vs. Auroglobal Comtrade (P) Ltd.** reported in **(2014) 2 SCC 657**, of which, paragraph Nos.43 and 44, are extracted hereinunder:

"43.As rightly pointed out by Shri Nariman, a licence by definition does not create any interest in the property. A licence only gives a right to use the immovable property of the grantor, to the grantee. There is no transfer of any interest in such property in favour of the grantee. On the other hand, under the Transfer of Property Act, an interest either limited or unlimited is created in favour of the transferee depending upon the nature of the transfer (sale, mortgage or lease etc.). Under Section 60, a licence is revocable at the will



of the grantor which is the essence of a licence. The Easements Act categorically declares that a licence can be revoked by the grantor except in the two contingencies specified under Sections 60(a) and (b). No such exceptions are pleaded or demonstrated by the appellants. Therefore, it must be held that none of the appellants have any indefeasible right of renewal either under the Easements Act or under the above mentioned policy.

44. However, that does not mean that a public body like the respondent Board can arbitrarily decline to renew a licence. It is well settled by a catena of decisions of this Court that no public body under our constitutional system is vested with such arbitrary powers, as was pointed out by this Court in *Ramana Dayaram Shetty vs. International Airport Authority of India*. If the Board decides not to renew any licence either with respect to a class of licences or with reference to a specific area of land, normally such a decision cannot be said to be either irrational or arbitrary unless there are other compelling reasons to indicate that the decision has no rational purpose to be achieved.

5. The learned Senior Counsel further submits that the terms of the contract itself declares that any claim of renewal would not be a matter of right and hence, the respondent - writ petitioner cannot claim any better right than what was indicated in the existing policy and terms of licence itself. But, the learned Single Judge has opined that there was a hope and expectation in the mind of the respondent - writ petitioner that he would probably be considered for a further period of three years and therefore, the same stood protected under the earlier Policy of 2010, hence, he had the right of renewal, which finding is erroneous in law.

6. The learned Senior Counsel has invited the attention of the Court to the judgment of the Apex Court in the case of ***South Central Railways vs. S.R.C. Caterers, Dry Fruits, Fruit Juice Stalls Welfare Assn.***, reported in **(2016) 3 SCC 582**, to further substantiate his submissions.

7. Ms. AL. Gandhimathi, learned counsel for the respondent - writ petitioner has opposed the appeal contending that as per Clause-16 of the terms and conditions prescribed for renewal, the respondent - writ petitioner had every right of renewal for a further period of three years, for which, a specific reliance was placed on Clause 16.2.1 of the terms and conditions of licence, which is extracted herein under:

<https://hcservices.ecourts.gov.in/hcservices/>



"16.2.1. Special Minor Units at A, B, and C category stations shall be awarded for a period of 5 years **with a renewal after every 3 years on satisfactory performance** and payment of all dues and arrears and withdrawal of court cases, if any."

WEB COPY

8. Relying on the same, it is urged that this renewal ought to have been considered and therefore, denial of this opportunity to the respondent - writ petitioner has been rightly adjudicated by the learned Single Judge, as it had not been considered in accordance with law and in terms of the then existing Policy of 2010, which ought to have been applied. Hence, no interference is called for.

9. We have heard the learned counsel for the parties and we find that the grant of licence is subject to the terms and conditions provided for in Clause 17 of the 2010 Policy for renewal of licence, as under:

"17.RENEWAL

Renewal will not be a matter of right.

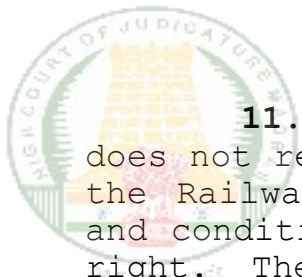
The licensee must apply for renewal minimum 6 (six) months in advance before the expiry of the contract. Renewal will be based on the following:-

17.1. Satisfactory performance of the licensee during the tenure of the contract. An imposition of fine/warnings on more than 5 occasions will result in rejection of the application for renewal."

10. The tenure of licence is further subject to the actual terms of the licence, which contained in the agreement and the same is extracted hereinunder:

"2. Tenure of License

The period of renewal of license shall be for Five Years from 21.01.2012 to 21.01.2017 unless it is extended at the discretion of the Railway Adminsitration. The agreement is liable to summarily terminated in the event of breach of conditions of agreement, unsatisfactory services, subletting or any other improper act by the licensee. This agreement may also be terminated by either party giving to the other not less than one calender months notice in writing, without assigning any reason. In event of death or insolvency or conviction by a criminal court of the licensee, the license shall automatically cease and be terminated."



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.

WEB COPY

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.

14. Therefore, there is no vested right as rightly contended by the learned counsel for the appellant - Railways to seek renewal and hence, we find that the impugned Judgment dated 06.09.2018 is legally unsustainable.

15. Accordingly, the writ appeal is allowed and the Judgment, dated 06.09.2018 in W.P.(MD) No.2331 of 2018, is set aside. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CSII)

// True Copy //

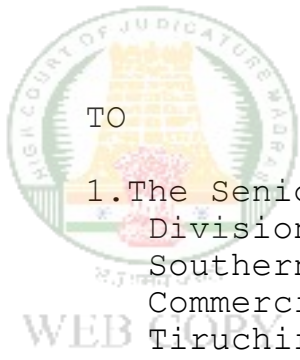
/ /2020

Sub Assistant Registrar(CS)

Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

krk / sts



TO

1.The Senior Divisional Commercial Manager
Divisional Office
Southern Railway
Commercial Branch
Tiruchirapalli

2.The Divisional Railway Manager
Southern Railway
Tiruchirapalli Division
Tiruchirapalli

+1 CC to M/s.S. MANOHAR, Advocate (SR-20409[F] dated 16/10/2020)

W.A. (MD) No.1566 of 2018
and
C.M.P. (MD) No.11180 of 2018
16.10.2020

SRK (CO)
KB (04.11.2020) 7P 4C