

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

983 WRIT PETITION NO.8859 OF 2021

SHRI SAI CATERING AND SUPPLIER THR ITS PROPRIETOR
SUREKHA SANJAY MANDAWADE
VERSUS
SENIOR DIVISIONAL COMMERCIAL MANAGER CENTRAL
RAILWAY AND ANOTHER

...
Advocate for Petitioners : Mr. S.P. Brahme & Mr. A.R. Syed
AGP for Respondents 1 & 2 : Mr. M.N. Navandar
...

**CORAM : S.V. GANGAPURWALA &
R.N. LADDHA, JJ.**
DATED : 12/10/2021.

PER COURT :

. Mr. Brahme, learned advocate for the petitioner submits that the petitioner had been allotted the parking contract for a period of three years on or about 30th of December, 2020. The license fees was Rs.8,85,750/- per quarter. The learned advocate submits that because of the Covid-19 pandemic, restrictions were imposed. The railways were not running at the full capacity. Number of railways and number of passengers have reduced. The respondents, considering the same, gave concession to the other contractors in payment of license fees. The petitioner

is discriminated. The learned counsel submits that this Court may take judicial notice of the pandemic situation and the difficulties faced. The petitioner requires to be given some benefits as extended to other contractors. The petitioner was given contract for two wheeler parking on the north side. The person who was given contract for parking on south side has been given concession in payment of license fees. The decision, not to accord concession to the petitioner, is arbitrary and discriminatory.

2. Mr. Navandar, learned advocate for the respondents submits that there is no discrimination. The respondents have not discriminated the petitioner. Those contractors who were given contracts in earlier point of time i.e. before the pandemic, they have been given the concession and the benefit. The petitioner is also given concession in another contract which he had entered in to prior in point of time. The present contract is of December, 2020 after the pandemic restrictions have been relaxed. The learned advocate submits that it is only with effect from 1st of July 2021, the petitioner is required to pay the license fee and contract would be for the period of three years from 1st of July 2021.

3. We have considered the submissions. In contractual matters, this Court would be very slow to entertain the petition unless the action of instrumentality of the State is arbitrary, malafide and is absolutely unreasonable.

4. The petitioner had bid for the allotment of the parking space in December, 2020 i.e. much after the restrictions were earlier placed and thereafter relaxed.

5. In the present matter, it would not be the case of frustration of contract. If the contract would be entered in to prior to March 2020 and as the complete lock down was declared on or about 24th of March 2020, one could say that because of the supervening circumstances beyond the control of normal human being the contract has become impossible of performance and void. In the present case, such a situation does not arise.

6. The concession given by the respondents is to those contractors who had contracted prior to onset of pandemic and

because of the pandemic, they have been given concession. The petitioner cannot be placed at par with those contractors.

7. In the light of above, the writ petition is disposed of.
No costs.

[R.N. LADDHA, J.]

[S.V. GANGAPURWALA, J.]

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